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[2024] PBRA 49

Application for Reconsideration by Ilott

Application

1. This is an application by Ilott (the Applicant) for reconsideration of a decision of an oral hearing panel dated the 1 February 2024. The decision of the panel was not to direct release.

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, and/or (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 dossier consisting of 1141 pages; the application for reconsideration submitted by the Applicant's legal representative; and the response by the Secretary of State (the Respondent).

Background

4. On the 21 May 2010 the Applicant was sentenced in relation to an offence of wounding with intent (S18). The Applicant was sentenced to an indeterminate sentence for public protection. The minimum term fixed by the judge was three years.

5. The Applicant, in 2008, pursued and attacked the victim by kicking him to the head and body causing bruising and swelling and the loss of 3 teeth.

6. The matter concerning wounding was committed in October of 2008. The Applicant was at the victim's home, there was a disagreement. The Applicant attacked the victim and stabbed him under his chin and in the stomach. The injuries were near to life threatening. The background to the offence was that the victim had been in a relationship with a family member of the Applicant. The Applicant was alleged to have held a grievance against the victim because he believed that the victim had been violent towards that family member.

7. The Applicant was noted to have an extensive history of criminal offending and a substantial number of offences recorded, including offences of violence and the use of weapons.

Request for Reconsideration

8. The application for reconsideration is dated the 18 February 2024.

9. The grounds for seeking a reconsideration are set out below.

Current parole review

10. The Applicant had been released on licence by the Parole Board on two earlier occasions. He had been recalled following releases. The current panel were therefore considering release following recall. The Applicant's first recall had occurred 9 months after release in circumstances where the Applicant had failed to comply with licence conditions and where his alcohol consumption had increased. He was also convicted of a further offence whilst on licence. The offence involved an assault and the possession of a knife.

11. The Applicant was released again by a Parole Board panel in July of 2020. He was recalled in August of 2020.

Oral Hearing

12. The review was conducted by an independent Chair of the Parole Board, a psychiatrist member of the Parole Board and an independent third member of the Parole Board. Oral evidence was given by a responsible clinician, a social worker, a care coordinator, and a Community Offender Manager (COM). The Applicant was represented by a solicitor.

13. A dossier consisting of 1117 pages was considered.

The Relevant Law

14. The panel correctly sets out in its decision letter dated 1 February 2024 the test for release.

Parole Board Rules 2019

15. Pursuant to 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

16. 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."

17. 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.

18. The application of this test has been confirmed in previous decisions on applications for reconsideration under rule 28: **Preston [2019] PBRA 1** and others.

Procedural unfairness

19. 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.

20. 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.

21. The overriding objective is to ensure that the Applicant's case was dealt with justly.

22. 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.*"

23. Panels of the Parole Board are not obliged to adopt the opinions and recommendations of professional witnesses. It is their responsibility to make their own risk assessments and to evaluate the likely effectiveness of any risk management plan proposed. They must make up their own minds on the totality of the evidence that they hear, including any evidence from the Applicant. They would be failing in their duty to protect the public from serious harm (while also protecting the prisoner from unnecessary incarceration) if they failed to do just that. As was observed by the Divisional Court in **DSD**, they have the expertise to do it.

The reply on behalf of the Respondent

24. The Respondent offered no representations.

Reconsideration grounds and discussion

Grounds 1 and 2

25. The Applicant's solicitor submits that the panel came to an irrational conclusion in this case by assessing that the Applicant's evidence (that he did not have access to a map, setting out his exclusion zone, or that he was unaware of his exclusion zone) lacked credibility. A second submission also argues that it was irrational for the panel to conclude that the Applicant would have been aware that, being in close proximity to a prohibited address would cause concern. Both of these grounds are linked, and I take them together.

26. The background to this submission is that the Applicant was subject to a licence condition which restricted him from going to the area of a block of flats in a road. He was being monitored by an electronic monitoring system. Reports from the monitoring company, to probation, indicated that he had been detected loitering outside the block of flats concerned. When asked about these matters in, and before, the hearing he explained that he was visiting a friend who lived opposite the block of flats, but had not entered the flats themselves, and therefore had not breached his condition.

27. The licence condition relating to the exclusion areas was recorded in the decision by the parole board panel who had directed his release. The licence condition in the parole board decision specifically indicated that the area was defined by an "attached" map. The Applicant contended that he had not seen, or been given the map. The exact wording of the condition, as set out in the decision of the parole board was *"not to enter the areas of… (block of flats) … as defined by the attached map".*

Discussion

28. The panel raised this matter with the Applicant in the hearing. As indicated, the Applicant argued that he had not seen or been given the map and that he had not entered into the block of flats. The panel came to the conclusion that on the balance of probabilities, the Applicant's contention about not having access to the map or seeing a map was not credible.

29. It is clearly apparent from the dossier, that a substantial area of concern, when the Applicant was released on licence on the last occasion, was the potential for risk to the residents of the block of flats. This was the reason for the prohibition and exclusion. The Applicant was therefore well aware of the fact that this was an area of concern. The management of risk by those on licence involves a compact between the public, the probation service and the licensee. The Applicant would have received a copy of the parole Board decision and would therefore be fully aware that the licence condition involved consulting a map. This was clearly written in the decision. The burden, therefore, of consulting the map and ensuring that the licence condition was not breached was on the Applicant. The Applicant would have had regular contact with his probation officer, and if there was any misunderstanding (or if the map had not been received) it was clearly incumbent upon the Applicant

to clarify the position. Of note was the fact that the wording of the condition was in fact *"not to enter the areas of"* … (the block of flats). The condition therefore required the Applicant to stay away from that area.

30. The panel in this case concluded that the Applicant's evidence (of not having a map or being unaware of the exclusion zone), lacked credibility. As noted above, there had been historical allegations of risky behaviour when in the locality of the identified exclusion zone. The panel determined that this would have clearly alerted the Applicant of the need for caution and clarity if entering that area.

31. The panel considered the evidence relating to this issue. They concluded that the decision, by the probation service, to recall the Applicant to prison, was appropriate. The panel's determination was that the Applicant was found to be in the "*area of*" the exclusion zone. The Applicant would have been notified of the exclusion zone details, by way of the Parole Board written decision, and by way of his licence conditions issued to him on release from prison. I am not persuaded that the panel's finding could be considered irrational in the sense set out above.

Ground 3

32. The panel were irrational in concluding that the Applicant had manipulated a situation relating to contact with his children, to ensure that he could have contact on his terms, irrespective of the wishes and concerns of probation and Social Services.

Discussion

33. The background to this submission is that the Applicant's relationship with former partners had been troubled. There had been allegations that the Applicant had been controlling and coercive and threatening towards at least two partners. One of those two partners had applied for and been granted a non-molestation order in the past. The Applicant had also breached non-molestation orders. In a probation service report issued in September 2023 it is recorded that the Applicant had discussed contact with two children with his probation officer. It is clear from the notes of the discussion between the probation service and the Applicant (at page 1141 of the dossier), that the Applicant understood that matters of contact had to be settled with a children's services agreement and that the children themselves would need to be spoken to. The Applicant is recorded as having said to his probation officer that, if required, he would be willing to meet the children at a contact centre. The probation service had a duty to manage the Applicant's risk. It is apparent therefore that the Applicant was fully aware of the fact that the probation service were concerned that contact with children should not take place until appropriate arrangements had been made. It was also clear from this conversation that the probation service, as the lead agency in terms of managing risk, were to be fully involved and appraised of the contact arrangements. It appeared from this conversation that the Applicant accepted and was aware of this position.

34. The panel at the oral hearing noted that, in fact, the Applicant had met the children in a way which circumvented the intentions of probation and social services. The panel found that he had arranged to visit the home of a family member when he was aware that the children would be at the family members home. The Applicant

argued in the hearing that these meetings were unplanned, and a pleasant surprise. The Applicant also admitted to the panel that these apparent unplanned visits had occurred on at least two or three occasions. The Applicant had not informed his probation officer of these meetings until after the event.

35. The panel concluded on the balance of probabilities, that the Applicant had manipulated the situation to ensure that he could have contact on his terms, irrespective of the wishes of the probation service and children's services.

36. The Applicant had told the parole Board panel (at paragraph 2.20) that the visits were unplanned surprises. The Applicant's solicitors argue that in fact "*professionals were aware of the contact taking place*".

37. The panel's conclusion, that the Applicant had manipulated the situation to ensure that he could have contact, was supported by credible evidence. In particular, the fact that the probation service were informed of these visits after the event, rather than in advance and the fact that the Applicant appeared to be telling the parole Board panel that the presence of children at the family members house was an unplanned surprise, but submitting in his application for reconsideration that the visits were in circumstances where professionals were aware that contact was taking place.

38. In the circumstances. I am not persuaded that the panels conclusion, on balance, that the Applicant had manipulated the situation relating to children's visits, was irrational in the sense set out above. There was compelling evidence supporting the contention.

General

39. As noted above, I am not persuaded that the particular factual circumstances set out in the grounds for this application are supported by the evidence and I do not find that the conclusions of the panel in relation to those two factual areas were irrational.

40. However, it should be also noted that the panel's decision, not to direct release in this case, was not entirely dependent upon manipulative behaviour or breaching of an exclusion zone.

41. The panel indicated a significant concern relating to the Applicants grievances towards probation and therefore the difficulty in relation to compliance with licence conditions and managing risk. The Applicant was assessed as having a medium risk of serious harm to staff in the community. This assessment had been based upon historical behaviour in relation to the probation service. By way of example, the panel noted that the Applicant had, while in prison, declined to discuss issues with his probation officer unless in the presence of a solicitor. This was said to be due to a sense of ongoing grievance with the probation service. The panel felt that this reluctance to discuss matters with his probation officer was evidence of delusional thinking towards probation, which was supported by diagnoses in the past.

42. The panel also concluded, on the balance of probabilities, that despite the absence of formal convictions, the Applicant had a significant history of controlling behaviour

in intimate relationships, and he posed a high risk of harm, by way of domestic violence, towards past and future partners. The view of the panel was that if violence occurred, there would be a high risk of serious harm to partners and to any children who may witness violence.

43. The panel also concluded on the basis of the evidence on the dossier and the evidence received in the hearing that the Applicant had exhibited symptoms of delusional jealousy in the past towards partners. The panel specifically rejected the view of the medical witness in the hearing. That medical witness had submitted that the Applicant's delusional beliefs did not extend to former partners. The panel rejected that view.

44. The panel further noted that the Applicant had yet to undertake behavioural work in connection with the risk of domestic violence. The panel concluded that behavioural work in this area was fundamental in terms of risk reduction.

45. Having considered the decision in its entirety. I am satisfied that the decision does not evidence irrationality or procedural unfairness in the sense set out above, and I therefore refuse the application.

Decision

46. In all the circumstances therefore, I conclude that the decision in this case was not irrational in the legal sense set out above and that the decision was not procedurally unfair. I refuse the application for reconsideration.

HH S Dawson
05 March 2024