

[2023] PBRA 192

Application for Reconsideration by Edwards**Application**

1. This is an application by Edwards (the Applicant) for reconsideration of a decision of an oral hearing panel (the panel) dated the 6 October 2023 (issued on 12 October) not to direct his release.
2. Rule 28(1) of the Parole Board Rules 2019 (as amended) (the Parole Board Rules) provides that applications for reconsideration may be made in eligible cases (as set out in rule 28(2)) either on the basis (a) that the decision contains an error of law, (b) that it is irrational and/or (c) that it is procedurally unfair.
3. I have considered the application on the papers. These are:
 - a) The decision letter dated the 6 October 2023;
 - b) A request for reconsideration from the Applicant's legal representative dated the 20 October 2023; and
 - c) The dossier, numbered to page 548, of which the last document is the decision letter.

Background

4. The Applicant is now 35 years old. In 2010, when he was 22 years old, he received a sentence of imprisonment for public protection following his conviction for two offences of causing grievous bodily harm with intent, and two offences of false imprisonment (the Index Offences). The sentencing court determined that the Applicant must serve a minimum of five years in prison prior to being eligible to be considered for release by the Parole Board. The Applicant reached that eligibility date in May 2015.
5. The sentencing Judge said that the Applicant and his co-defendant had committed "*extremely serious offences*" and that the Applicant was the "*ring leader*". The Applicant used a heated steam iron against two victims who had been stripped to their underwear. The Judge said that his actions were "*a deliberate, sustained, sadistic attack ... it can only be described as gratuitous torture...*".
6. In May 2019, the Applicant was released on the direction of the Parole Board. He was recalled to prison on the 14 January 2022 and remained unlawfully at large until the 31 March 2022. Concerns were raised about his engagement on licence



and he was recalled following his arrest for further offences of affray, possession of drugs and possession of a knife.

7. The Applicant failed to disclose his arrest to Probation, failed to attend court and later (June 2022) received a fourteen-month determinate sentence. The circumstances of his further offending were that he was involved in a violent altercation in July 2021 and was seen brandishing a knife. The Applicant tried to flee when police arrived and a taser was deployed. He was found to be in possession of cannabis and a knife was recovered nearby.
8. On the 5 May 2022, the Secretary of State referred the Applicant's case to the Parole Board for it to decide whether re-release could be directed, or in the alternative whether the Applicant could be recommended for a move to an open prison.
9. On the 4 July 2022, a member of the Parole Board reviewed the Applicant's case on the papers and directed that an oral hearing be held. Reports were directed to be produced to ensure an effective hearing.
10. The panel considered the case at an oral hearing which took place over two dates on the 1 February 2023 and the 21 August 2023. The panel then adjourned for further evidence before concluding the case and issuing its decision letter dated the 6 October 2023. The panel did not direct release and did not recommend that the Applicant be progressed to an open prison.
11. At the oral hearing, the Applicant admitted that he had withheld his arrest from Probation, being fearful of a recall to prison. He stated that he would not have told Probation about the offences if the charges had been dropped. He said that he had been 'tipsy' on alcohol at the time of the offences and had used cannabis.
12. At the oral hearing, the panel heard from the Applicant's probation officer in the community, the official supervising his case in custody and a psychologist at the prison who had produced a directed assessment. The Applicant also gave evidence to the panel and he was legally represented.
13. The panel noted that professional witnesses supported re-release, although there had been uncertainty whether further risk reduction work might be available for the Applicant to complete in the community. The psychologist witness had described this work as 'essential' but had confirmed that she would still be supportive of release if the work was later deemed unnecessary by professionals in the community.
14. The panel was mindful of the professional views in the case, however, it disagreed with those views. The panel accepted that there had been no evidence of violence in prison and that the Applicant had demonstrated largely positive behaviour. However, the panel was "extremely concerned" by the Applicant's further convictions on licence, "particularly his use of a weapon which could have led to serious injury or death. It considered this behaviour to be offence paralleling...".
15. Although professionals had considered that further work to address risk could be undertaken, if necessary, in the community, the panel did not agree. It determined that any risk management plan would be "overly reliant on external controls", which

concerned the panel because the Applicant had *"a history of non-compliance, avoidance, absconding and committing offences on licence"*. The panel also had concerns, after hearing the Applicant's evidence, about his likelihood of openness and honesty with professionals, *"he willingly withheld vital information from professionals tasked with managing his risk for several months in the hope of 'getting away with it'"*.

16. In the panel's view, there remained a need for further work to be completed by the Applicant and it found that the work should be undertaken in custody prior to any likely safe release.

Request for Reconsideration

17. The application for reconsideration is that the panel's decision was irrational in that:

- a) The panel failed to explain the rationale for departing from the recommendations of all professional witnesses;
- b) The panel was wrong in stating that it *"agreed with the psychologist that [the Applicant] lacks insight into these crucial areas of risk ..."* when the evidence was that the psychologist supported release; and
- c) The panel acknowledged that the risk management plan was robust and that their conclusion was *"at variance to the professional report writers, but on this occasion, the panel simply preferred their own risk assessment"*. However, the panel failed to elaborate or fully explain as to why it deemed its assessment more appropriate than that of the professional witnesses who had worked closely with the Applicant and had known him for a substantial period of time.

The Relevant Law

18. The panel correctly sets out in its decision letter 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.

19. The Parole Board will direct release if it is no longer necessary for the protection of the public that the prisoner should be confined. The test is automatically set out within the Parole Board's template for oral hearing decisions.

Parole Board Rules 2019 (as amended)

20. Under Rule 28(1) of the Parole Board Rules 2019 the only types of decisions which are eligible for reconsideration are those concerning whether 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)). Decisions concerning the termination, amendment, or dismissal of an IPP licence are also eligible for reconsideration (rule 31(6) or rule 31(6A)).

21. Rule 28(2) of the Parole Board Rules provides the sentence types which are eligible for reconsideration. These are indeterminate sentences (rule 28(2)(a)), extended sentences (rule 28(2)(b)), certain types of determinate sentence subject to initial

release by the Parole Board (rule 28(2)(c)) and serious terrorism sentences (rule 28(2)(d)).

22. 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

23. 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."

24. 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.

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

Other

26. It is possible to argue that mistakes in findings of fact made by a decision maker result in the final decision being irrational but the mistake of fact must be fundamental. The case of **E v Secretary of State for the Home Department [2004] QB 1044** sets out the preconditions for such a conclusion: *"there must have been a mistake as to an existing fact, including a mistake as to the availability of evidence on a particular matter; the fact or evidence must have been "established", in the sense that it was uncontentious and objectively verifiable; the appellant (or his advisors) must not have been responsible for the mistake; and the mistake must have played a material (though not necessarily decisive) part in the tribunal's reasoning."* See also **R (Alconbury Developments Ltd) v Secretary of State for the Environment, Transport and the Regions [2003] AC 295**, which said that in order to establish that there was a demonstrable mistake of fact in the decision of the panel, an Applicant will have to provide *"objectively verifiable evidence"* of what is asserted to be the true picture.

27. In **Oyston [2000] PLR 45**, at paragraph 47 Lord Bingham said: *"It seems to me generally desirable that the Board should identify in broad terms the matters judged by the Board as pointing towards and against a continuing risk of offending and the Board's reasons for striking the balance that it does. Needless to say, the letter should summarise the considerations which have in fact led to the final decision. It*

would be wrong to prescribe any standard form of Decision Letter and it would be wrong to require elaborate or impeccable standards of draftsmanship."

The reply on behalf of the Secretary of State (the Respondent)

28. In a response on the 27 October 2023, the Respondent confirmed that he would not be making any representations.

Discussion

29. I have read the Applicant's application with great care and have thoroughly reviewed the dossier of evidence in this case, and the panel's decision letter.

30. I am afraid that the grounds advanced in the application are either not made out or do not meet the high bar of irrationality.

31. When reading the decision letter in its entirety, it is perfectly clear why the panel did not agree with the professional witnesses. Panels are not obliged to simply accept the recommendations of witnesses at an oral hearing. In fact, the panel was required to complete its own independent assessment of the case and would have been failing in its duty if it did not do so. It explained why it disagreed with the recommendations for release, finding that it had concerns about openness, honesty and likely compliance. It found that this would impact on the likely effectiveness of the risk management plan in this case.

32. The panel was mindful that professionals believed risk reduction work might be completed on licence but it determined that the work must first be completed in a closed prison. It was entitled to reach the conclusion that it did and it properly explained its reasons for doing so.

33. Even if the panel were in error, and for the avoidance of doubt I am not offering a view as to whether it was or was not, its passage about the psychologist's assessment of the Applicant's insight was not the sole or overriding reason for its decision to refuse release in this case. Any decision letter must be considered in its entirety, and when doing so in the Applicant's case, the panel provided clear and detailed reasons as to why his release was not being directed.

34. The panel's decision letter set out (in detail) its findings, assessments, operative reasoning and conclusions of the witnesses and took fully into account all of the evidence given to the panel, including that of the Applicant himself. The panel in my judgment satisfied the public law duty to provide evidence-based reasons and these adequately and sufficiently explained the conclusions it reached.

Decision

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

Robert McKeon
13 November 2023