

[2019] PBRA 9

Application for Reconsideration by Hickman

Application

1. This is an application by Hickman (the Applicant) for reconsideration of a decision of the Parole Board dated the 5 August 2019.
2. 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 (a) irrational or that it is (b) procedurally unfair.

Background

3. The Applicant is now aged 33. On the 14 May 2010 he received an Extended Sentence of 20 years comprising a custodial sentence of 15 years with an extension period of 5 years. His sentence expiry date is the 13 May 2030. On the 10 November 2017 he was released on licence.
4. On the 29 June 2017, following the commission of further offences his licence was revoked and he was returned to custody.
5. On the 5 August 2019, following an earlier deferment of his case, the Applicant appeared before a panel of the Parole Board comprising a Judicial Member and two Independent Members. He sought his re-release. The panel declined his request and it was ordered that he remain in custody.
6. The panel was in possession of a dossier including several reports about the Applicant and some personal documents which now appear in the papers before me.
7. I note that the report writers supported the Applicant's application for re-release.
8. I have been provided with (unsigned) written submissions lodged by the Applicant's solicitors who represented him at the panel hearing in August 2019.
9. I have also received written representations from the Secretary of State which seek to deal with some of the factual assertions appearing in the written submissions from the Applicant's solicitors.
10. I have also received an email dated the 3 September 2019 from the Applicant's Offender Supervisor which seeks to support the written submissions about relevant coursework undertaken by the Applicant.



3rd Floor, 10 South Colonnade, London E14 4PU



www.gov.uk/government/organisations/parole-board



info@paroleboard.gov.uk



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0203 880 0885

11. I should add that I have also been provided with supplementary information which appears to have been lodged by the Applicant. It is not referred to in the written submissions and in my judgement cannot and does not assist me in the decision I have to make.
12. In passing, I would like to point out that whilst it is open to the representatives of both sides to lodge written submissions and address factual issues it is not open to them to lodge fresh evidence which should have been made available to the panel.

Request for Reconsideration

13. The written application for reconsideration is based upon the two strands of Rule 28. It is argued that the process was procedurally unfair and irrational. I shall deal with each in turn.
14. Procedurally unfair: in summary it is asserted as follows:-
 - (a) "*The Weight attached to the Police Report*". Under this heading, it is asserted that the police report is materially inaccurate and that the panel made unwarranted assumptions arising from material in this document. There are additional assertions about other matters related to the Applicant's employer.
 - (b) The written submissions refer to evidence which might have been provided by the Applicant's former Offender Manager.
 - (c) Finally, it is submitted that the panel failed to have regard to work which the Applicant is recorded as having undertaken, namely the training course addressing victim awareness and one to one sessions. I note that the written submissions indicate that these matters were brought to the attention of the panel.
15. Irrational: in summary it is asserted as follows:-
 - (a) Insufficient weight was attached to the fact that the Applicant had undertaken the training course addressing decision making and better ways of thinking and that whilst in prison, following its conclusion, there had been a period of consolidation.
 - (b) Complaint is made that the panel appeared to misrepresent the support for release which the Applicant had from his previous Offender Manager. I note that his previous Offender Manager initially supported the Applicant's re-release but later withdrew that support.
 - (c) Finally, it is asserted that the panel came to the wrong conclusion regarding the risk that the Applicant currently presented and therefore wrongly concluded that his risk could not be managed in the community.



16. The underlying basis of the application is that the Applicant seeks to suggest that if there were mistakes of fact then they were material and the panel fell into error in arriving at its conclusion because the conclusion was based on those factual errors.
17. No authorities have been cited for my consideration.
18. The issue for me is whether the decision was procedurally unfair or irrational on the basis of the evidence placed before it. In arriving at my decision, I note that the Applicant and his representatives seek to argue that the panel should have arrived at a different conclusion. That submission is based upon their interpretation of some of the evidence. The suggestion is that any factual inaccuracies, if there were any, influenced the outcome of the hearing.
19. I must consider the basis of the application which, having regard to the written submissions of the Applicant's representatives, is an investigation of the facts as presented to the panel which considered his case. It follows from that conclusion that I am being invited to reconsider the oral and documentary evidence presented to the panel and, it follows, the inferences which could properly be drawn from that evidence.
20. For the reasons set out below, whilst I have carefully considered the dossier and the facts of the case, unless there is evidence that suggests the panel's conclusions were manifestly incorrect then it would be inappropriate for me to conduct a line by line examination of the alleged mistakes and arrive at a conclusion based upon each and every assertion made by the Applicant and/or his representative.

Current parole review

21. In considering this request for reconsideration, I note that the Applicant was properly represented and, as I have indicated, the case was deferred, on the Applicant's application, to allow him to complete the training course addressing decision making and better ways of thinking.
22. The panel, in its decision, acknowledged the work the Applicant had undertaken on his return to custody. If any material which is now available and was not before the panel then the panel cannot be criticised for exercising their judgment on the material placed before them.

The Relevant Law

23. The process for Reconsideration, as set out in Rule 28, is intended to replicate the approach of the Administrative Court when judicially reviewing any decision of a tribunal.
24. Judicial Review is a remedy that gives the Administrative Court jurisdiction to "*secure that decisions are made by the executive or a public body according to law*": see **Mercury Energy Ltd -v- Electricity Corporation of New Zealand Ltd [1994] 1 WLR 521**, per Lord Templeman at page 526.



25. In my judgement, the procedure in judicial review is generally inapt to resolve disputes of fact: see for example: **Anufrijeva -v- London Borough of Southwark [2004] QB 1124** and **R (St. Helen's Borough Council -v- Manchester Primary Care Trust [2009] PTSR 105** which refers to the "paper" procedure in judicial review. That, of course, is what I am being asked to consider.
26. The Administrative Court is concerned with the route by which a decision is reached and will not normally consider conclusions or claims which dispute the applicant's version of the facts.
27. I accept that there are some significant exceptions to this principle, and I have had regard to them. For example, it is possible to argue that findings of fact made by a decision maker may be said to be irrational, but, in my judgement, the mistake of fact must be fundamental: see **R (Alconbury Developments Ltd) -v- Secretary of State for the Environment, Transport and the Regions 2003 AC 295**.
28. To establish that there was a demonstrable mistake of fact in the decision of the panel an Applicant will have to provide "*objectively verifiable evidence*" of what is asserted to be the true picture.
29. I note that the panel in this case was required not only to consider proven allegations of misconduct of a criminal nature, but also evidence of conduct falling short of a criminal act; conduct which might be construed as being inconsistent with the terms of the Applicant's licence conditions and the expectations of him as a person who had been released from prison on licence.
30. In that regard, I note that the panel adopted the proper approach to unproven allegations and in their decision, they applied the appropriate weight to the different "*strands*".
31. I also note that the panel found as a fact that the decision to recall the Applicant was correct (per **R -v- Calder**), a matter which he does not seek to contradict.
32. The panel noted that this was a "*finely balanced decision*". They had regard to the views expressed by the Offender Manager and the Offender Supervisor. They gave due weight to the recommendations. They gave credit for the work done by the Applicant. They looked at the evidence which brought about the Applicant's recall to custody and they divided the evidence into what they described as "*Three Strands*".
33. The decision examines the evidence the panel heard and indicates whether evidence was capable of being relied upon for the purpose of their decision. In this the panel noted that it had to "*carefully consider the weight to be given to the circumstances*" of the Applicant's recall. This they manifestly appeared to do, applying the appropriate test for release.
34. It was open to the panel to come to a conclusion which was at odds with report writers if, in their collective judgement, the totality of the evidence demonstrated



that the risk the Applicant presented could not be managed in the community and it was necessary for the protection of the public that he remain confined.

35. The concluding paragraphs of the decision set out the duty of the panel and the approach they adopted.
36. Where a panel arrives at a conclusion, exercising its judgement based on the evidence before it and having regard to the fact that they saw and heard the witnesses, it would be inappropriate to direct that the decision be reconsidered unless it is manifestly obvious that there are compelling reasons for interfering with the decision of the panel.
37. The Reconsideration Mechanism is not a process whereby the judgement of a panel when assessing risk can be lightly interfered with. Nor is it a mechanism where I should be expected to substitute my view of the facts as found by the panel, unless, of course, it is manifestly obvious that there was an error of fact of an egregious nature which can be shown to have directly contributed to the conclusion arrived at by the panel. In the circumstances it seems to me that the Applicant has a high burden to discharge.
38. I have concluded that there are no such errors of fact in this case and accordingly no substantive grounds for interfering with the conclusion the panel arrived at.
39. The panel considering the Applicant's case set out the relevant facts for the purposes of their decision, applied the correct tests, identified the relevant facts and arrived at a decision which was clearly open to it. It cannot be said to be either procedurally unfair or irrational.

Decision

40. For the reasons given, I have come to the conclusion that there is no cogent argument for seeking the reconsideration of the panel's decision. I do not consider that the decision was either procedurally unfair or irrational. Accordingly, application for reconsideration is dismissed.

Nicholas Coleman
10 September 2019

