

[2020] PBRA 207

Application for Reconsideration by Bradbury

Application

1. This is an application by Bradbury (the Applicant) for reconsideration of a decision of an oral hearing panel dated the 3 December 2020 not to direct 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 (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 (including the decision letter) running to 422 pages and the Applicant's submissions in support of his application.

Background

4. The Applicant is serving an extended determinate sentence of 8 years, 6 months, imposed on the 21 August 2015, when he was aged 30, for the offence of manslaughter. The custodial period is 4 years, 6 months and the additional licence period is 4 years.
5. When he committed the offence, the Applicant was on licence for an offence of burglary.
6. The Applicant was released on licence from the current sentence on the 1 November 2018. Following a violent incident with his partner, he was recalled to prison on the 20 December 2019.

Request for Reconsideration

7. The application for reconsideration was received on the 17 December 2020.
8. The grounds for seeking a reconsideration are based on irrationality and are as follows:
 - a) All three professional witnesses supported the Applicant's release;
 - b) The risk reduction work identified for the Applicant to do was available in the community; and

- c) The panel's decision set the Applicant an unrealistic goal in expecting him to complete the risk reduction work in custody within 12 months.

Current parole review

9. Following a referral by the Secretary of State to the Parole Board to consider whether to direct the Applicant's release, the oral hearing took place on the 26 November 2020; it was conducted remotely due to Covid restrictions. The panel consisted of an independent chair, a judicial member and an independent member. The panel heard from the Applicant, the Prison Offender Manager, the Community Offender Manager, a prison psychologist and the Applicant's legal representative.
10. The Applicant was aged 35 at the time of the hearing; this was his first review since recall.

The Relevant Law

11. The panel correctly sets out in its decision letter the test for release.

Irrationality

12. 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."

13. 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.

14. A panel may decline to follow the recommendations of professional witnesses. Sir John Saunders put it this way in **Benson [2019] PBRA 46**:

'There are two matters which apply generally to all these applications. First, it is for the panel to assess the weight to be given to any piece of evidence, including the opinion as to risk given by the professional witnesses. It is for the panel to test the assessment and look at the reasons for it. So, even in a case where every witness is supporting release, it is for the panel to make their assessment taking into account all the evidence. The reverse is also true. If the panel disagrees with the evidence given by the professionals, it must give adequate reasons for doing



so. Secondly a decision letter is directed at the prisoner. While it has to descend to sufficient detail so that everyone, but particularly the prisoner, can understand the reasons for the decision, it is not necessary for every point which has been raised in the hearing to be discussed. What is necessary is that everyone is able to understand the reasons for the decision.'

The Reply on behalf of the Secretary of State

15. The Secretary of State did not make any representations in response to the application for reconsideration.

Discussion

16. The panel carried out a balancing exercise between the factors supporting release and the factors suggesting the Applicant should remain confined for the protection of public.
17. The factors supporting release included the fact that the Applicant had managed a period of around a year on licence without warnings and had appeared to have been complying with his licence; that since recall, his behaviour in custody had been of a consistently good standard; and that all the professional witnesses supported his release.
18. The professional witnesses recommended that the Applicant should do a training course addressing relationships and the handling of emotions ("the course").
19. The Prison Offender Manager, the Community Offender Manager and the prison psychologist all supported release. Their recommendations were not without reservations. They accepted that it was preferable for the Applicant to complete the course before release so he would better understand his risks before entering into a relationship. The three professional witnesses balanced the desirability of that proposal with the fact the Applicant was unlikely to complete the programme before mid-2021 and each, on balance, supported the alternative proposal that the Applicant should do the course at the earliest available opportunity in the community.
20. In normal circumstances (that is, in circumstances unaffected by the coronavirus pandemic), the Applicant would not be released until he had completed the course.
21. The professional witnesses justified recommending release before completing the course on the basis it would not be proportionate for him to continue to be detained to complete the work in custody.
22. The panel, in my view rightly, held that that was not the correct test. It is not the Applicant's fault that the work has not yet been commenced in custody. However, that is not the test the panel applies; the panel must have the protection of the public as its primary duty.



23. Among the factors the panel identified as reasons for refusing to direct release was the fact that the earlier panel had directed release in September 2018 on the basis the Applicant would complete in the community a training course addressing his tendency to use violence and also would have individual sessions with the Community Offender Manager about controlling emotions and family relationships. By an oversight, neither piece of work had started by the time of his recall.
24. Again, it was not the Applicant's fault that the work was not done; nevertheless, the panel was entitled to take into account, and did take into account, that sometimes the Parole Board releases prisoners on the basis they will do certain work in the community and that work is never done.
25. The panel identified other factors tending to militate against release. These included the following:
- a) The Applicant has shown on a number of occasions, an ability to behave well in custody but has not been able to maintain his positive behaviour in the community;
 - b) The Applicant ignored the fact he was on licence and returned to alcohol use which was a key risk factor for him;
 - c) The Applicant had not always been honest in his reports to the Community Offender Manager; had he been honest, further support would have been put in place;
 - d) The Applicant failed to ask for help when it must have been clear to him he needed help in order to abide by his licence conditions;
 - e) The Applicant failed to take responsibility to manage his own risk and again used violence or the threat of violence and pleaded guilty to an offence of affray, arising out of the incident for which he was recalled;
 - f) What was being proposed by the professional witnesses was very much the same as last time and the panel was not persuaded things would be different this time around; and
 - g) The panel's view was that significant work remained before the Applicant's risk in the community was manageable;
26. The argument that the panel set an unrealistic goal in expecting the work to be done within 12 months may or may not be factually correct. What is crucially important is that it is not test the panel has to apply, namely the protection of public from the risk of serious harm.
27. The panel, who had the great advantage of seeing and hearing the witnesses, was entitled to decide this Applicant needed to do further work before his risk became manageable in the community.
28. Insofar as that decision differed from the opinions expressed by the professional witnesses, the panel gave adequate reasons for taking a different view. The



decision was entirely within the range of discretion before its decision could be described as irrational.

Decision

29. 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 January 2021



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