

[2021] PBRA 151

Application for Reconsideration by Farrington

Application

1. This is an application by Farrington (the Applicant) for reconsideration of a decision of a Panel of the Parole Board dated 4 October 2021, following an oral hearing on 23 September 2021.
2. The hearing was conducted remotely via video-link. The Panel made no direction for release.
3. Rule 28(1) of the Parole Board Rules 2019 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.
4. I have considered the application on the papers. These are the dossier of 411 pages (that includes the decision letter) and the application for reconsideration.

Background

5. The Applicant was aged 26 at the time of sentence and is now aged 38 years old. He was sentenced to Imprisonment for Public Protection on 22 February 2010 for an offence of manslaughter. The minimum tariff was set at 4 years, 6 months, and expired on 22 August 2014.
6. The Applicant was released (for the second time) on 22 January 2021 and recalled three days later.

Request for Reconsideration

7. The application for reconsideration is dated 25 October 2021.
8. This notes that both the professional witnesses at the hearing (the Prison Probation Officer and the Community Probation Officer) were recommending release. In light of that, the decision to not direct release was irrational.
9. Particular emphasis is placed on the fact that the Applicant was released during the 'lockdown' which meant that much of the support that was hoped to be available was not present.



Current parole review

10. The Applicant's case was referred to the Parole Board in February 2021 after his return to custody. An oral hearing was directed the next month.
11. The oral hearing was conducted remotely on 23 September 2021. The Panel heard evidence from the Applicant, as well as from the prison probation officer and the community probation officer.
12. In the written decision letter, the Panel sets out reasons to not direct release. However, they did recommend that the Applicant was suitable for a move to open conditions. I have not been told whether that recommendation has been accepted by the Secretary of State.

The Relevant Law

13. The panel correctly sets out in its decision letter the test for release and the issues to be addressed in making a recommendation to the Secretary of State for suitability to remain in open conditions.

Parole Board Rules 2019

14. Under Rule 28(1) of the Parole Board Rules 2019 the only kind of decision which is eligible for reconsideration is a decision that the prisoner is or is not suitable for release on licence. Such a decision is eligible for reconsideration whether it is made by a paper panel (Rule 19(1)(a) or (b)) or by an oral hearing panel after an oral hearing (Rule 25(1)) or by an oral hearing panel which makes the decision on the papers (Rule 21(7)).
15. A decision to recommend or not to recommend a move to open conditions is not eligible for reconsideration under Rule 28. This has been confirmed by the decision on the previous reconsideration application in **Barclay [2019] PBRA 6**.

Irrationality

16. 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."

17. 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. The Board, when considering whether or not to direct a reconsideration, will adopt the

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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.

18. The application of this test has been confirmed in previous decisions on applications for reconsideration under rule 28: **Preston [2019] PBRA 1** and others.

The duty to give reasons

19. The decision as to the assessment of risk is one for the Parole Board, who are not bound by the views of the professionals.

20. However, where the Panel makes a decision contrary to the recommendations of the professionals, it is incumbent on it to give clear reasons for this, and sufficiently justify its conclusion (**R (Wells) v the Parole Board [2019] EWHC 2710 (Admin)**).

21. In considering an application for reconsideration, I should remember that the question is to do with the liberty of the subject. In those circumstances, I should adopt an anxious scrutiny of the Panel's decision.

The Reply on behalf of the Secretary of State

22. The Secretary of State has stated that he does not wish to make any representations.

Discussion

23. The fact that both the professionals were recommending release is something that the Panel were bound to take into account, but were not bound to follow, provided that proper reasons were given.

24. In this case the Panel has set out a full summary of the evidence and the reasoning behind the recommendations.

25. It then goes on to explain the concerns that the Panel had as to why the proposed release plan would not be sufficient to manage the Applicant's risk in the community.

26. These reasons are clear and are certainly sufficient for the Applicant to understand why he was unsuccessful and contain no error of law.


27. Further, the decision that the Panel reached was one that was clearly open to it in the circumstances of the case, especially given that this was the Applicant's second recall in such a short period of time.

Decision

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28. For the reasons I have given, I do not consider that the decision was irrational. Accordingly, the application for reconsideration is refused.

Daniel Bunting
3 November 2021