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[2024] PBRA 18

Application for Reconsideration by Popo

Application

1. This is an application by Popo (the Applicant) for reconsideration of the decision of a Parole Board panel dated 12th December 2023, following an oral hearing on 29th November 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.

3. I have considered the application on the papers. These are:

   i. The dossier of 487 pages including the Decision Letter (DL) the subject of this application.
   ii. The grounds of appeal dated 3rd January 2024 submitted on the Applicant's behalf by his legal representative.

Background

4. The Applicant's index offences and the subsequent sentence and parole history are accurately set out in the DL. In summary:
   i. He was convicted of aggravated burglary in December 2010 and sentenced to Imprisonment for Public Protection with a minimum term of 3 years 174 days. His tariff expired on 2nd June 2014. In 2021, a Parole Board panel declined to order his release. Since then, on 1st September 2022, he was convicted of an offence, committed in prison, of possession of an offensive weapon and sentenced to 16 months imprisonment.
   ii. The hearing of 29th November 2023 was the 6th review of his case by the Parole Board (PB). His last review was conducted – on the papers - on 23rd June 2021.

Request for Reconsideration

5. The application for reconsideration is dated 3rd January 2024.

6. The grounds for seeking a reconsideration are in summary as follows:

   i. The panel wrongly decided to accept the assessments of the professional witnesses over that of the Applicant as to his suitability for release.

ii. He has completed risk reduction work during his sentence – including the Thinking Skills Programme, the Victim Awareness Course, CARATs (Counselling, Assessment, Referral and Throughcare), and other in-cell work, as set out in the evidence of the professionals.
iii. The allegations of poor behaviour made against him whilst in prison were not sufficiently or fairly considered – and in particular – neither were his allegations against prison staff which are currently under consideration by the Prison and Probation Ombudsman.
iv. His behaviour in prison since his arrival at his current prison has been such as to demonstrate that his risk is no longer such as to justify his continued detention.
v. The suggestion at paragraph 2.1 of the DL that the panel had concerns as to the Applicant's motivation to complete programmes was irrational. His inability to complete programmes was due to the lack of availability of the relevant programmes in the prisons in which he has been held.

Current parole review

7. The case was referred to the Parole Board by the Secretary of State (the Respondent) on 12th August 2022.

The Relevant Law

8. The panel correctly set out the test for release in its decision letter dated 12th December 2023.

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)).

Irrationality

10. 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."

11. 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.

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

13. 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.*"

The reply on behalf of the Respondent

14. On 10th January 2024 the Respondent indicated that he did not wish to make representations in reply to the application.

Discussion

15. Each panel has to decide whether to accept the recommendations and conclusions expressed by witnesses both before and at the hearing and the submissions made on them by or on behalf of the prisoner at or after the hearing. It is perfectly clear from the terms of the DL that the panel did just that in some detail at paragraphs 2 and 3 of the DL before reaching its decision. In this case there was no unqualified support from any of the professional witnesses for release and in the case of each witness the reasons for that opinion were clearly stated both in their reports to the panel and in the panel's decision. To paraphrase the words quoted above at paragraph 10, it is only if the decision could not have been reached by a panel applying its mind properly to the legal requirement at the heart of the process, namely the existence or otherwise of the risk currently posed by the offender of serious harm whether mental or physical to members of the public, that it must be quashed. In those circumstances the remaining grounds put forward at paragraphs ii-v have little if any value. The matters set out at sub-paragraphs ii-iv were clearly taken into account in the same paragraphs of the DL and as to sub- paragraph v, the Board has to look at the risk of serious harm to the public posed by an offender on release. If work which might have reduced the risk sufficiently to permit a release decision has not been completed – whatever the reason – the Board is still bound to apply the statutory test.

Decision

16. I therefore decline to order that the case be reconsidered by a fresh panel.

Sir David Calvert-Smith
22nd January 2024