

[2021] PBRA 54

Application for Reconsideration by Tate

Application

1. This is an application by Tate (the Applicant) for reconsideration of a decision of a Panel made on 18 January 2021 after an oral hearing held on 14 January 2021 not to recommend that the Applicant be transferred to open conditions.
2. This application is made under Rule 28(1) of the Parole Board Rules 2019 (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.
3. The application is also expressed to be made under Rule 25 of the 2019 Rules.
4. I have considered the application on the papers, which comprise the Oral Hearing Decision Letter of 18 January 2021, the representations of the Applicant's solicitor dated 19 January 2021, the statement of the Secretary of State 23 February 2021 explaining that no representations will be made on his behalf and the dossier comprising 220 pages.
5. As a preliminary matter, it has to be decided if an application can be made for reconsideration under either Rule 28 or Rule 25 of the 2019 Rules and this issue will be considered first.
6. Furthermore, it is noted that this case had been referred to the Parole Board to consider whether the Applicant is suitable for a transfer to open conditions. The Board were not asked in this case to consider the question of release.

Preliminary Issue

7. The Board has explained (with emphasis added) in the previous case of **Collyer [2020] PBRA 158** that:

"Reconsideration under rule 28 of the 2019 Rules only applies to decisions made by the Board under rule 19 (1) (a) or (b), 21(7) or 25(1) of these Rules, which are decisions on suitability for release.

Recommendations as to suitability for move to open conditions are outside the scope of rule 28, so reconsideration could not be directed on the grounds that the Board has erred in its consideration of a request by the Secretary of State to advise on that matter".

8. The reason for that was explained by Jeremy Roberts QC in **Barclay [2019] PBRA 6** who stated (with emphasis added) that:

*“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 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)). **A decision to recommend or not to recommend a move to open conditions is not eligible for reconsideration under Rule 28**”.*

9. It would follow that the Applicant cannot seek reconsideration under Rule 28, but he also relies on Rule 25 of the 2019 Rules which provides (with emphasis added) that:

“(4) Where a panel receives a request for advice from the Secretary of State concerning whether a prisoner should move to open conditions, the panel must recommend either that—

- (a) the prisoner is suitable for a move to open conditions, or
(b) the prisoner is not suitable for a move to open conditions.*

*(5) Where the Board receives a request for advice with respect to any matter referred to it by the Secretary of State, **any recommendation made in respect of that request is final**”*

10. The effect of a recommendations in respect of a request being “final” is that it cannot be reconsidered because Rule 25(3) of the 2019 Rules provides (with emphasis added) that:

*“(3) Any decision made by the panel under paragraph (1) which **is not eligible for reconsideration under rule 28 is final**”.*

11. So, the position is that the Applicant is not entitled to reconsideration of the decision to refuse to recommend that the Applicant be moved to open conditions.

Background

12. On the 7 November 2008, following a trial, the Applicant was sentenced to Life Imprisonment for the offences of Attempted Murder, Possession of Firearms with Intent, and Possession of Prohibited Weapons. The offences were committed in late August 2007, when he was 24 years old.

13. The sentencing judge imposed a minimum term of 16 years on the Applicant. Sentences of 8 years and 6 years concurrent were imposed for the firearms offences.

Request for Reconsideration

14. The Application for Reconsideration is dated 9 February 2021.

15. It is contended that the Panel's decision not to recommend that the Applicant be transferred to open conditions was irrational and procedurally unfair.

Decision

16. As mentioned above, this case was referred to the Board to consider whether a transfer to open conditions would be appropriate. The Board were not asked to consider the question of release. Therefore, this case is ineligible for reconsideration under Rule 28 and will not be considered any further.

17. This is not an appropriate case in which to order reconsideration because (a) a decision to recommend or not to recommend a move to open conditions cannot be the subject of an order for reconsideration and/or (b) the panel were not asked to consider whether the Applicant would be suitable for release.

Sir Stephen Silber
25 April 2021