

[2022] PBRA 81

Application for Reconsideration by Phillip

Application

1. This is an application by Phillip (the Applicant) for reconsideration of a decision of a Panel of the Parole Board dated 13 June 2022 following an oral hearing on 17 May 2022. The hearing was conducted remotely via video-link.
2. The Panel made no direction for release but recommended that he was suitable to transfer to open conditions.
3. 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.
4. I have considered the application on the papers. These are the dossier of 440 pages (that includes the decision letter) and the application for reconsideration (including an annex which contains a four-page letter from the Applicant that sets out the substance of the application).

Background

5. The Applicant was aged 17 at the time of sentence and is now aged 33 years old.
6. He was sentenced to detention for public protection on 30 January 2007 for a number of offences including rape and s18 Grievous Bodily Harm (GBH). The tariff was set at 6 years (with allowance for time on remand) and expired in September 2012.
7. The Applicant was released for the second time in July 2019, being recalled in March 2020. This was the second review since recall.

Request for Reconsideration

8. The application for reconsideration is dated 28 June 2022.
9. The application form was completed by the solicitor who represented the Applicant at the oral hearing, but refer in large part to the letter written by the Applicant himself.
10. It is said that the decision to not direct release was an irrational one.



11. In support of that it is pointed out that the recall to prison did not involve any further offending and the psychologist stated that his risk in the community was not imminent.
12. The Applicant's letter re-iterates the above, and sets out reasons why the Panel should have directed his release.
13. It is also said that as the Applicant's risk to the public was not imminent, and it was accepted that he would comply with the regime in open conditions, it was irrational not to direct release.

Current parole review

14. The Applicant's case was referred to the Parole Board in December 2020. An oral hearing was directed in June 2021.
15. The oral hearing was conducted remotely on 17 May 2022. The Panel heard evidence from the Applicant, as well as from the prison probation officer, the community probation officer and a prison psychologist.
16. All the witnesses recommended that the Applicant was suitable for a move to open conditions. None of them were recommending release.

The Relevant Law

17. The panel correctly sets out in its decision letter dated 13 June 2022 the test for release and the issues to be addressed in making a recommendation to the Secretary of State for suitability to remain in open conditions.

Parole Board Rules 2019

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. A decision to recommend or not to recommend a move to open conditions is not eligible for reconsideration under Rule 28. This has been confirmed by the decision on the previous reconsideration application in **Barclay [2019] PBRA 6**.

Irrationality

20. 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."

21. 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.
22. I remind myself of what was said in **Wells [2019] EWHC 2710 (Admin)** as to the heightened need for full reasons where the Panel is going against the recommendations of the witness. The application of this test has been confirmed in previous decisions on applications for reconsideration under rule 28: **Preston [2019] PBRA 1** and others.

The reply on behalf of the Secretary of State

23. The Secretary of State has stated that he does not wish to make any representations.

Discussion

24. My role is not to decide what decision I would have made, or whether I agree with the decision of the Parole Board. Rather it is the question of whether the decision that the Panel made was not within the range of reasonable decisions.
25. That is a high test, although I remind myself of the importance of what is at stake for the Applicant, which requires that any decision to keep him deprived of his liberty is one that should be anxiously scrutinised.
26. In this case, all the professionals were recommending that the Applicant remain in custody (albeit in open conditions). The Panel were not bound by those recommendations, but it is clear that it was bound to take them into account.
27. The decision letter makes clear that the Panel were aware of the lack of further offending and the views of the psychologist as to the imminence of risk in the community.
28. Against the backdrop of the recommendations, and the difficulties recorded that led to the Applicant's recall (as well as the issues that had arisen afterwards), I consider it clear that the decision of the Panel was one that was open to it.
29. This was the second recall that involved a number of instances of non-compliance with his licence. In those circumstances the Panel were entitled to conclude that the Applicant was not yet in a position to show that he would comply in the community if released.
30. I also consider that there were sufficient reasons given by the Panel for the decision that they made.

31. In those circumstances, the decision made by the Panel could not be said to be irrational.

32. Many of the issues raised by the Applicant in his letter are an attempt to re-argue his case. I do not criticise him for this, but I am not here to re-hear his application for Parole. That was the job of the Panel on the 17 May 2022 which, for the reasons set out above, they undertook properly.

Conclusion

33. It was for the Panel to assess the evidence that it heard and, bearing in mind the recommendations, to come to its own conclusions. That is what it did. I consider that it was a conclusion that was open to it.

34. The Panel has set out the reasons for the decision made. These are sufficient for the Applicant to understand why he was unsuccessful in obtaining a direction for release and contain no error of law.

Decision

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

Daniel Bunting
4 July 2021