

[2020] PBRA 132

Application for Reconsideration by Subryan

Application

1. This is an application by Subryan (the Applicant) for reconsideration of a decision of the Parole Board made under rule 25(1) of the Parole Board Rules 2019 (the 2019 Rules) that the Applicant was unsuitable for release (the Decision).
2. Rule 28(1) of the 2019 Rules 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, comprising a dossier of 350 numbered pages including the letter giving notice of the Decision with reasons dated 18 August 2020 and written submissions by the legal representative on behalf of the Applicant dated 2 September 2020.

Background

4. The Applicant is serving an Extended Determinate Sentence of five years and four months imprisonment with an extension period of three years. The sentence was given to the Applicant on 11 November 2015, at which time he was 35 years' old. The Applicant became eligible for parole on 20 April 2020. The Conditional Release Date for the sentence is 29 January 2022 and the Sentence Expiry Date is 2 May 2025.

Request for Reconsideration

5. The application for reconsideration was received by the Board on 2 September 2020.
6. The Applicant's written submissions assert that there was procedural unfairness in the Decision being contrary to the recommendations of the four professional witnesses and in what is asserted to be an inadequacy of the reasons for departing from those recommendations.

Current parole review



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7. The Decision was made on the Secretary of State's referral of the Applicant's case to the Parole Board to consider whether or not it would be appropriate to direct the Applicant's release.
8. The Decision was made by a panel that considered the Applicant's case at an oral hearing on 27 July 2020 that I assume was conducted remotely due to restrictions on social contact due to the COVID-19 pandemic. The Applicant was 40 years' old at the date of the hearing, and the date of the Decision.

Relevant Law

9. Rule 28 of the Parole Board Rules 2019 provides that a party may apply to the Board for the case of a prisoner who is serving a sentence of a type that is specified by the rule to be reconsidered on the grounds that a decision on the prisoner's suitability for release is irrational or procedurally unfair.

Irrationality

10. 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 review 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."

11. 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.
12. The application of this test in applications for reconsideration under rule 28 has been confirmed in previous decisions, such as **Preston [2019] PBRA 1**.

Procedural Unfairness

13. 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



14. On 10 September 2020, the Board was informed by the Public Protection Casework Section, on behalf of the Secretary of State, that no representations were offered in response to the Applicant's reconsideration application.

Discussion

15. The Applicant's assertions are in reality challenges to the rationality of the Decision.
16. In the Applicant's case, the Decision not to direct release is contrary to the opinion and recommendation of all four professional witnesses. However, the Parole Board is not obliged to adopt the opinions and recommendations of professional witnesses. It is important that a panel should explain clearly a decision that is contrary to the opinions and recommendations of all the professional witnesses: **R (Wells) v Parole Board [2019] EWHC 2710**. However, it is the Board's responsibility to make its own risk assessment and to evaluate the likely effectiveness of any risk management plan proposed on the totality of the evidence, which it may be expected to perform with the benefit of its expertise in the realm of risk assessment; see **DSD**, for example.
17. The Applicant's written submissions assert that the panel gave too much weight to his previous abscond and did not acknowledge all the work he had been completed since then in relation to his mental health or examples that were provided where he had effectively utilised these internal controls. The submissions also refer to the opinions of the two Psychologist witnesses that the risk posed by the Applicant was neither high nor imminent, and the "*clear risk management plan*" including a three months period in designated accommodation, "*stringent licence conditions*", "*monitoring*" and support.
18. The material findings that are stated in the Decision include that, despite the Applicant having made notable progress recently, including therapeutic work and a good relationship with the Offender Manager, the effect of that work had yet to be properly tested in less supportive environments. Reasons are given for considering that the Applicant was still developing insight into the reasons for his offending and failure to comply with supervision in the community, which included absconding from custody and remaining unlawfully at large for some five months. Reasons are given for considering that the Applicant in particular lacked insight into the harm that examples of his past behaviour was likely to have caused to others, and his current risk factors, including what the panel considered was a display by the Applicant in oral evidence of his continuing ignorance or minimisation of the anti-social ways of thinking that the panel considered to be key risk factors. It is stated in the letter that for those reasons it was considered that the Applicant's risk had been underestimated, and that the risk management plan needed to be more reliant on external factors.
19. Reasons are given in the Decision letter for considering that the risk management plan was inadequate, including the uncertainty as to the location of the designated accommodation and accommodation after the placement in designated accommodation



It is also noted that contact with the current Offender Manager would be limited to telephone only due to restrictions on contact during the COVID-19 pandemic, and that it was considered that the Applicant would be unlikely to access the recommended therapy and other mental health support speedily in the community. It is noted in the Decision letter that the assessment of professional witnesses was that the Applicant would be able to manage such delays, but it is stated that that confidence was considered to be misplaced given the Applicant's history of disengagement and poor compliance, during which the serious index offences had been committed. It was therefore considered that disengagement or becoming demotivated could escalate the Applicant's risk very quickly and without warning, and the risk management plan was therefore inadequate to protect the public.

20. I consider that the Decision not to direct release, contrary to the opinion and recommendation of the professional witnesses, is adequately justified by the reasons stated in the Decision letter that I have summarised above.

Decision

21. The application for reconsideration is accordingly refused.

Timothy Lawrence
21 September 2020

