[2019] PBRA 83

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Application for Reconsideration by Sturnham

Application

1. This is an application by Sturnham (the Applicant) for reconsideration of a decision of an Oral Hearing panel dated 22 November 2019 not to direct his release or recommend open conditions.

Background

2. On 31 January 2007, the Applicant was sentenced for an offence of manslaughter to imprisonment for public protection (IPP) with a minimum period to serve of 2 years, 3 months and 19 days. This minimum period expired on 19 May 2009.

3. The Applicant was first released on licence in September 2011. Whilst on licence, he committed further offences and was recalled on 5 April 2015. On 9 October 2015 he was convicted of the further offences and sentenced to 18 months imprisonment.

4. On 11 June 2018, the Applicant was again released on licence. On 28 April 2019, he returned to his designated accommodation affected by drink; after a few hours he left and failed to return. He was recalled on 29 April 2019 and returned to prison on 1 May 2019.

Request for Reconsideration

5. The application for reconsideration was received on 2 December 2019. The Applicant has settled his own grounds clearly and succinctly. His reason for saying that the decision was irrational is substantially that the Board's decision was heavily predicated upon factual inaccuracies and, as a consequence, there was no causal link between the reason for his recall and the assessment of his future risk. It is more convenient to deal with the Applicant's particular allegations in turn later in this decision.

6. The Applicant does not rely on procedural unfairness.

7. The Secretary of State offered no representations in response to the application for reconsideration.

Current parole review

8. The Secretary of State referred the Applicant's case to the Board on 28 May 2019 to decide whether to direct release or if that was not appropriate, to recommend a transfer to open conditions.

The Relevant Law

9. Rule 28(1) of the Parole Board Rules 2019 provides that applications for reconsideration may be made in eligible cases either on the basis (a) that the decision is irrational and/or (b) that it is procedurally unfair.

10. The Application raises a number of points of law.

11. Lord Diplock's much cited test for irrationality has been held to apply in judicial reviews of Parole Board decisions:

    "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."
    R (on the application of DSD and others)-v-the Parole Board [2018] EWHC 694 (Admin), and **CCSU -v- Minister for the Civil Service [1985] AC 374**.

12. 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.

13. The Applicant, although he has not referred to the authority by name, understandably may have relied on some of the arguments canvassed in **R (on the application of Sturnham) (Appellant) -v- The Parole Board of England and Wales and another (Respondents) (No. 2) [2013] UKSC 47.**

14. In particular, the Applicant postulates the need for a causal link between the reason for the recall and the assessment of future risk. That is not a completely accurate statement of the law.

15. The "*causal link*" is a requirement that detention after the expiration of the tariff needs to reflect the objectives of the court that sentenced the Applicant for the index offence. However, this causal link does not require the risk to be of the same type of offending as the index offence.

16. As far as release following recall is concerned, there is no statutory test but in relation to life sentences it has been held that the panel should apply the same test as when considering whether to direct initial release. The Panel correctly set out the test for release in the first paragraph of the Decision Letter and in applying that test it had to consider all the circumstances of the case.

Discussion

17. The Applicant represented himself at the Oral Hearing. He declined the Panel's invitation to make written submissions. Had he done so and had he made the points he now makes, no doubt the Panel would have dealt with them in the Decision Letter. Be that as it may, the Applicant makes four criticisms of the Panel's decision.

18. The Applicant's first complaint is that on page 4 of the Decision Letter, the Panel said

    "On all the evidence available to it, the panel has found that the recall was appropriate. This is because [the Applicant] had relapsed into alcohol misuse which meant that [his] risk of causing serious harm was imminent."

19. The Applicant makes the point that the reason for the recall was a breach of the rules of the designated accommodation and not a relapse into alcohol.

20. There may be a misunderstanding about the correct approach to be adopted by the Panel. The Panel had to consider whether a recall was justified but it was entitled to hold that it was justified, not for the reasons given in the revocation decision but because of other behaviour that had come to light before the hearing. The only condition was that the new material must have been capable of justifying reconsidering the risk the Applicant posed at the time when he was deemed to be eligible for release on licence.

21. Much of the Applicant's previous offending, the index offence and the offending on licence in 2015 were associated with excessive drinking. The fact that the Applicant left the designated accommodation without permission following drinking alcohol, coupled with the opinion of the Offender Manager that the imminence of the Applicant's risk could be within days were he to relapse, entitled the Panel to conclude the recall was justified.

22. In the circumstances, there was no factual error. Put another way, the causal link was established and the Panel's understanding of the reason for the recall was not erroneous.

23. The next alleged error identified by the Applicant occurs on page 5, Section 6 (and possibly other places) in the Decision Letter where the Panel said:

    "…[the Applicant's]r risk of further violence has been underestimated given that [he has] relapsed into alcohol use on several occasions."

24. Later in that section the Panel recorded:

"[The Applicant] planned to abstain previously but have relapsed on several occasions when on licence. It is unclear what [the Applicant's] strategies for avoiding relapse are, particularly as [he] saw [his] mental health as being the determining factor rather than addiction. [The Applicant is] honest in saying that [he] could not be confident that [he] could abstain from alcohol. [The Applicant] did agree to consider Antabuse." (A medication used in the treatment of alcoholism).

25. The Applicant contends he had not suffered a "*relapse*" whilst on licence but merely a single "*lapse*".

26. The Panel had identified the Applicant's core risk factors as alcohol misuse and his world view. In that context, the observations in Section 6 of the Decision Letter plainly refer to the Applicant's chronic addiction to alcohol and not simply to the "*lapse*" on the 28 April 2019. There was, therefore, no misunderstanding on the part of the Panel.

27. The Applicant's third criticism is:

"Historically, there is no evidence that alcohol raises my risk to that of "imminent". I was drinking heavily for 15 years before 2006 which does not indicate a risk that is imminent".

28. This is a somewhat difficult submission to grasp. Drunkenness was the proximate cause of the index offence in 2006, the offences committed on licence in 2015 and the failure to abide by the licence conditions in 2019. The Panel used the word "*imminent*" once in the Decision Letter when dealing with current risk and the Panel's opinion was based on the clear evidence of the Offender Manager. At the hearing the Panel's duty was to assess the current rather than the historical risk. This it did.

29. The Applicant's last point is:

"The supposed 'kicking' incident that occurred whilst on an escort does not represent 'parallel behaviour'. I was in a seated position and it was merely a flick of the ankle because the officer was pulling on the chains before I was ready. It speaks volumes that I did not receive a behavioural warning."

30. The incident occurred on the 30 June 2019. The Offender Supervisor's account appears at page 245 of the dossier for the Oral Hearing. According to this account, the Applicant was being obstructive and was challenged about his conduct; at this, he became intimidating and among other matters told the prison officer "*you are just a little boy*"; the incident culminated in the kick. The Offender Supervisor told the Panel he could not explain why the Applicant had not been placed on report for the incident.

31. As I understand it, parallel behaviour does not have to result in an offence; it simply needs to resemble, in some significant respect, the sequence of behaviours leading up to the original offence. The Reconsideration Mechanism's function is not to substitute its interpretation of the facts that were before the Panel but to ensure that on those facts the Panel was entitled to come to the conclusion it did.

32. In my judgement, there was ample evidence to support the Panel's conclusion on the incident.

Decision

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

James Orrell
17 December 2019