

[2020] PBRA 110

## Application for Reconsideration by Ghuman

### Application

1. This is an application by Ghuman (the Applicant) for reconsideration of a decision of a single member panel completing a paper review dated 3 July 2020 (issued on 8 July 2020) not to direct his release.
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 (a) that the decision is irrational and/or (b) that it is procedurally unfair.
3. I have considered the application on the papers. These are;
  - (a) The dossier of 108 pages;
  - (b) The decision letter; and
  - (c) The application for reconsideration.

### Background and Current Parole Review

4. The Applicant is serving an extended sentence imposed on 23 December 2015, comprised of a custodial element of four years, six months and an extended licence period of two years, six months, following conviction for kidnap with intent to commit a sexual offence. He received concurrent determinate sentences for false imprisonment, burglary (dwelling) and attempted burglary (dwelling). His sentence end date is recorded as 29 June 2022.
5. He was released at his conditional release date on 27 December 2019 and recalled to custody on 29 January 2020 after breaching his licence conditions and the rules at his designated accommodation.
6. A member of the Parole Board considered his case on the papers on 26 March 2020 and directed it to an oral hearing. The member indicated that an oral hearing was necessary to *“enable examination of the circumstances surrounding recall, especially given that [the Applicant] challenges the appropriateness, and an opportunity to explore further the current level of risk”*.
7. Directions were made by the member at the paper review which included a direction for a previous Parole Board decision to be added to the dossier. Directions were also made for updated reports to be prepared by the Applicant’s Offender Manager and Offender Supervisor four weeks before any listed hearing.



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8. Following that, the previous Parole Board decision from 2018 was added to the dossier and so was a medical screening tool report from 2019. In addition, the Offender Manager made an application for a specific risk assessment to be considered and this was granted by a duty member on 26 May 2020.
9. By the time these directions were made, the Parole Board had halted all face to face hearings due to the COVID-19 pandemic. In order to ensure cases received a timely review during the pandemic, an intensive paper review of cases awaiting listing for oral hearing was conducted. The Applicant's case was included in this review and on 29 May 2020 a single member considered the case at another paper review. His hearing had not yet been listed. The member concluded that "*further information could be provided which could impact on the necessity for an oral hearing*". Directions were then made for representations from the Applicant or his Legal Representative and the Secretary of State regarding the "*proposal to conclude the case on the papers*".
10. Representations from the Applicant's Solicitor dated 19 June 2020 were received. They reaffirmed the previous representations from 3 March 2020 and asked for a direction for release on the papers. If that could not be granted, they confirmed the need for the oral hearing and made submissions regarding the hearing, including panel composition now that a psychological assessment had been directed. The Secretary of State confirmed that he did not wish to make any representations by way of email from a case manager dated 2 June 2020.

## Application for Reconsideration

11. The application for reconsideration is dated 27 July 2020. It is a document of four pages submitted by Solicitors for the Applicant.
12. The grounds for seeking a reconsideration are as follows:
  - (a) The decision is procedurally unfair. Had the evidence and the representations been properly taken into account, fairness would have required an oral hearing to allow the Applicant to put his case forward. There were reasons arising from the Applicant's version of events and further evidence presented after an oral hearing was directed to suggest an oral hearing was appropriate and necessary to achieve fairness.
  - (b) The material before the Parole Board suggesting fairness required an oral hearing as set out in principles in **Osborn**, and the lack of consideration thereof, has resulted in an irrational decision (in addition, the body of the application goes on to point out inaccuracies within the letter).

## The Relevant Law

13. The panel correctly sets out the test for release in its decision letter dated 3 July 2020.



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## Parole Board Rules 2019

14. Under Rule 28(1) of the Parole Board Rules 2019 the only kind of decision which is eligible for reconsideration is a decision that the prisoner is or is not suitable for release on licence. This is such a case.
15. Such a decision is eligible for reconsideration on the basis that (a) the decision is irrational and/or (b) that the decision is procedurally unfair.
16. Rule 21 of the Parole Board Rules 2019 allows for a decision on the papers after there has been a direction for an oral hearing but only if certain criteria are met. Rule 21 states;

*"21.—(1) Subject to the provisions of this rule, where further evidence is received by the Board after a panel have directed that a case should be determined at an oral hearing under rule 19(1)(c) or 20(5), a panel chair or duty member can direct that the case should be decided on the papers if an oral hearing is no longer necessary.*

*(2) Where further evidence is received under paragraph (1), the Board must notify the parties of the receipt of the evidence as soon as practicable.*

*(3) Within 14 days of notification of the receipt of further evidence under paragraph (2), the parties may make representations on— (a) the contents of the further evidence, and (b) whether they agree to the case being decided by a panel on the papers.*

*(4) After the 14-day period for the parties to make representations under paragraph (3), the panel chair or duty member will consider the further evidence and any representations made, and make a direction that the case should— (a) be decided by a panel on the papers, or (b) continue to be determined by a panel at an oral hearing under rule 25."*

### *Irrationality*

17. 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."*

### *Procedural unfairness*

18. Procedural unfairness means that there was some procedural impropriety or unfairness resulting in the proceedings being fundamentally flawed and therefore, producing a manifestly unfair, flawed or unjust result. These issues



(which focus on how the decision was made) are entirely separate to the issue of irrationality which focusses on the actual decision.

## The reply on behalf of the Secretary of State

19. The Secretary of State did not submit any representations in response to the application.

## Discussion

20. Although the Applicant has provided detailed grounds, he has not in fact submitted that the decision did not comply with Rule 21. However, the decision to proceed on the papers is governed by Rule 21 and I, therefore, have to consider whether it complies.

21. The starting point for a decision to be concluded on the papers after a direction to oral hearing is the receipt of 'further evidence'. The only additional documents received at the point that this case was reviewed in May 2020 were a previous Parole Board decision and the medical screening tool report that is barely legible but was from 2019, the dossier having already contained information that the Applicant believed he had previously suffered an injury. The single member did not make mention of the Parole Board Rules or Rule 21 but asked for representations from parties. These representations could reasonably be assumed to be those under Rule 21(3) and can only be directed once the 'further evidence' is received.

22. I have to consider whether the documents received since the direction for an oral hearing could, and should, amount to 'further evidence'. It is right to say that the Applicant himself considers that it might, as he refers in his application to the medical screening tool report and the request from the Offender Manager for a psychological assessment as further evidence.

23. In the decision letter it is said that "*having considered the subsequent representations made on your behalf by your solicitors and the additional written evidence provided since an oral hearing was directed, a different Parole Board member has decided to conclude your current review on the papers under Parole Board Rule 21*". The 'additional written evidence' is not identified or specifically referred to.

24. It is plain to me that Rule 21 envisages 'further evidence' to be new evidence that materially affects the risk assessment or management of that risk so as to enable a decision to be made on the papers. Rule 21 is not to be used as a method simply to re-visit the Member Case Assessment (MCA) stage and retake a decision under Rule 19 of the Parole Board Rules 2020. The Board received a previous decision as directed that was made in 2018 prior to the Applicant's release which was not new evidence and did not reveal anything significant. The Board received the medical screening tool report which, due to the handwriting and subsequent scanning of the document, is not entirely legible but certainly does not amount to any new assessment of risk. The request by the Offender



Manager for a specific risk assessment was just that, a request for further information rather than further evidence itself.

25. The decision to conclude on the papers appears to have been based, not on further evidence, but on the further representations received as a result of the directions made in May 2020. Whilst representations may amount to 'further evidence' if they were to contain significant new information, this was not the case here. Those representations do not differ significantly from the previous document submitted in March 2020 because essentially there was nothing new to comment on other than the indication that the case might be concluded without a hearing. In addition, those representations should only have been directed once further evidence was received and in effect, none was.
26. The decision to proceed on the papers therefore appears to be a breach of the Rules.
27. Given my finding in respect of Rule 21, I do not propose to address the further grounds as detailed in the application, save to say that in **Osborn [2013] UKSC 61**, the Supreme Court gave guidance as to the types of cases where the Parole Board should conduct an oral hearing which includes where there are conflicts of evidence. The Applicant disputes matters relating to his recall and argues that he has completed further offending behaviour work than is reported and therefore has reduced his risk. These are matters which are relevant to the question of whether an oral hearing is required.

## Decision

28. The breach of the rules was procedurally unfair and consequently the application for reconsideration is granted. This case should now be listed for an oral hearing as per the original MCA assessment in March 2020.

**Cassie Williams**  
**19 August 2020**

