[2022] PBRA 165

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Application for Reconsideration by Ryan

Application

1. This is an application by Mr Ryan ("the Applicant") for reconsideration of a decision of the Parole Board dated 14 October 2022 following an oral hearing on 1 August 2022. The panel declined to release him. (The panel also declined to recommend that he move to open conditions; there is, however, no power to reconsider that decision).

2. Rule 28(1) of the Parole Board Rules 2019 (as amended by the Parole Board (Amendment) Rules 2022) (the Parole Board Rules) provides that applications for reconsideration may be made in eligible cases (as set out in rule 28(2)) either on the basis (a) that the decision contains an error of law, (b) that it is irrational and/or (c) that it is procedurally unfair.

3. I have considered the application on the papers. These are: (1) the dossier, now running to some 887 pages including the decision letter; (2) the pro-forma application for reconsideration dated 3 November 2022 with supporting submissions from the Applicant's legal representative, running to 9 pages, and various supporting documents listed in an index; (3) an email dated 11 November 2022 distilling for me, at my request, the grounds on which the application is put; (4) a further document, entitled "*SOA Williams*" also sent on 11 November 2022; (5) a further email from the Applicant's legal representative dated 21 November 2022.

Background

4. On 28 February 2003 the Applicant, then aged 19, was sentenced to imprisonment for life for murder. His minimum term was set at 13 years less time spent on remand. The Applicant was stealing the deceased's motor car. The deceased, while attempting to prevent him from doing so, fell in front of the car. The Applicant deliberately ran him over. He pleaded guilty to manslaughter and aggravated vehicle taking. The jury found him guilty of murder. The trial judge, when setting the tariff, said he considered it more likely than not that the Applicant's intention was to cause serious bodily harm rather than to kill.

5. By the time of the murder the Applicant had a significant record of offences for vehicle-related crime, other acquisitive offending and public disorder. He had one conviction for actual violence – an assault on a police officer. He was on bail at the time when he committed the murder.

6. In 2012 the Applicant was transferred administratively to an open prison. On 7 September 2014 while on day release he committed assault occasioning actual bodily harm – punching a stranger in a queue at a fast food restaurant. He then attempted to pervert the course of justice by what the sentencing judge described as a planned and sustained attempt to derail the course of justice in a serious assault trial by manufacturing false evidence and making serious and unfounded allegations against a police witness. He was sentenced to 12 months and 14 months respectively for these offences.

7. The minimum term for the Applicant's life sentence expired on 3 September 2015. Eventually, on 16 May 2019, he was released by virtue of an oral hearing decision of the Parole Board dated 2 April 2019.

8. On 3 October 2020, however, the Applicant committed three further offences of violence – an assault occasioning actual bodily harm and two common assaults, all against women, late at night at or in the vicinity of the home of one of the women. He was recalled to prison on 18 December 2020. He pleaded not guilty to these offences. He was convicted by the magistrates and sentenced, on 30 September 2021, to 3 months' imprisonment. He appealed to the Crown Court. His appeal was dismissed on 7 July 2022.

Request for Reconsideration

9. As noted above, the application for reconsideration was supported by 9 pages of written submissions and a significant number of documents. At my request the Applicant's legal representative has summarised the grounds. I make it clear that I have taken into account all the submissions and documents, but it is convenient here to summarise the grounds, drawing on the email of the Applicant's representative dated 11 November (2022) and on the submissions.

10. The grounds for seeking a reconsideration are as follows:

    a. Procedural unfairness. It is said that two psychological reports in 2016 and 2017 had been removed from the Applicant's dossier for the 2019 oral hearing. Initially they had been omitted from the dossier for the 2022 hearing. At the chair's direction, however, they had been added to the dossier and the professionals had placed weight on them. The hearing is said to have been procedurally unfair by reason of the inclusion of the reports, their consideration by the panel and the weight attached to them by professionals.

    b. Legal error. It is said that, since the sentence for murder was mandated by law, no assessment of dangerousness was made by the sentencing court in the Applicant's case. It is submitted that the panel has (i) made unwarranted assumptions about his risk of serious harm in the absence of any such assessment; (ii) required him to demonstrate that he has reduced his risk, when there was or should have been no requirement on him to do so; (iii) relied, for his continuing detention, on the risk of his committing offences which would not constitute or evidence a risk of serious harm; (iv) detained him when the evidence did not establish a risk of serious harm. This is, I hope, a reasonable summary of a sustained passage in the submissions of the Applicant's representative.

c. Irrationality. The argument set out in paragraph a above is also put forward as a ground of irrationality – it is said that inclusion of the reports has contributed to the overall irrationality of the decision. The errors said to be legal errors in paragraph b above may also be said to errors in rationality. It is said that, while the Applicant has committed further offences, they do not mirror the original index offence and ought not to have led to a finding that his continued detention was warranted.

Current parole review

11. In order to set the scene for grounds a and c above, it is necessary to start my account of the current parole review with an explanation of what occurred on the previous review, especially as regards psychological reports.

12. That review first went to an oral hearing in 2017. A psychological report by a prison psychologist ("*A*") was prepared on 30 June 2016. By March 2017 the Applicant had completed the accredited programme Resolve with a positive outcome. Up to date psychological risk assessments were prepared: a report dated 9 June 2017 by a prison psychologist *("B")* which did not recommend release and a report dated 22 July 2017 by an independent psychologist ("*C*") which supported release. The panel, relying in part on the report and evidence of B, declined to release.

13. That decision was quashed on judicial review in about October 2018. The full reasons are in the current dossier. The key passage is at paragraphs 34 to 42 of the Judge's reasons. Put shortly, B had given evidence, which the panel had accepted, that the Resolve programme had not addressed the risk factors underpinning the Applicant's violence. Indeed the panel had expressed the view that the Resolve programme was not designed to address offence related attitudes and beliefs. However the panel had not seen the detailed post-programme report following the Resolve programme which made it clear that it did address risk factors, attitudes and beliefs relating to violent offending. In the light of these errors, no confidence could be placed in B's risk assessment or the panel's reliance on it; and the panel's finding that there remained core risk reduction work to complete lacked a logical basis.

14. Accordingly the review was remitted for an oral hearing before a further panel. As noted above, it was this panel's oral hearing decision dated 2 April 2019 which resulted in the Applicant's release on 16 May 2019. That panel received further psychological risk assessments: a report dated 8 March 2019 from a different prison psychologist and a further report dated 27 February 2019 from C. These reports both recommended release on licence to an AP Approved Premises; and the panel accepted their recommendations.

15. Following the Applicant's recall in December 2020 for further offences of violence his case was referred again to the Parole Board on 13 January 2021. An oral hearing was directed, but repeatedly adjourned pending his trial for those offences and his appeal against his convictions.

16. In preparation for the hearing a further psychological risk assessment was directed from a prison psychologist. She had not been involved in the case before. Her report, dated 7 February 2022 with an addendum dated 15 July 2022, did not recommend

release: it was said that the Applicant's risk was not manageable in the community, that one to one intervention in custody was required followed perhaps by use of the Offender Personality Disorder Pathway OPD and an AP PIPE. No fresh report was provided by an independent psychologist; and no independent psychologist was called on the Applicant's behalf.

17. In her report the prison psychologist noted that she had consulted a range of documentation listed in appendix 1. This appendix included not only the 2019 reports but also the reports of A, B and C together with the outcome of the judicial review proceedings; and in his interview with her the Applicant also drew her attention to the judicial review proceedings. Some reliance was placed by the new prison psychologist on an IPDE (International Personality Disorder Examination) undertaken by C in 2017; the new prison psychologist accepted from that report that the Applicant did not currently have a diagnosis of personality disorder, although she found that he had personality traits which perpetuated his problem with violence. I cannot see any specific reliance on B's report, and the newly instructed psychologist did not make the error about the Resolve programme which led to the quashing of the 2017 decision.

18. In May 2022 the Applicant's legal representative expressed concern that there was material in the dossier, namely reports from 2016 and 2017, which had previously been removed from the dossier because the judicial review found that "*some of the material needed to be removed".* The Applicant's legal representative also referred to the "*now excluded reports from 2016 and 2017".* The panel chair addressed this matter in panel chair directions dated 22 July 2022. She identified the reports and reviewed the judicial review judgment. She concluded as follows.

> *"1. It is erroneous to refer to the psychological reports from 2016 and 2017 as "excluded" as this does not form part of the judgment.*
>
> *2. The reports are relevant as they are referred to in current reports from the COM and psychologist and for the panel to have a full understanding of the risk assessments of the COM and psychologist it needs to view all relevant material.*
>
> *3. Therefore, the psychologists reports from 2017 should be added back to the dossier."*

19. The oral hearing was taken by a 3-member panel. The chair was an independent member; the co-panellists were a psychologist and an independent member. They had a dossier which included the reports of A, B and C. They heard evidence from the Prison Offender Manager POM, the Applicant, the prison psychologist and the Community Offender Manager COM. They adjourned for some further documents to be added including historic psychiatric reports, a security report, some NOMIS entries and notes from a previous prison, and legal submissions. The panel then concluded on the papers.

20. In its decision the panel recorded, in paragraph 1.7, the earlier ruling which the panel chair had made. It reviewed in detail the evidence which it heard. In its conclusions it listed matters of concern as well as positive factors. In the end it concluded as follows (within paragraph 4.3):

"Taking into account all the matters of concern [the panel] could not be satisfied that [the Applicant's] risk of causing serious harm could be satisfactorily managed in the community. It took particular account of the risk assessments, the lack of full understanding of the triggers to [the Applicant's] offending, the pattern of offending whilst on temporary release and licence, and the assessments that core risk reduction work remains outstanding".

21. It is clear from the decision as a whole that the reference to core risk reduction work is a reference to work on poor emotional regulation which required in the view of the professionals to be undertaken before release (or a move to open conditions again). It is a reference to a course of 1 to 1 work rather than an accredited programme.

The relevant law

22. In its decision letter the panel correctly set out the test for release: the Parole Board will direct release if it satisfied that is no longer necessary for the protection of the public that the prisoner be confined. The test is automatically set out within the Parole Board's template for oral hearing decisions.

23. The Applicant was serving a life sentence. The panel's decision as to release is eligible for the reconsideration procedure: see rule 28(2)(a) of the Parole Board Rules 2019. For the avoidance of doubt, the panel's decision as to a recommendation for open conditions is not eligible for the reconsideration process.

24. The Parole Board has a duty to take decisions which are lawful. A panel must therefore (1) take decisions which are within its legal powers, (2) apply the law correctly when taking its decisions, (3) fulfil legal duties which are placed upon it in taking its decisions, (4) exercise its discretionary powers for proper purposes, (5) take into account considerations which the law requires it to take into account, and (6) leave out of account considerations which are irrelevant in law.

25. The concept of irrationality is derived from public law. The test is whether the 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".* See **CCSU v Minister for the Civil Service [1985] AC 374**, applied to Parole Board decisions by **R (DSD and others) v the Parole Board [2018] EWCH 694 (Admin).** This is the standard I have applied when considering this application for reconsideration.

26. The concept of procedural fairness is rooted in the common law. A decision will be procedurally unfair if there is some significant procedural impropriety or unfairness resulting in a manifestly unfair or flawed process. The categories of procedural unfairness are not closed; they include cases where laid-down procedures were not followed, or a party was not sufficiently informed of the case they had to meet, or a party was not allowed to put their case properly, or where the hearing was unfair or the panel lacked impartiality.

The reply on behalf of the Secretary of State

27. The Secretary of State has made representations in respect of one matter mentioned in the submissions of the Applicant's representative. I will address this below.

Discussion

28. I will first address the Applicant's submissions concerning psychological reports in 2016 and 2017.

29. The Parole Board is well aware that there are time limitations on the validity of psychological and psychiatric assessments. If an assessment is more than a year old, particularly if the prisoner has engaged in further treatment or there have been changes in their conduct, the assessment is unlikely to be valid: see the Parole Board Guidance on Specialist Psychological Reports at page 10. As noted above, a fresh psychological risk assessment was prepared for the recent oral hearing.

30. This does not, however, mean that previous psychological reports are irrelevant. They are likely to contain important records of interviews and reviews of information which form part of the background to a current referral and may help a panel to assess the attitudes and progress of a prisoner over time. They may contain valuable records of a particular kind of examination – such as the IPDE assessment carried out by C in 2017. It is commonplace for a dossier to contain a run of earlier psychological reports for reasons such as these. The fact that they are in the dossier does not mean that the panel is relying on them as current risk assessments.

31. I can see nothing remotely unfair in the inclusion of the reports of A and C in the bundle. The panel chair was plainly right to say that they were relevant for the reasons set out in the last paragraph. Neither A nor C fell into the error which was identified in the judicial review proceedings. (It may be that the application is not intending to challenge the report of C, which was an independent report commissioned by the Applicant's lawyers, but since it was a 2017 report which had been omitted from the dossier and which the panel chair directed to be included, I have covered it to be on the safe side).

32. What about the report of B, who made the error identified in the judicial review? The panel chair carefully reviewed the basis upon which the application for judicial review was decided. In my opinion she was correct in her view that the decision did not mean that B's report had to be excluded. The fact that B made an error about the Resolve programme did not mean that her interviews with the Applicant and her reviews of information were irrelevant.

33. It would, however, be unfair and irrational if the panel had repeated the error which was identified in the judicial review proceedings. It is clear that the panel was alive to this issue: the panel chair directions prior to the hearing address it, and the judicial review decision was in the dossier. I can see no reason to suppose that the panel fell into this error. Indeed, I can see no sign that B's report was anything more than background to the reasoning which the panel gave in its oral hearing decision.

34. Therefore, in so far as grounds a and c of the application arise out of the reports in 2016 and 2017, I reject them. I turn next to ground b, which alleges error of law.

35. In my opinion there is no substance to ground b. The oral hearing decision correctly sets out the legal test which the panel had to apply, and I cannot detect anything in the panel's reasons which suggests an incorrect legal approach. I do not think the panel made unwarranted assumptions about the level of the risk posed by the Applicant;

rather it took account of the risk assessments by professionals and made its own assessment – accepting that he indeed posed a high risk of serious harm to adults and finding that the risk of violent offending was underestimated (see paragraphs 3.9 and 3.10 of the decision). I do not think the panel placed any requirement on him to reduce his risk; rather, taking account of all the evidence, the panel was satisfied that the risk existed. I do not think the panel detained him because of a risk that he might commit offences which would not cause serious harm: the relevance of the Applicant's subsequent offences was that they demonstrated impulsive and opportunistic violence – the kind of violence which led to the murder conviction – the consequences of which might on another occasion be very serious. There was in truth ample evidence from which the panel could conclude that there was a risk of serious harm which could not be managed safely in the community.

36. I believe I have dealt with the principal points made by the Applicant's representative, but I have also looked carefully at the submissions made as a whole. Those submissions are passionate in nature and set out many assertions about the Applicant's case, even to the extent of challenging at length a past diagnosis of personality disorder which it is accepted is no longer applicable (see paragraph 17 above and paragraph 1.6 of the decision). The submissions also incorporate many references from prison and some from the community in support of the Applicant's case; but the panel made a summary of his recent conduct in paragraphs 2.1 to 2.3 of its reasons which cannot be characterised as irrational. The submissions also assert at one point that the most recent prison psychologist, whose qualifications and experience are set out at page 485 of the dossier, may have exceeded her remit in some way, and a following email suggests that the supervising senior psychologist cannot have performed her role properly; but (as the Secretary of State points out) her report confirms that the supervising senior psychologist has checked that her reasoning and methods were appropriate (page 485 again) and there is no basis for doubting that this was the case. It is not the role of the senior supervising psychologist to attend the interviews.

37. It is not sufficient, or even helpful, for submissions in support of an application for reconsideration to argue for an alternative narrative or emphasise a different point of view; an application for reconsideration is not a re-hearing and will be granted only if one of the stated grounds – error of law, irrationality or procedural unfairness – is established. Having looked at all the submissions and supporting documents I am satisfied that none of the grounds have been established.

Decision

38. For these reasons the application for reconsideration is refused.

David Richardson
22 November 2022