[2023] PBRA 185

Application for Reconsideration by Garrett

Application

1. This is an application by Garrett (the Applicant) for reconsideration of a decision of an oral hearing panel dated the 22 September 2023. The decision of the panel was not to direct 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, and/or (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 dossier consisting of 507 pages; the application for reconsideration submitted by the Applicant's legal representative; and the response by the Secretary of State (the Respondent).

Background

4. On 28 July 1989, when aged 45 years old, the Applicant was sentenced to life imprisonment in relation to a series of sexual offences. The victims were young children. The offences were committed over a period of thirty years. The offences included rape and buggery matters. The minimum term fixed by the judge was fourteen years, eleven months and eleven days and expired on 1 February 2001.

Request for Reconsideration

5. The application for Reconsideration is dated 9 October 2023.

6. The grounds for seeking a reconsideration are set out below.

Current parole review

7. The Applicant is now 79 years old and this was the fourteenth parole review of the Applicant's case.

Oral Hearing

8. The review was conducted by an independent Chair of the Parole Board, and two further independent members of the Parole Board. Oral evidence was given by the

Prison Offender Manager (POM), a prison instructed psychologist and a Community Offender Manager (COM). The Applicant was represented by a solicitor.

9. A dossier consisting of 478 pages was considered.

The Relevant Law

10. The panel correctly sets out in its decision letter dated 22 September 2023 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

11. Pursuant to 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)).

12. 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

13. 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."

14. 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.

15. The application of this test has been confirmed in previous decisions on applications for reconsideration under rule 28: **Preston [2019] PBRA 1** and others.

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.

19. In **Oyston [2000] PLR 45**, at paragraph 47 Lord Bingham said: "*It seems to me generally desirable that the Board should identify in broad terms the matters judged by the Board as pointing towards and against a continuing risk of offending and the Board's reasons for striking the balance that it does. Needless to say, the letter should summarise the considerations which have in fact led to the final decision. It would be wrong to prescribe any standard form of Decision Letter and it would be wrong to require elaborate or impeccable standards of draftsmanship.*"

20. The Applicant's Application for Reconsideration in this case did not argue that there had been procedural unfairness.

The reply on behalf of the Respondent

21. The Respondent offered no representations.

Reconsideration grounds and discussion

22. The Applicant's legal adviser, in the application for reconsideration, submits the following matters which it is argued merit reconsideration, and submits that the Applicant therefore met the statutory test for release:
    a. That the proposed release plan was extremely robust and would identify any warning signs before risk would be imminent and the robustness of the release plan would manage that.
    b. That the risk posed by the Applicant is not imminent.
    c. That the Applicant has insight into his own risk factors and warning signs.
    d. That the Applicant evidenced a willingness and motivation to comply with the requirements of his licence.
    e. That the Applicant has evidenced that he is open and honest, and he has built up a relationship with the professionals who would be managing him in the community.
    f. That the panel identified current protective factors for the Applicant as including; his professional care, taking his medications and keeping himself busy with his craft activities.

Discussion

23. I have considered the decision of the panel in this case. At paragraphs 3.3 – 3.18 the panel analysed in detail the Risk management plan, including the proposal for being accommodated in Approved Premises and for a number of external support factors being in place. The panel acknowledged that the Applicant would be subject to "*robust monitoring conditions*". However in their overall analysis of the plan the panel took account of various factors including:
    - The substantial period of time that the Applicant had been in prison,
    - The potential for destabilisation (particularly after a period within Approved Premises),
    - The fact that arrangements for accommodation beyond the Approved Premises were not established and would be likely to take time to organise.

24. The panel therefore determined that despite its robust content, the risk management plan would not be sufficient to manage risk particularly in the medium and longer term. This view was supported by the professionals, who took the view that immediate release was not indicated.

25. In addition to concerns about destabilisation the panel identified further factors of concern. The panel took the view that the Applicant had made progress in addressing and understanding his risk, (although he had been reluctant to address his offending in the past), however the panel noted that the Applicant had not undertaken any long term behavioural intervention work in the past. He struggled with discussing his offending, and the panel accepted a professional view that shame was a psychological factor in understanding his presentation. The panel were also considered that addressing this area of potential difficulty required more work, although not necessarily work to be completed in a closed prison.

26. The Applicant had also referred to a hope that he might be able to be with children in the future, (albeit in controlled circumstances). Although again, not necessarily indicating a need for intensive intervention. The Applicant's understanding of his risk in this area remained a factor which the panel indicated required further development.

27. As referenced above, the panel's decision clearly demonstrates that the panel carefully considered the entirety of the evidence in this hearing. The Panel's role was to analyse that evidence and to reach an independent decision on risk. The panel, in my determination, have appropriately undertaken the task of referencing and analysing the evidence and considering whether the statutory test was met. The panel found that it was not. The reasoning is clear. I am not persuaded that this is a case which meets the test for irrationality set out above.

Decision

28. The application for reconsideration is therefore refused.

HH S Dawson
22 October 2023