

[2019] PBRA 17

Application for Reconsideration by Crawford

Application

1. This is an application by Crawford (the Applicant) for reconsideration of a decision by a three-member panel not to direct his release but, in the alternative, to recommend to the Secretary of State that he should progress to open conditions, following an oral hearing on 6 August 2019.
2. I have considered this application on the papers. These comprise of the dossier, the provisional decision letter of the panel dated 9 August 2019, the application for reconsideration dated 30 August 2019 and the response of the Secretary of State by e-mail dated 10 August 2019.
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 that the decision is (a) irrational or that it is (b) procedurally unfair. This is an eligible case.

Background

4. On 2 March 2006, the Applicant was sentenced to Imprisonment for Public Protection (IPP) with a minimum period to serve of 1 year 7 months and 26 days (the tariff) before he was eligible to apply for parole, having pleaded guilty to four offences of sexual activity with a child. That minimum period expired on 26 October 2007.
5. He was released on 15 August 2016 pursuant to a decision of an earlier panel on 6 July 2016 but recalled, following revocation of his licence on 18 April 2018, for breaches of his licence conditions.

Request for Reconsideration

6. The application for reconsideration is as follows:

"The client's instructions: The decision is irrational because all report writers recommended release, there was consistent opinion that open conditions would add little to the evaluation of risk or is necessary for risk to be managed in the community. Attached is a copy of the client's letter to the Parole Board."

7. That letter consisted of a three-page document described as "Personal Representations for the Panel to review the Decision." In it, the Applicant



acknowledged breaches of his licence conditions. He claimed, since recall, to have been highly motivated to engage and carry out the recommended courses and work in order to reduce his risk factors. In addition, he set out details of his personal and health difficulties and his opposition to a period in open conditions.

8. The Secretary of State indicated that he offered no representations in response to the application.

Current parole review

9. The Secretary of State referred the Applicant's case to the Parole Board in June 2018. It was originally listed for 11 December 2018 but adjourned, at the request of the Applicant's Legal Representative, to enable psychological 1:1 work to be undertaken and further reports obtained.
10. At the hearing on 6 August 2019, an application was made for release and supported, in oral evidence, by an Independent Psychologist and the Applicant's Offender Supervisor and Offender Manager who advised that the Applicant had no outstanding treatment needs, that he had developed the necessary controls in accordance with the Risk Management Plan, which envisaged initial release to designated accommodation and robust licence conditions.
11. In its decision, the panel found that, despite the Applicant having prior to the hearing accepted full responsibility for his breaches of licence conditions, the Applicant had sought in oral evidence to blame external factors including his relationship with his police Offender Manager to justify his actions. The panel judged, having considered the Applicant's oral evidence, that he would not be able to manage his risk factors in the community in accordance with his Risk Management Plan. It emphasised that, whilst in the community, there had been no warning signs and that the breaches had been discovered as a matter of luck. The Risk Management Plan had, therefore, not been effective. Having decided to refuse release, it found that there were significant benefits to be gained from a period in open conditions with a more controlled environment over a longer period and, accordingly, recommended a transfer to Category D.

The Relevant Law

12. 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 uses



the same word as is used in judicial review demonstrates that the same test should be applied. This test for irrationality is not limited to decisions whether to release but applies to all Parole Board decisions.

Discussion

13. In my judgment, the decision to refuse release cannot be said, in any way, to meet the test of irrationality. The fact that the panel did not follow the advice of professional witnesses, though relevant, does not, in itself, constitute evidence of irrationality. I am satisfied that the panel, having clearly considered, with care, the documents in the dossier and the oral evidence, gave a clear and reasoned decision in which it emphasised that the Applicant's evidence did not indicate the development of internal controls which other witnesses suggested had been developed. An assessment of credibility and reliability is a prime function of oral hearings and, in my judgment, the panel was fully entitled to come to its decision.
14. I have considered the specific submissions of the Applicant. Reconsideration is not a re-examination of evidence or consideration of personal circumstances and I can find nothing which suggests that the test of irrationality is met.

Decision

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

Edward Slinger
18 September 2019

