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[2024] PBRA 28

Application for Reconsideration by Kepple

Application

1. This is an application by Kepple (the Applicant) for reconsideration of the decision of a Parole Board panel dated 22nd December 2023, following an oral hearing on 17th November 2023, not to direct his release.

2. Rule 28(1) of the Parole Board Rules 2019 provides that applications for reconsideration may be made in eligible cases either on the basis (a) that the decision is irrational and/or (b) that it is procedurally unfair.

3. I have considered the application on the papers. These are:
    a. The dossier of 788 pages including the Decision Letter (DL) the subject of this application.
    b. The application for reconsideration submitted on his behalf by his legal representative.

Background

4. The Applicant's index offence and the subsequent sentence and parole history are accurately set out in the DL. In summary, aged 18, he murdered a 17-year-old girl with whom he was then in a relationship after an argument with her and while under the influence of alcohol, ecstasy and cannabis. The Applicant was sentenced on 6th February 2001 and received a sentence of life imprisonment with a minimum term of 11 years. The Applicant is now aged 42 and this was the seventh review of his case by the Parole Board.

Request for Reconsideration

5. The application for reconsideration is dated 17th January 2024.

6. The Applicant submits in summary:

    a. There has been no, or no significant, sign that the risks identified in the DL have been prevalent in the recent past.
    b. The index offence is the only offence of violence in the Applicant's extensive criminal record.
    c. The index offence was not committed because the victim was female but simply because it was with her that he had the argument which led to the murder.

d. The panel's reliance in part on a transcript of conversations between the Applicant at pp476-493 of the dossier was irrational in that a written record may not always reflect the actual tone of a conversation.
e. The panel did not apply a balanced consideration to the transcripts which only reflected the normal ups and downs in a relationship.
f. The Applicant's management of a difficult moment during the hearing at which he was alone, his legal representative being 'on-line' with the panel, was indicative of his ability to control his emotions.
g. The panel was wrong to reject the independent psychologist's evidence that the Applicant's 'communication style' may seem to be threatening or controlling as against his actual behaviour in difficult situations.
h. The panel's conclusion that the index offence should be categorised as "inter-partner violence" (IPV) was irrational. The correct interpretation was that it represented "general violence".

Current parole review

7. The case was referred to the Parole Board by the Secretary of State on 20th October 2020.

The Relevant Law

8. The panel correctly set out in the DL the tests for release.

Parole Board Rules 2019

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 Secretary of State (the Respondent)

14. The Respondent has offered no representations.

Discussion

15. In my judgment the DL deals with what was clearly a difficult case at length and with great care. As to the grounds summarised above:
    a. Any danger to future partners or their children would only become apparent following release.
    b. While this is true, that fact was clearly within the minds of the panel – and no doubt of previous panels. The fact that an index offence is the only offence of extreme violence committed by an offender cannot determine the question of release.
    c. The panel was well aware of this fact.
    d. The panel was entitled to the view it formed (at paragraphs 1.17-19) of the contents of the telephone call transcripts.
    e. The panel was entitled to put the words used in the conversations together with the facts of the index offence in reaching its conclusion.
    f. The panel had well in mind, and gave the Applicant credit for, his behaviour during the understandably upsetting moment during the hearing. (See paragraphs 1.5-8 of the DL).
    g. The panel was entitled to come to the conclusion it did when deciding not to accept the recommendation of the independent psychologist as against those of other witnesses. See paragraphs 1.20-23 of the DL.
    h. The panel was entitled to come to the conclusion at paragraph 1.15 of the DL that the index offence was an example of IPV. Indeed, it would have been surprising if it had not come to that conclusion.

Decision

16. For these reasons I find that the panel's decision was not tainted by irrationality and therefore reject the application that it be reconsidered.

Sir David Calvert-Smith
30 January 2024