

[2019] PBRA 75

Application for Reconsideration by Plentie

Application

1. This is an application by Plentie (the Applicant) for reconsideration of a decision by a three-member panel (including both Psychologist and Judicial members) not to direct his release nor to recommend that he be transferred to open conditions, following a hearing on 4 November 2019.
2. I have considered this application on the papers. These consist of the dossier, the provisional decision of the panel dated 6 November 2019, the applications for reconsideration dated respectively 6 November 2019 (made by the Applicant's solicitors) and 2 December 2019 (made by the Applicant himself), and the responses of the Secretary of State, by e-mail, dated 21 November 2019 and 3 December 2019. In addition, on 3 December 2019, the Applicant's solicitors indicated that they had no comment to add to the Applicant's personal application.
3. Rule 28(1) of the Parole Board Rules 2019 provides that applications for reconsideration may be made in eligible cases either on the basis that the decision is irrational (a) and/or that it is procedurally unfair (b).

Background

4. On 27 October 2006, the Applicant was sentenced to Imprisonment for Public Protection (IPP) with a minimum term to serve of 11 months and 6 days (the tariff) before he was eligible for parole, for four robberies. That minimum period expired on 2 October 2017.
5. He was released on 11 April 2019 pursuant to a decision of an earlier Panel on 20 March 2019 but recalled on 25 April 2019 for breach of his licence conditions.

Request for Reconsideration

6. The application for reconsideration, submitted by his Solicitors, is as follows:
 - "The Parole Board decision is irrational.
 - During the hearing the OM clarified the reasons for recall and confirmed what had happened following further investigations, and it was not as serious as described in the recall paperwork.



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- It is submitted that the recall was premature, and that [the Applicant] had not been given warnings over the alleged behaviour, which it turns out, was incorrect as described initially. Recall must also be the last resort.
 - [the Applicant] has not failed any drug test, there was no evidence at the oral hearing that he had actually failed a drug test. Any suggestion that [the Applicant] had failed a drug test is purely speculative, and not based on evidence. No evidence was presented.
 - [the Applicant] has not failed any drug test since he has been recalled.
 - [the Applicant] had 43 positive entries about his behaviour whilst in prison.
 - The OM confirmed at the Parole hearing that the risk is not imminent.
 - The RMP is robust and clearly worked to be able to recall [the Applicant] quickly, it would work again if he were to be released.
 - The risk that is posed is not imminent and he has completed numerous courses on drugs since his recall and previously which have assisted in reducing his risk.
 - It is submitted that there is no need for further offender behaviour work to be completed, as it already has been completed. The decision is based on a lack of real evidence and without the expert psychiatric report that the decision references.
 - The risk that [the Applicant] poses could be managed in the community could be managed because the risk was confirmed to not be imminent, and that no evidence was provided to suggest that he has done anything wrong, since his recall his custodial behaviour has been excellent and there was no evidence to suggest offence parallel behaviour”.
7. The Applicant’s own application consisted of four handwritten pages claiming unfairness of procedure, that the decision was irrational and adding additional comments. It is not necessary to reproduce the application in full, but all sections have been considered and their relevance to issues of irrationality or procedural unfairness are dealt with below.

Current parole review

8. The Secretary of State referred the Applicant’s case to the Parole Board on 22 May 2019.
9. At the hearing on 4 November 2019, an application was made for release and supported in oral evidence by a witness called by the Applicant but neither release nor a transfer to open conditions were supported by the professional witnesses, Offender Manager and Offender Supervisor (both of whom had earlier experience of the Applicant and had given evidence in support of release on 20 March 2019).
10. In its decision, the panel found that, despite the supportive evidence of his witness and his denials of breaches of licence conditions, particularly a reversion to drugs shortly after release, that the Applicant’s conduct had been in line with similar conduct during 5 periods in open conditions and a previous release to



designated accommodation. It heard evidence from the Offender Manager who had spoken to members of the staff at the designated accommodation and seen record logs.

The Panel accepted that there was a close link between drug misuse and the risk of serious harm to the public. They also considered evidence that, during the short period of release, the Applicant had denied any drug problems and, since return to custody, had declined to participate in any courses or to engage with the prison substance misuse team. The Panel considered his risk unmanageable in the community until he undertook intensive substance misuse courses, which could only be completed in custody.

11. The Panel, although incorrectly stating that it had not been asked to consider a transfer to open conditions, properly set out the test for such a recommendation and recorded that the Applicant had made it clear in evidence that any such outcome would be unwelcome. The issue of such a recommendation does not form part of this application.

The Relevant Law

12. 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 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 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.

13. Procedural unfairness under the Parole Board Rules relates to the making of the decision by the Parole Board and an assessment is required as to whether the procedure followed by the Panel was unfair.

Discussion

14. In my judgment, the decision to refuse release cannot be said in any way, to meet the test of irrationality. The Panel, having clearly considered, with care, the



documents in a substantial dossier and the oral evidence, gave a clear and reasoned decision:

- a. In approving the recall, it made findings of fact which it was clearly entitled to do.
- b. In dealing with release, it placed emphasis on the undisputed fact that the Applicant was unwilling to carry out further substance misuse work.

15. I have considered the specific submissions of the Applicant. Reconsideration is not a re-examination of evidence and I can find nothing to suggest that the test of irrationality is met. In particular, the Applicant's personal representations consist of challenges in relation to evidence and his personal view and that, he claims, of prisoner officers that the decision was incorrect. These submissions are not evidence of irrationality in the Panel's decision.

16. Reference is made in the reconsideration application to the decision having been made "without the expert psychiatric report that the decision references". I can find no reference to a psychiatric report but the Panel, which considered an earlier psychology assessment, suggested that a future Panel would be assisted by an updated psychology report. I do not find this relevant to the current reconsideration.

17. Procedural unfairness:

- (a) No claim of procedural unfairness is made in the application submitted by the Applicant's solicitors.
- (b) The Applicant's own claims of procedural unfairness consist of challenges to evidence such that "if this was a court of law, there would be no case to answer" and suggesting "my skin colour is a major factor in this case". He further submitted "there is only one conclusion is to have a new panel to look at my case again immediately".

18. I find nothing in these submissions to suggest that there was any procedural unfairness in the Panel's review. The Applicant both personally and through his solicitor was able to give evidence, challenge witnesses and make submissions.

19. Additional Comments. These comments relate to suggestions that professional views had been expressed that the Applicant could be managed in the community and his own comments on his plans for the future. I do not consider that they, in any way, affect my decision that the tests for irrationality or procedural unfairness have not been met.

Decision



20. For the reasons I have given, I do not consider that the decision was irrational and accordingly the application for reconsideration is refused.

Edward Slinger
10 December 2019