

[2023] PBRA 77

Application for Reconsideration by Page

Application

1. This is an application by Page (the Applicant) for reconsideration of a decision of the Parole Board dated 4 April 2023 following an oral hearing on 29 March 2023. The panel declined to direct release. (The panel also declined to recommend a move to open conditions; there is, however, no power to reconsider that decision).
2. Rule 28(1) of the Parole Board Rules 2019 (the Parole Board Rules) provides that applications for reconsideration may be made in eligible cases (as set out in rule 28(2)) on the basis (a) that the decision contains an error of law, (b) that it is irrational or (c) that it is procedurally unfair.
3. I have considered the application on the papers. These are: (1) the dossier, now running to some 352 pages including the decision letter; and (2) the pro-forma application for reconsideration, signed by the Applicant, undated but received by the Parole Board on 19 April 2023. In addition, I have listened to part of the recording of the hearing: see further paragraphs 23 and 24 below.
4. The Applicant was convicted and sentenced under the name Page and is held in the male prison estate. [Redacted]. The Secretary of State referred the case to the Parole Board under this name; and the Secretary of State's witnesses have referred to the Applicant as Page. The panel adopted this approach; and I will also do so.

Background

5. On 4 April 2003 the Applicant, then aged 26, was sentenced to life imprisonment for manslaughter. The minimum term was set at 9 years and expired on 4 April 2012. The Applicant continues to be classified as a category A prisoner.
6. The index offence took place on about 28 February 2000. The victim was a vulnerable man with health problems, unable to defend himself. The Applicant attacked him in his home, striking more than 100 blows with a knife, a hammer, an axe and by stamping on him. The sentencing judge described the attack as a brutal and horrific killing. The Applicant has said that the motive of the attack was to steal and that she was high on drugs and alcohol.
7. At a retrial directed by the Court of Appeal the Applicant pleaded guilty to manslaughter by reason of diminished responsibility. The Judge said that extensive psychiatric evidence established without doubt that the Applicant suffered from psychopathic disorder and was a serious risk to the public. The sentencing judge was not satisfied



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that her condition was treatable: indeed, the Applicant was refusing to co-operate with treatment.

8. The Applicant had an extensive record of offending, including assaults occasioning actual bodily harm, affrays, threats to kill, possession of an offensive weapon, assaults on Police Officers, a robbery, arson, witness intimidation and criminal damage.
9. The Applicant has remained a category A prisoner. She has a history of violence and threats of violence to staff and other prisoners with only relatively short periods of stability and good behaviour. She has generally refused to have in depth discussions with Probation Officers and Prison Psychologists. She has not completed any risk reduction work. It is recognised that she has learning difficulties which must be taken into account in identifying appropriate risk reduction work.

Request for Reconsideration

10. The application for reconsideration has been made by the Applicant in person. I will set out the handwritten text in full and without amendment, except that I have added numbers in order to identify what appear to me to be the main points.

"(1) The panel board refuse to let me back in the hearing to ask the report writers about lies in their reports so that was a breach of fairness towards me. (2) And getting my hopes up for a hostel when that was lies. (3) And I have never refused to do courses at all. I gave the panel member prove all my apps that I asked to do the courses but nine years this prison messed me around and lied to the panel members that I refused to do the courses."

Current parole review

11. The current parole review was the Applicant's seventh. Her previous oral hearing was on 3 July 2018. The decision letter dated 12 July 2018 records that she had dispensed with the services of her solicitor and was appearing in person. The decision letter also records that she left the hearing angrily, threatened a psychologist witness and might have gone further if not immediately restrained.
12. Directions had been given for the completion of an updated psychological risk assessment as well as reports by the Prison Offender Manager (the POM) and the Community Offender Manager (the COM). The assessment had been completed by a trainee Forensic Psychologist under supervision. The Applicant had not co-operated in the making of the assessment. By the time of the hearing the trainee had left the service; his supervisor prepared an addendum report and attended the hearing.
13. The panel for the oral hearing consisted of an Independent Member in the chair and a Psychologist member as co-panellist. Witnesses were the previous and current POMs, the psychologist, the COM and the Applicant herself. Two other Prison Officers attended with the Applicant for reasons of safety. The Applicant does not complain about the attendance of these officers and in view of the Applicant's history their attendance was in my view justified.
14. The panel recorded in its decision its account of what transpired at the hearing.



"[the Applicant] was not legally represented at the hearing. An earlier oral hearing had been adjourned for [the Applicant] to obtain legal representation, but she had not secured the services of a solicitor, so her hearing went ahead without her being represented. [the Applicant] did not apply for another adjournment.

"Throughout the hearing, [the Applicant] was flanked on either side by a prison officer and sat some distance from the panel and witnesses. However, despite this, during her evidence, she very quickly became agitated and emotional, leaving the hearing and stating that she would not return. The panel urged her to take ten minutes and then to return. Subsequently she did return, and evidence was taken for a period of time before she again became angry and verbally threatening and threw files containing her papers in a forceful manner towards the two witnesses (POM and Psychologist). This resulted in the Psychologist being hit with a ring folder, and her suffering an injury to her wrist and emotional distress. [The Applicant] was not allowed to take any further part in the hearing and was to be reported for assault. In the circumstances, the Psychologist was excused from giving evidence, given her having not been the author of the main psychological risk assessment report. Following the incident, the hearing was concluded with evidence from the COM".

15. It is sufficient for the purposes of this application to set out part of the panel's conclusion as representing its key reasons for declining to direct release.

"Despite being confined continuously for more than 22 years since the index offence of manslaughter, [the Applicant] has made little or no progress. She has remained a category A prisoner throughout her time in prison on this sentence and has a lengthy pattern of violence and aggression whilst confined, continuing that previously evidenced in the community. [the Applicant] remains highly volatile. She has completed no structured risk-reduction work, despite there being a 'treatment pathway' suited to her learning difficulties in place for many years. [The Applicant places much blame elsewhere for her current situation and largely resists attempts by Psychology and Probation staff to engage with her. She has very little insight into why she is regarded as posing a considerable risk to others and consistently considers that she is being discriminated against or unjustly treated. At her recent hearing she sought a direction for release, but then got very angry and assaulted a witness some distance away from her, despite being flanked by two Prison Officers. Whilst she is clearly frustrated at her lack of progress in custody, she must think about the choices she makes to behave in violent and unhelpful ways.

*The panel assesses [the Applicant] as currently being at very high risk of violence and to pose a very high risk of serious harm to the public and criminal justice staff. It is evident that her level of risk is far too high for her to be safely managed in the community and it is clear that she needs to remain confined for public protection. **Accordingly, the panel makes no direction for her release.**"*

The relevant law

16. In its decision letter the panel correctly set out the test for release: the Parole Board will direct release if it is satisfied that it is no longer necessary for the protection of the public that the prisoner be confined. The test is automatically set out within the Parole Board's template for oral hearing decisions.



17. The Applicant was serving a life sentence. The panel's decision as to release is eligible for the reconsideration procedure: see rule 28(2)(a) of the Parole Board Rules 2019. For the avoidance of doubt, the panel's decision as to a recommendation for open conditions is not eligible for the reconsideration process.
18. The Parole Board has a duty to take decisions which are lawful. A panel must therefore (1) take decisions which are within its legal powers, (2) apply the law correctly when taking its decisions, (3) fulfil legal duties which are placed upon it in taking its decisions, (4) exercise its discretionary powers for proper purposes, (5) take into account considerations which the law requires it to take into account, and (6) leave out of account considerations which are irrelevant in law.
19. The concept of irrationality is derived from public law. The test is whether the 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.*" See **CCSU v Minister for the Civil Service** [1985] AC 374, applied to Parole Board decisions by **R (DSD and others) v the Parole Board** [2018] EWCH 694 (Admin). This is the standard I have applied when considering this application for reconsideration.
20. The concept of procedural fairness is rooted in the common law. A decision will be procedurally unfair if there is some significant procedural impropriety or unfairness resulting in a manifestly unfair or flawed process. The categories of procedural unfairness are not closed; they include cases where laid-down procedures were not followed, or a party was not sufficiently informed of the case they had to meet, or a party was not allowed to put their case properly, or where the hearing was unfair, or the panel lacked impartiality.

The reply on behalf of the Secretary of State

21. The Secretary of State has informed the Parole Board that no representations are offered in this case.

Discussion

22. The Applicant's first complaint is that the panel refused to let her back into the hearing to question the report writers about their reports; and this was a breach of her right to a fair hearing.
23. I have quoted above the account given by the panel of what transpired at the hearing. The Applicant has not challenged that account but, bearing in mind that she is representing herself, I have listened to the recording of the hearing for myself. The recording bears out that there were two occasions during the hearing when the Applicant became agitated and left the room: the first is at about minutes 52-53 in the recording, the second at about minute 83. The first occasion was at the end of the evidence given by the POMs; she had the opportunity to ask questions of both. The second occasion was after she had given evidence herself for about 25 minutes. There is no reason to doubt, and I accept, the account of the panel that she threw her files of papers forcefully in the direction of two witnesses and struck one of them, causing her injury and emotional distress.



24. On neither occasion was the Applicant's behaviour mitigated by any inappropriate questioning or other conduct on the part of the panel. She was at all times treated by the panel with courtesy and respect.
25. The panel says that the Applicant was not allowed to take any further part in the hearing following this incident. In my view that was a fair and proportionate response to her conduct. She can have no legitimate expectation that she will be permitted to take further part in a hearing when she has behaved as she did.
26. I therefore do not accept that there was any procedural unfairness in the way in which the panel conducted the Applicant's case.
27. The Applicant's second complaint is that the panel raised her hopes for a hostel place when "*this was all lies.*"
28. In assessing whether a prisoner can safely be released into the community it is necessary for the Parole Board to consider the risk management plan which is put forward and is available for that prisoner. The Parole Board will therefore expect to be told what the risk management plan will be if a direction for release is made. In this case, therefore, the COM put forward a risk management plan; and, since a placement at approved premises was part of this risk management plan, she made enquiries as to the availability of such a place. It is plain, however, that her own view was that the Applicant could not safely be released.
29. I cannot see any unfairness to the Applicant in the procedure which was followed in this case. Nor do I think that she has any objective basis for saying that her hopes were raised: there was no professional support in the dossier for her release. Nor do I think the panel or the COM has lied to her about this question.
30. The Applicant's third complaint is that the panel accepted lies from professionals to the effect that she had refused to do courses, when in fact she had applied for them and was always willing to do them. I note from the recording that the Applicant indeed informed the panel that this was her case, and displayed to the panel what she said were applications for courses, including the Thinking Skills Programme (transcript, minute 82).
31. The panel's actual finding, set out above, was that the Applicant had failed to engage with the treatment pathway suited to her learning difficulties and in place for many years. Earlier in its reasons the panel explained that her sentence plan had long been for her to complete the Motivation and Engagement Programme, then to embark on the "*Becoming New Me +*" adapted programme. It found that at her current location she had consistently declined to engage in either, stating that she would only do so if transferred to another prison. There was ample evidence to support this conclusion: see, for example, pages 266, 268 and 302 of the dossier. I see nothing irrational or unfair about this finding.

Decision

32. In my view there was no procedural unfairness, error of law or irrationality in the panel's decision. The application for reconsideration is therefore refused.



David Richardson
28 April 2023