

[2023] PBRA 140**Application for Reconsideration by Blackwell****Application**

1. This is an application by Blackwell ("the Applicant") for reconsideration of the decision of a Panel of the Parole Board ("the Board") which on 22 June 2023, after an oral hearing on that day, declined to direct his release. The decision was provisional because it was eligible for reconsideration under Rule 28(1) of the Parole Board Rules 2019.
2. The case has been allocated to me as one of the members of the Board who are authorised to make decisions on applications for reconsideration.
3. 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)) 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.
4. I have considered the following documents for the purpose of this application:
 - The dossier provided by the Secretary of State ("the Respondent") which now contains 477 numbered pages;
 - The Panel's decision letter ("DL");
 - The application for reconsideration ("the application") submitted on behalf of the Applicant by his solicitor dated 20 July 2023
 - An undated handwritten document headed "*Parole appeal reasons*" presumably prepared by the Applicant commenting on some of the Panel's findings.

Background

5. The Applicant is now aged 67 and has an admitted history of cross-dressing, voyeurism and deviant sexual fantasies.
6. On the morning of 13 June 1997 the Applicant attacked and raped a 12 year old girl who was on her way to school, dragging her into bushes and threatening to kill her if she told the police. On 20 October 1997, at the age of 42, he was sentenced to 14 years imprisonment for this offence.



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7. While serving this sentence, DNA analyses connected him with two earlier offences.
8. On the evening of 25 June 1994, when he was aged 38, the Applicant attacked and attempted to rape the 19 year old female victim whom he stated he believed to be younger. For this offence on 28 May 2004 he was sentenced to life imprisonment with a minimum tariff of five years.
9. The first offence in time took place in the early hours on the morning of 29 July 1989 when the Applicant entered a tent occupied by a 15 year old schoolgirl and her two friends, armed with a knife. He threatened to kill them all and raped the 15 year old victim. The Applicant was aged 33 at the time. On 24 March 2006, for this offence he received a further sentence of life imprisonment with a minimum tariff of 8 years.
10. The tariff expiry date is given as 24 March 2014.

Current parole review

11. The Applicant was transferred to open prison conditions in July 2018 and this is his fifth review which was referred to the Board by the Respondent in December 2021.
12. The case was allocated to a Panel, which comprised three members of the Board, a psychiatrist and two psychologists and the Panel was chaired by one of the psychologist members.
13. The Applicant was represented by his solicitor who sought a direction for release.
14. At the hearing evidence was given by:
 - a) The Prison Offender Manager;
 - b) The Community Offender Manager;
 - c) The Applicant;
 - d) A Senior Forensic Prison Psychologist.

Request for Reconsideration

15. The application for reconsideration is said to be based on the ground of procedural unfairness. Five reasons are briefly cited:
 1. *"The panel placed undue weight on a matter for which he was not convicted."*
 2. *"The panel placed undue weight on the report and the evidence of the prison psychologist."*
 3. *"The panel placed insufficient weight on the fact that professionals were agreed that no core risk reduction work was outstanding."*
 4. *"The panel placed insufficient weight on the fact that professionals did not consider further testing by way of Release on Temporary Licence to be necessary."*

5. "The panel placed insufficient weight on the fact that professionals agreed that remaining risk was low and not imminent and that there was a robust Risk Management Plan proposed."

16.No further argument is proffered in support.

The Relevant Law

The test for re-release on licence

17.The test for re-release on licence is whether the Applicant's continued confinement in prison is necessary for the protection of the public. This test was correctly set out by the Panel in its decision. Indeed, nowadays, the test is automatically set out in the Board's template for oral hearing decisions.

18.Under Rule 28(1) of the Parole Board Rules 2019 (as amended) a decision is eligible for reconsideration if (but only if) it is a decision that the prisoner is or is not suitable for release on licence.

19.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 contains an error of law, (b) that it is irrational and/or (c) that it is procedurally unfair.

20.In this case the Applicant is serving life sentences of imprisonment and a decision was made by the Panel at an oral hearing not to direct his release on licence. It is thus eligible for reconsideration.

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.

Procedural unfairness

24. 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.

25. 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.

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

27. 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.

The reply on behalf of the Respondent

28. By email of 9 August 2023 it was confirmed that the Respondent offers no representations in response to the Application.

Discussion

29. In dealing with the grounds for reconsideration, it is necessary to stress certain matters of basic importance. The first is that the Reconsideration Mechanism is not a process by which the judgement of the Panel when assessing risk can be lightly interfered with. Nor is it a mechanism in which the member carrying out the reconsideration is entitled to substitute his/her view of the facts in place of those found by the Panel, unless, of course, it is manifestly obvious that there was an error of fact of an egregious nature which can be shown to have directly contributed to the conclusion arrived at by the Panel.

30. The second matter of material importance is that when deciding whether a decision of the Parole Board was irrational, due deference has to be given to the expertise of the Parole Board in making decisions relating to parole.

31. Third, where a Panel arrives at a conclusion, exercising its judgement based on the evidence before it and having regard to the fact they saw and heard the witnesses, it would be inappropriate to direct that the decision be reconsidered unless it is manifestly obvious that there are compelling reasons for interfering with the decision of the Panel.

32. I move now to consider the grounds put forward by the Applicant which can be dealt with shortly.

33. I find that the application is misconceived. The five points put forward have nothing to do with procedural unfairness. This is evidenced by the fact that in each case it is submitted that the Panel placed either undue or insufficient weight on certain factors. No arguments are put forward to support the five propositions which all relate to the exercise of a judgement based on all the evidence which is peculiarly a matter for the Panel.
34. None of the reasons put forward in the application suggest that the Applicant was not given a fair hearing or that his case was not dealt with justly.
35. However, in deference to the Applicant's assertions, I will deal with them briefly as though it was being suggested that they amount to irrationality.
36. The reference to a matter for which he was not convicted presumably relates to the Applicant's voyeuristic activities in relation to a female neighbour. These were of understandable and proper concern to the Panel, particularly as the Applicant provided further information in his oral evidence of which professionals were not hitherto aware.
37. It is clear from the DL that the Panel gave careful and critical consideration to the evidence of the psychologist.
38. The Panel was well aware and took into account that the professional view was that the Applicant had no outstanding core risk reduction work to complete and that further testing by way of temporary release on licence was not necessary.
39. Paragraphs 3.1-3.3 of the DL make it clear that it is not correct to describe the Applicant's remaining risk as "low" while the Panel was under a duty to consider imminence in the longer term.
40. Finally, the professional witnesses expressed ongoing concerns about the risk management plan, which was described as being as robust "*as it could be*", and also conceded that their recommendations were a bit "*woolly*" and contained caveats.
41. Overall, I am satisfied that the Panel set out its concerns and conclusions with considerable clarity and that it took proper account of the evidence and views of the professionals, which it analysed with care, and that it was justified, on the basis of the evidence before it, in reaching the conclusion that the Applicant did not meet the public protection test for release.

Decision

42. I find that the Application is without merit and, for the reasons I have given, do not consider that the decision was procedurally unfair or (although this has not been pleaded) irrational and, accordingly, the application for reconsideration is refused.

PETER H. F. JONES
17 August 2023