

[2021] PBRA 169

Application for Reconsideration by Lynch

Application

1. This is an application by Lynch (the Applicant) for reconsideration of a decision of an oral hearing dated the 6 October 2021 not to direct release or to recommend progression 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 consisting of 453 pages, including the decision letter, and the Applicant's own grounds in support of his application.

Background

4. On the 23 September 1993, the Applicant was sentenced to life imprisonment for the murder of his partner. He was given a tariff of 9 years, which expired on the 14 April 2002. The Applicant was aged 40.
5. He was released on licence on the 30 April 2003. Intimate and familial relationships had been identified as a prime risk area and his licence conditions required the Applicant to disclose intimate relationships to his community offender manager.
6. The Applicant was recalled on the 11 October 2009 on the ground he had married about four years previously, moved out of the probation area and had failed to inform his community offender manager of the relationship.
7. The Applicant is now aged 68.

Request for Reconsideration

8. The application for reconsideration is dated the 1 November 2021.
9. The document has been drafted by the Applicant and contains a number of historical complaints; however, the grounds for seeking a reconsideration, on the basis of irrationality, are as follows:



- a) The Applicant denies making statements attributed to him and set out in the decision letter;
- b) That the contents of the decision letter are disputed and are incorrect;
- c) That the panel erred in not accepting the evidence of the prison offender manager that the Applicant had completed all relevant offending behaviour work.

Current parole review

10. The Secretary of State's referral is dated the 22 May 2020 and required the panel to consider the Applicant's release or, in the alternative, to make a recommendation for a move to open conditions.

11. The panel consisted of three members, of whom two were independent members and one was a psychologist member. Because of the Covid-19 pandemic the hearing took place by way of video link. The panel heard evidence from the prison offender manager, the community offender manager, a prison instructed psychologist and an independently instructed psychologist and the Applicant. The Applicant was legally represented.

The Relevant Law

12. The panel correctly sets out in its decision letter dated 18 October 2021 the test for release and the issues to be addressed in making a recommendation to the Secretary of State for a progressive move to open conditions.

Parole Board Rules 2019

13. 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 the decision on the papers (Rule 21(7)).

14. A decision to recommend or not to recommend a move to open conditions is not eligible for reconsideration under Rule 28. This has been confirmed by the decision on the previous reconsideration application in **Barclay [2019] PBRA 6**.

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Irrationality

15. 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."

16. 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.

The reply on behalf of the Secretary of State

17. The Secretary of State offered no representations in response to the reconsideration application.

Discussion

18. A good deal of the evidence is common to the first two grounds for reconsideration, and I shall consider them together.

19. The decision letter recounts how his marriage and move from the area came to light after the Applicant had been arrested for making threats to murder his wife's son in law [MB]. It appears his wife had left the matrimonial home and in the early hours of the 11 October 2009, the Applicant left two threatening and vulgar telephone messages for the intended victim. This was the evidence in support of the allegation of threatening to kill. A police officer had listened to the messages and made a record of what had been said.

20. The Applicant denies he ever threatened to fight MB. The decision letter records the Applicant suggested that, as MB's family member was a police officer, there may have been collusion between the police. The Applicant strongly denies he made any such suggestion in front of the panel.

21. It has to be remembered this was the Applicant's seventh parole review and the events of 2009 must have been visited more than once. The matters were in the present decision letter simply as part of the history of the case and in particular, how the existence of the marriage became known; plainly they did not form the basis for this panel's decision.

22. As a matter of record, the Applicant was arrested, prosecuted and convicted of making threats to kill.



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23. The matter had been considered by the panel reviewing the Applicant's case in 2017. At page 388 of the dossier, that panel said,
24. *"The way that [The Applicant] talked about the recall conviction for making threats to kill MB makes it clear that [The Applicant] consider[ed] the whole matter to be either a conspiracy of some sort, a negligent investigation on the part of the police or both. [The Applicant] continue[d] to talk about what [The Applicant] did in terms of ' [The Applicant] allegedly' did this, despite the fact that [The Applicant] [was] convicted and appealing has only served to have the sentenced reduced from 3 years to 5 years. [The Applicant is] fixated on the fact that MB deleted the messages you left him before they could be produced in court".*
25. The Applicant complains the decision letter stated *"[The Applicant] continued to obfuscate over whether he informed his previous COM [community offender manager] about his relationship with [his wife]. He told the panel that he probably told his COM when his marriage banns were read before his wedding in 2005."*
26. The Applicant said that is incorrect and he never mentioned banns to Probation. If anything, that seems to support the probation officer's case that the Applicant never told her of his relationship with his wife. The grounds for reconsideration then moved to the topic of the Probation progression reports.
27. The panel relied on that passage as evidence of the Applicant's lack of honesty and straightforwardness during the hearing. Unhappily, there was a wealth of evidence upon which the panel could come to that view. The panel actually saw the Applicant and listened not just what he said but how he said it. A reconsideration panel does not have that advantage.
28. Two passages from the dossier illustrate the sort of difficulties the panel experienced with the Applicant's evidence.
29. At page 417, the author of the psychological risk assessment commissioned for the review observed:
- "During the exchanges described above, [The Applicant] was never overtly hostile or threatening towards me but his manner was at times intimidating and unpleasant. At other times his thought processes were hard to follow as he appeared to go off on tangents, although he usually returned to the unreliability of [Probation services]".*
30. The Parole Board panel in 2017 found the Applicant to be dishonest and evasive to the extent it had no confidence he would be honest with the community offender manager in the community for any sustained period of time.
31. The Applicant raised other matters without perhaps explaining their relevance to his application. He stated that if he embarked on a new, intimate relationship, he would



be honest about his past. The panel recorded he told them he would refer the person to a specific internet search engine. The Applicant does not indicate whether he accepts or denies he said that, but perhaps very little turns on it when put in the wider context of the decision.

32. The Applicant also stated he did not discuss his family's lifestyle. The panel accepted that. He also objected that the panel repeated an historical aspect of the manslaughter, namely the Applicant had concealed his partner's body for a short time.

33. The panel set out, as it should, the Applicant's past before considering his present situation. It came to its decision on the current situation and the Applicant's evidence and that of the professional witnesses.

34. The disagreement the Applicant had with the panel's summary of his past, if correct, would not be sufficient to alter the panel's conclusion and therefore it is insufficient to justify listening to the tape recording of the hearing.

35. The first two grounds fail.

36. As to the third ground, at page 3 of the submissions, the Applicant asked rhetorically "*who are the panel to question a so called professional*". The simple answer is because that is the panel's job. The panel has to listen to the evidence and where there are differences of opinion (as occurred in this case) decide whose opinion it prefers and why.

37. The independent psychologist and the prison offender manager supported the Applicant's release.

38. The community offender manager did not recommend release because the Applicant had not made good his lack of insight into his risk factors or the methods to manage them in the future. She supported progression to open conditions, if only to test whether he could comply honestly with supervision.

39. The prison instructed psychologist said the Applicant's core treatment needs had not been met due to his inability or unwillingness to engage with treatment pathways. She took the view that those needs would not be addressed in the Category D estate.

40. At the heart of the panel's decision on release was its view that the risk management plan relied heavily on the honesty and clarity of communication by the Applicant, and, in respect of Category D, the panel's acceptance that open conditions would not address the Applicant's core treatment needs.

41. I have considered the contents of the decision carefully. The letter is both clear and comprehensive and sets out perfectly adequately whose evidence the panel preferred and the short reasons for coming to that conclusion.



42. Provided that is done, the reconsideration panel has no right to interfere with the decision.

43. I am afraid the application reveals some of the personality difficulties which, sadly, are holding back the Applicant from achieving progression.

44. I regret that in the final analysis this application has no merit.

Decision

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

James Orrell
2 December 2021