

[2023] PBRA 172

Application for Reconsideration by Jasinskyj

Application

1. This is an application by Jasinskyj (the Applicant) for reconsideration of a decision made by an oral hearing panel dated 1 September 2023 not to direct his release.
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. This is an eligible case, and the application was made in time.
3. I have considered the application on the papers. These are the decision, the dossier which consisted of 525 pages, and the application for reconsideration.

Background

4. The Applicant received a sentence of life imprisonment on 10 May 2002 following conviction for murder. He also received a ten-year concurrent sentence for rape. The Applicant pleaded not guilty and maintains his innocence. The tariff was set at 18 years, four months and two days and expired in September 2020.
5. The Applicant was 45 years old at the time of sentencing and is now 66 years old. This is his second parole review.

Request for Reconsideration

6. The application for reconsideration is dated 17 September 2023 and has been drafted by solicitors acting for the Applicant.
7. It argues that the decision was procedurally unfair. These submissions are supplemented by written arguments to which reference will be made in the **Discussion** section below. No submissions were made regarding irrationality or error of law.

Current Parole Review

8. The Applicant's case was referred to the Parole Board by the Secretary of State (the Respondent) in October 2021 to consider whether or not it would be appropriate to direct his release. If immediate release was not directed, the Board was invited to

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advise the Respondent whether the Applicant should be transferred to open prison conditions.

9. The matter proceeded to an oral hearing on 23 August 2023 before a three-member panel, including two psychologist specialist members. The Applicant was legally represented throughout the hearing. The Respondent was not legally represented. The panel heard oral evidence from the Applicant, his Prison Offender Manager (**POM**), his Community Offender Manager (**COM**), and an HMPPS psychologist (the **prison psychologist**).
10. In the professional opinion of the POM, COM and prison psychologist, the Applicant was not suitable for release.
11. The panel did not direct the Applicant's release.

The Relevant Law

12. The Parole Board will direct release if it is no longer necessary for the protection of the public that the prisoner should be confined. The test is automatically set out within the Parole Board's template for oral hearing decisions.

Parole Board Rules 2019

13. Rule 28(1) of the Parole Board Rules provides the types of decision which are eligible for reconsideration. Decisions concerning whether the prisoner is or is not suitable for release on licence are eligible for reconsideration whether 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)). Decisions concerning the termination, amendment, or dismissal of an IPP licence are also eligible for reconsideration (rule 31(6) or rule 31(6A)).
14. Rule 28(2) of the Parole Board Rules provides the sentence types which are eligible for reconsideration. These are indeterminate sentences (rule 28(2)(a)), extended sentences (rule 28(2)(b)), certain types of determinate sentence subject to initial release by the Parole Board (rule 28(2)(c)) and serious terrorism sentences (rule 28(2)(d)).
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**.

Procedural unfairness

16. 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.
17. 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.

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

The reply on behalf of the Respondent

19. The Respondent has submitted no representations in response to this application.

Discussion

- 20. It is submitted that the panel was not in possession of all relevant information before making its decision. Specifically, the Applicant states he has never had a formal professional assessment nor formal diagnosis with regard to personality disorder.
- 21. The evidence of the prison psychologist was that the Applicant had not undergone a personality assessment because the problematic personality traits that had been identified were evident in the Applicant's presentation and other documentary evidence within the dossier.
- 22. Moreover, a formal diagnosis was not necessary for a referral for identified risk reduction work.
- 23. It is apparent from the dossier that the Applicant was dissatisfied with the findings within the prison psychologist's report. It contains a 20-page handwritten response calling the competence and qualifications of the author (and his supervisor) into question and disputing some 67 points within the report itself.
- 24. If the Applicant was so dissatisfied, it was open to him to commission his own psychological risk assessment (which could have included a formal personality assessment if he so instructed). He did not do so. Neither did his legal representative seek an adjournment to do so at the oral hearing, despite having heard the opinions of the professional witnesses regarding the Applicant's personality and its impact on risk management.
- 25. It is also clear from the panel's decision that there was evidence of problematic personality traits in the Applicant's presentation at the oral hearing. Again, while not a formal diagnosis, it is important to note that the panel (unusually) contained two psychologist specialist members who were entitled to form a view based upon on their impressions of the Applicant.
- 26. In any event, the panel's decision was not solely based on the presence (or otherwise) of problematic personality traits. If such traits exist, they are said to be a bar to the Applicant's ability to gain insight into his risks: an insight which has not yet been gained. As such, there remained little understanding of the Applicant's

causes or motivations for violence and sexual violence. This would be the case even if a formal diagnosis ruled out the presence of the disputed personality traits.

27. Overall, I am satisfied that the panel had sufficient and adequate evidence on which to base its decision and no further enquiry was necessary. A formal diagnosis (or a ruling out) was not necessary evidence in all the circumstances on this review. Neither was one sought. There is no procedural unfairness in the way in which the review was conducted.

Decision

28. For the reasons set out above, the application for reconsideration is dismissed.

Stefan Fafinski
28 September 2023