

[2020] PBRA 108

Application for Reconsideration in the case of James

Application

1. The Secretary of State (the Applicant) seeks the reconsideration of a decision of the Parole Board to direct the release of James (the Respondent). The panel directing release was a Member Case Assessment (MCA) single-member panel who considered the matter on paper on the 6 July 2020.
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 (a) that the decision is irrational and/or (b) that it is procedurally unfair.
3. I have considered the application on the papers. These are the dossier of 203 pages including the decision letter, the representations on behalf of the Applicant and the representations on behalf of the Respondent.

Background

4. On the 7 November 2019, the Respondent, then aged 29, was convicted after a trial of an offence of attending a place outside the United Kingdom where terrorist training with weapons was being delivered; he was sentenced to 12 months imprisonment.
5. The Respondent also pleaded guilty to an unrelated offence of possession of an illegal drug with intent to supply for which he was sentenced to three years imprisonment. The sentences were to run consecutively.
6. The total custodial term was four years with an extended licence period of one year.
7. The Respondent became eligible to apply for parole on the 5 May 2020 and is entitled to be released automatically in September 2020. His licence expires on the 16 February 2023.

Request for Reconsideration

8. The application for reconsideration was received on the 27 July 2020.
9. The application is based on irrationality. The ground for seeking a reconsideration was the panel did not hold an oral hearing with the result that the following matters were not investigated adequately.



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- (a) Not all the key witnesses supported release; in particular the Offender Manager and the Offender Supervisor did not support release in the absence of an assessment of the Respondent's risks and needs specifically in the context of his conviction for an offence of terrorism.
- (b) The Respondent failed to manage certain aspects of his personality and had exhibited extremely difficult behaviour in custody.
- (c) The Respondent had not completed any offending behaviour work.
- (d) Not all the risk factors had been identified in the absence of the risk assessment and therefore it was unclear whether the risk management plan would be adequate for the protection of the public.

Current parole review

10. On the 24 January 2020, the case was referred to the Parole Board by the Applicant to consider whether or not it would be appropriate to direct the Respondent's release.

The Relevant Law

11. The panel correctly sets out in its decision letter the test for release.
12. In **R (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."

The reply on behalf of the Respondent

13. On behalf of the Respondent, it is submitted the decision took into account sufficient information in order to reach a rational decision. In particular, although the panel did not have the risk assessment referred to, the panel did have the benefit of a lengthy psychiatric assessment. The panel paid close attention to:
 - (a) The brevity of the risk period.
 - (b) The Respondent's risk was not imminent.
 - (c) The robustness of the risk management plan.
 - (d) The Respondent's liability to be recalled.
 - (e) Any additional risks identified could be managed by way of additional licence conditions.



Discussion

14. The panel had been asked to review the case on the 2 June 2020, some 14 weeks before the Respondent's automatic release. Despite that short period of time, the panel adjourned the case twice for further information.
15. On the 1 June 2020, the panel considered carefully and sensibly whether to hold an oral hearing, and came to the conclusion that to do so would be impractical, bearing in mind the restrictions put in place upon the prison estate due to COVID-19.
16. The panel also considered whether it had sufficient information with which to proceed and decided it had.
17. The panel considered the risk factors posed by the Respondent, the protective factors, his conduct in custody and the extensive licence conditions.
18. The panel agreed with the professional assessments of the Respondent's risk of reoffending but concluded that the risk was not imminent.
19. The panel also considered, correctly, the period over which the risk management plan had to provide effective protection for the public, a period of less than eight weeks.
20. It is perhaps to state the self-evident that a risk management plan which may not be wholly effective in the longer term can be highly effective in the short term.
21. On the information before it, the panel was entitled to decide that the Respondent's risk could be managed in the community over the period of eight weeks.
22. The Respondent's legal representative submitted,

"that the decision taken by an experienced panel member on 1 July 2020 was rational, clearly explained and evidenced and does not meet the high threshold for a finding of irrationality set out above".

23. I agree with that submission.
24. However, the real problem with this application is one of jurisdiction.
25. The reconsideration process, to a degree, is intended to reduce the number of unnecessary applications for judicial review and, as far as is practicable, it adopts the law and procedure of judicial review. Its powers, however, are governed by the **Parole Board Rules 2019, Rule 28**.
26. Relief in judicial review claims is discretionary and the court may refuse relief in cases where there are good grounds if, for example, the relief is likely to be academic, an abuse of the process or where the relief would not bring tangible benefit to the claimant.



27. Rule 28 of the Parole Board Rules confines the power of the assessment panel (i.e. the reconsideration panel) to directing that the provisional decision should be reconsidered or dismissing the application – Rule 28(6). There is no power to make a declaratory judgement and if the assessment panel directs a decision should be reconsidered, the panel reconsidering the matter under Rule 5 is confined to the terms of the Secretary of State’s reference, which in the instant case is to consider whether or not it would be appropriate to direct the Respondent’s release.
28. Unsurprisingly, the panel has no jurisdiction to refuse to release a prisoner who has already been released.
29. It is clear that a panel could not hold an oral hearing before September 2020 and to ask a panel to adjudicate upon a prisoner who has already been released is an abuse of the process.
30. It follows that in the present case, an oral hearing would bring no tangible benefits to the protection of the public over and above the protection provided by the licence which will expire in 2023.
31. It also follows that, if it is an abuse of the process for a panel to consider whether or not to direct the release of a prisoner already at liberty, it must also be an abuse of the process to ask an assessment panel to direct reconsideration in circumstances where a second panel could not, with due diligence, be convened prior to the prisoner’s release.

Decision

32. 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
21 August 2020

