

[2020] PBRA 7

## Application for Reconsideration in the case of Joyce

### Application

1. This is an application by the Secretary of State for Justice (SoS) for the reconsideration of an Oral Hearing Decision by a Parole Board panel to direct Joyce's (the Respondent) release.
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 irrational or that it is procedurally unfair, or both.

### Background

3. The Respondent is 37. In 2008 he was sentenced to an extended sentence for robbery. His current Sentence Expiry Date is 31 October 2021. On 28 November 2019 a panel considered his case at an oral hearing. It ordered his release.

### Request for reconsideration

4. The application is dated 19 December 2019. The lengthy grounds submit in summary that the panel,
  - (a) Failed to take into account, or to give adequate weight to, evidence tending to militate against release, in particular evidence that:
    - (i) The Respondent's risks have not been addressed and/or are not manageable on release. In particular, that the Offender Manager (OM) did not support release and that the Offender Supervisor (OS) could not make a firm recommendation either way;
    - (ii) Alcohol and drug misuse are noted to be risk factors which have contributed to the Respondent's recall on previous occasions;
    - (iii) He has failed a drug test since his most recent recall;
    - (iv) He has undertaken no work since his recall to address these risk factors although such work has been recommended by his OS;
    - (v) There is an outstanding criminal charge in Ireland about which the panel had little knowledge; and



- (vi) Gave insufficient weight to the facts:
- That the assessment of risks and their origin report suggests that his risks of re-offending and of causing serious harm to the public remain high;
  - That he has previously absconded while on licence and that on the last occasion he had been unlawfully at large for a long period;
  - That an assault had taken place in the Respondent's cell which had resulted in his being placed on Basic regime.
- (b) Failed to take into account or give sufficient weight to its own findings that it needed to consider:
- (i) Whether the Respondent's behaviour in custody was relevant to the likelihood of his complying with his licence conditions;
  - (ii) That if he was unsupervised his risk would increase.
- (c) Placed too much reliance on the positive evidence given by the Key Worker and Unit Manager;
- (d) Failed to explain the reasons for the decision; and
- (e) Mistakenly concluded that the principal risk of serious harm on release is to the Respondent rather than to members of the public.

## The Relevant Law

5. 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 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'.*

This test was first set out by Lord Diplock in **CCSU v Minister for the Civil Service [1985] AC 374**. 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. The Board, when considering whether or not to direct a reconsideration, will adopt the same high standard for establishing "irrationality". The fact that Rule 28 uses the same word as is used in judicial review demonstrates that the same test should be applied.

## Discussion



6. As the Decision Letter (DL) makes clear there is one overriding principle guiding a panel in all cases, namely the risk that serious harm may be caused to the public during the period in question – in this case a little less than 2 years.
7. As to the Grounds:
  - (a) 4(a)(i). The fact that the professionals with oversight of the offender do not recommend release is relevant but cannot be decisive. If it was, Parole Board hearings would be unnecessary.
  - (b) 4(a)(ii)-(iv). Clearly alcohol and drug misuse have been relevant factors in the Respondent's past offending and that it is by no means clear that when released he will not misuse one or both. He is now disqualified from driving, the activity which has most recently given rise to the risk of serious harm to members of the public. It would of course have been open to the panel to conclude that his fondness for alcohol and his readiness to drive when intoxicated in 2017 meant that his risk could not be safely managed on release but it cannot be said to be "irrational" not to have done so. The fact that he has done no work since recall to reduce his risk in this respect is not his fault.
  - (c) 4(a)(v). While the fact that it is reported that he has an outstanding charge of dangerous driving in Ireland about which nothing else is known is clearly a relevant consideration, a refusal to direct release simply because the SoS has no further information than that about the charge would itself run the risk of being categorised as irrational.
  - (d) 4(a)(vi). It is clear from the DL that the three facts referred to in these grounds were canvassed at the hearing with the professional witnesses and the Respondent. Once again it would have been open to the panel to refuse to direct release, but it cannot be said that it was "irrational" not to do so.
  - (e) 4(b)(i) & (ii). It is clear from the DL that the panel had indeed considered the issues referred to. The fact that, as with many offenders released on licence – in particular those who have already been recalled in the past – there will be a higher risk of failure and therefore of serious harm, cannot be a bar to release on conditions designed to minimise the risk and to take appropriate action if the risk becomes unmanageable.
  - (f) 4(c). The evidence of the two witnesses was clearly relevant. It was for the panel to decide how much weight to put on it. There is in fact no indication in the DL, which simply summarises the evidence, that either or both played any particular part in the decision.
  - (g) 4(d). The reasoning is clearly set out in Sections 6 and 7 of the DL.
  - (h) 4(e). There was a good deal of evidence in the dossier that the Respondent has posed, and may in the future pose, a risk of harm to himself. However, even if the panel's conclusion was wrong, it has nothing to do with the rationality of the decision concerning the extent of the risk to the public the



Respondent currently poses and the ability of the Licence Conditions to manage it and enable appropriate action to be taken if necessary.

## Decision

8. It is understandable that those professionals concerned with the Respondent may feel upset that their views have not been adopted, and possible that a different panel might have reached a different conclusion. It is for that reason that Oral Hearings are convened since the Decision cannot be made on the papers. However, as can be seen, the standard of "irrationality" set out at para 5 above is a very high one indeed. None of the grounds, whether taken on their own or as a whole, reach that standard.
9. Accordingly, the application for reconsideration is refused.

Sir David Calvert-Smith  
8 January 2020

