

[2022] PBRA 32

## Application for Reconsideration by Mills

### Application

1. This is an application by Mills (the Applicant) for reconsideration of a decision of an oral hearing panel dated 19 January 2022 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 Decision Letter dated 24 January 2022;
  - b) A request for reconsideration in the form of written representations from the Applicant, consisting of 54 pages dated 13 February 2022 and 8 pages of additional representations dated 21 February 2022; and
  - c) The dossier, numbered to page 1121, of which the last document is a letter from the Applicant to the Parole Board oral hearing panel (the panel). The panel considered a dossier which ran to 1090 pages, together with a letter from the Applicant to his stepfather in April 2018 and information on his assessed risk of reconviction for a sexual offence.
4. The application was not made on the published form CPD 2, which contains guidance notes to help prospective Applicants ensure their reasons for challenging the decision of the panel are well-grounded and focused. The document explains how I will look for evidence to sustain the complaints and reminds Applicants that being unhappy with the decision is not in itself grounds for reconsideration. However, that does not mean that the application was not validly made, and I am satisfied that the written representations provide the Applicant's explanation as to the proposed grounds for reconsideration.
5. The application was received by the Parole Board on 23 February 2022 which was out of time for a reconsideration application to be made. However, the prison has confirmed that the Applicant produced and submitted his application in time and that he was not at fault for any delay in it being forwarded to the Parole Board. The reply from the prison indicates that the Applicant submitted his paperwork to staff on 31 January



2022, however, this cannot be correct when taking note of the dates of the Applicant's representations. Nevertheless, his initial representations were produced in time and I am satisfied that it is more likely than not that he submitted his paperwork in time.

## Background

6. The Applicant is now 61 years old. On 11 September 1995, when he was 35, he received a discretionary sentence of Life Imprisonment, with a requirement that he should serve a minimum of 18 years before he could be considered for release by the Parole Board. This was reduced by the Court of Appeal on 30 November 2004 to 12 years and 6 months and the minimum term expired on 19 September 2006.
7. The sentence was imposed following the Applicant's conviction at trial for sexual offences, a violent offence, false imprisonment and the taking of a child without lawful authority (the Index Offences).
8. The circumstances of the Index Offences were that the Applicant persuaded a 12-year old girl (the victim) to go with him to his flat. At his flat, he struck the victim to the head with a piece of wood, stripped her naked and placed her in a suitcase. He then took her, in the suitcase, to his partner's home and committed sexual offences against her. He later took the victim back to his flat and she was taken somewhere near to her home when the victim's disappearance was reported on the television news.
9. The Applicant has maintained throughout his sentence that he is not guilty of the Index Offences.
10. The Applicant has a lengthy history of offending, first coming before the courts in 1974 when he was convicted of taking a motor vehicle without lawful authority. He has convictions for acquisitive crime, driving offences, criminal damage, drug possession and violent offending.
11. The Secretary of State referred the Applicant's case to the Parole Board in August 2018 to determine whether he should be released, or in the alternative, whether he should be moved to an open prison. This was the 6<sup>th</sup> review by the Parole Board of the Applicant's case and at the time he remained in a Category A (High Security) prison.
12. The case was initially considered on the papers on 4 February 2019 and was directed to an oral hearing. An oral hearing was listed to be heard on 26 February 2020, however, the Applicant then applied to defer the hearing because his legal representative intended to commission a psychological report. The hearing was then listed on 16 September 2020, however, this was during the Coronavirus pandemic restrictions, and, at the Applicant's request, the Parole Board agreed to defer the hearing until it could take place in person at the prison. The Parole Board's review then faced further delay, in part due to the Coronavirus pandemic restrictions and also to allow time for the Applicant's newly appointed legal representative to commission a psychological report about him.
13. On 8 December 2021, the Applicant applied to defer the oral hearing listed in January 2022 because his word processor in the prison was awaiting repair and/or he was



unable to print documents. The panel refused to defer the case on the basis that there was sufficient time before the listed hearing for the Applicant to prepare. Directions were made that the prison should provide the Applicant with paper copies of the pages in his dossier for him to refer to in the oral hearing. On 23 December 2021, the panel issued a direction that it would not agree to the Applicant's request that it intervene in his dealings with his legal representative, as this was not the role of the Parole Board.

14. A panel of the Parole Board considered the Applicant's case at an oral hearing on 19 January 2022. The Applicant, the official supervising his case in prison, a senior probation officer (standing in for the Applicant's probation officer), a prison psychologist and a psychologist instructed by the Applicant's legal representative gave evidence. The Applicant's legal representative was present, and the hearing was held in person at the prison.

### **Request for Reconsideration**

15. The Applicant's grounds for reconsideration are within his lengthy written representations. It would have assisted if he had made his application on the published form, nevertheless, I have taken great care to review his representations, and all of the evidence, so that I can identify and consider the detail of his complaint.

16. The grounds for seeking a reconsideration are that the decision was procedurally flawed and irrational. In summary, the detail of the application is as follows:

#### **Irrationality**

- a) The oral hearing panel based its decision on professional witnesses giving dishonest evidence in claiming, amongst other things, that the Applicant had been trying to contact the victim;
- b) The Decision Letter contains several factual errors.

#### **Procedurally Unfair**

- c) The Applicant was led to believe that he was being released and so did not refer to his files during the hearing or ask the questions of witnesses he had intended to ask.
- d) The Applicant wanted a psychologist witness to be called to give evidence, but this was denied.

### **The Relevant Law**

17. The panel correctly sets out in its decision letter dated 19 January 2022 the test for release and the issues to be addressed in making a recommendation to the Secretary of State for a progressive move to open conditions.

18. 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. 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)).

19. In **R (on the application of 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."*

20. 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. This strict test for irrationality is not limited to decisions whether to release; it applies to all Parole Board decisions.

21. The application of this test has been confirmed in previous decisions on applications for reconsideration under rule 28: **Preston [2019] PBRA 1** and others.

22. Procedural unfairness has a similar meaning as procedural irregularity does in Judicial Review. It is for me to decide whether I consider the procedure adopted by the panel in conducting the Parole hearing was unfair to either of the parties.

23. 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.

24. 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;
- 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.

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

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

26. The Secretary of State provided a response on 3 March 2022 indicating that he does not seek to make any representations about the application.

### **Discussion**

27. Prior to discussing the Applicant's grounds for reconsideration, I note his reference to seeking a copy of the recording of the oral hearing. In certain circumstances there may be merit in an Applicant seeking a transcript of an oral hearing, although I note from the evidence before me that the Applicant would not have been content with this and would have wanted a copy of the actual recording. It is open to me, in considering the Applicant's application for reconsideration, to listen to a recording of the oral hearing. Having considered the Applicant's complaint, I am not persuaded that I would be assisted by listening to the oral hearing recording.

#### *Dishonest evidence*

28. The application sets out in detail the Applicant's dissatisfaction with the evidence heard from witnesses at the oral hearing, particularly his belief that the prison psychologist attempted to deceive the panel. His application also seeks to rehearse many of the complaints about assessments of him and reports about him within the dossier.

29. A key complaint, in the Applicant's submission, is that it had been alleged that he had tried to contact the victim of his offences, something he disputes. The Applicant also disputes that there was any risk of him ever trying to seek out the victim if his release was directed.

30. In December 2017, the Applicant was spoken to by professionals, including his Probation Officer and was warned about his persistent attempts to contact the victim of his offences via the victim liaison team in his home probation area. It had been reported within the dossier that there had been many concerns raised over the past few years in regard to the Applicant attempting to contact the victim and his threats to send letters written by him to his friends in the community in order for them to be uploaded onto the internet. In the discussion in December 2017, the Applicant was agitated and insistent that he should be able to contact the victim, and had said that he intended to take his case to the Jeremy Kyle television programme. He was abusive to staff and refused to accept the warning. The Applicant told his Probation Officer that he had written a 10-page letter to the victim, that he was yet to finish, and had produced another 10 pages to add to the letter.

31. In April 2019, the Applicant produced his comments (13 pages) on the dossier, and these formed a part of the evidence before the panel. Within those comments, the Applicant disputes many points raised about him, including the report of him attempting to contact the victim. He stated that the warning he received was following his request for the address of the victim liaison team. He did accept that he had requested to send a letter to the victim via the victim liaison team, which he said was refused, but he denied ever threatening to send letters to friends in the community for



them to be uploaded to the internet. However, he also stated in his comments that he had a "right to the media as any other person, or prisoner". The Applicant also refers to an "unfinished letter" to the victim when he comments on the claim that he had written letters requesting that the victim attend a legal firm to instruct them that he is innocent of the offences against her.

32. Elsewhere within the dossier, within his representations, the Applicant reiterates that he has not attempted to contact the victim and that he had planned for any letter he produced for the victim to be sent to the victim liaison office who would be able to review its suitability. However, he goes on to say that he expected, if he had written a letter to the victim, that she would have contacted him and visited him in prison for "our long-awaited talk". In a letter to the Parole Board on 9 March 2020, the Applicant stated, "If I knew that [the victim] was going to attend my parole hearing, I would withdraw all my instructions from my solicitor, and attend the hearing on my own without any paperwork". In a letter from the Applicant to a psychologist (03/04/2021), he states "I have tried everything I can think of to get [the victim] and her mother to attend my hearing. If [the victim] is pressured by those who do not know the truth of my case, and she is obliged to attend, I will [original emphasis] be paroled", although he told the oral hearing panel that he had since changed his mind about this.
33. In the Decision Letter, the panel noted the evidence about the Applicant's alleged attempts to contact the victim. The Applicant told the panel that he had expected the victim to write to him when she turned 18 but she had not done so. He said that he thought about the victim every day, with positive thoughts, and that if he was allowed to do so he would write to the victim now.
34. There is nothing within the panel's evaluation to demonstrate that any evidence was 'dishonest'. Any reading of the evidence demonstrates that the Applicant has a continuing interest in wanting to contact the victim, much of which is focussed on his wish to demonstrate that he is not guilty of the Index Offences. Whether he agrees with this assessment of the evidence does not meet the high test of irrationality.
35. The Applicant's remaining comments about dishonest evidence focus on his disagreement with the professional assessments of his case either because he believes them to be wrong or because he believes that others have lied about him. He is entitled to disagree, however, the panel was entitled to consider the evidence. His complaints do not meet the high test of irrationality.

#### *Factual errors*

36. The Applicant outlines what he considers to be factual errors within the decision letter, and I have considered each of them with care.
37. The key points are these:
- a) the panel was in error when it referenced charges left to lie on file in his case;
  - b) the panel identified a pattern of aggression and violence committed by him to get what he wants;
  - c) the panel noted the evidence suggesting he would be a risk to the victim if released;
  - d) there was no evidence to show that he had attempted to persuade another child to go with him prior to committing the offences against the victim;



- e) he did not tell the panel that his girlfriend had cheated on him and he had been looking for a bit of fun;
- f) he disputes the identified risk factors.

38. The Applicant's remaining comments focus on his disagreement with the evidence presented to the panel, the panel's assessment of his case and what he sees as deception on the part of the prison psychologist. In addition to his comments of April 2019, the Applicant submitted 183 pages of representations, including written evidence about his case in September 2019. Much of those comments and representations outline the Applicant's complaints about professionals, and his disagreement with his conviction and the reports about him. In letters to the Parole Board on 9 March 2020, 20 March 2020, 27 August 2020, 20 October 2020, 14 January 2021, 26 January 2021, 6 March 2021, 22 August 2021, 29 November 2021, 16 December 2021 and a subsequent undated letter, the Applicant also sets out in detail, together with various attached documents, his comments on the dossier, the Parole review, his complaint about being convicted and of many of the professionals who have been involved in his case, including the Probation Service.

39. Panels of the Parole Board are not obliged to adopt the opinions and recommendations of professional witnesses. It is their responsibility to make their own risk assessments and they must make up their own minds on the totality of the evidence that they hear, including any evidence from the Applicant. They would be failing in their duty to protect the public from serious harm (while also protecting the prisoner from unnecessary incarceration) if they failed to do just that. As was observed by the Divisional Court in **DSD**, they have the expertise to do it. Whether or not the Applicant agrees with the evidence before the panel or the panel's assessment of that evidence does not meet the test for irrationality.

40. In terms of the identified factual errors within the application, points a), d) and e) (See paragraph 37 above), even if found to be in error, were not by any reading of the Decision Letter deciding factors in the panel's decision not to direct the Applicant's release. There was no support for his release at the oral hearing and the panel, having the expertise to do so, exercised its own judgement in assessing his level of risk. In respect of points b, c and f, when noting the entire evidence before the panel, these were determinations it was entitled to make. Again, whether the Applicant agrees with the panel does not meet the test for irrationality.

#### *The Applicant's belief that he would be released*

41. The Applicant states that he did not refer to his files in the hearing because:

- a) the Panel Chair told him that the panel had read all of the documents he had produced in the dossier;
- b) he had observed the panel's "hard" questioning of the witnesses, including why release was not supported;
- c) he had come to the conclusion on the morning of the hearing that he would be released;
- d) the panel had told him at the hearing or inferred to him that he would be released;
- e) he had been prevented from referring to his files at the end of the hearing;
- f) the panel, in deciding not to direct his release, could not have read all of the evidence because the decision letter was produced in around two working days;



- g) someone other than the panel must have written the decision letter;
- h) he believes that the witnesses, including his independently instructed psychologist, and his solicitor may have conspired in some way to prevent his release; and
- i) therefore, the panel's original decision to release him should be reinstated.

42. The Applicant indicates that he had questions prepared for witnesses to deal with what he believed to be false statements about him. He had attended the hearing with various files and documents and had planned to utilise these in his case. His decision not to do so was a matter for him and his legal representative, however, the Applicant came to the decision that there was no need to focus on these matters because he was convinced, either by his own belief or his interpretation of the comments of the panel, that he would be released.

43. There is nothing within the Decision Letter to suggest that the panel had been minded to release the Applicant, in fact the reverse is true. The panel was clear in its decision that it remained necessary for the protection of the public that he be confined and did not direct his release.

44. The Applicant is of the view that something happened after his oral hearing that led to a changed decision and that someone other than the panel wrote the Decision Letter. Much of that is based on his view that the panel had decided to direct his release and had made this clear to him at the oral hearing. Even without listening to the recording of the oral hearing, it is obvious from the Applicant's own submissions that he is wrong in his belief that the panel planned to release him. For example, he notes that the panel spoke of him being released to the London area and that it detailed what would happen. However, it is clear, even with sole reference to the Applicant's submissions, that the panel was detailing the risk management plan if he were to be released. In summary, the panel was assessing the risk management plan not presenting its decision on release. It seems to me that the Applicant, having waited a long time for his oral hearing and being convinced that he could be released, allowed himself to also be convinced that he was going to be released.

45. The Applicant believes that others may have conspired against him to change the decision in this case. There is nothing to support this claim. Panels of the Parole Board conduct independent assessments of cases without fear or favour. They must assess the evidence and make their own professional judgement of the case. I am satisfied, having reviewed the Decision Letter, and contrary to the Applicant's belief, that it was produced by the panel. As to how a Decision Letter might be produced in a short time frame, this is not in my experience unusual. Parole Board members are required to assess and evaluate complex and detailed evidence on a regular basis. In my own experience of chairing hearings for the Parole Board, careful preparation and analysis affords an opportunity to produce decision letters in a timely manner. The Applicant may be surprised by the panel's efficiency, however, I am not and his complaint is without merit.

46. As to the Applicant being prevented from referring to his files, his commentary on events within his application demonstrates that the panel was focussing the case on risk and not on the various complaints he had about the professionals involved in his case. Even if this were not true, and for the avoidance of doubt I am satisfied that it is true, the Applicant was legally represented at the hearing. Cases in which the party has been represented by a lawyer are highly unlikely to generate a successful appeal



if there had been no challenge made to the alleged irregularity by the Applicant, save in the event for instance of a failure by the other party (for example, a failure to disclose material relevant to the ultimate decision to the Applicant).

*The refusal of the Applicant's request for a psychologist witness*

47. The Applicant submits that his legal representative advised him that all witnesses the Applicant had wanted to attend his oral hearing had been refused by the Parole Board. He had been unhappy with a prison psychological report written about him during an early stage of the Parole review and had wanted the author to be present at the hearing. The Applicant also sets out witnesses, in addition to those at the oral hearing, that he would expect to be called at a re-hearing of his case.

48. There is nothing within this ground. There is no evidence before me to show that any application was ever made for the author of the earlier prison psychological report to attend as a witness or an application for any other witness requested by the Applicant to attend being refused. There is nothing to demonstrate that this was raised as an issue by the Applicant, who was legally represented, at the hearing. Further, the Applicant's submission that all his witnesses were refused is plainly untrue. His legal representative commissioned a psychological report and the author of that report gave evidence at the hearing.

49. It is of course open to any panel to determine the witnesses it needs to complete a full and fair review of a case. The earlier prison psychological report was updated by a further prison psychological report and the author of that updated report was in attendance as a witness. There was nothing unfair in the panel's approach.

## **Decision**

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

**Robert McKeon**  
**09 March 2022**