

[2019] PBRA 82

## Application for Reconsideration by Craigie

### Application

1. The Applicant applies for reconsideration of a decision by a Parole Board panel not to recommend that he should be released following an oral hearing dated 13 November 2019.
2. I have considered the application on the papers. These comprise of the dossier, the provisional decision letter, the application for reconsideration dated 5 December 2019.
3. The Secretary of State did not make any formal representations in response to the application

### Background

4. The Applicant is serving a sentence of life imprisonment for the offence of manslaughter on the grounds of diminished responsibility. His minimum term was set at 8 years 7 months and 19 days. His tariff expired on 3 July 2016. The referral from the Secretary of State which relates to this application referred only to release and not to open conditions.
5. In the request for reconsideration the Applicant complains of irrationality on the basis that:
  - a. The panel overestimated the risks associated with withdrawing from methadone;
  - b. The panel overstated risks associated with his relationship with his close relative;
  - c. The panel should have adjourned the hearing to gain a better understanding of his relationship with his close relative; and
  - d. That the panel overestimated the fears that the Applicant would not seek help and support when required.

### The Relevant Law

6. Rule 25 and rule 28 of the Parole Board Rules 2019 apply in this case.
7. 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.



8. 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 paragraph 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'*. 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 risk. The Board when considering whether or not to direct a reconsideration will adopt the same high standard for establishing 'irrationality'.
9. Procedural unfairness has a similar meaning as procedural irregularity does in Judicial review. It is for me to decide whether I consider the procedure adopted by the panel in conducting the parole hearing was unfair to either of the parties.
10. In cases where an offender is over tariff the panel must always exercise anxious scrutiny as to the level of risk involved to ensure that the offender spends no more time in custody than is necessary.

## Discussion

11. The panel considered evidence from the Offender Supervisor, the Offender Manager, a prison psychologist and the Applicant. The offence itself was serious. It was described by the judge as a brutal assault involving 2 knives and a number of stabbing injuries to the chest and neck. The Applicant had a previous history of convictions. These were minor offences of assaulting police officers and disorderly behaviour. However, he had been convicted in the past of attempted murder. He was aged 16 at the time and had attacked a close relative using a knife and scissors to cut the throat. This offence was committed with a background of prescription medication and drink. The index offence also involved alcohol and the taking of drugs.
12. At the hearing a number of risk factors were cited. The Applicant had a troubled childhood and had experienced violence and trauma at home. He had been recorded as having problems with managing his emotions and mental well-being and had a history of drug and alcohol use. The Applicant had also been diagnosed as suffering from a personality disorder and had received interventions for the disorder during the course of his sentence. The index offence was indicative of unpredictable behaviour. Although the Applicant had received positive reports from prison staff as to his compliance with rules within prison, there were, within the dossier, concerning examples of non-compliance both inside and outside prison.
13. In 2000 the Applicant was released from an earlier sentence of imprisonment of 6 years. He was required to reside in designated accommodation. He returned to the designated accommodation drunk on one occasion and then, fearing that he would be breached, ran away. He surrendered himself to the police 16 months later. He told a psychologist that he didn't like staff or the premises.
14. In more recent times he was transferred to an open prison following the recommendation of a Parole Board panel. Within 4 weeks of the transfer he



absconded because of concerns he had about the health of a close relative. It also transpired that for a considerable period before the Applicant's transfer to open conditions he had been taking illicit drugs and had not brought this to the attention of prison staff.

15. At the oral hearing the panel had before it a considerable body of evidence and heard from the Applicant as well as the professional witnesses. The panel also had an up-to-date psychological report to consider.
16. 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 evaluate the likely effectiveness of any risk management plan. 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.
17. In this case the panel assessed the Applicant as posing a high risk of serious harm to the public and to known adults. It was also accepted that the Applicant's risk of further offending was medium. Importantly however the panel noted that should there be any further offending it could have catastrophic consequences based upon the Applicant's previous pattern of offending.
18. The panel applied the correct test for release and explained in detail the basis upon which their decision had been reached. The panel acknowledged the positive factors in the Applicant's case in particular his good behaviour in prison and his commitment to work with a substance misuse team to assist with detoxification. Also acknowledged was the Applicant's work in supporting other prisoners and in working with the prison equalities team.
19. None of the professional witnesses supported release and indeed until a relatively short time before the hearing, the Applicant himself had accepted that it would be appropriate to move to a progressive regime in preparation for release in the future. Clearly this indication was in no way binding upon the Applicant and he had a perfect right to apply for release at the hearing.
20. The major concern of the panel was the impulsive nature of the absconsion from open conditions, coupled with the concerns about the taking of illicit drugs without seeking help from support agencies within the prison. Additionally, the panel were concerned that the Applicant felt the necessity to rely upon a methadone prescription in order to manage his emotions.

### **Dealing with the specific representations set out in the application.**

21. The panel indicated in the decision letter that it was concerned about the risk associated with reliance upon methadone to assist with managing emotions. The prison psychologist took the view that it was important for the Applicant to be able to cope with challenging situations without dependence on substances given the fact that substance misuse was a fundamental risk factor in the Applicant's case.



22. The Applicant himself had said in evidence that he intended to detoxify and would do so more easily in the community.
23. Although detoxification within the community was clearly an option in this case, I determine that the panel's conclusion that reliance upon a methadone prescription and further a reliance upon detoxification in the future created a high risk of serious harm. Thus, I determine that it was not irrational, particularly in the light of the Applicant's pattern of offending in the past, for the panel to conclude that it was necessary for the protection of the public that the Applicant's ability to control his emotions without the use of medication was demonstrated before release.
24. The Applicant also indicates his concern about references to his relationship with his close relative who was currently unwell. The Applicant argues that the panel failed to investigate this topic thoroughly and should have considered adjourning the matter for more information. It appears that the Applicant himself did not apply for an adjournment.
25. It was reasonable for the panel to draw inferences from the fact that on two previous occasions in the past serious offences had occurred in circumstances of extreme emotional distress relating to close relatives. It was clear that the relationship with the close relative was a factor in the final decision by the panel, however I do not conclude that it was a decisive factor. I do not therefore conclude that a failure to adjourn and seek more information was irrational.
26. The Applicant complains that the panel misunderstood the difficulties facing prisoners who request help and support in closed prison environments. The Applicant asserts that he sought help for his developing drug misuse problems prior to the hearing but did not receive it. This is clearly an evidential point however, it appears that the Applicant's Offender Supervisor was able to confirm that following the Applicant's recall, he engaged with the substance misuse team and was prescribed methadone. There is no evidence that the Applicant approached the substance misuse teams in earlier prisons, and importantly there is limited evidence to indicate that the Applicant had sought help in relation to his deteriorating emotional condition. I determine therefore that it was not irrational for the panel to conclude that the Applicant had failed to engage with support services at a time of emotional dysregulation. The Applicant's failure to engage was clearly an important factor in assessing the nature of his relationship with his Offender Manager and other supporting services if he were in the community.
27. I conclude therefore that the panel's careful and detailed decision letter demonstrates that it took into account all relevant factors and arrived at its conclusions based upon a correct application of the test and a fair and balanced assessment of the available evidence.

## Decision

28. For the reasons set out above this application is refused.

**HH Stephen Dawson**  
**12<sup>th</sup> December 2019**