

[2019] PBRA 19

Application for Reconsideration by Johnston

Application

1. Johnston (the Applicant) applied for reconsideration of a decision by the Parole Board dated 21 August 2019 not to direct his release on licence.
2. The Parole Board Rules 2019 provide that in relation to some decisions made by the Board, either party may apply to the Board for the case to be reconsidered on the grounds that the decision is— (a) irrational, or (b) procedurally unfair. The Applicant's case is eligible for reconsideration.

Background

3. In September 2013 the Applicant was sentenced to an extended sentence of 8 years for offences of attempted robbery and possession of an offensive weapon. The custodial period of the sentence was 4 years. The Applicant was released on licence on 24 June 2016 and recalled the same day for failing to comply with the conditions of his licence. He has remained in custody since then.

Request for Reconsideration

4. There are grounds for reconsideration submitted by the Applicant's legal representative and further material in support of the application from the Applicant himself. The legal representative's grounds are set out briefly but clearly for which I am grateful. Such brief and clear grounds are a model of how we would wish grounds for reconsideration to be drafted. I have considered all the information that has been submitted. The principle ground for the application is that, in the decision letter, it is asserted that the Applicant was sentenced on 24 February 2017 to 12 months imprisonment for offences of burglary, possession of a bladed article, intimidating a witness and battery. That assertion was not correct as is accepted by the Secretary of State. It is said that, as a result, the decision is procedurally unfair and should be reconsidered. There are other grounds set out by both the legal representative and the Applicant suggesting that, on the information that the panel had before them, it was irrational for the panel to reach the decision that it did and that the Applicant's case was not considered in sufficient detail.
5. The Secretary of State has made no submissions but has checked whether there was a conviction in 2017 as asserted in the decision letter and is satisfied that there was not.

Discussion

6. It is a well-established ground for Judicial Review that the tribunal has taken into account information which it is accepted is inaccurate. The grounds for reconsideration mirror those for Judicial Review and therefore it is also a ground for reconsideration. I accept that it is capable of being both irrational and procedurally unfair to take into account inaccurate factual information in making a decision. So far as I can see, this inaccurate information did not come from the dossier or anything said at the hearing. I have checked to see whether it could have been a typographical error and it does not appear to have been.
7. It will not invariably follow that if there is an inaccurate fact or facts in the decision letter that an application for reconsideration will be granted. Reconsideration, like Judicial Review, is a discretionary remedy and, if the Reconsideration Panel is satisfied that the incorrect fact did not affect the decision then the application is likely to be refused. In this case the incorrect fact of that conviction was capable of being relevant to an assessment of future risk. That is capable of impacting on the rationality of the decision. In the course of its decision letter, the panel said that it was concerned that the Applicant could cause serious harm in the course of a burglary if there was a confrontation with the occupant of the property. The incorrect fact of the conviction in 2017 could have fed into that finding. On the other hand, the 2017 conviction is never referred to again and the details set out of the Applicant's recall in the decision letter make it clear that the Applicant was in custody in 2017. It follows that there are concerns about the rationality of the decision.
8. I have also had to consider whether, as a matter of procedural fairness, the decision should be reconsidered when there is a serious mistake of fact in the decision letter. It is important that decisions are not only fair but are also seen to be made according to a fair procedure. If incorrect information is included in the decision letter, the fairness of the procedure is called into question.

Decision

9. Having balanced all those factors, I have decided that this application succeeds, and the matter should be reconsidered. I have considered the other grounds and I am not convinced that they would have provided grounds for reconsideration, but in view of my decision on the main ground, it is not necessary for me to consider them further.

Directions

10. This is the first successful application for reconsideration, and I have had to consider what directions would be appropriate. The reconsideration should be expedited. There should be a fresh hearing before a new panel. The decision letter must be removed from the dossier and must not be seen by the new panel. I think it is necessary that the panel should be told that this is a reconsideration but none of the reasons as to why it was ordered. The new panel should also be advised



that the fact that this is a reconsideration should not in any way effect their decision. It is a complete re-hearing.

John Saunders
24 September 2019