

[2020] PBRA 3

Application for Reconsideration by King

Application

1. This is an application by the Secretary of State (the Applicant) for reconsideration of a decision of the Parole Board to direct the release of King (the Respondent) dated 19 November 2019.
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 the decision letter, the dossier and the application for reconsideration.

Background

4. In April 2016 the Respondent was sentenced to an extended determinate sentence of 7 ½ years for offences of rape of a child under the age of 13 and a sexual assault. The custodial period was 6 ½ years and there was a one year licence extension. The victim of the offences was the Respondent's daughter then aged 7 or 8. The offences happened on the same occasion and otherwise the Respondent had no convictions.

Request for Reconsideration

5. The application for reconsideration is dated 11 December 2019.
6. The grounds for seeking a reconsideration are that the decision was irrational. The Applicant further argues that the decision was unfair in that there were elements of procedural unfairness. I can find nothing in the application for reconsideration to justify the contention that there was procedural unfairness and accordingly I shall consider this application solely on the ground of irrationality.

Current parole review

7. The Respondent's case was referred to the Board to consider whether to direct his release on 12 January 2019. The reference does not include an invitation to the Board to consider recommending a transfer to open conditions in the event that it does not direct release.



8. The matter was considered by an MCA member on 15 April 2019 when the matter was deferred for further reports including a psychological risk assessment. The Respondent's legal representative said in their representations that they had commissioned a psychological risk assessment of their own. There was a direction that that should be disclosed by 29 July 2019 if it was to be relied upon. It has never been disclosed if it was obtained. The Respondent declined to be interviewed by the Psychologist instructed on behalf of the Prison Service to produce a report. The Psychologist prepared a report nevertheless but without the benefit of being able to interview the Respondent.
9. In making the decision to release the panel considered a dossier of 185 pages. This included reports from the Offender Manager (OM) and the Offender Supervisor (OS) and from the Prison Psychologist. The panel also considered representations from the Respondent's legal representative.

The Relevant Law

Parole Board Rules 2019

10. **28.**— (1) *Subject to paragraph (2), where a decision has been made under rule 19(1)(a) or (b), 21(7) or 25(1), a 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.*

11. Irrationality: 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."

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.

12. In **DSD** the Court decided that a decision to release could be quashed if the panel had made an irrational decision not to investigate matters which ought to have been investigated before reaching their decision. That failure was capable of rendering the decision irrational.
13. In this case the Applicant contends that there was insufficient evidence to justify the decision to release or, in the alternative, there was a failure to adequately explore the risk of further offending.



The reply on behalf of the Respondent

14. The Respondent contends that the very high test for reconsideration as set out in **DSD** has not been met. It is contended on his behalf that the panel had to reach its own judgment and was entitled to disagree with the opinions of the professionals. It is pointed out that the panel was entitled to release on the papers and, if satisfied that the test was met, was bound to do so.

Discussion

15. I have carefully considered all of the submissions made on behalf of the Respondent which make perfectly valid points.
16. Both the OM and the OS do not consider that the Respondent should be released. The OM is concerned at the failure of the Respondent to complete any risk focussed work. The Respondent has always denied the offence and for that reason would not be accepted on most courses intended to reduce risk. It has been suggested to him that he could apply to go on a training course addressing sex offending which is designed for offenders who deny the offence. He has so far not been willing to do so. He has a mistrust of professionals, which the OM believes may make it difficult to manage him while he is on licence. The Psychologist in her report said:

"It is of concern that [the Respondent] has reported that he does not share his true thoughts and feelings with those working with him and may wear a mask; therefore it is crucial that he develops positive working relationships prior to progressing into the community. Therefore I cannot recommend direct release at this time due to concerns that [the Respondent] may not be able to be open and honest and engage with professionals managing his risk."

The OS takes up those reservations in recommending that the Respondent is not released at this stage.

17. The panel recognised these problems. Part of the decision letter reads: "Your continued denial makes it difficult to assess the triggers to offending. The failure to develop a relationship with your OM is also recognised."
18. The panel in the decision letter points to matters which are supportive of release: the Respondent is estimated to be at a low risk of re-offending. The risk is likely to be elevated if the Respondent was allowed to be part of a family unit where there are children, but that situation would be controlled. The Respondent has a supportive family. The Respondent has behaved well in custody and recognises the seriousness of non-compliance with authority if released. He has made no attempt to contact the victim or the victim's family while in custody. All those matters are capable of supporting the release decision, although some would attract greater weight than others.

Decision

19. The panel was entitled to reach a decision contrary to the recommendations of all the professionals but the High Court has made it clear that, where that does happen, the panel needs to give detailed reasons as to why it is disagreeing. See **R(Wells)**



v the Parole Board [2019] EWHC 2710. In this case all the witnesses agreed that the Respondent did not have a good relationship with professionals. They were the ones who would have to manage his risk on release. The witnesses' opinion was that the Respondent mistrusted the professionals and that it was necessary that he developed a good relationship with them before it would be safe to release him. The Prison Psychologist considered it to be crucial. While the Respondent had told the Board that he had instructed a psychologist to prepare a report, none has been served. While no inference can be drawn from that, it does mean that the Prison Psychologist's evidence was unchallenged at the time the MCA member considered it. The previous MCA member had considered it necessary to get a psychologist's report before considering the merits of the case. The report did not support release. The panel deals with this part of the evidence by saying: "*the panel was satisfied that a robust [Risk Management Plan] has been provided which has the potential to manage your risk to children.*" In my judgment that is not sufficient to give a clear explanation as to why the panel was disagreeing with the view of all the professionals. However robust the Risk Management Plan, it has to be administered by professionals who are responsible for containing the risk. The reasons for the opinions of the professionals needed to be explored in my judgment. If the panel disagreed with them, having explored those reasons, then a decision to release may well have been justified.

20. So, while it may be that this Respondent is safe to be released, in my judgment, before anyone could be satisfied about that, further examination of the evidence was required. That could only be done by having an oral hearing. The failure to give adequate reasons and to adequately explore the evidence are well accepted grounds for judicial review. Accordingly, the application for reconsideration is granted.

John Saunders
3 January 2020

