

[2021] PBRA 144

## Application for Reconsideration by Maxey

### Application

1. This is an application by Maxey (the Applicant) for reconsideration of a decision of an oral hearing panel which, on 20 September 2021, after hearings on 2 July 2021 and 6 September 2021, decided not to direct his release on licence.
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 559 page dossier provided by the Secretary of State which included the decision letter, the application for reconsideration and an email from the Public Protection Casework Section (PPCS).

### Background and current parole review

4. The Applicant is now aged 23. On 23 September 2016, he received an extended sentence comprised of a custodial period of 5 years and a licence extension of 3 years following conviction for an offence of wounding with intent to cause grievous bodily harm. He was 17 years old when he committed the offence in May 2016. He stabbed and slashed the male victim with a knife, causing serious injury.
5. The Applicant had previous convictions. He was first convicted at the age of 14.
6. His case was considered by the Parole Board at an oral hearing in October 2019. That panel made a direction for release and consequently, he was released on 27 November 2019. His licence was revoked and he was recalled to custody on 20 December 2019.
7. This was his first review by the Parole Board since his recall. His case was referred by the Secretary of State and on 4 February 2020 a member of the Parole Board directed his case to an oral hearing. Due to the coronavirus pandemic, there were various delays to the case being listed.
8. An oral hearing was listed for 1 March 2021 but had to be deferred on 23 February 2021 due to directions not having been complied with and therefore vital evidence was not yet available. The Panel Chair at that stage determined that the case could now be heard via video link rather than requiring a face to face hearing.



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[info@paroleboard.gov.uk](mailto:info@paroleboard.gov.uk)



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9. The case was then listed for a video link hearing on 2 July 2021. That hearing was adjourned in order to obtain further information. A further hearing took place on 6 September 2021. The oral hearing panel consisted of three members, including a psychologist member.
10. The oral hearing panel heard evidence from the Applicant, his Prison Offender Manager (POM), his Community Offender Manager (COM), a psychologist employed by the prison service and a psychologist instructed by the Applicant's legal representative. The Applicant's mother also attended the hearing and was given the opportunity to share her thoughts about the Applicant. The Applicant was legally represented throughout the hearing. The Secretary of State was not formally represented.

## Request for Reconsideration

11. The application for reconsideration is dated 29 September 2021. It was submitted by the Applicant's solicitor.
12. The Applicant seeks reconsideration on the sole ground that the decision was irrational. The Applicant submits that the panel did not sufficiently explain its reasons for going against the recommendations of all professional witnesses and the reasons which were given by the panel were not sufficient in explaining the rationale behind the decision, so much so that it is '*manifestly obvious that there are compelling reasons for interfering with the decision of the panel*'. The Applicant submits the following points in support;
  - i. The decision was inconsistent with the previous decision by the Parole Board;
  - ii. The evidence from the witnesses was compelling;
  - iii. The Applicant did not commit any further offences when he was in the community;
  - iv. The panel did not mention the report from the mental health team which was read out at the hearing;
  - v. The panel was wrong to assess him as a high risk of re-offending, with a high risk of non-compliance; and
  - vi. The proposed risk management plan was robust.

## The Relevant Law

13. The panel correctly sets out in its decision letter dated 20 September 2021 the test for release.

### *Irrationality*

14. 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."*

15. 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.
16. The application of this test has been confirmed in previous decisions on applications for reconsideration under rule 28: **Preston [2019] PBRA 1** and others.
17. In **Oyston [2000] PLR 45**, at paragraph 47 Lord Bingham said: "*It seems to me generally desirable that the Board should identify in broad terms the matters judged by the Board as pointing towards and against a continuing risk of offending and the Board's reasons for striking the balance that it does. Needless to say, the letter should summarise the considerations which have in fact led to the final decision. It would be wrong to prescribe any standard form of Decision Letter and it would be wrong to require elaborate or impeccable standards of draftsmanship.*"

### The reply on behalf of the Secretary of State

18. The Secretary of State did not make any representations in reply. This was confirmed by way of email from PPCS on 8 October 2021.

### Discussion

19. Where a panel arrives at a conclusion, exercising its judgement based on the evidence before it, it would be inappropriate to direct that the decision be reconsidered unless it is manifestly obvious that there are compelling reasons for interfering with that decision. The Reconsideration Mechanism is not a process whereby the judgement of a panel when assessing risk can be lightly interfered with.
20. The panel in this case had the advantage of an extensive dossier of reports and other material. It had the advantage, too, of seeing and hearing the Applicant as well as the four witnesses. Panels of the Parole Board are not obliged to adopt the opinions and recommendations of professional witnesses. It is the panel's responsibility to make its own risk assessments and to evaluate the likely effectiveness of any risk management plan proposed. It must make up its own mind on the totality of the evidence that it hears, including any evidence from the Applicant. The panel would be failing in its duty to protect the public from serious harm (while also protecting the prisoner from unnecessary incarceration) if it failed to do just that. As was observed by the Divisional Court in **DSD**, the panel has the expertise to do it.
21. However, if a panel makes a decision contrary to the opinions and recommendations of all the professional witnesses, it is important that it should



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explain clearly its reasons for doing so and that its stated reasons should be sufficient to justify its conclusions, per **R (Wells) v Parole Board 2019 EWHC 2710**. The Applicant argues that the panel in this case did not do so.

22. The panel provided its written reasons which run to just over 11 pages. The panel carefully set out the evidence it heard, including details of the recommendations of each witness and the Applicant's evidence. It is important to highlight that the recommendations from witnesses were nuanced, particularly with reference to the risk management plan and what would be available. This was highlighted in the panel's decision at section 7.
23. The Applicant submits that the decision was inconsistent with the previous decision by the Parole Board. This is a reference to the 2019 Panel's decision to release the Applicant which was in the dossier. It is not entirely clear to me on what basis the Applicant is arguing it is inconsistent. Of course, each review of a case leads to a fresh independent risk assessment by a panel of the Parole Board. The dossier will usually contain the previous decision as it is a helpful summary of where each prisoner was in terms of their progress at that time. Matters move on between reviews which may well lead a panel to reach different conclusions about all aspects of risk and the final decision. In this case, the panel agreed with the previous panel's risk factors but added some further identified factors for example. This review was taking place almost two years after the previous review and since the last review the Applicant had been released and recalled and accepted that his recall had been appropriate. It cannot be said that reaching a different final decision in those circumstances was irrational.
24. The Applicant submits that he did not commit any further offences when he was in the community and this offers compelling evidence as to why the decision not to re-release is irrational. He submits that it also adds weight to the assertion that the panel was wrong to assess him as a high risk of re-offending and a high risk of non-compliance. It is common ground that the Applicant was not convicted of any further offending. He does not need to have been so convicted in order to be recalled or to be refused release. The Applicant is assessed under the probation service assessment report as a high risk of serious harm a high likelihood of reoffending. The panel agreed with those assessments, as did the previous panel in 2019. Furthermore, the panel set out in its decision its concerns about compliance including the reasons for recall, behavioural issues in custody in 2020 and a lack of engagement with services. Given that evidence and the reasons given, I do not accept that this submission supports a conclusion that the decision is irrational.
25. The Applicant submits that the panel did not mention the report from the mental health team which was read out at the hearing. The Applicant states that the report "*outlined it was not considered any further input was required from mental health and that it would not benefit the Applicant to receive any further medication*". The report now appears to be in the dossier and is dated 15 August 2021. The summary given by the Applicant does not accord entirely with the report I have seen. The report describes the Applicant as difficult to engage, states he is not prescribed any medication and goes on to say, "*His attitude to medication appears to be ambivalent at best, in that he often requests consideration of prescriptions but then does not take the medication when prescribed*". Whilst the Applicant submits it was



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not referred to in the decision letter, it is clear that it was mentioned on page 7 during section 5, when the panel states, "Healthcare had now determined that you no longer required input around [particular issues], although the panel notes that this was not a full psychiatric/psychological assessment".

26. Furthermore, having carefully considered the written reasons in this case, I reject the submission that the panel did not provide sufficient reasons for disagreeing with the witnesses or for coming to its conclusion generally. The panel's decision analyses all evidence that it read and heard. Without repeating the content of the decision letter, I give the following examples of where the decision is detailed with regards to the panel's reasons for concluding that it was necessary for the protection of the public that the Applicant remain confined;

- a) The panel identified outstanding risk factors;
- b) The panel set out that it was not satisfied that there were sufficient protective factors to prevent further offending and risk of serious harm. The panel detailed the protective factors in place but found that some had been in place previously and this had not prevented a return to substance misuse, non-compliance with licence conditions and his recall to custody. This was based on evidence received regarding the recall, which the Applicant accepted;
- c) In agreement with the POM, the panel was concerned by the likely short length of stay at designated accommodation if released;
- d) The panel states clearly in its decision that it has drawn the conclusion that the risk management plan alone is not sufficiently robust to manage the risks posed by the Applicant;
- e) Witnesses recommended that the Applicant could be managed provided he complied with the plan and fully engaged with services. The panel set out its reasons as to why it did not think this would happen, including previous lack of engagement and issues in custody since recall;
- f) In section 7 of its decision, the panel set out in detail its concerns about whether the Applicant would be honest and open if he were to be released and his lack of skills to deal differently with situations in future;
- g) The panel specifically stated that it did not find the recommendations to be "compelling or persuasive"; and
- h) The panel set out in its conclusion at section 8 the concerns it had about the evidence from the Applicant which impacted on its decision.

## Decision

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

**Cassie Williams**  
**12 October 2021**