

[2024] PBRA 122**Application for Reconsideration by Mitchell****Application**

1. This is an application by Mitchell (the Applicant) for reconsideration of an oral hearing decision of the Parole Board dated the 17 May 2024 not to direct the release of the Applicant following an oral hearing on 7 May 2024.
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2. Rule 28(1) of the Parole Board Rules 2019 (as amended by the Parole Board (Amendment) Rules 2022) (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. This is an eligible case, and the application was made in time.
3. I have considered the application on the papers. These are the oral hearing decision, the dossier consisting of 755 pages (including the decision letter) and the application for reconsideration.

Request for Reconsideration

4. The application for reconsideration is dated 6 June 2024. It has been drafted by representatives acting for the Applicant. It submits that the decision was irrational.
5. This submission is supplemented by written arguments to which reference will be made in the Discussion section below.

Background

6. The Applicant received a sentence of imprisonment for public protection (IPP) on 9 February 2007 following his guilty plea to offences of kidnap and threats to kill. No separate penalty was imposed for offences of taking a motor vehicle without consent, driving whilst disqualified, actual bodily harm, criminal damage and using a vehicle while uninsured. The tariff was set at 25 months less time on remand and expired on 19 February 2009.
7. The Applicant was 28 years old at the time of sentencing and is now 45 years old. This is his 4th review since recall in October 2018 following his release directed by the Parole Board in April 2018.

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8. The Applicant's case was referred to the Parole Board by the Secretary of State (the Respondent) in July 2022 to consider whether or not it would be appropriate to direct his release.
9. On 10 January 2023, the case was directed to oral hearing by a single member Member Case Assessment (MCA) panel. The hearing was listed for a remote hearing on 12 December 2023. The hearing was adjourned on the day for a psychological risk assessment (PRA) to be obtained. The adjourned hearing was re-listed for a remote hearing to be held on 7 May 2024.
10. The hearing on 7 May 2024 took place before a three member panel, including a psychologist member. The Applicant was legally represented throughout the hearing, the Respondent was not represented by an advocate. Oral evidence was taken from the Applicant, his Prison Offender Manager (POM), his Community Offender Manager (COM) and the HMPPS psychologist author of the previously directed PRA.
11. The panel did not direct the Applicant's release nor make a recommendation for open conditions. It is only the release decision that is open for reconsideration.

The Relevant Law

12. The panel correctly sets out in its decision letter dated 17 May 2024, 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 (as amended)

13. Rule 28(1) of the Parole Board Rules provides the types of decision which are eligible for reconsideration. Decisions concerning whether the prisoner is or is not suitable for release on licence are eligible for reconsideration whether 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)).
14. 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)).
15. 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



16. The power of the courts to interfere with a decision of a competent tribunal on the ground of irrationality was defined in *Associated Provincial Houses Ltd -v- Wednesbury Corporation* 1948 1 KB 223 by Lord Greene in these words "*if a decision on a competent matter is so unreasonable that no reasonable authority could ever have come to it, then the courts can interfere*". The same test applies to a reconsideration panel when determining an application on the basis of irrationality.
17. In *R(DSD and others) -v- the Parole Board* 2018 EWHC 694 (Admin) a Divisional Court applied this test to parole board hearings in these words 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.*"
18. In *R(on the application of Wells) -v- Parole Board* 2019 EWHC 2710 (Admin) set out what he described as a more nuanced approach in modern public law which was "*to test the decision maker's ultimate conclusion against the evidence before it and to ask whether the conclusion can (with due deference and with regard to the panel's expertise) be safely justified on the basis of that evidence, particularly in a context where anxious scrutiny needs to be applied*". This test was adopted by a Divisional Court in the case of *R(on the application of the Secretary of State for Justice) -v- the Parole Board* 2022 EWHC 1282(Admin).
19. As was made clear by Saini J this is not a different test to the *Wednesbury* test. The interpretation of and application of the *Wednesbury* test in Parole hearings as explained in *DSD* was binding on Saini J.
20. It follows from those principles that in considering an application for reconsideration the reconsideration panel will not substitute its view of the evidence for that of the panel who heard the witnesses.
21. Further while the views of the professional witnesses must be properly considered by a panel deciding on release, the panel is not bound to accept their assessment. The panel must however make clear in its reasons why it is disagreeing with the assessment of the witnesses.

The reply on behalf of the Secretary of State

22. On 18 June 2024 the Respondent confirmed that he would not be submitting any representations.

Discussion

23. It is submitted that all the professional witnesses recommended release and that the panel's reasons for rejecting those recommendations were irrational. It is submitted that the panel's use of the word "*core*" rather than "*key*" to describe the risk reduction work remaining to be completed had an impact on the case. It is



submitted that the panel should not have rejected the reports that indicated that the work required could be completed in the community without further information. It is further submitted that the Applicant has completed all the work required of him. It is submitted that the decision goes against the evidence of all the witnesses.

24. The panel considered all the evidence presented and in particular carefully considered the evidence presented in the PRA. Whether the word "key" or "core" was used made no difference in this case, the relevance being that further work was needed, a factor not in dispute between the witnesses nor disputed by the Applicant himself. Although the grounds submit that the wording has an impact on the case the grounds fail to set out what the impact is or how that made a difference to the case.
25. The panel noted the recommendation for release made by all the witnesses however the decision making process is not a rubber-stamp exercise to endorse majority or unanimous views of witnesses. The panel analysed all the reports and gave reasons why it reached the conclusion set out. The panel did not need to adjourn to obtain further information about work available in the community as the panel did not reject the claim that the work to be completed could be done in the community, but rather took the view that the work should be completed before release. The panel noted the Applicant's offending history and in particular how quickly on his last release he had resumed a relationship without disclosure, which had previously involved domestic violence. The panel noted both his dishonesty and his non-compliance very soon after his release on IPP licence.
26. The Applicant no doubt is disappointed that the decision did not follow the recommendation of the witnesses however that is not the test and is not enough to establish irrationality in law. The decision is fully reasoned and those reasons were ones that were open to the panel; they make clear why the panel disagrees with the recommendations of the witnesses. The legal test of irrationality, set out above, is essentially that the panel's decision not to release the Applicant was so illogical or unreasonable that no other panel would have come to it. That is a high test that is not met in this case.
27. Accordingly, this application fails.

Decision

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

B Mensah
3 July 2024