

[2024] PBRA 38

Application for Reconsideration by Ali

Application

1. This is an application by Ali (the Applicant) for reconsideration of a decision made as part of a member case assessment dated the 15 December 2023 refusing to release the Applicant on licence and deciding that there were no reasons for holding an oral hearing.
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 the application for reconsideration, e mail communications with the Board and the decision of the panel and the dossier.

Background

4. On 23 February 2022 the Applicant was sentenced to 4 years and 6 months custody with an extended licence period of one year as an offender of particular concern for an offence of rape of girl aged under 13. He became eligible to be considered for parole on 15 February 2024.

Request for Reconsideration

5. The application for reconsideration is dated 30 January 2024.
6. The grounds for seeking a reconsideration are that the proceedings were unfair in that the Applicant had no notice that the matter was to be considered at an MCA hearing and had no opportunity to make representations that there should be an oral hearing in his case.

Current parole review

7. This was an on-tariff reference to the Board and is accordingly the first time the Board has considered the Applicant's case.

8. The Applicant had been advised at the commencement of the parole period that he should engage a solicitor to act on his behalf. The panel considering the matter on 15 December 2023 believed that the Applicant was still unrepresented. In fact, while it had taken time for the Applicant to instruct a solicitor, he was represented by 15 December 2023, but the solicitor had received no information about the hearing and had not had any opportunity to make representations to the Board in preparation for the MCA hearing as she understood the hearing would not take place until February 2024.

The Relevant Law

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)).

Procedural unfairness

10. Procedural unfairness means that there was some procedural impropriety or unfairness resulting in the proceedings being fundamentally flawed and therefore, producing a manifestly unfair, flawed or unjust result. These issues (which focus on how the decision was made) are entirely separate to the issue of irrationality which focusses on the actual decision.
11. In summary an Applicant seeking to complain of procedural unfairness under Rule 28 must satisfy me that either:
- (a) express procedures laid down by law were not followed in the making of the relevant decision;
 - (b) they were not given a fair hearing;
 - (c) they were not properly informed of the case against them;
 - (d) they were prevented from putting their case properly; and/or
 - (e) the panel was not impartial.
12. The overriding objective is to ensure that the Applicant's case was dealt with justly.

The Reply on behalf of the Secretary of State (the Respondent)

13. The Respondent does not wish to make any submissions in relation to this application.

Discussion

14. On the basis of the information provided by the Applicant's solicitor which is not disputed by the Respondent the procedure seems to have gone wrong in this case to the Applicant's detriment. I have first considered whether this application is in time. The decision was made on 15 December 2023 and the application for reconsideration was made either on 24 January 2024 in an e mail exchange or in a

letter sent on 30 January 2024. While the time for making an application for reconsideration is 21 days and the decision was made after that period, the period only starts to run when the decision is communicated to the parties. I am satisfied on the evidence I have seen that the decision was not communicated to the Applicant until the 24 January 2024 as it was sent to the wrong prison. I am satisfied that both the Applicant and his solicitor wished to make representations to the MCA member that the application should be put off to an oral hearing, but because of miscommunication they did not have the opportunity to make representations to the MCA member who made the decision on the information then available and refused the application for parole. In my judgment this was procedurally unfair in that the Applicant did not have an opportunity to make representations. The case should be re-heard and this time the Applicant must have the opportunity to make representations.

Decision

15. For the reasons that I have given I do consider that there has been a procedural irregularity and the Applicant has not had a fair hearing. Accordingly, the application for reconsideration is granted. The matter should be referred back to an MCA panel to consider whether there should be an oral hearing.

John Saunders
21 February 2024