

[2023] PBRA 100

Application for Reconsideration by Grace

Application

1. This is an application by Grace (the Applicant) for reconsideration of a decision of an oral hearing dated the 11 February 2023 not to direct release or to recommend open conditions.
2. Rule 28(1) of the Parole Board Rules 2019 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 the dossier together with the decision letter comprising 534 pages, the grounds for the application and an undated letter from the Applicant, a request for further information, dated the 15 March 2023 and the solicitor's reply, dated the 12 April 2023.

Background

4. The Applicant has an entrenched pattern of offending from the age of thirteen. His offending has included violence both against younger victims and within an intimate relationship.
5. The Applicant was sentenced on the 14 January 2011 to an indeterminate sentence for public protection with a minimum specified term of three years less time served on remand for false imprisonment and wounding with intent to cause grievous bodily harm. The Applicant was nineteen years old at the time of the offending. His accomplice girlfriend was sixteen; the victim was also aged sixteen.
6. The Applicant suspected the victim had stolen a number of his DVDs and had damaged his television. The Applicant confronted him and punched him several times to the face before taking a knife and causing him serious injuries.
7. The Applicant, who had taken drugs before the attack, accepted his actions amounted to torture and both he and his accomplice appeared to have taken delight in inflicting the injuries.
8. The Applicant has completed a number of accredited programmes whilst in custody. He has also been released and recalled three times.

9. Whilst on licence in 2019, the Applicant harassed and stalked a female housing support worker despite being warned not to. On the 18 November 2019, he was sentenced to sixteen months in prison for this.

Request for Reconsideration

10. The application for reconsideration was received on the 21 February 2023.

11. The grounds for seeking a reconsideration are based on irrationality and are as follows:

- a) The panel having failed to indicate a formal finding of fact was to be made, proceeded to make a finding of fact in respect of AR's allegations against the Applicant. The finding of fact was against the weight of the evidence.
- b) The panel failed to attach sufficient weight to the evidence of three professional witnesses that the Applicant's risk could be managed safely in the community.
- c) No witness had indicated that there was outstanding core risk reduction work that could not be done in the community; nevertheless the panel found there was such work outstanding.

12. I asked for further particulars of the Applicant's grounds as part of the original application was in very general terms. As a result, further information has been supplied by the Applicant as follows, the professional witnesses were not permitted by the Secretary of State to make specific recommendations at the hearing; however, the solicitor's recollection was the professional witnesses had felt the risk management plan was detailed and appropriate and they were of the view that this could manage the risks but they had reservations over the Applicant's lack of openness and honesty.

Current parole review

13. The Secretary of State's referral was dated the 11 April 2022 and required the Parole Board to consider the Applicant's suitability for release or to be recommended for progression to open conditions.

14. The oral hearing took place on the 7 February 2023 before a panel consisting of three independent members.

15. The panel heard evidence from the Applicant and from the prison offender manager, the prison psychologist and the community offender manager.

16. The Secretary of State was not represented.


17. The Applicant was represented by his legal representative who drafted the representations in support of this application.

The Relevant Law

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18. The panel correctly sets out in its decision letter dated the 11 February 2023 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.

Parole Board Rules 2019 (as amended)

19. 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)).

20. 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

21. [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."

22. 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.

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

24. 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 (the Respondent)

25. The Respondent did not make any representations in respect of this application.

Discussion

26. I shall deal with the individual grounds in support of the application in turn.

27. **Ground 1** - The panel having failed to indicate a formal finding of fact was to be made, proceeded to make a finding of fact in respect of AR's allegations against the Applicant. The finding of fact was against the weight of the evidence.

28. AR had complained about the Applicant's conduct towards her whilst they were in a relationship in the community and had alleged he had stalked her. The police took no action in the case because AR did not support a prosecution.

29. As I read the decision letter, the panel did not make any specific findings in respect of her allegations. What the panel did was to take into account a number of uncontroversial facts which included:

- a. The Applicant did not disclose the relationship to his offender manager promptly.
- b. That in respect of an incident on 6 March 2022 involving both AR and the Applicant, he lied both to professionals and to the panel.
- c. Complaints about his treatment of AR were made to the police. The Applicant said he believed they had been made by her mother who did not like him.
- d. The Applicant made a number of calls to the police making allegations against AR's family.
- e. Following his recall, over a four-month period during the summer of 2022, the Applicant made 334 telephone calls to AR, notwithstanding that during the second month he had been told she had requested she should not be contacted.
- f. In December 2021, a former partner had alleged the Applicant had harassed her. There was little or no independent evidence to support this allegation but the Applicant told his offender manager he had contacted the police about the matter when he had not.

30. The panel relied on these uncontroversial facts to find that the Applicant lacked insight into how his partners perceived his behaviour, that there was evidence of offence paralleling behaviour, and that the Applicant was dishonest about his relationships.

31. In my judgement, the panel was entitled to reach those conclusions on the information before them.

32. **Ground 2** - The panel failed to attach sufficient weight to the evidence of three professional witnesses that the Applicant's risk could be managed safely in the community.

33. It is important to note the complaint is the panel failed to give proper weight to the evidence and not the panel failed to give adequate reasons for disagreeing with the professional witnesses.
34. The proposed risk management plan was very similar to the one in place when the Applicant had last been released. On that occasion he completed a period in a Psychologically Informed Planned Environment (PIPE) Approved Premises and worked with the Discovery Project. As the panel observed, despite the support provided, the Applicant failed to be open and honest with professionals and failed to recognise the risks around the relationship with AR. The only difference between then and now was the provision of more face-to-face contact following the ending of lockdown.
35. There was a clear difference between the professionals who relied considerably on the external controls provided by the proposed risk management plan and the panel (which may have had the seriousness of the index offences and the repeated failures of the Applicant on licence at the forefront of its considerations) which placed more emphasis on the Applicant's need to develop internal resources. Throughout the decision letter there is a thread of anxiety about his lack of honesty, openness and his difficulties in relating to professionals.
36. Again, the panel was entitled to disagree with witnesses and it explained clearly why it was doing that.
37. **Ground 3** - No witness had indicated that there was outstanding core risk reduction work that could not be done in the community, nevertheless the panel found there was such work outstanding.
38. The panel considered the evidence very carefully and reminded itself of the positives in the case but came to the conclusion that the Applicant's poor insight, his difficult relationships with professionals and his worrying dishonesty would lead to a further release ending in the same way as the previous three releases. The panel was entitled to say those negative factors had to be addressed before the Applicant could be released safely into the community. The panel puts its reasoning clearly and attractively in paragraphs 2.29 and 2.30 of the decision letter:

"[The Applicant] has retained learning from interventions completed to address general instrumental violence, substance misuse and thinking skills. However, he has not been able to translate thinking skills into the context of relationships or the need to be open and honest with professionals. When in the moment, the relationship and the protection of himself from hurt becomes his priority. [The Prison Psychologist] recommends work around relationships, honesty with professionals and schema therapy. The panel consider this to be core risk reduction work.

He has a lack of experience and exposure to healthy supportive interpersonal relationships and this lack of experience sits alongside his experiences from childhood and how he has formed views on relationships. He needs to undertake work to explore his beliefs and views around relationships before he becomes involved in a new intimate relationship."



39. It seems to me the panel was entitled to use the expression '*core risk reduction work*' to describe work it regarded as necessary and work that had to be done before the Applicant could be considered safe to be released into the community for a fourth time.

40. In the undated letter, the Applicant seeks a fresh hearing on the basis a person called [KJ] had been on the panel. The Applicant alleges that [KJ] had abused him as a child and should not have been involved in the case.

41. As there was no panel member called [KJ], I asked the Applicant's solicitor in the request for further information dated the 15 March 2023 to explain the reference further. The solicitor did not do this in her response; I assume this was because she has no clear instructions on the point. In the circumstances the matter remains unintelligible.

Decision

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

James Orrell
26 May 2023