

[2022] PBRA 90

### Application for Reconsideration by Challis

#### Application

1. This is an application by Challis (the Applicant) for reconsideration of a decision, dated 10 June 2022, by a 3-member Parole Board Panel including a Psychologist Member, refusing to direct his release or to recommend that he be transferred to open conditions.
2. The review was conducted by video conference, initially on the 31 January 2022 and, there being insufficient time to hear all relevant evidence, concluded on 30 May 2022. Evidence at the hearings was given by the Applicant himself, two Prison Offender Managers (POMs), a prison appointed psychologist (PP) his Community Offender Manager (COM) and an independent psychologist (IP) commissioned on behalf of the Applicant.
3. I have considered this application on the papers. These comprise of the dossier, the decision of the Panel and the application for reconsideration.

#### Background

4. On 26 March 2002, the Applicant, at the age of 29, was given a Life Sentence having been convicted, after trial, of a charge of false imprisonment. His tariff was set at 4 years and expired on 26 March 2006. The offence occurred whilst the Applicant was living on licence, in a Probation Hostel, some 3 weeks after his release from an 8 year sentence imposed for rape, possession of a firearm, threats to kill and false imprisonment.
5. The index offence occurred in the dark when the Applicant, wearing combat clothing, attacked a lone female, pulling her onto the ground on nearby railway lines and placing his knee on her thigh telling her to be quiet. She screamed and he fled the scene.
6. The earlier offence involved him separating a teenage girl from her boyfriend at knife point, making threats to kill and detaining and raping the girl. At the time he had consumed a large amount of alcohol and drugs and admitted that he regularly stalked women and had fantasies of rape and murder.
7. He had a substantial criminal record including violence by way of s.18 Grievous Bodily Harm with Intent and robbery.

8. This was the Parole Board's eighth review of the Applicant's sentence. There had been no previous release decisions or recommendations for transfer to open conditions. He had, however, spent periods in a closed prison Therapeutic Community (TC) and in a Progressive Regime but, from each, was returned to standard closed conditions, having made negligible progress in terms of risk reduction and rehabilitation.

### Request for Reconsideration

9. The application for reconsideration comprises a 6-page document, prepared by the Applicant's Legal Representative.

10. The function of the Reconsideration Assessment Panel (RAP) is limited to the reconsideration of the statutory limbs of challenge of irrationality or procedural unfairness. The application seeks reconsideration only on the grounds that the decision was irrational. It is not necessary to reproduce the application in full, but all sections have been considered and the aspects relevant to the issues of irrationality are dealt with below.

11. Issues in relation to open conditions are not, in any event, within the scope of the Reconsideration Mechanism (see **Panasuik [2019] PBRA 2**). The RAP has not, therefore, considered matters strictly related to open conditions save in so far as they are relevant to the statutory limbs of challenge.

12. In general terms the application submits:

(a) Irrationality:

- i) That the "*crux of the Panel's decision .....was that there was core risk reduction work necessary in his case which needs to be completed in closed conditions. Our argument to the Panel was that any outstanding work was neither necessary nor appropriate.*"
- ii) That the Panel's decision had factually misinterpreted events leading to its decision that treatment needs remained and that PP had identified an "*appropriate treatment pathway*" and, accordingly, the "*underlying premise*" that the Applicant's current presentation demonstrated that there were outstanding needs requiring further core risk reduction work, was irrational.
- iii) That the Panel had dismissed the opinion of IP and, in doing so, had failed to give a "fair summary of IP's opinion or the context behind it", in circumstances where prison psychologist could not point to any published evidence that the OPD offender personality disorder pathway reduces risk."
- iv) There was no evidence that a treatment pathway reduced risk, in circumstances "*where the Ministry of Justice (MOJ) had refused to disclose research as to its effectiveness*" and "*particularly in the case such as the (Applicant) who is 16 years post tariff where anxious scrutiny is required.*"

## Response from the Secretary of State

13. The Secretary of State (the Respondent), by e-mail dated 19 July 2022, indicated that no representations were made in response to the application.

## Current parole review

14. The Panel considered a dossier of 689 pages and, in a comprehensive 12-page decision, dealt in detail with the index offence, the Applicant's personal and criminal background including substantial drugs and alcohol abuse which was said to be involved in much of his offending. The Panel recorded that the Applicant strongly denied that the index offence was sexually driven although professionals and earlier Panels had considered the similarities between the index and the earlier rape offences. It also expressed concern that he had told previous Panels that he had intent to kill the index victim and might well have done so had he not come to his senses and run away.
15. The Applicant's custodial history had fluctuated between periods of poor behaviour and improved performance but the frequent poor behaviour led the substantial number of previous Panels to find that progress was not appropriate. This Panel recorded and gave him credit for an "overall" steady in his behaviour and for positive roles performed by him. Nonetheless, his POM, COM and PP all expressed concerns over the honesty and reliability of his evidence, the COM, in particular, speaking of a "tendency towards pathological lying", a conclusion she supported by reference to a meeting involving herself, the Applicant, and POM.
16. The Panel dealt in detail with the evidence of each of the professional witnesses all of whom, with the exception of IP, recommended that the Applicant remain in closed conditions and completed necessary core risk reduction work. IP, by contrast, felt able to recommend both release and, in the alternative open conditions. The respective evidence of PP and IP was closely examined and, in a restrained assessment, the Panel preferred the evidence of PP as "clearly based on a more thorough and rigorous assessment of risk and risk factors."
17. The Panel concluded that, although the Applicant had completed some work to examine his behaviour and address his offending, treatment needs still remained. Core risk reduction work had been identified by PP, work which needed to be completed within the security of closed conditions. He needed to be able to work openly and collaboratively with those responsible for monitoring and managing his risk, and risk of escape from open conditions was current. It stressed its findings that the Applicant was "a poor historian" and his self-reports unreliable leaving professionals "baffled" by his ability to say things and then deny them.

## The Relevant Law

18. Rule 28(1) of the Parole Board Rules provides that applications for reconsideration may be made in eligible cases either on the basis that the decision was (a) irrational or that it is (b) procedurally unfair. This is an eligible case.

19. **R (on the application of 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".*

20. 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 same high standard for establishing 'irrationality'. The fact that Rule 28 uses the same word as is used in judicial review demonstrates that the same test should be applied. This test for irrationality is not limited to decisions whether to release but applies to all Parole Board decisions.

21. The common law duty to act fairly, as applied in this context, is influenced by the requirements of article 5(4) as interpreted by the European Court of Human Rights. Compliance with the common law duty should result also in compliance with the requirements of article 5(4) in relation to procedural fairness. Article 6 is relevant to criminal trials but does not impinge on this duty.

#### Discussion

22. In my judgment, the decision to refuse release cannot be said to meet the test of irrationality. The Panel, having clearly considered, with care, the documents in the dossier gave a clear and reasoned decision, and adopted a correct test for its decision. When considering a substantial dossier and detailed oral evidence, the duty of the Panel is not to identify, with particularity, each and every aspect of relevant issues but to show that both positive and negative aspects of a prisoner's case have been examined and a fair decision taken in accordance with the test required. I am fully satisfied that this has been done. Reconsideration is not a re-examination of evidence.

#### Decision

23. For the reasons that have been given, the RAP does not consider that the Panel's decision was irrational and, accordingly, the application for reconsideration is refused.

**Edward Slinger**  
**21 July 2022**