

[2020] PBRA 25

Application for Reconsideration by Hill

Application

1. This is an application by Hill (the Applicant) for reconsideration of a decision of an oral hearing panel dated 19 December 2019 not to direct his release but to recommend a transfer to open conditions
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 before the panel running to 227 pages, the Decision Letter dated 9 December 2019, and the Applicant's grounds for reconsideration consisting of four pages, to which he has attached ten pages of information explaining the work of a residential addiction rehabilitation facility. I have also read the application and grounds for reconsideration drafted by the Applicant's solicitor and dated 19 December 2019.

Background

4. On 26 June 2008, following his convictions for conspiracy to commit robbery and manslaughter, the Applicant was sentenced to Imprisonment for Public Protection (IPP) with a minimum period of eight years, six months less 152 days on remand before he was eligible to apply for parole. This minimum period expired on 26 July 2016.
5. On 15 August 2017, a panel decided that, although the Applicant posed a high (but not an imminent) risk of serious harm to the public, that risk could be managed by a robust risk management plan. In coming to that decision, the panel had accepted the evidence of the Applicant's then Offender Manager.
6. The additional licence conditions imposed by the panel included an exclusion zone.
7. The Applicant was released on 1 September 2017. On 28 June 2019, his licence was revoked and he was recalled to prison for poor behaviour and the commission of further offences.

Request for Reconsideration

8. The applications for reconsideration were both received by 19 December 2019.
9. The Applicant's grounds for seeking a reconsideration can be distilled as follows:



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- (a) Both the Offender Supervisor and the Offender Manager deemed any risk manageable in the community;
- (b) The panel had at its disposal release to a residential addiction rehabilitation facility;
- (c) Open conditions would not have the facilities to address the Applicant's prime risk factors;
- (d) The panel wanted the Applicant to demonstrate he could abstain from illegal drug use in open conditions; however, he had already demonstrated that he could be law-abiding for two years on licence until his lapse into use of illegal drugs; and
- (e) A robust risk management plan provided the best means of addressing his drugs misuse.

10. The grounds for reconsideration drafted by the Applicant's solicitor can be summarised as follows:

- (a) Neither professional witness recommended open conditions'
- (b) Both professionals deemed the Applicant's risk is manageable in the community;
- (c) A residential substance addiction rehabilitation facility was available; and
- (d) The treatment at the facility would address all intrinsically connected risk factors.

Current parole review

11. The oral hearing took place on 2 December 2019 before a three-member panel. The Applicant was represented. The Panel heard evidence from the Offender Supervisor, the Applicant, a Chaplaincy Volunteer and the Offender Manager. All the witnesses supported release on licence.

The Relevant Law

12. Given the Applicant has set out his own carefully argued grounds for reconsideration, I shall set out the legal principles I have to apply at somewhat greater length than I might otherwise have done.

13. Both sets of grounds give a number of reasons why, on the facts, the panel ought to have come to a different conclusion.

14. The difficulty for the Applicant is that a panel decision can be interfered with by the reconsideration mechanism only on the grounds stated above of irrationality or procedural unfairness.

15. In order to be "irrational" within the meaning of Rule 28(1)(a) the decision in question must be so outrageous as to defy logic, accepted moral standards or one at which no sensible person could have arrived. Moreover, in considering the assessment of the decision, due deference is to be given to the expertise of the Parole Board in making decisions relating to parole. It will also be borne in mind that in the case of oral hearings it is the panel members who saw heard and



assessed the evidence of witnesses before them: see **R (on the application of DSD and others) v the Parole Board [2018] EWHC 694 (Admin), CCSU v Minister for the Civil Service [1985] AC 374.**

16. The reconsideration mechanism follows the practice and procedure of Judicial Review. The correct approach of the reconsideration process is not to ask whether the panel might have come to a different decision; the correct approach is confined to asking whether the Applicant has established that the panel's finding was irrational within Lord Diplock's definition.
17. The principle goes even further because it is not every mistaken exercise of judgement that can be properly categorised as unreasonable. As Lord Hailsham remarked in **Re W (An Infant) [1971] AC 682:**

"Two reasonable [persons] can perfectly reasonably come to opposite conclusions on the same set of facts without forfeiting their right to be regarded as reasonable.... Not every reasonable exercise of judgement is right, and not every mistaken exercise of judgement is unreasonable."

18. 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 to evaluate the likely effectiveness of any risk management plan proposed. They must make up their own minds on the totality of the evidence that they hear, including any evidence from the Applicant. 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.
19. The panel should indicate with sufficient clarity its reasons for coming to its conclusion. In **Oyston [2000] PLR 45**, at paragraph 47 Lord Bingham said:

"It seems to me generally desirable that the Board should identify in broad terms the matters judged by the Board as pointing towards and against a continuing risk of offending and the Board's reasons for striking the balance that it does. Needless to say, the letter should summarise the considerations which have in fact led to the final decision. It would be wrong to prescribe any standard form of Decision Letter and it would be wrong to require elaborate or impeccable standards of draftsmanship."

The duty to give detailed reasons is heightened by the fact that by implication the panel was disagreeing with the recommendations of both professional witnesses - see **R (Wells) v the Parole Board 2019 EWHC 2710.**

Discussion

20. I have examined anxiously the Decision Letter and, where necessary, the dossier to see if there are any indications that the panel slipped into irrationality. In particular, I have looked for significant mistakes of fact, a serious misunderstanding of the evidence, failure to take into account relevant factors, inconsistency, failure to give adequate reasons and a failure to rely on any relevant provision of the **Human Rights Act 1995.**



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21. I have not found any such error or shortcoming. I then have to consider whether the panel's reasoning was so erroneous as to deprive the final decision of its logic.
22. The Decision Letter is clearly written, structured and puts not only the arguments against the Application but also those for release.
23. In the former category, the panel placed weight on the following matters. The Applicant's criminal record suggested a pattern of acquisitive offending. The Applicant's last period of licence showed he had responded poorly to supervision and trust by committing two commercial burglaries and theft; two of the offences were committed when the Applicant was free of drugs; two of the offences were committed within the exclusion zone and he was also arrested twice, on suspicion of theft and suspicion of possessing an illegal drug, although no further action was taken in respect of either matter.
24. The Applicant had a long history of using illegal drugs and he had a number of risk factors (i.e. factors which increased his risk of offending).
25. In the latter category, among other matters, the panel bore in mind that during the first part of his sentence the Applicant had done a number of courses to address offending behaviour; that if his behaviour started to deteriorate on licence, the warning signs would be observable and gradual; that since his recall the Applicant's conduct in prison had been good apart from a single adjudication for using illegal drugs on 4 October 2019. The Applicant had not been involved in violent behaviour for 11 years. The panel also took into account the fact that the Applicant had contacted the residential addiction rehabilitation facility on his own initiative.
26. The panel accepted the professional assessment of risk posed by the Applicant of future serious harm. It also bore in mind that it had the power to impose additional licence conditions (as it had done previously to little avail) to try to reduce the risk of serious harm.
27. The rehabilitation facility central to the Applicant's case operates a Twelve-step programme which appears from the leaflet to be a development from, or a variant of, the original programme introduced in the 1930's. The method can be adapted to address a wide range of alcohol misuse, and dependency problems. Unsurprisingly, in the endeavour to overcome these problems, behavioural issues, inextricably linked (the phrase used by the Applicant's solicitor) to the addiction are also addressed: but the main focus of the work is the eradication of addiction.
28. In the end, the essential difference between the Applicant on the one hand and the panel on the other is that the Applicant believed drug addiction was the root cause of his offending problem and if this were treated, he would be problem free. In contrast, the panel, relying on the fact the Applicant committed two offences on licence before he returned to illegal drugs, took the view that the illegal drugs were not the root cause of his offending but were the consequence of his becoming overwhelmed by the prime risk factors. This view was clearly set out at page 8 of the Decision Letter.



29. The prime risk factors were identified by the panel on clear evidence, as not thinking about what will happen as a result of his actions, not being able to solve life's problems well enough, poor coping skills and struggling to cope with his emotions.
30. The difference between the panel and the professional witnesses was the latter believed that the Applicant's risk could be managed by the risk management plan which entailed the Applicant spending a period of time in the rehabilitation facility together with work in the community to address the prime risk factors.
31. The panel's view was the unit would address only the use of illegal drugs and not the Applicant's core problems and that, as far as the risk management plan was concerned, its strength in tackling the use of illegal drugs was counterbalanced by a more significant weakness in not tackling the core problems. This view was consistent with an acceptance that the rehabilitation facility would address to some extent risk factors including the ability to control extreme emotions as part of the treatment for the addiction.
32. The panel's considered opinion was that until the Applicant could demonstrate that he was able to put theory and insight into hard practice, it was unsafe to permit his release.
33. In the context of all that was known about the Applicant, was that opinion irrational within the meaning of Lord Diplock's definition? I am afraid the plain answer is it was not irrational.
34. I have not considered whether the panel adequately assessed the arguments for and against making the recommendation for progression to open conditions. Neither professional witness supported such a move. However, it is well established that a decision either to recommend or not recommend such a progression cannot be reviewed under the Parole Board Rules 2019 – see Panasuik [2019] PBRA 2.

Decision

35. 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
19 February 2020

