

[2021] PBRA 5

Application for Reconsideration by Brown

Application

1. This is an application by Brown (the Applicant) for reconsideration of a decision of an MCA panel chair dated 11 November 2020 refusing to direct release.
2. 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.
3. I have considered the application on the papers. These are the application for reconsideration made by the Applicant on 24 December 2020 and the dossier of 123 pages which includes the MCA Decision letter dated 11 November 2020.

Background

4. The Applicant is serving a sentence of particular concern (SOPC) comprising 27 months' imprisonment, with an extended licence period of one year. This sentence was imposed for the sexual assault by penetration of a child under 13. His sentence was imposed on 31 January 2020. He will become eligible for parole on 16 March 2021. His conditional release date is 30 April 2022 and his sentence expiry date is 30 April 2023. The Applicant was 19 years old at the time of the offence and aged 22 years at the time of this review.

Request for Reconsideration

5. The application for reconsideration is dated 24 December 2020.
6. The sole ground for seeking reconsideration is as follows:

That the decision is procedurally unfair because the Applicant did not receive the provisional decision of the parole board dated 11 November 2020 and the prison only provided him with the decision on 23 December 2020.

7. The application is handwritten and has been made by the Applicant in person. Although the Applicant refers in his application to being represented, no representations from the Applicant's solicitor have been submitted in support of this application.



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Current parole review

8. The Applicant's case was referred to the parole board on 12 June 2020 to decide whether or not it is appropriate to direct the Applicant's release. This is the Applicant's first parole review.
9. The case was considered by a single MCA panel chair on 11 November 2020 with the dossier of 120 pages (This was the same dossier as that before me without the decision letter). All of that dossier was disclosed to the Applicant. The dossier did not contain any legal representations from the Applicant's solicitors.
10. The panel chair made the decision on the papers and refused to direct the Applicant's release on the grounds that a significant amount of work needs to be completed in custody before the Applicant's risk can be reduced sufficiently to allow him to be safely managed in the community.

The Relevant Law

11. The panel correctly sets out in its decision letter dated 11 November 2020 the test for release.

Parole Board Rules 2019

12. 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)).
13. A panel of the Parole Board may be appointed under Rule 5 (1) to consider the release of a prisoner. Under Rule 19 (1) Where a panel is appointed under Rule 5 (1) to consider the release of a prisoner, the panel must make a decision on the papers either that – a) the prisoner is suitable for release; b) the prisoner is unsuitable for release, or c) the case should be directed to an oral hearing.
14. Under rule 19 (8) the decision of that panel must be recorded in writing with reasons for that decision or advice, and the written record provided to the parties within 14 days of that decision.
15. Rule 20 (1) provides that where a panel so appointed makes a decision that a prisoner is unsuitable for release under rule 19 (1) (b) the prisoner may apply in writing for a panel at an oral hearing to determine the case.
16. Rule 20 (2) states that a prisoner who makes an application under rule 20 (1) must serve the application, together with reasons for making an application, on the Board and the Secretary of State, within 28 days of the provision of the written record under rule 19 (8).



Procedural unfairness

17. 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. These issues (which focus on how the decision was made) are entirely separate to the issue of irrationality which focusses on the actual decision.
18. In summary an Applicant seeking to complain of procedural unfairness under Rule 28 must satisfy me that either:
- (a) express procedures laid down by law were not followed in the making of the relevant decision;
 - (b) they were not given a fair hearing;
 - (c) they were not properly informed of the case against them;
 - (d) they were prevented from putting their case properly; and/or
 - (e) the panel was not impartial.
- The overriding objective is to ensure that the Applicant's case was dealt with justly.

The reply on behalf of the Secretary of State

19. The Public Protection Casework Section (PPCS) on behalf of the Secretary of State responded on 21 January 2021 to inform the Parole Board that he did not wish to make any representations in response to this application.

Discussion

20. It is significant that the Applicant does not claim that the procedure followed by the panel chair was flawed. The Applicant does not claim that the procedure followed was unfair, that he was not given a fair hearing, that he was not properly informed of all the information in the case (including information against him), that he was prevented from putting his case properly or that the panel was not impartial. I agree that there is nothing in the application, or on the face of the decision itself, to suggest that the way in which the decision was reached was unfair.
21. There is nothing in the Applicant's application to suggest he was not properly given an opportunity to participate in the parole decision. I note in this respect that, although no submissions from the Applicant's representatives appear to have been submitted, that the Applicant is legally represented and appears to have been so at the time of the hearing. This gives some reassurance that the Applicant had an opportunity to submit representations in relation to the decision itself but, for whatever reason chose not to.
22. The Applicant's central complaint is, however, his assertion that the first time he saw the decision to refuse his release was on 23 December 2020.
23. I have therefore considered whether in a broader sense the decision can be said to be unfair due to any procedural errors in following rules 19 or 20. I have in particular considered carefully whether an irregularity has arisen that could be said to have



denied the Applicant the opportunity to make representations that the provisional decision to refuse his release should not stand and that he should instead be granted an oral hearing.

24. The difficulty for the Applicant is that I cannot find any such irregularity in following the procedure. The decision was made on 11 November 2020. The decision was issued to the prison on 13 November 2020. This was well within the 14 days from the making of the decision required by Rule 19 (8).

25. The effect of Rule 20 (2) is that a prisoner must apply in writing for a panel at an oral hearing to determine the case within 28 days of the provision of the written record. No such representations were made.

26. I have no further information about what happened to the decision between it being issued on 13 November 2020 and the 23 December 2020 when the Applicant claims that he first saw it.

27. I do not know whether the decision was received by the Applicant's solicitors either although I note he is represented and will now be seeking their advice as to how to proceed.

28. As a result I must conclude, despite some sympathy for the Applicant's position if he is right that he did not see the decision until 23 December 2020, that this is not a case where any procedural unfairness has occurred within the meaning of the Parole Board Rules. I have therefore found that whatever issue has arisen here, is not for the reconsideration mechanism to resolve.

Decision

29. For the reasons I have given, I do not consider that the decision was procedurally unfair and accordingly the application for reconsideration is refused.

Kay Taylor
31 January 2021

