

[2024] PBRA 148

## Application for Reconsideration by Garrett

### Application

1. This is an application by Garrett (the Applicant) for reconsideration of a decision made by an oral hearing panel dated the 2 July 2024 not to direct her 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 oral hearing decision, the dossier consisting of 793 pages, and the application for reconsideration.

### Request for Reconsideration

4. The application for reconsideration is dated 12 July 2024. It has been drafted by legal representatives on behalf of the Applicant.
5. The grounds for seeking a reconsideration are that the decision fails to take into account material considerations, gives insufficient weight to the risk management plan and licence conditions, fails to provide sufficiently detailed reasons and is irrational in its conclusion.

### Background

6. The Applicant received a sentence of 15 years and 6 months imprisonment on 31 May 2017 following a guilty plea to two counts of rape. She was judged to be an offender of particular concern and therefore had an additional licence period of 12 months attached to his sentence. The sentence was in respect of rape of a child under 13 years of age. Two years previous to the sentence the Applicant had been sentenced to 13 years imprisonment in respect of sexual offences involving the same child.
7. The Applicant was aged 28 years old at the time of sentencing and is now 35 years old. This is her first parole review.

### Current parole review



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8. The Applicant's case was referred to the parole board by the Secretary of State (the Respondent) in February 2023 to consider whether or not it would be appropriate to direct her release.
9. The case proceeded to an oral hearing via videoconference on 23 January 2024 and following an adjournment reconvened with the same panel on 21 June 2024. The panel consisted of two independent members and a psychologist member. It heard oral evidence from the Applicant, her Prison Offender Manager (POM), Community Offender Manager (COM), a prison commissioned psychologist and a prisoner commissioned psychologist.
10. The panel did not direct the Applicant's release.

### The Relevant Law

11. The panel correctly sets out in its decision letter dated 2 July 2024 the test for release.

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

12. 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)).
13. 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)).

#### *Irrationality*

14. The power of the courts to interfere with a decision of a competent tribunal on the ground of irrationality was defined in *Associated Provincial Houses Ltd -v- Wednesbury Corporation* 1948 1 KB 223 by Lord Greene in these words "*if a decision on a competent matter is so unreasonable that no reasonable authority could ever have come to it, then the courts can interfere*". The same test applies to a reconsideration panel when determining an application on the basis of irrationality.
15. In *R(DSD and others) -v- the Parole Board* 2018 EWHC 694 (Admin) a Divisional Court applied this test to parole board hearings in these words 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.*"
16. In *R(on the application of Wells) -v- Parole Board* 2019 EWHC 2710 (Admin) Saini J set out what he described as a more nuanced approach in modern public law which



was "to test the decision maker's ultimate conclusion against the evidence before it and to ask whether the conclusion can (with due deference and with regard to the panel's expertise) be safely justified on the basis of that evidence, particularly in a context where anxious scrutiny needs to be applied". This test was adopted by a Divisional Court in the case of R(on the application of the Secretary of State for Justice) -v- the Parole Board 2022 EWHC 1282(Admin).

- 17.As was made clear by Saini J this is not a different test to the Wednesbury test. The interpretation of and application of the Wednesbury test in Parole hearings as explained in DSD was binding on Saini J.
- 18.It follows from those principles that in considering an application for reconsideration the reconsideration panel will not substitute its view of the evidence for that of the panel who heard the witnesses.
- 19.Further while the views of the professional witnesses must be properly considered by a panel deciding on release, the panel is not bound to accept their assessment. The panel must however make clear in its reasons why it is disagreeing with the assessment of the witnesses.
- 20.A panel must provide sufficient reasons to explain its logic and how its conclusion follows from the evidence put before it. There should not be an "unexplained evidential gap or leap" – see the decision of Mr Justice Saini in R(on the application of Wells) v Parole Board [2019] EWHC 2710 (Admin).

### The reply on behalf of the Respondent

- 21.The Respondent has offered no representations in response to this application.

### Discussion

- 22.The application raises four grounds of irrationality.
- 23.Ground 1 – The Applicant submits that there was a failure to take into account material considerations in relation to a number of matters.
- 24.Ground 1(a) - The Applicant complains that the panel placed undue weight on her offending history. I disagree. The panel was obliged to note the offending history, the weight placed on that history is a matter for the panel. The panel noted the allegation by the Applicant's own child against her but also noted that those matters were left to lie on the file. There is no evidence that any or any undue weight was placed on those matters. It is quite clear that the focus of the panel's consideration is the offences in respect of which the Applicant was found guilty or pleaded guilty and the matters left to lie on the file do not form part of that assessment.
- 25.Ground 1(b) - The Applicant, in quoting from the decision letter the passage regarding being unable to control her offending, crucially omits that the panel stated "at that time" – those words are important as they make clear the fact that the Applicant did not stop her offending herself but it was brought to an end by the complaint of the victim. The panel noted the differences between 'the old me' and



'the new me' and the complaint in respect of this ground is based on a misreading or misunderstanding of paragraph 4.3 of the decision letter.

26. Ground 1(c) - The Applicant submits that the panel held against her the fact that she was unable to complete offending behaviour work, the Healthy Sex Programme (HSP), noting that all professionals were of the opinion that no such further work was necessary in prison. I do not agree that the panel held against the Applicant the fact that the work was not completed. The panel noted that, albeit on the Applicant's own assessment, the conclusion was that she did not have treatment needs that required her to engage on the HSP programme. The panel went on to note that she did engage with the New Me MOT. The panel also noted the view of the professionals all recommending release. However, the role of the Parole Board is not to confirm a unanimous or majority decision but to make its own assessment of risk based on all the evidence presented. From the evidence presented the panel was not satisfied that the Applicant had completed specific work to address a sexual interest in children and was satisfied that she lacked insight into that risk factor. That was a conclusion with reasons set out in paragraph 4.3 of the decision that was open to the panel and does not raise any issue of irrationality.
27. Ground 1(d) - The Applicant submits that the panel did not consider the licence conditions, risk management plan and evidence of the witnesses. I am satisfied that there is no evidence to support that claim. The fact that the panel did so is evidenced by the clear reasons given as to why they accepted or rejected evidence presented. The evidence of the COM was that in the absence of a release decision and date, there could be a delay in securing a bed place outside the exclusion area if release was directed. Accommodation could therefore be to somewhere with a short period of stay, the panel were noting the risks involved in such a situation where monitoring would not be provided on a continuous basis thus creating a management risk. That was a logical and reasonable conclusion.
28. Ground 1(e) - The Applicant submits that the panel relied on gender reassignment in explaining the reason not to direct release. I am not satisfied that the Applicant has properly read or understood this passage of the decision. The panel acknowledged that gender reassignment could be a protective factor, but in the circumstances of this case, particularly the stage where the Applicant had reached in the process, the panel did not accept this as a factor which reduced risk. There is no irrationality in this conclusion which was open to the panel.
29. Ground 2 - The Applicant submits that insufficient weight was given to the risk management plan and additional licence conditions. I do not agree. The fact that there is self-reporting by the Applicant is of real and legitimate concern for the panel. It is an indication of the subjective nature of the assessment which the panel is right to treat with caution, care and thorough analysis. It is also of concern that contrary to advice from the professionals, the Applicant wished to continue her relationship with a convicted sex offender. That is an indication of the potential for non-compliance with instructions which the panel is right to treat with caution. The Applicant is not correct in stating that the decision has not clearly explained why the panel reach the conclusion that the future risk management depends to a significant degree on self-reporting. The panel noted that based on a self-report the HSP Suitability Assessment report concluded that the Applicant did not have any treatment needs that required her to engage in HSP. Her psychologist drawing on



that conclusion, which was based on self-reporting, considered that the Applicant could be managed in the community with a robust risk management plan. For those reasons (the initial self-report and the reliance on it by the psychologist) the panel examined carefully the robustness of the risk management plan and licence conditions. The weight they attached to the evidence and the conclusions they drew from it were conclusions open to the panel and do not display any irrationality.

30. Grounds 3 and 4 – The Applicant submits that the panel failed to give full reasons for its decision and reached a decision outside the range of reasonable decisions open to the panel amounting to irrationality. I do not agree. The panel has clearly given full reasons for its decision as set out above. The decision was not one that the Applicant was hoping to receive but it is not irrational. The legal test of irrationality is essentially that the panel’s decision not to release the Applicant was so illogical that every other panel would have decided otherwise and released her. That is not the case here.
31. The decision letter sets out in detail the reasons why the panel does not direct release and why the panel concludes that the risk management plan and licence conditions cannot manage the risk the Applicant continues to pose. The Applicant may disagree with the conclusions of the panel but that is not enough to establish irrationality in law. The legal test sets a high bar which this case does not meet. Accordingly, this application for reconsideration fails.

## Decision

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

**Barbara Mensah**  
**21 August 2024**

