

[2019] PBRA 46

Application for Reconsideration in the case of Benson

Application

1. The Secretary of State (the Applicant) submitted an application for reconsideration of the decision of the Parole Board dated 30 September 2019 to direct the release of Benson (the Respondent).

Background

2. The Respondent is serving an extended sentence of 9 years imprisonment imposed on 9 November 2012 for an offence of rape. The custodial period is 6 years and the additional licence period is 3 years. He has been released twice and recalled for breaching his licence conditions.

Current Parole Review

3. There was an oral hearing on 23 July 2019 when all the oral evidence was heard. The hearing was adjourned for further information to be obtained and on 1 October 2019 the panel issued a decision letter directing release.

Grounds for Reconsideration

4. The Applicant applies for reconsideration of the decision to direct release on the grounds that the decision of the panel was irrational. In support of his application, the Applicant asserts that there were matters that the panel should have investigated but did not. It is also alleged that the panel did not place sufficient weight on the evidence of the Offender Manager (OM) and the Offender Supervisor (OS) and made inaccurate statements about the Respondent's offending history which led to them underestimating the seriousness of the Respondent's recent offending.

Response by the Respondent's legal representative

5. The Respondent complains that the OM has instigated this application, having told the Respondent that she would apply for reconsideration if the panel directed release before the decision was given and the reasons considered. That is denied and, as I have no way of determining which version is correct, I shall ignore it and decide the case on its merits. The Respondent argues that all relevant matters were taken into account by the panel and they were entitled to reach their own conclusion, even if it differed from the views of the OM and the OS. I did not find it helpful to be told by the Respondent's representative that, if this application for reconsideration was upheld, an appeal would be pursued through the courts.



Everyone has the right to appeal but a threat to appeal is not to be used 'in terrorem'. I shall decide this application entirely on its own merits.

Discussion

6. I will apply the test for irrationality which is set out by the Divisional Court in the case of **R (on the application of DSD and others) -v- The Parole Board [2018] EWHC 694 (Admin)**. The test is by now well-known and does not need repeating. I will also give due deference to the expertise of the Board members in assessing risk.
7. There are two matters which apply generally to all these applications. First, it is for the panel to assess the weight to be given to any piece of evidence, including the opinion as to risk given by the professional witnesses. It is for the panel to test the assessment and look at the reasons for it. So, even in a case where every witness is supporting release, it is for the panel to make their assessment taking into account all the evidence. The reverse is also true. If the panel disagrees with the evidence given by the professionals, it must give adequate reasons for doing so. Secondly a decision letter is directed at the prisoner. While it has to descend to sufficient detail so that everyone, but particularly the prisoner, can understand the reasons for the decision, it is not necessary for every point which has been raised in the hearing to be discussed. What is necessary is that everyone is able to understand the reasons for the decision.
8. It is also important that applications for reconsideration are accurate. The Secretary of State described a Governor who had taken out a harassment order against the Respondent as being female when the Respondent says he was male. I will assume the Respondent is correct about this and it does make a difference. One of the principle areas of risk for the Respondent is his behaviour towards and treatment of women.
9. The Applicant complains that the panel failed to investigate matters that they should have done. The Divisional Court in **DSD** found that it was irrational for the panel in that case not to make enquiries into other offending, not for the purpose of deciding guilt, but in order to test the evidence of the prisoner and, in that case, the basis on which the psychologists had formed their opinions. There are two specific matters of further offending which the Applicant points to. First, when the Respondent was convicted of rape (the index offence), two counts of sexual penetration were ordered to lie on the file. It is suggested that these matters should have been investigated by the panel. An examination of the papers discloses that before he committed the rape, the Respondent put fingers from one hand and then the other into his victim's vagina. It seems to me to be overwhelmingly likely that these were the two offences of sexual penetration which were ordered to lie on the file. They were left to lie on the file because they did not add to the allegation of rape. Those facts were all included in the dossier at several places and I have no doubt the panel were well aware of them. They did not require further investigation.
10. Reference is also made in the application to another allegation of rape in 2011. I am grateful for being supplied by the Applicant with information as to where that is to be found in the dossier. It appears in the assessment of risks and their origin



where it says: "*Allegation of rape made in 2011 by a partner and subsequently dropped by the police*". According to the decision letter, the OM referred to this in her evidence. That is the only information there is about this allegation. While the Divisional Court in **DSD** found it to be irrational that the panel in that case did not inquire into unproven allegations against the prisoner, it has to be remembered that the Court did say that the case was exceptional. This was an allegation of rape made by a former partner which was investigated by the police who decided that there was no case to pursue. It can be properly inferred that the Respondent had denied the allegation otherwise it would no doubt have been pursued. In those circumstances how far would any further inquiries have taken the panel? The panel could not and should not have inquired for the purpose of establishing guilt of that allegation (see the judgment in **DSD**). If the Respondent had been asked about the allegation it can be properly inferred he would have denied it and there is no other information about any of the surrounding circumstances. Further would it have been fair to the Respondent to start making those enquiries at this stage? While I accept that it would have been better if the panel had said in their decision what weight if any they had attached to this allegation, in my judgment, in the circumstances of this case it would have been impossible for them to have attached any weight at all to it. It was not, in my judgment, irrational for the panel not to make further inquiries about it.

11. The other matters referred to by the Applicant are further allegations of domestic abuse which, it is said, should have been investigated further. Having read the decision letter with care, I have no doubt that the panel had well in mind all the evidence relating to domestic violence. They concluded that the risk of further domestic violence could be contained under the Risk Management Plan. In my view they were perfectly entitled to reach that conclusion and it cannot be said it was irrational.
12. At paragraph 16 of the application it is suggested that the panel were wrong to say that "*the risk of instrumental violence has now lessened*". Properly understood, that is a reference by the panel to the Respondent's risk of committing robberies and other offences where weapons have been used. It does not mean that the panel considered that domestic violence is any less serious than robberies. The panel were clearly correct to take that view.

Decision

13. I have considered all the different grounds both individually and cumulatively and, in my judgment, the high bar for establishing irrationality has not been reached. The panel came to the conclusion that the Respondent's risk could be contained within the Risk Management Plan. In my judgment they were entitled to reach that conclusion and they have sufficiently explained how they came to it in the decision letter.
14. Accordingly, the application for reconsideration is refused.

John Saunders
28 October 2019

