

[2022] PBRA 106

Application for Reconsideration by Blake

Application

1. This is an application by Blake (the Applicant) for reconsideration of a decision of an oral hearing panel (the panel) dated the 7 July 2022 not to direct his release.
2. Rule 28(1) of the Parole Board Rules 2019 (as amended by the Parole Board (Amendment) Rules 2022) (the Parole Board Rules) provides that applications for reconsideration may be made in eligible cases (as set out in rule 28(2)) either on the basis (a) that the decision contains an error of law, (b) that it is irrational and/or (c) that it is procedurally unfair.
3. I have considered the application on the papers. These are:
 - a) The Decision Letter dated the 7 July 2022;
 - b) A request for reconsideration in the form of written representations from the Applicant's legal representative, dated the 28 July 2022; and
 - c) The dossier, numbered to page 276, of which the last document is the Applicant's application. The panel had a dossier numbered to page 262.

Background

4. The Applicant is now 62 years old. On the 1 August 2013, at the age of 53, he received an extended determinate sentence following his conviction for offences of rape. A custodial term of 12 years was set by the court, with an extended licence period of 4 years.
5. Subsequent to that sentence, the Applicant received a 12 year determinate sentence on the 6 April 2017 following his conviction for a further offence of rape.
6. In February 2021, the Secretary of State referred the Applicant's case to the Parole Board to consider whether it would be appropriate to direct his release. A paper review on the 6 July 2021 directed that the case be considered at an oral hearing.
7. The panel convened to hear the case on the 7 July 2022, and this was the first review of the Applicant's case by the Parole Board. The Applicant was present and was legally represented. Also present were the Applicant's Probation Officer in the Community, the official supervising the Applicant in custody and a prison psychologist who had produced a report about the Applicant.
8. As noted within the panel's Decision Letter and in the application for reconsideration, relevant qualifying dates in the Applicant's two sentences were



3rd Floor, 10 South Colonnade, London E14 4PU



www.gov.uk/government/organisations/parole-board



info@paroleboard.gov.uk



@Parole_Board



0203 880 0885



INVESTORS
IN PEOPLE | Bronze

discussed at the oral hearing. It was established that if the Applicant was not released by the panel, he would otherwise be automatically released on the extended sentence in March 2023. However, the further sentence imposed in 2017, meant that the Applicant would not be released automatically from that further sentence until March 2023. Therefore, even if the panel were to direct his release in respect of the extended sentence, the Applicant would remain in custody until March 2023.

9. With the agreement of the parties, a decision was made by the panel not to direct his release and the case was concluded.

Request for Reconsideration

10. The Applicant's grounds for reconsideration are that the panel's decision was procedurally unfair, in that fresh evidence has been provided showing that errors within the dossier led to an incorrect evaluation of the relevant dates in the Applicant's two sentences.

The Relevant Law

11. The panel correctly sets out in its decision letter dated the 7 July 2022 the test for release.

Parole Board Rules 2019 (as amended)

12. Under Rule 28(1) of the Parole Board Rules 2019 the only types of decisions which are eligible for reconsideration are those concerning whether the prisoner is or is not suitable for release on licence. Such a decision is eligible for reconsideration whether it is made by a paper panel (Rule 19(1)(a) or (b)) or by an oral hearing panel after an oral hearing (Rule 25(1)) or by an oral hearing panel which makes the decision on the papers (Rule 21(7)).

13. Rule 28(2) of the Parole Board Rules provides the sentence types which are eligible for reconsideration. These are indeterminate sentences (rule 28(2)(a)), extended sentences (rule 28(2)(b)), certain types of determinate sentence subject to initial release by the Parole Board (rule 28(2)(c)) and serious terrorism sentences (rule 28(2)(d)).

Procedural unfairness

14. 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.

15. In summary an Applicant seeking to complain of procedural unfairness under Rule 28 must satisfy me that either:

- (a) express procedures laid down by law were not followed in the making of the relevant decision;

 3rd Floor, 10 South Colonnade, London E14 4PU

 www.gov.uk/government/organisations/parole-board

 info@paroleboard.gov.uk

 @Parole_Board

 0203 880 0885

 INVESTORS
IN PEOPLE | Bronze

- (b) they were not given a fair hearing;
- (c) they were not properly informed of the case against them;
- (d) they were prevented from putting their case properly; and/or
- (e) the panel was not impartial.

16. The overriding objective is to ensure that the Applicant's case was dealt with justly.

The reply on behalf of the Secretary of State

17. In representations of the 9 August 2022, the Secretary of State confirms the revised qualifying dates (see paragraph 18) that were provided in this case on 12 July 2022, after the oral hearing had taken place.

Discussion

18. In helpful and focussed representations, the Applicant establishes that following the oral hearing, on the 12 July 2022, the Secretary of State provided further information which showed that the identified dates in the Applicant's two sentences were incorrect. This meant that at the time of the oral hearing on the 7 July 2022, the Applicant was in fact eligible to be released from custody, if the panel found that he met the test for release.

19. Although the information was provided to the Parole Board, the panel had by that point made its decision and had issued its Decision Letter. In **Dickins [2021] 1 WLR 4126**, a panel was found to become functus officio at the point at which the panel members had agreed the written decision. That position has since changed following the revised Parole Board Rules 2019 (as amended), and panels are now considered to be functus officio at the point at which the Decision Letter is issued to the parties.

20. At the time of the panel's decision, the earlier 2019 Rules were in place, although whichever way you look at it, the panel was unable to revisit its decision because a) it had made its decision and b) the parties had been issued with the Decision Letter. The only way to revisit the decision would be via the reconsideration mechanism or the recently established setting aside procedure. I see from the documents in the dossier that the panel chair did try to consider the new information before it was agreed that the panel had become functus officio. It therefore fell to the Applicant to make his application for reconsideration.

21. There can be no criticism of the panel in its approach to this case and it is clear from the dossier that attempts had been made to confirm the qualifying dates in the two sentences prior to the oral hearing taking place. Information was provided in response to the Parole Board's direction but, as the Secretary of State has since established, that information was incorrect.

22. The incorrect information meant that the Applicant was unable to put his case properly because he was led to believe that he was not eligible to be released. If the true facts had been known, then it is unlikely that the panel would have proposed the conclusion of the case in the way that it did and the Applicant would have been unlikely to have agreed to the case being concluded.

23.Procedural unfairness under the Rules relates to the making of the decision by the Parole Board. In making its decision the panel considered all the evidence that was before it, however, that evidence contained factual inaccuracies. Through no fault of the panel, and for the reasons I have given, the review of the Applicant's case was unfair. On that basis, the Applicant's application succeeds.

Decision

24.The application for reconsideration is therefore granted. Noting the circumstances, I am satisfied that the original panel can consider this case at an oral hearing, unless delay can be mitigated by allocating the case to a fresh panel.

Robert McKeon
9 August 2022