

[2024] PBRA 147

Application for Reconsideration by Hussain

Application

1. This is an application by Hussain (the Applicant) for reconsideration of a decision of a panel of the Parole Board dated 24 June 2024 not to direct his release following an oral hearing on 18 June 2024.
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 oral hearing decision and the dossier.

Background

The Applicant was sentenced on 7 July 2017 to an extended sentence of 14 years. That is made up of a custodial period of 9 years with an extended licence of 5 years. The Applicant was working as a taxi driver at the time of the offence and was convicted of two accounts of rape of a female aged 16 years or older.

Request for Reconsideration

4. The application for reconsideration is dated 10 July 2024.
5. The grounds for seeking a reconsideration are that the interpreter provided for the Applicant did not speak the same dialect as the Applicant and could not accurately interpret what the Applicant said. As a result the Applicant dispensed with the services of his interpreter and gave evidence in English. It is submitted that this was unfair to the Applicant; the proceedings were procedurally unfair and should be re-considered with the assistance of an interpreter who speaks the same dialect as the Applicant.

Current parole review

6. This was the Applicant's first parole hearing. The hearing had originally been scheduled for 20 February 2024 but was adjourned so that the permanent Community Offender Manager (COM) could attend and for the witnesses to re-interview the Applicant with the assistance of an interpreter.



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7. The oral hearing took place on 18 June 2024. The panel heard evidence from the Prison Offender Manager (POM), the COM and a prison commissioned psychologist as well as the Applicant who had an interpreter present to assist him but did not make use of his services.

The Relevant Law

8. The panel correctly sets out in its decision letter dated the test for release.

Parole Board Rules 2019 (as amended)

9. Under 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)).

Procedural unfairness

10. 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.
11. 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.
12. The overriding objective is to ensure that the Applicant's case was dealt with justly.

The Reply on behalf of the Secretary of State (the Respondent)

13. The Respondent has put in representations setting out the views of the COM and POM on the matters complained of by the Applicant. Their account is that the panel were at pains to ensure that the process of interpretation was satisfactory. It was their impression that it was and the Applicant appeared happy with the assistance that he was getting from the interpreter. While I have taken note of those matters, I have not decided this application on that basis as that might involve resolving issues of fact for which the reconsideration process is not suitable. I am nevertheless grateful to the Respondent for taking the trouble to make submissions.

Discussion

14. The Applicant complains that he had to give evidence to the panel in English because the interpreter who had been booked to carry out the translation spoke a different dialect to the Applicant. I would have expected that arrangements would have been made for the Applicant and the interpreter to speak together before the hearing to ensure that they spoke the same dialect. I am not informed whether that happened or not. It is something that I would have expected the legal representative to ensure happened. It may be that it was not practicable to achieve that in the circumstances of this hearing.
15. At some stage the Applicant became concerned about the translation and decided to give evidence in English. He had a legal representative with whom he could have discussed his decision if he wished to. Having made his decision to carry on in English, it is in my judgment not open to him to say his decision rendered the hearing unfair. His option was to ask for an adjournment to get an interpreter that he was happy with but he didn't do that. Having made that decision it is not open to complain that it was unfair for him to carry on without an interpreter when the decision of the panel was negative.
16. The Applicant has not pointed to any part of the decision which he says misrepresents his evidence, which is set out in great detail in the oral hearing decision.
17. For most of the preparations for the parole hearing the interviews had been conducted without an interpreter and the professionals do not believe that there were communication difficulties which required the assistance of an interpreter. When the hearing was adjourned, primarily to secure the attendance of the permanent COM, the Applicant requested that he was re-interviewed through an interpreter. There don't appear to be significant differences between what was recorded as being said in the first interview as compared with the interviews when an interpreter was present.
18. The panel have obviously considered the evidence of the Applicant in great detail and have set it out in great detail. There is no indication in the decision that the panel had any difficulty in understanding his evidence.
19. Having considered all the evidence both from the decision and the dossier I am satisfied that this hearing was fair. It is not ideal, when an interpreter is ordered, for that interpreter to speak a different dialect but equally it is not unusual for a witness to give evidence in what may be his second language rather than give evidence through an interpreter. It was the responsibility of not only the panel but also the Applicant's legal representative to ensure that the hearing was fair and it seems that everyone did do that.

Decision

20. For the reasons I have given, I do not consider that the decision was procedurally unfair and accordingly the application for reconsideration is refused.

John Saunders
08 August 2024