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[2024] PBRA 216

Application for Reconsideration by Whyte

Application

1. This is an application by Whyte (the Applicant) for reconsideration of a decision of a panel of the Parole Board on 7 October 2024 not to direct release or recommend for open conditions following an oral hearing on 30 September 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 decision, the application for reconsideration and the dossier.

Request for Reconsideration

4. The application for reconsideration is dated 17 October 2024.

5. The grounds for seeking a reconsideration are that the decision of the panel to refuse to release was irrational.

Background

6. The Applicant is serving a sentence of life imprisonment for two offences of rape imposed on 7 November 1997. The Applicant had to serve a minimum period of 8 years before he could apply for release on parole.

Current parole review

7. This is the 10th parole review of the Applicant's sentence and was referred to the Board on 17 March 2023.

8. The oral hearing took place on 30 September 2024. The panel heard evidence from the Prison Offender Manager (POM), the Community Offender Manager (COM) and a prison psychologist.

The Relevant Law

9. The panel correctly sets out in its decision letter dated 7 October 2024 the test for release and the issues to be addressed in making a recommendation to the Secretary of State for a progressive move to open conditions.

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)).

12. A decision to recommend or not to recommend a move to open conditions is not eligible for reconsideration under rule 28.

Irrationality

13. 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.

14. 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."*

15. 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).

16. 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.

17. 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.

18. 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).

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

Discussion

20. The Applicant is many years over tariff but the panel still had to apply the standard test for release which is a high one. The Supreme Court has stated that a panel should consider ever more anxiously whether a prisoner should be released the longer over tariff they are (Osborn v Parole Board [2013] UKSC 61).

21. The panel did take into account the progress made by the Applicant during his sentence as set out in the decision.

22. The panel were concerned that there was core risk reduction work to be done before the reasons for the Applicant's offending could be properly understood. The psychologist's evidence was that the Applicant has a personality disorder which requires work to be carried out in custody. That view was supported by the POM. The COM agreed that core work needed to be carried out but was of the view that it could be carried out in open conditions.

23. All of the professionals agreed that core risk reduction work needed to be carried out before the Applicant could be safely released. The panel accepted that core risk reduction work still remained to be done. The panel preferred the evidence of the POM and the psychologist to that of the COM and concluded that the work needed to be done in closed conditions.

24. The panel were entitled to reach both those conclusions on the evidence that they heard. They have set out clearly in their decision how they reached their conclusions.

25. It is not arguable that the decision was irrational or that this was a decision that other panels would not have reached.

26. I am satisfied on consideration of the decision that the panel gave the necessary anxious consideration as to whether the Applicant should be released.

Decision

27.For the reasons I have given, I do not consider that the decision was irrational.

John Saunders
12 November 2024