

Application for Reconsideration by Vickers

Application

1. This is an application by Vickers (the Applicant) for reconsideration of a decision by a Panel of the Parole Board not to direct his release on the basis that the decision was both irrational and procedurally unfair.

Background

2. The Applicant is currently serving an Indeterminate sentence for Public Protection imposed on 13 March 2009 following conviction for burglary of a dwelling, for two counts of rape and one count of assault on a female by penetration. The minimum custodial term was set at 63 months and 12 days, taking account of time spent in custody on remand and his tariff expired on 25 June 2014.
3. The Applicant was 41 at the time of the index offences. He had 43 previous convictions, dating from the age of 12, for 105 offences. They included convictions for burglary, aggravated burglary, wounding with intent, assault occasioning actual bodily harm, violent disorder, and possession of an offensive weapon.
4. The Applicant has a history of being unable to manage certain aspects of his personality.
5. The Secretary of State referred the Applicant's case to the Parole Board by Notice dated August 2016 to consider whether to direct his release and, if not, whether to recommend his transfer to open prison conditions.
6. After considerable delay, the review was conducted by a panel comprising a judicial chair, a judicial member and a psychiatrist member at an oral hearing on 5 August 2019. The panel decided neither to direct the Applicant's release nor to recommend a transfer to open conditions. Its reasons are set out in a Decision Letter dated 9 August 2019 (the Decision Letter).

Request for Reconsideration

7. The application for reconsideration is dated 4 September 2019 and is made on the basis that the Panel's Decision not to release the Applicant was both procedurally unfair and irrational.
8. The Applicant submits in broad terms that: the hearing was unfair; that he was the only witness prevented by the Panel Chair from giving all his evidence; that



his application for a former Offender Supervisor to give evidence was refused; that the panel relied on material in the dossier which was inaccurate; that it was wrong to ask him to reconsider his refusal to be assessed for a designated facility; that the panel did not ask for an up to date assessment of risks and their origin or sentence plan where he could have had input; that it failed to mention in its Decision Letter the assessment by the Psychiatrist; and that his treatment needs were not taken into account.

Current parole review

9. The Decision Letter records the fact that the panel considered an extensive dossier. The documents in it included: Reports from the former Offender Manager dated 19 October 2018 and the current Offender Manager dated 28 June 2019; Offender Supervisor Reports dated 30 May and 22 July 2019; an assessment of risks and their origin dated 27 June 2019; the Psychiatrist's Report dated 18 February 2015; a letter from Consultant Psychiatrist dated 6 September 2016 reporting that the Applicant had declined to engage with him; a detailed Report from the Prison Integrated Mental Health Team dated 23 July 2019; and the Sentence Plan for the Applicant dated 29 January 2018.
10. The Decision Letter also covers the availability of courses between 2012 and 2014.
11. The resettlement and risk management plan proposed by the Offender Manager and described in the Decision Letter involves release to designated accommodation with engagement with a regime designed and supported by psychologists to help people recognise and deal with their problems. The Offender Manager suggested that such engagement could ideally be done through a designated facility which helps people deal with their problems. The training course addressing sex offending had also been identified as suitable, but the Applicant was said to have concerns about group work.
12. The Applicant's current Offender Manager had been unable to attend the hearing but the Senior Probation Officer who had countersigned the report and had longstanding knowledge of the case did so in his place. He referred to hopeful signs in the Applicant's understanding of his risk factors, acceptance of his offending, remorse, and motive for change, which the panel stated were encouraging signs.
13. Neither the Offender Manager nor the Offender Supervisor considered the Applicant to be yet suitable for release or transfer to open conditions.
14. Having stated that it looked at all the evidence concerning current risk, the panel assessed the Applicant as posing a high risk of reconviction, including for violent re-offending, and with a high risk of serious harm to the public in the event of any re-offending. It concluded that there was insufficient evidence showing that he had the skills to manage those levels of risk, and that his risk had not been reduced to a level where he no longer required detention to protect the public. Accordingly, the panel did not direct the Applicant's release.



15. The Decision Letter refers in terms to the Applicant's acceptance at the hearing that work was needed on the core risk factors before moving to open conditions or being released.
16. The panel was unable to conclude that the Applicant had made "*the significant progress in tackling his risk factors in closed conditions which would be required*" for it to recommend his progression to open conditions.

The Relevant Law

17. Rule 25 (decision by a panel at an oral hearing) and Rule 28 (reconsideration of decisions) of the Parole Board Rules 2019 apply to this case.
18. Rule 28(1) provides that applications for reconsideration may be made in eligible cases on the basis that (a) the decision is irrational and/or (b) that it is procedurally unfair. This is an eligible case.
19. In **R (On the application of 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."

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 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 uses the same word as is used in judicial review demonstrates that the same test should be applied. This test for irrationality is not limited to decisions whether to release but applies to all Parole Board decisions.

Discussion

20. I can see nothing in the Decision Letter which shows that the panel misapplied disputed evidence about past records, which are in any event unlikely to have much current relevance. The panel referred to the fact that the Applicant's behaviour in custody had improved over time and that he had achieved Enhanced status under the Incentives and Earned Privileges Scheme.
21. The panel will have read the psychiatric report, but it did not base its decision on the presence or absence of any current psychiatric condition. The letter clearly shows that, contrary to the Applicant's assertion, his current treatment needs were taken into account.
22. I do not consider that evidence from the Applicant's former Offender Supervisor is likely to have assisted the panel in reaching its decision, or that material in the



dossier which the Applicant states was inaccurate, is likely to have influenced such decision.

23. Nor can the suggestion that the Applicant reconsider his position in relation to the designated facility be construed as more than a positive comment designed to assist the Applicant in his approach to future sentence planning.
24. A more up to date assessment of risks and their origin is unlikely to have had a material effect on the panel's assessment of risk in the light of the latest reports from the Offender Manager and Offender Supervisor and the oral evidence given at the hearing.
25. A careful reading of the Decision Letter shows that the Applicant gave substantial evidence, and that panel must have taken this and his submissions into account. Significantly, the Applicant expressly conceded that he was not yet suitable for release or transfer to open conditions. He does not challenge the record of that concession.
26. It may be that the judicial chair declined to allow certain evidence to be given by the Applicant, but a chair is entitled to take a considered view as to its relevance. The Applicant has not shown that in the any of the areas about which he complains such evidence would have had a materially significant effect on the decision-making process.

Decision

27. Accordingly, I do not find there to have been any procedural irregularity nor do I consider that the decision itself was irrational, for the reasons set out above. The application for reconsideration is therefore refused.

HH Judge Graham White
27 September 2019

