

[2022] PBRA 6

Application for Reconsideration by Coddington

Application

1. This is an application by Coddington (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 15 November 2021 (the Decision Letter).
2. I have considered the application on the papers comprising:
 - a) A dossier of 879 numbered pages;
 - b) The Decision Letter; and
 - c) Written submissions by the Applicant's solicitors, by which reconsideration is requested (the Applicant's Submissions).

Background

5. On 15 January 1997, the Applicant received a mandatory life sentence with a minimum custodial tariff of 12 years less time served on remand following his conviction for murder. The minimum tariff expired in February 2008.
6. The Applicant was originally released on life licence in March 2013 but recalled in February 2014. He was released again in April 2019 but recalled in July 2019. He was released for a third time on 11 January 2021, after which his licence was again revoked, and he was returned to custody on 26 March 2021.
7. The Applicant was aged 18 when he received the sentence and is now aged 43.

Current parole review

8. The decision was made on the Secretary of State's first referral of the Applicant's case to the Parole Board since the most recent recall to custody that is referred to above.
9. The decision was made by a three-member panel of the Board that considered the Applicant's case at an oral hearing, conducted by remote video-links in October 2021. The panel comprised of three Independent Members of the Board.



Application and response

10. The Applicant's submissions assert that the decision is marred by irrationality and procedural unfairness.
11. By an email dated 6 January 2022, 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

12. 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

13. 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."

14. 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.
15. 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

16. 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

17. The Applicant expresses concern that insufficient time was given to reading the closing submissions provided by his solicitor given a negative decision was issued the same day. However, it is perfectly possible for a panel to agree a decision and finalise it in the time frame that is described. The Applicant does not suggest that the Board failed to engage with the contents of the closing submissions.

18. The Applicant submits that the Decision is irrational in suggesting that he cannot be managed in the community because there was no reoffending or evidence of threats or bad behaviour prior to recall and that the concerns regarding the Applicant's behaviour prior to recall were not directly related to his risk to the public. However, the Decision Letter describes the factors that justified the recall, in the panel's view, which are related to risk of serious harm, including the manageability of risk in the community. Those factors included reports of impulsive behaviour, threats to a partner and of self-harm, aggressive behaviour towards and attempts to manipulate staff, providing misleading information regarding his movements and potential move-on accommodation, and a lack of consequential thinking.
19. The Applicant submits that the Board should have directed a fresh assessment of psychology if they were to disagree with the most recent assessment within the dossier, and that the Board acted unfairly or irrationally in using the existing report 'against' the Applicant to support the decision, because the report writer had recommended release, and because the Applicant was not given notice that the Board's decision would be in conflict with the report. However, the report in question pre-dated the most recent release and recall, and is not relied on by the Board in the decision. There is no apparent irrationality nor any unfairness in the Board's decision not to obtain a new report. The Applicant did not commission his own report, nor did he submit at any earlier stage that a new report was required, and the potential value of a new report has not been explained by the Applicant. The Applicant was on notice that his release was not supported by the Community Offender Manager, who is recorded in the Decision Letter as the only professional witness to make a clear recommendation that post-dates the recall. There is no obligation of fairness on the Board to inform a prisoner in advance that the Board's decision will be in conflict with the recommendation in any report or of any witness.
20. The Applicant submits that the Panel were irrational in placing weight upon information that led to his recall which was not substantiated with evidence, including information provided by and the assessment of the Community Offender Manager, who had not met with the Applicant and had only spoken with him on the telephone. However, in reaching its decision, the Board can take into account the matters provided for at s.239(3) of the 2003 Act. The wide language of this provision was considered in **DSD**,

*"151. Section 229(3)(a) uses the term "information", as opposed to "evidence", as does s. 239(3)(b) in the context of the Parole Board. It is clear from Lord Judge's judgment in **Considine** that the sentencing judge is given considerable latitude as to the range of the information to be considered, subject always to considerations of fairness. In our judgment, the same principle applies to the Parole Board."*

21. In determining whether the Board's procedure was fair, the leading authority in which the Supreme Court reviewed the procedure is **Osborn v The Parole Board [2013] UKSC 61**. In that case, Lord Reid said, at [65], that *"The Court must determine for itself whether a fair procedure was followed... Its function is not merely to review the reasonableness of the decision-maker's judgment of what fairness*

required." The Court's assessment will turn on the facts of each case. If the Court is satisfied that the Board has followed a fair procedure, the issue of weight (if any) to be given to information or evidence is a matter of the Board's expert judgment.

22.The Decision Letter reveals that the Board followed a fair procedure, and there is nothing irrational in its assessment of the information and evidence that is referred to in support of the clearly and cogently reasoned decision.

Decision

23.Reconsideration is not directed.

Timothy Lawrence
13 January 2022