

[2021] PBRA 116

Application for Reconsideration by Coles

Application

1. This is an application by Coles (the Applicant) for reconsideration under rule 28 of the Parole Board Rules 2019 (the 2019 Rules), of a decision of the Parole Board under rule 25(1) of the 2019 Rules, that the Applicant was unsuitable for release (the Decision), dated 6 July 2021. The Decision was communicated in a written decision letter of the same date (the Decision Letter).

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2. I have considered the application on the papers, comprising:

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- a) The parole dossier of 422 numbered pages (including a copy the Decision Letter); and
- b) Written representations for the Applicant by the Applicant's solicitors dated 28 July 2021.

Background

3. In March 2015, the Applicant was sentenced to an extended determinate sentence of imprisonment after his conviction for threats to kill, committing an offence, namely threatening with a bladed article, with intent to commit a sexual offence and threatening with that bladed article. The sentence expiry date is 8 March 2025.

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4. The Applicant was released in March 2019 on a licence that was revoked in December 2019, leading to his recall to custody.

5. The Applicant was aged 22 when he received the sentence in March 2015 and is now aged 28.

Current parole review

6. The Decision was made on the referral by the Secretary of State for Justice (the Respondent) of the Applicant's case to the Parole Board to consider whether or not it would be appropriate to direct the Applicant's release.

7. The Decision was made by a panel of two members of the Board who considered the Applicant's case at two oral hearings, on 20 October 2020 and on 14 June 2021 (the Panel). The hearings were conducted by video link due to the COVID-19 pandemic.

Application and response

8. It is asserted in the Applicant's representations dated 5 July 2021 that the Decision is marred by irrationality.
9. The Public Protection Casework Section confirmed in an email dated 6 August 2021 that the Respondent would offer no representations in response to the Applicant's reconsideration application.

The Relevant Law

10. Rule 28(1) of the 2019 Rules provides that applications for reconsideration may be made in eligible cases either on the basis (a) that the decision is irrational and/or (b) that it is procedurally unfair.

Irrationality

11. In **R (DSD and others) v the Parole Board [2018] EWHC 694 (Admin)**, the Divisional Court set out the test for irrationality to be applied in judicial reviews of Parole Board decisions. It said at para. 116,

"the issue is whether the release decision was so outrageous in its defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it."

12. This test was set out by Lord Diplock in **CCSU v Minister for the Civil Service [1985] AC 374**. The Divisional Court in **DSD** went on to indicate that in deciding whether a decision of the Parole Board was irrational, due deference had to be given to the expertise of the Parole Board in making decisions relating to parole.

13. The Board, when considering whether or not to direct a reconsideration, will adopt the same high standard for establishing 'irrationality'. The fact that Rule 28 contains the same adjective as is used in judicial review shows that the same test is to be applied. The application of this test has been confirmed in previous decisions on applications for reconsideration under Rule 28: **Preston [2019] PBRA 1** and others.

Procedural unfairness

14. Procedural unfairness means that there was some procedural impropriety or unfairness resulting in the proceedings being fundamentally flawed and therefore, producing a manifestly unfair, flawed or unjust result.

Consideration

15. It is asserted by the Applicant that the Decision is marred by irrationality because the Decision is against the weight of the evidence.
16. The Applicant also asserts that several errors were made in the Decision Letter that raise the concern that the Panel may have confused the evidence in the Applicant's case with another case.

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17. The Applicant notes that at the second hearing, the Community Offender Manager (COM), Prison Offender Manager (POM) and Psychologist all recommended the Applicant's release, based on the Applicant's engagement at that time, which was considered by the witnesses to involve openness and honesty.
18. As the Applicant acknowledges, the Decision Letter reveals that the Panel considered that engagement was short lived. The Applicant asserts that the Panel considered that the engagement was not necessarily genuine for that reason and that the Panel failed to give adequate weight to a letter the Applicant had written to her, about his life and history. However, the Decision Letter reveals that the Panel had regard to the letter and that the Panel's concern was whether the engagement, which it acknowledged, was superficial and whether it would be likely to endure, given the Panel's concerns that the Applicant had not been open in the community and that that persisted for some time after recall. The Panel considered moreover that the Applicant's communication only improved after there was a clear indication from the Panel that engagement with professionals should improve during the adjournment between the two hearings. These aspects of the Panel's assessment cannot properly be described as irrational.
19. The Applicant's assertion that the Panel was irrational in considering that the proposed risk management plan would be insufficient to protect the public is based on the assertion that the Applicant's risk was effectively managed by his recall in 2019, by which he was removed from an undisclosed relationship. However, the fact that the Applicant was prepared to practice such a level of deceit, in breach of a condition of his licence, could only rationally signal the need for heightened scepticism as to the Applicant's ability and willingness to engage with those responsible for his supervision in an open and honest manner.
20. It is important that a panel should explain clearly a decision that is contrary to the opinions and recommendations of professional witnesses. That is especially so in the case of unanimity among professional witnesses: **R (Wells) v Parole Board 2019 EWHC 2710**. However, the Parole Board is not obliged to adopt the opinions and recommendations of professional witnesses and it is a panel's responsibility to make its own risk assessment and to evaluate the likely effectiveness of any risk management plan proposed on the totality of the evidence, which it may be expected to perform with the benefit of its expertise in the realm of risk assessment; see **DSD**, for example. In the Applicant's case, I consider the reasons stated within the Decision Letter are adequate.
21. I assume for the purpose of the assessment of this application that the Decision Letter contains the factual errors identified by the Applicant, but those errors, while unfortunate, are not material to the Decision and do not raise any reasonable concern

that the Panel may have confused the evidence in the Applicant's case with another case.

Decision

22. The Decision is not marred by irrationality or procedural unfairness. The application for reconsideration is, accordingly, refused.

Timothy Lawrence
16 August 2021