

[2021] PBRA 150

Application for Reconsideration by Morgan

Application

1. This is an application by Morgan (the Applicant) for reconsideration of a provisional decision by the Parole Board under Rule 25(1) of the Parole Board Rules 2019 (the 2019 Rules) that the Applicant was unsuitable for release (the Decision). The letter by which the Decision was communicated is dated 11 October 2021 (the Decision Letter).
2. I have considered the application on the papers comprising:
 - a) A dossier of 365 numbered pages, including the Decision Letter; and
 - b) Written submissions by the Applicant in-person (undated) in which reconsideration is requested (the Applicant's Submissions).

Background

3. In June 2007, the Applicant received an indeterminate sentence of imprisonment for public protection for two counts of robbery. The minimum tariff was set as four years and expired in June 2011.
4. The Applicant was aged 28 when he received the sentence and is now aged 43.

Current parole review

5. The Decision was made on the Secretary of State's referral of the Applicant's case to the Parole Board to consider whether or not it would be appropriate to direct the Applicant's release.
6. The Decision was made by a three-member panel of the Board that considered the Applicant's case at an oral hearing in September 2021 (the Panel). The panel comprised of a two Independent Members of the Board and a Psychologist Member. The oral hearing was conducted remotely.

Application and response

7. The Applicant's submissions assert that the Decision is marred by irrationality and procedural unfairness.



8. By an email dated 27 October 2021, the Public Protection Casework Section notified the Board that the Secretary of State offered no representations in response to the Applicant's reconsideration application.

The Relevant Law

9. Rule 28(1) of the 2019 Rules 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.

Irrationality

10. 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."

11. 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.

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

Procedural unfairness

13. Procedural unfairness means that there was some procedural impropriety or unfairness resulting in the proceedings being fundamentally flawed and therefore, producing a manifestly unfair, flawed or unjust result.

Consideration

14. The Applicant asserts a factual error in the Decision where the Applicant's reduction or completion of a prescription is described as a relatively recent and rapid development, whereas the Applicant states that it had taken him a year of reducing to reduce the prescription to nil. However, the Decision Letter reveals that the Panel's reasoning was that the Applicant had completed a training course addressing prescription medication the week before the hearing and that the Applicant's ability to sustain that was untested.

15. The Applicant complains that the Panel failed to have regard to the evidence of his greater openness with his community Probation Officer since being recalled. However, the Decision Letter reveals cogent reasons why the Panel considered the Applicant not to have developed a fully thought through relapse plan, including the

Applicant's assertion that he was convinced he would simply not use again and therefore that he did not need to consider high risk scenarios and warning signs of a possible return to substances. The Panel also moreover persuaded by the opinion of the prison forensic psychologist that the Applicant would find it very difficult to avoid negative peers and other substance users in the community.

16. The Applicant complains that the Panel describes the support given for his release by the prison forensic psychologist as 'somewhat cautious' whereas the Applicant asserts that the prison forensic psychologist's support for his release was resolute in oral evidence. However, the Applicant does not deny the record in the Decision Letter that the psychologist expressed simultaneously her concern that the Applicant needed to complete work to address problem-solving and engage in additional work with his community Probation Officer to identify high risk situations and warning signs of increased risk and develop strategies to manage these and plan appropriate support, which indicates a degree of caution in my consideration.
17. The Applicant disputes the information in the Decision Letter that he deselected himself from a regime to help people deal with decision making and better ways of thinking because he believed it would be of no benefit for him. He states that he was advised to leave in order to engage in an alternative form of intervention. However, I note that it is recorded in the previous Parole Board review letter within the dossier that the Applicant did not feel he needed to do an intense structured recovery programme which the regime to help people deal with decision making and better ways of thinking entails, in order to address his history of substance use as he had come to the conclusion that he already has a clear insight and awareness about his triggers and high-risk situations and coping strategies for managing these. That description is consistent with the description given in the Decision Letter and it was open to the Applicant to challenge that information during the review process leading up to the oral hearing.
18. The Applicant denies the Panel's finding that it was not satisfied that he had sufficient insight into his risk and strategies to manage it without recourse to an entrenched pattern of substance misuse, non-compliance, abscond and increased risk to the public. In relation to that point, the Applicant asserts that the Panel took a different view to that of the three professional witnesses and asserts that he has demonstrated such insight during his engagement with a training course addressing decision making and better ways of thinking which he is apparently presently undertaking or has completed since the oral hearing. However, the Panel is entitled to take a different view to that of professionals and adequate reasons are stated in the Decision Letter for why it did so in this case. The Applicant's engagement in the training course addressing decision making and better ways of thinking after the hearing is not a factor that can be taken into account in the consideration of whether the Decision was irrational.
19. The Applicant complains that the Decision pays insufficient regard to protective factors including his family, friends, a job offer, and the support of his community Probation Officer. However, the Decision Letter reveals that the Panel had regard to each of those factors. The weight to be given to them was for the Panel, and the reasons stated in the Decision Letter for considering that the Applicant's risk to the public was unmanageable cannot correctly be described as irrational.

20. Finally, the Applicant complains that his hearing was rushed owing to problems with his community Probation Officer joining the remote hearing. However, he notes that the offer was made that the hearing could be adjourned part-heard to reconvene at a later date if he wanted more time, which he declined. The Applicant complains that the community Probation Officer was not asked questions by all of the members of the Panel and that other witnesses were asked more questions, but that is not an indication of procedural unfairness: Panels will often simply have fewer questions to ask of some witnesses, for reasons including the clarity and comprehensiveness of written reports provided by that witness, the ability of particular witnesses to speak to particular issues of concern, or that certain issues have been clarified during the taking of evidence from preceding witnesses during the hearing.

21. For those reasons, I conclude that the Decision was not marred by irrationality or procedural unfairness.

Decision

22. The Decision is not marred by procedural unfairness and reconsideration is not directed.

Timothy Lawrence
3 November 2021