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[2024] PBRA 195

Application for Reconsideration by Abtahi

Application

1. This is an application by Abtahi (the Applicant) for reconsideration of a decision of a panel of the Parole Board dated the 28 August 2024 not to direct release of the Applicant following an oral hearing dated 13 August 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. This is an eligible case, and the application was made in time.

3. I have considered the application on the papers. These are the application for reconsideration, the decision of the panel and the dossier.

Request for Reconsideration

4. The application for reconsideration is dated 13 September 2024.

5. The grounds for seeking a reconsideration are that the decision was irrational in that it was not justified on the evidence which the panel considered.

Background

6. The Applicant was sentenced on 20 January 2017 to an extended sentence of 14 years 8 months for offences of wounding with intention to cause grievous bodily harm, kidnapping and threats to kill. The custodial part of the sentence was 11 years and 8 months and there was an extended licence of 3 years.

Current parole review

7. The case was referred to the Parole Board by the Secretary of State (the Respondent) on 11 July 2023.

8. At the hearing on 28 August 2024 the panel heard evidence from a prison psychologist, the Community Offender Manager (COM) and the Prison Offender Manager (POM).

The Relevant Law

9. The panel correctly sets out in its decision letter dated 28 August 2024 the test for release.

Parole Board Rules 2019 (as amended)

10. 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)).

11. 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

12. 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.

13. 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."*

14. 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).

15. 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.

16. 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.

17. 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.

Other

18. It is possible to argue that mistakes in findings of fact made by a decision maker result in the final decision being irrational, but the mistake of fact must be fundamental. The case of **E v Secretary of State for the Home Department [2004] QB 1044** sets out the preconditions for such a conclusion: "*there must have been a mistake as to an existing fact, including a mistake as to the availability of evidence on a particular matter; the fact or evidence must have been "established", in the sense that it was uncontentious and objectively verifiable; the appellant (or his advisors) must not have been responsible for the mistake; and the mistake must have played a material (though not necessarily decisive) part in the tribunal's reasoning."* See also **R (Alconbury Developments Ltd) v Secretary of State for the Environment, Transport and the Regions [2003] AC 295**, which said that in order to establish that there was a demonstrable mistake of fact in the decision of the panel, an Applicant will have to provide "*objectively verifiable evidence*" of what is asserted to be the true picture.

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.*"

The reply on behalf of the Respondent.

20. The Respondent has made no submissions in response to this application.

Discussion

21. There was in my view ample evidence to justify the panel's decision. Both the psychologist and the POM recommended that the Applicant should remain in custody for a further period to demonstrate that he would be open with professionals in the community. They took that view at least in part because the Applicant was found to have taken cannabis when on overnight release and in the period after his return. The Applicant accepted this and said he did it because of anxiety. Part of the training that he has had is to go to professionals for advice if he feels anxiety rather than taking drugs. The panel was entitled to conclude from this that the Applicant was not at the moment being sufficiently open with professionals which would be a concern if he was released on licence. While the Applicant has been open about other matters and admitted taking cannabis the critical time for him to be open was before he took the drugs. This caused the POM to change his recommendation from being in favour of release to opposing it. The psychologist gave comprehensive reasons for her opinion and felt that further

testing on ROTLs should take place before the Applicant could be safely released. The panel was entitled to rely on that evidence.

22. The panel concluded at para 4.7 in relation to the cannabis that *'despite the amount of work he has done to address the triggers to and reasons for his use of drugs, he did not disclose that he felt he needed to use the cannabis, or that he had used it. This raises questions not only with regard to his coping skills, but significantly about his willingness to be open and honest and his genuine commitment to pursuing a fully pro-social lifestyle'*.

23. In my view the panel were entitled to come to that conclusion on the evidence.

24. The panel were also concerned about what they regarded as minimisation by the Applicant of his part in the index offence. The Applicant pleaded guilty to wounding with intent at the beginning of his trial. He was sentenced by the Judge on the basis that he accepted causing almost all of the serious injuries that the victim suffered. He told the panel and others who prepared reports that he only punched the victim twice and was not present at the time the other serious injuries were caused.

25. In the absence of some sort of explanation the panel were entitled to conclude that he was minimising what he had done. The panel also concluded that he was minimising his behaviour following an adjudication for fighting when he said that he had used reasonable force to defend himself. It appears that the panel may have been in error in regarding his explanation as minimising his conduct as the adjudication was dismissed and the Applicant claimed that he was reacting to an attack.

26. It is difficult for me to say for sure whether the panel were mistaken without hearing all the evidence but in the absence of any more detailed explanation for this finding I will deal with this case on the basis that the panel were mistaken.

27. I do take the view that even if the panel should not have relied on this in making their decision it did not make a material contribution to their decision. More importantly they found that the Applicant minimised his part in the index offence which was of greater importance.

28. Establishing that a decision is irrational is a very high bar and in my judgment the grounds for reconsideration do not reach that. It cannot be said that the decision was not justified by the evidence. There was evidence which was capable of justifying the panel's decision and that they were entitled to rely on it.

Decision

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

John Saunders
04 October 2024