

[2021] PBRA 47

Application for Reconsideration by Jackson

Application

1. This is an application by Jackson (the Applicant) for reconsideration of a decision of a Panel of the Parole Board dated 16 March 2021 following an oral hearing on 9 March 2021.
2. The Panel made no direction for release, nor did it recommend that he was suitable to be transferred to open conditions.
3. 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.
4. I have considered the application on the papers. These are the dossier of 516 pages (that includes the decision letter) and the application for reconsideration.

Background

5. The Applicant was aged 36 at the time of sentence and is now aged 66 years old. He was sentenced to life imprisonment on 21 February 1992 for an offence of murder. The tariff was set at 20 years (with allowance for time on remand) and expired on 25 February 2011.
6. The Applicant has remained in custody since being sentenced.

Request for Reconsideration

7. The application for reconsideration is dated 30 March 2021.
8. The grounds are short and are not set out in much detail. In essence, it is said that the decision was an irrational one as the evidence of all the witnesses was that the Applicant was 'ready to progress' and the Panel failed to take this into account.

Current parole review

9. The Applicant's case was referred to the Parole Board in January 2020. An oral hearing was directed in March 2020.



10. The oral hearing was conducted remotely (by video link) on 9 March 2021 due to the current COVID-19 restrictions. The Panel heard evidence from the Applicant, as well as from the prison probation officer, the community probation officer and from two psychologists - one instructed by the Applicant and a prison psychologist.

The Relevant Law

11. The panel correctly sets out in its decision letter dated 16 March 2021 the test for release and the issues to be addressed in making a recommendation to the Secretary of State for a move to open conditions.

Parole Board Rules 2019

12. 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.

13. Such a decision is eligible for reconsideration on the basis that (a) the decision is irrational and/or (b) that the decision is procedurally unfair.

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**.

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.

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

The reply on behalf of the Secretary of State

18. The Secretary of State has stated that he does not wish to make any representations.

Discussion

19. As noted above, under 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.
20. The decision letter contained such a decision, as will every decision (other than a pre-tariff review in indeterminate sentence cases). As is the case with many hearings, there were two different decisions to make; the decision as to release or not, and the decision (if release is not directed) whether or not to recommend a move to open conditions.
21. The 'decision' that I can consider under rule 28 is the decision whether or not to direct release. The question of whether or not to recommend open conditions is outside the scope of the reconsideration mechanism.
22. The decision letter is a comprehensive one that sets out in detail the oral evidence heard.
23. This confirms that whilst all witnesses supported the Applicant's progress to open conditions, none supported release. All witnesses gave reasons why this was the case.
24. The Panel set out clear reasons why they did not direct release, and why the proposed release plan was not sufficient to manage the Applicant's release.
25. In order to succeed in this reconsideration application, the Applicant would have to show that the decision of the Panel as to release, that followed the recommendations of all the witnesses, was wrong.
26. The fact that the witnesses were all recommending open conditions does not impact on that.
27. The Panel reached a decision on release which was clearly open to them in light of the evidence called and the recommendations. In those circumstances it cannot be considered to be irrational.

Decision

28. For the reasons I have given, I do not consider that the decision to refuse release was irrational and accordingly the application for reconsideration is refused.

Daniel Bunting
21 April 2021