

[2019] PBRA 15

Application for Reconsideration by Stokes

Application

1. This is an application by Stokes (the Applicant) for reconsideration of a decision by a Parole Board panel not to direct his release on the basis that the decision was irrational.
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 that the decision is (a) irrational or that it is (b) procedurally unfair.

Background

3. In 1978 the Applicant was 19 years old. On 12 October 1979, he was sentenced to life imprisonment for the murder. He was also convicted of robbery 2 days after the murder. His tariff was set at 15 years and one day. He was first released on licence in 2005. He was recalled 5 months later. In 2008 he progressed to open conditions but returned to closed conditions in 2013. In January 2016 he was again returned to open conditions. He was released on licence for the second time in December 2017. In July 2018 he was recalled to prison again.
4. On 20 June 2019 a panel considered the Applicant's case at an oral hearing and subsequently on the papers on 24 July 2019. It declined to order release but recommended that he be moved to open conditions.

Request for reconsideration

5. The application is dated 14 August 2019. The grounds allege in summary that:
 - (a) Evidence concerning the Applicant's use of the internet was misrepresented in the decision letter.
 - (b) Evidence given by the Offender Manager (OM), was 'hyperbolic', and 'speculative' and that the panel placed too much weight on it in reaching its decision.
 - (c) The panel were (wrongly) dismissive of the amended Risk Management Plan put forward for their consideration.



- (d) The panel failed to explain properly its decision to reject the recommendations of the 5 witnesses who had supported release.
6. Perhaps unsurprisingly in a case now 40 years old, and which the Parole Board had first considered in 1992, the dossier was extensive. The Applicant has had a large number of parole hearings since his first in 1992.
 7. The panel had the benefit of reports and other material which covered the length of the sentence, in particular the period since the Applicant has been in open conditions or at liberty on licence. The events which led to his most recent recall were extensively canvassed. On all three occasions the concerns which led to the recall/re-categorisation concerned relationships which gave rise to concern about risk.
 8. The Offender Supervisor (OS) and OM both recommended release, although the OM was understandably concerned by the frequency with which the Applicant had breached his conditions in the period before his recall. Three psychologists gave evidence. They too recommended release on strict conditions, although conceded that there were benefits to be found in a transfer back to open conditions.
 9. In the end, the panel decided not to direct release, in particular because the Risk Management Plan was similar in almost all respects to the previous Plan which had led to his recall, because of the breaches of licence. The most recent breaches had all been connected to his principal risk of causing serious harm within or within the context of, intimate relationships.

The Relevant Law

10. In **R (on the application of 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."

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. This strict test for irrationality is not limited to decisions whether to release; it applies to all Parole Board decisions.

Discussion

11. Misrepresentation of the alleged use of the "sex sites". The Applicant's case was that he had been accessing a social networking website and had been targeted by persons who had tried to tempt him into using sites of concern.
12. The panel's real concern concerned relationships with real people and the risks to them if such relationships were not closely monitored and the person(s) concerned were not aware of the Applicant's previous history. It is clear that the concern expressed by the panel was more for those with whom he might seek a relationship and who might be at risk of physical harm as a result. There was ample evidence, with or without the internet, to suggest that the Applicant wished to form a new relationship.
13. Over-reliance on the comments of the OM which underestimated the Applicant's compliance with his licence conditions. Clearly the OM, who was in the end recommending release, had found, as is conceded, the Applicant a difficult person to supervise. That in itself may well not have given rise to concerns about his risk of causing serious harm to others, but it was certainly a matter which the panel was entitled to consider when weighing the pro and cons of release against the history of violence to his partners and around relationships which was part of his background.
14. Failure to give sufficient weight to the proposed changes to the Risk Management Plan, in particular to respect a specific curfew and the proposal that the Applicant receive psychological support in the community from the STRIVE team. Of course, it would be impossible for the panel to predict how the new factors would assist in reducing the risk the Applicant posed, in particular against the background of repeated failures to comply with earlier regimes whether on licence or in open conditions. The question therefore is whether the panel's decision to reject the new conditions as providing sufficient protection to the public was 'irrational'.
15. Failure to explain why the panel rejected the recommendations of 5 professionals that the Applicant be released. There is nothing in this ground. The reasons are clearly set out at the conclusion of paragraph 7 and in paragraph 8.

Decision

16. While it is easy to understand the disappointment of the Applicant at the decision, and it is possible that a different panel might have come to a different decision, it is impossible to characterise the decision letter, its reasoning and conclusions as 'irrational' within the definition set out above. Accordingly, the application for reconsideration is refused.

Sir David Calvert-Smith
16 September 2019



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