

[2022] PBRA 64

Application for Reconsideration by Corlett

Application

1. This is an application by Corlett (the Applicant) for reconsideration of a decision of the Parole Board not to direct release. The Parole Board panel heard his case at an oral hearing on the 19 April 2022, and following a short adjournment issued its Decision Letter (DL) on 3 May 2022.
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 dossier of 506 pages which includes the decision letter (DL) under review; and the Applicant's representations.

Background

4. The Applicant is now aged 50. On 28 February 2008 he was sentenced to an indeterminate sentence of imprisonment for public protection following his conviction for robbery and possession of an imitation firearm, with a tariff period of 5 years less time served on remand. He was 36 years old at the time of the sentencing. He was released on licence on 10 August 2015 and recalled to prison on 23 June 2016. He was released again on 7 November 2017 and recalled on 29 January 2018. He was released for a third time on 16 January 2020 and recalled to prison on 1 February 2020.

Request for Reconsideration

5. The application for reconsideration is dated 10 May 2022.
6. The grounds for seeking a reconsideration are, in summary, as follows:

The decision was irrational on the basis that:

- a) The Applicant's behaviour in custody has not been given sufficient weight in reaching the decision;
- b) There has been no further offending whilst on licence; and
- c) All professionals concluded that the Applicant was ready for release and he is being 'punished' because a part of his Risk Management Plan is not available until 2023 and as a consequence the test for release has been 'overlooked'.




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7. There is also reference in the submissions to Article 5 of the European Convention on Human Rights, but no specific representation is made about this.

Current parole review

8. The case was referred to the Parole Board by the Secretary of State for Justice on 12 March 2021. The referral was for the Parole Board to consider whether or not it would be appropriate to direct the Applicant's release. If after considering the case, the Board decided to direct the Applicant's release on licence, the referral invited the Board to make a recommendation in relation to any condition which it considered should be included in the licence.
9. If the Board did not decide to direct release on licence, the referral invited the Board to make a recommendation whether the Applicant was ready to be moved to open conditions, commenting on the degree of risk involved if this recommendation were to be followed.
10. The referral was considered by a Member Case Assessment panel on 17 August 2021 and directed to oral hearing. The hearing took place by a video link on 19 April 2022 by a three member panel. Oral evidence was heard from the Prison Offender Manager (POM), Community Offender Manager (COM), a prison commissioned psychologist and the Applicant. The Applicant was legally represented during this hearing.
11. The panel decided to adjourn its decision for further enquiries to be made by the COM, a psychiatrist who had been involved in the Applicant's care, for the prison commissioned psychologist to review all papers in the dossier that they had not previously seen, and for a further update from the POM. Further reports were directed, which were provided, and a review by the panel took place on the papers, as had been envisaged when the decision was adjourned.
12. The DL was issued on 3 May 2022.

The Relevant Law

13. The panel correctly sets out in its DL dated 3 May 2022 the test for release and the issues to be addressed in making a recommendation to the Secretary of State for a progressive move to 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.

18. 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.

The reply on behalf of the Secretary of State

19. The Secretary of State has indicated in an email dated 18 May 2022 that he does not wish to make representations in response to this application for reconsideration.

Discussion

Ground (a)

20. The evidence of the POM that the Applicant had been of enhanced status since June 2020, with no adjudications, no security concerns and no significant concerns about his behaviour other than his self-harming was recorded in the DL. It was noted that he had a negative entry in February 2022 for failing to comply with a direct order. The evidence of the COM also acknowledged his well behaved custodial behaviour but identified that despite this previous risk management plans had not worked out. In considering this evidence the DL identified as a positive factor for the Applicant his positive custodial behaviour and engagement with substance misuse work and the Resettle service.

21. Good behaviour in the custodial environment does not of course necessarily equate to the Applicant meeting the legal test for release and is just one of the factors for the panel to take into account. The DL expressly considered the Applicant's custodial history, his release and recall history and the views of the professionals as part of the decision. It is for the panel to assess the weight to be given to this factor, making up their own minds on the totality of the evidence. As the Divisional Court identified in **DSD** they have the expertise to do so. There is nothing to demonstrate irrationality in their decision and I find that there was none.

Ground (b)

22. The DL detailed the reasons that the Applicant's licence had been revoked on each of the three occasions during this sentence. On the first and second recalls (2016 and 2018) he had relapsed into drug misuse, receiving warnings but failing to take opportunities to address the problem. When recalled in January 2018 he also spent a period unlawfully at large after failing to return to approved premises following a period of leave at his mother's address.
23. On the third most recent recall in 2020, he was recalled after less than 3 weeks on licence. He had provided two positive drug tests for which he received a verbal and then a written warning. He failed to attend for a drug test and subsequently did not return to the Approved Premises.
24. The DL identified that "[the Applicant's] licence was revoked because substance misuse is a key risk factor linked to his risk of offending." It was recorded that there had been no further offending whilst on licence, but that this was not the acid test, given the pattern of offending and the link between drugs and offending.
25. Again, it was for the panel to assess the weight to be given to this factor, noting as they did that there had not been further offending but considering the matter in the round on the totality of the evidence. The Applicant has not established that there is irrationality in relation to this ground either.

Ground (c)

26. The representations for reconsideration on this ground warrant setting out in full:

"We wish to submit that all of the professionals in attendance at the oral hearing submitted that [the Applicant] could be safely released into the community with the support from the Resettle Service.

However, the Resettle Service have provided a timescale of 2023 until they can work with [the Applicant].

We would submit that, ultimately, the professionals submitted that our client was ready for release and not an imminent risk. It therefore seems that our client is being unfairly punished on the grounds that the Resettle Service cannot be available any sooner.

Therefore, the test for release seems to have been overlooked in this case."

27. As I have previously found, the test for release was accurately set out within the DL. Consideration of the risk management plan being proposed is a key element to the panel when undertaking that test. The risk management plan recommended by each of the professionals in their written and oral evidence included the Resettle community based intensive intervention and risk management service for people with personality related difficulties. This is a multi-agency initiative funded by HMPPS and NHS England.

28. The professional witnesses all agreed that the Resettle service was essential to the Applicant's long term resettlement and rehabilitation and their recommendations for release were subject to a risk management plan which included a placement with this service. However, a placement with the Resettle service was not available to the Applicant until mid September 2023. The panel therefore directed the COM to provide a current risk management plan and recommendation, setting out in the decision letter that they had done so as they could not consider a plan that would only be effective in 18 months' time, since they could not know what risk related developments there might be in the meantime.
29. The panel and the legal representative for the Applicant explored the proposed risk management plan at the oral hearing. The evidence of both the COM and the psychologist was that the involvement of the Resettle service was a necessary part of the risk management plan, given his previous failed attempts in the community. Release was not recommended by the professionals (COM, POM and psychologist) on the current risk management plan, with all considering risk was not manageable without the monitoring, control and support of the Resettle service.
30. Far from the test being overlooked by the panel it is clear that they had it at the forefront of their minds when undertaking this parole review. The professionals did not recommend release other than with the specific risk management plan which involved the Resettle service. The limited availability of that resource is not a reason to override the public protection test as the representations seem to invite. Accordingly, I find there is nothing in this ground.

Decision

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

Angharad Davies
25 May 2022