

[2023] PBRA 165

## Application for Reconsideration by Uddin

### Application

1. This is an application by Uddin (the Applicant) for reconsideration of a decision of a panel of the Parole Board dated the 15 August 2023 not to direct release following an oral hearing held on 10 August 2023.
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 the application for reconsideration; the decision letter and the dossier.

### Background

4. On 26 October 2012 the Applicant was sentenced to an extended determinate sentence of 13 years in total, for offences of rape and false imprisonment. The custodial part of the sentence was 9 years, with an extended licence of 4 years. The Applicant was 28 years old at the time of conviction, and is now aged 39.
5. The Applicant was released on 23 December 2016 and recalled on 7 November 2018 when he was arrested for an alleged offence. The Applicant was not prosecuted for the alleged offence.

### Request for Reconsideration

6. The application for reconsideration is dated 5 September 2023.
7. The grounds for seeking a reconsideration are as follows:
  - a) It is submitted that there was procedural unfairness in that the Applicant did not see CCTV material viewed by the panel. The Applicant contends that this additionally amounted to an error of law. Further it is submitted that the panel, the psychologist and the probation service *'failed him throughout the review process as a result of discrimination against his racial and ethnic background'*.



3rd Floor, 10 South Colonnade, London E14 4PU

[www.gov.uk/government/organisations/parole-board](http://www.gov.uk/government/organisations/parole-board)[info@paroleboard.gov.uk](mailto:info@paroleboard.gov.uk)

@Parole\_Board



0203 880 0885

- b) It is submitted that the decision was irrational in that there was insufficient evidence to support the assessment of risk made by the panel in the absence of any further criminal convictions since the Applicant's release and there was insufficient evidence to support the panel's finding that the Applicant jumped out of the window prior to his arrest on 6 November 2018.

### Current parole review

8. This was the first parole review to consider whether the Applicant should be re-released following his recall. There had been a previous decision by the Board but following a reconsideration decision dated 21 May 2021, a fresh hearing was directed. There were a number of adjournments until this hearing was completed on 10 August 2023.
9. The panel heard evidence from the Applicant, the Community Offender Manager (COM); the Prison Offender Manager (POM); a psychologist and a police officer.

### The Relevant Law

10. The panel correctly sets out in its decision letter dated 15 August 2023 the test for release.

#### *Parole Board Rules 2019 (as amended)*

##### *Irrationality*

11. 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."*

12. 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 contains the same adjective as is used in judicial review shows that the same test is to be applied.

##### *Procedural unfairness*

13. 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.

14. 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.

15. The overriding objective is to ensure that the Applicant's case was dealt with justly.

#### *Error of law*

16. Error of law means a mistake of law by the panel which affects the decision which they made.

### **The reply on behalf of the Secretary of State (the Respondent)**

17. The Respondent has not made any submissions in response to the application for reconsideration.

### **Discussion**

18. The Applicant complains that he did not see any of the CCTV footage seen by the panel and that that was procedurally unfair and involved an error of law. There are two pieces of CCTV which were relevant to the decision of the panel. The first relates to the events of the recall where police officers arrived on the scene including a police officer wearing a body camera. Footage from this was seen by the panel and it seems by the legal representative of the Applicant as he was cross examined about it. It was open for the Applicant to request to see the CCTV footage through his legal representative which it appears was not done. There is no suggestion that the Applicant was refused permission to see the CCTV. The legal representative was able to inform the Applicant what could be seen on the CCTV.

19. In relation to what happened on 6 November 2018 the panel concluded on all the evidence that they saw and heard that the Applicant jumped out of the window. It is submitted that there was no clear video evidence to support the conclusion that the Applicant did jump out of the window and therefore the conclusion of the panel was irrational. That does not follow as the panel would be considering all the evidence in reaching their conclusion. They were entitled to reach that conclusion. The panel reached no conclusion as to what had happened before the Applicant exited the premises via the window. The panel did not conclude that the Applicant had committed an assault. However, it did find that the recall was justified on the basis that "[the Applicant] engaged in a relationship and was staying with a vulnerable female and did not disclose either fact to Probation". The panel were entitled to reach this conclusion on the evidence and were entitled to conclude in the light of all the evidence including the index offences that the recall was justified.

20. The other CCTV evidence reviewed by the panel which the Applicant says he did not see relates to an incident in a cell on 19 July 2022 when the Applicant is said to

have assaulted a prison officer. The matter was reported to the police but no prosecution was brought. Three prison officers had gone to the Applicant's cell to take away his TV for disciplinary reasons. The Applicant considered that action was not justified and tried to prevent them taking it. The Applicant claimed that he was holding the TV as he intended to put it on the bed. The panel rejected that account and concluded that the Applicant was holding the TV in a threatening manner. The panel were entitled to reach this conclusion on all the evidence that they saw and heard. Again, there is no suggestion that the Applicant's legal representative was not able to see the CCTV if he wished nor that the Applicant would not have been able to watch it had he asked. In those circumstances there was no procedural irregularity which rendered the proceedings unfair.

21. I am satisfied that the failure of the Applicant to be shown the CCTV in the circumstances of this case did not render the proceedings unfair and there is no basis for asserting that there was any mistake of law.
22. The panel were not satisfied on all the evidence that it was no longer necessary for the protection of the public that the Applicant remained confined. It was in my view inevitable that the panel would reach that conclusion on the evidence they heard and read. The balance of all the professional evidence was that more core work was required before the Applicant could be safely released. It was not necessary for there to be proof of criminal offences since the date of release to justify that conclusion. The risk assessment arrived at by the panel was not irrational but was a proper conclusion based on the evidence.
23. There is no evidence that the Applicant was discriminated against by the Panel or the psychologist or the Probation Service. Even if this matter were to be reconsidered I have no doubt that the same conclusion would be reached.

## Decision

24. For the reasons I have given, I do not consider that the decision was irrational, procedurally unfair or resulting from an error of law and accordingly the application for reconsideration is refused.

**John Saunders**  
**17 September 2023**