

[2024] PBRA 55

Application for Reconsideration by Jones

Application

1. This is an application by Jones (the Applicant) for reconsideration of a decision of an oral hearing panel dated 6 February 2024 not to direct his 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, (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 oral hearing decision, the dossier (consisting of 252 pages), and the application for reconsideration (dated 19 February 2024). The application is accompanied by letters from the Applicant dated 15 February 2024 and 19 February 2024 and some notes entitled 'Thinking Skills'.

Background

4. The Applicant received a sentence of life imprisonment on 18 February 1994 following conviction after trial for murder. His tariff was set at 12 years less time spent on remand and expired in April 2005.
5. He was first released on licence on 7 September 2016 following an oral hearing but recalled to custody on 24 December 2019 following an alleged incident of domestic violence against his mother. He was re-released following an oral hearing on 27 July 2020. His licence was revoked on 20 April 2023, and he was returned to custody on 25 April 2023. There were concerns that the Applicant had not disclosed a new relationship and it had also been alleged that he had made threats to kill his neighbour. This matter was subsequently disposed of with No Further Action.
6. The Applicant was 24 years old at the time of sentencing and is now 54 years old.

Request for Reconsideration

7. The application for reconsideration has been written by the Applicant. It sets out his reasons as to why he believes the decision not to release him should be reconsidered. I will refer to these reasons in the **Discussion** section below.

Current Parole Review

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8. The Applicant's case was referred to the Parole Board by the Secretary of State (the Respondent) in May 2023 to consider whether to direct his release. If the Board did not direct release, it was invited to advise the Respondent whether the Applicant should be transferred to open conditions. This is the Applicant's first parole review since his second recall.
9. The case proceeded to an oral hearing on 6 February 2024. The panel consisted of two members including a psychiatrist specialist member. It heard oral evidence from the Applicant, together with his Prison Offender Manager (**POM**) and Community Offender Manager (**COM**). The Applicant was legally represented throughout the hearing. The Respondent was not represented by an advocate.
10. The panel did not direct the Applicant's release (nor make a recommendation for open conditions). It is only the decision not to release the Applicant that is open for reconsideration.

The Relevant Law

11. The Parole Board will direct release if it is no longer necessary for the protection of the public that the prisoner should be confined. The test is automatically set out within the Parole Board's template for oral hearing decisions.

Parole Board Rules 2019 (as amended)

12. 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)).
13. 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)).
14. A decision to recommend or not to recommend a move to open conditions is not eligible for reconsideration under rule 28. This has been confirmed by the decision on the previous reconsideration application in *Barclay* [2019] PBRA 6.

Procedural unfairness

15. 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.

16. 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.

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

Irrationality

18. 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."

19. 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.

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

Error of law

21. An administrative decision is unlawful under the broad heading of illegality if the panel:

- a) misinterprets a legal instrument relevant to the function being performed;
- b) has no legal authority to make the decision;
- c) fails to fulfil a legal duty;
- d) exercises discretionary power for an extraneous purpose;
- e) takes into account irrelevant considerations or fails to take account of relevant considerations; and/or
- f) improperly delegates decision-making power.

22. The task in evaluating whether a decision is illegal is essentially one of construing the content and scope of the instrument conferring the duty or power upon the panel. The instrument will normally be the Parole Board Rules, but it may also be an enunciated policy, or some other common law power.

The reply on behalf of the Respondent

23.The Respondent has submitted no representations in response to this application.

Discussion

24.Although the Applicant was legally represented at the hearing, his application was written personally. Since the Applicant did not appear to have had the benefit of legal assistance when writing these letters, it is not surprising that they do not set out grounds for reconsideration in a precise or legalistic way. In fairness to the Applicant, I have read his application very carefully to see if I can discern anything within them that could potentially form a basis for reconsideration on any of the three possible grounds for reconsideration set out above.

25.It is clear that the Applicant is deeply disappointed by the panel’s decision. However, I can find nothing in his lengthy correspondence which could reasonably be shaped into a ground for reconsideration and evaluated against the relevant law.

26.Moreover, the panel’s decision is logical, evidence-based, and correctly focussed on risk throughout. It gives clear reasons for its conclusion. There is nothing that gives rise to any suspicion of procedural unfairness in the way it was reached. It is far from being an irrational decision when set against the high legal bar necessary for such a finding.

27.Since there are no discernible grounds for reconsideration put forward in the application, and the panel’s decision is objectively lawful, fair and rational, the application must fail.

Decision

28.For the reasons set out above, the application for reconsideration is refused.

Stefan Fafinski
12 March 2024