the Parole Board

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[2021] PBRA 126

Application for Reconsideration by Godfrey

Application

1. This is an application by Godfrey (the Applicant) for reconsideration of a decision of a Parole Board panel which heard his case at a telephone oral hearing on 28 June 2021, and, in its Decision Letter of 19 July 2021, declined to order his release or to recommend to the Secretary of State for Justice (SOSJ) that he be transferred 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:

   a) The dossier of 1092 pages including the decision letter (DL) under review;
   b) The Applicant's representations dated 5 August 2021; and
   c) The Secretary of State for Justice's reply dated 20 August 2021.

Background

4. The Applicant is now 60. In 2004 he was sentenced to life imprisonment following his convictions for rape and 2 indecent assaults, with a 'tariff period' of 7 years less time served on remand.

Request for Reconsideration

5. The application for reconsideration is dated 10 August 2021.

6. The grounds for seeking a reconsideration are, in summary, as follows:

   The panel's decision was irrational in that.

   a) The panel "over-relied" on the seriousness of the index offences and placed too little weight on the progress made by the Applicant while in prison;

   b) The panel placed too much weight on the circumstances surrounding a recent adjudication which was dismissed by the governor;

c) The panel placed too much weight on other matters which arose in evidence – in particular the Applicant's reaction to the loss of a stereo and the allegedly inadequate compensation he received;

d) The DL displayed a mistaken understanding of the evidence at the hearing concerning a relapse into using illegal drugs; and

e) The panel failed to articulate properly its reasons for declining to recommend his transfer back to open conditions.

Current parole review

7. Following referral by the SOSJ to the Parole Board on 16 May 2019 an oral hearing was directed on 18 December 2020.

8. The case was heard on 28 June 2021 by video link due to the restrictions imposed by the pandemic. The panel heard oral evidence from the Applicant's Offender Supervisor (OS) and Offender Manager (OM), a psychologist, and the Applicant. Both the Applicant and the SOSJ were legally represented.

The Relevant Law

9. The panel correctly set out the test for release in its decision letter dated 16 July 2021.

Parole Board Rules 2019

10. Under Rule 28(1) of the Parole Board Rules 2019 the only kind of decision which is eligible for reconsideration is a decision that the prisoner is or is not suitable for release on licence. Such a decision is eligible for reconsideration whether it is made by a paper panel (Rule 19(1)(a) or (b)) or by an oral hearing panel after an oral hearing (Rule 25(1)) or by an oral hearing panel which makes its decision on the papers (Rule 21(7)).

Irrationality

11. 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."

12. This test was 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 contains

the same adjective as is used in judicial review shows that the same test is to be applied.

13. The application of this test has been confirmed in previous decisions on applications for reconsideration under rule 28: **Preston [2019] PBRA 1** and others.

14. The Applicant, in his representations for the purpose of this application has referred me to other authorities, in particular **R(Kitto) v Parole Board [2003] EWHC 2774 (Admin),** and to authorities which stress that the Parole Board that its decisions must comply with the provisions of the European Convention on Human Rights.

Other

15. It is possible to argue that mistakes in findings of fact made by a decision maker result in the final decision being irrational, but the mistake of fact must be fundamental. The case of **E v Secretary of State for the Home Department [2004] QB 1044** sets out the preconditions for such a conclusion: "*there must have been a mistake as to an existing fact, including a mistake as to the availability of evidence on a particular matter; the fact or evidence must have been "established", in the sense that it was uncontentious and objectively verifiable; the appellant (or his advisors) must not have been responsible for the mistake; and the mistake must have played a material (though not necessarily decisive) part in the tribunal's reasoning."* See also **R (Alconbury Developments Ltd) v Secretary of State for the Environment, Transport and the Regions [2003] AC 295**, which said that in order 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.

16. 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 reply on behalf of the Secretary of State

17. A brief reply was received from the SOSJ. It did not address the grounds for the application but pointed out one of a large number of typographical errors in the legal representations submitted in support of the application.

Discussion

18. Ground 6 (a). The index offences, and those which had preceded them for many years before were persistent and of the utmost seriousness, being committed, as the years went by, within a short time of release form substantial sentences of imprisonment. They involved, violent, sexual, and sexually violent offences. Long prison terms served outside of the UK had had no effect on the Applicant's

behaviour. It is right to say, as the DL acknowledged, that during the current sentence the Applicant had done much useful work and made genuine efforts to rid himself of the traits and tendencies which had been so prominent in his life before he began the sentence. I have read the reports within the extensive dossier and studied the terms of the DL concerning them. I find no force in the contention that the panel, which had the benefit of a psychologist member, placed undue reliance on the index offences.

19. Ground 6 (b). The degree to which unproved allegations of any kind should be taken account of by Parole Board panels – whether allegations of crime or of breaches of prison rules - is a difficult topic. The way in which this panel dealt with it in the DL at paragraph 8 cannot be faulted, in that it relied on the admittedly "*disproportionate*" reaction of the Applicant, rather than on the details of the allegation or the POM's instinctive acceptance of its truth.

20. Ground 6 (c). The panel was entitled to come, as it did, to the general conclusion that the Applicant's reactions when he believes that he is in the right and others are not provokes a strong feeling of self-entitlement which significantly increase the risk he would pose to the public on release, whether in general or to females in particular. The reference to the dispute over compensation for the missing stereo is directly relevant to this issue which formed a significant part of the witnesses' reasoning and the panel's decision.

21. Ground 6 (d). The panel was doing no more, in using the words it did to describe the deterioration in the Applicant's behaviour and attitude, than summing up the understandable disappointment felt by the Applicant when he was returned from open conditions to closed conditions following the decision of the Parole Board in 2018.

22. Ground 6 (e). The panel explained clearly and rationally why in its view a recommendation for transfer to open conditions was not appropriate in the concluding passage of paragraph 8 of the DL.

23. In conclusion it should be borne in mind that not one of the professionals called to give evidence at the hearing recommended release or transfer to open conditions. A lengthy hearing, albeit beset by technical problems, and the opportunity to reflect on the evidence and consider the substantial submissions of the Applicant's legal representative resulted in a careful analysis of the case in the DL.

24. I therefore find that there was no irrationality in the decision such as to engage the legal principles set out above.

25. There is no suggestion in the grounds of any procedural irregularity.

Decision

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

Sir David Calvert-Smith
26 August 2021