

[2024] PBRA 213

**Application for Reconsideration by Wilkinson****Application**

1. This is an application by Wilkinson (the Applicant) for reconsideration of a decision of a panel of the Parole Board dated 2 October 2024 making no direction for release following an oral hearing on 1 October 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 oral hearing decision and the dossier.

**Background**

4. The Applicant is serving an extended determinate sentence of 9 years 1 month for an offence of arson with intent to endanger life. The custodial period is 6 years 1 month and there is an extended licence period of 3 years.

**Request for Reconsideration**

5. The application for reconsideration is dated 14 October 2024.
6. The grounds for seeking a reconsideration are that the decision of the panel was irrational in that the panel failed to take into account material considerations and the conclusion of the panel not to release the Applicant was irrational.

**Current parole review**

7. This was the first parole review of the Applicant's case and was referred to the Board on 20 October 2023.
8. The oral hearing was on 1 October 2024 by a two person panel. The panel heard evidence from the current and previous Prison Offender Managers and the Community Offender Manager.



## The Relevant Law

9. The panel correctly sets out in its decision letter dated 2 October 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.

### **The reply on behalf of the Secretary of State (the Respondent)**

18. The Respondent makes no representations.

### **Discussion**

19. The background to this application is that until 5 September 2024 the Applicant had made good progress in prison. He had been transferred to open conditions on 26 October 2023 and until the events of 5 September 2024 all the professionals were recommending that the Applicant should be released on licence. On the basis of the evidence before 5 September 2024 there must have been a very good prospect that the Parole Board would have directed the Applicant's release. On the 5 September 2024 the Applicant was found to be intoxicated and was returned to closed conditions. As a result of the events of 5 September 2024 the professionals who felt able to give an opinion changed their recommendations and their opinion after that was that the Applicant should not be released. The criticism of the panel is that they have paid too much attention to what happened on 5 September 2024 and have ignored what had happened through the remainder of the sentence.
20. The panel had to consider in detail what effect the events of 5 September 2024 had on their assessment of risk. Alcohol consumption had played a significant part in the index offences and in other of the Applicant's previous convictions. It was one of his risk factors. While the Applicant may have drunk on 5 September because of pressures that he felt he was under, the panel were entitled to conclude that he did not meet the test for release as he was likely to face similar pressures in the community. It is incorrect that the panel paid no attention to the progress made prior to the September relapse. They set out brief details of it in their decision.
21. It was a matter entirely for the panel to decide what weight they attached to the relapse as against the previous good progress. The panel heard and was able to evaluate the evidence. The authorities make it clear that the weight to attach to a piece of evidence is for the panel to decide.
22. The decision not to release was one which a reasonable panel could make on the evidence.

### **Decision**

23. 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**  
**31 October 2024**