

[2023] PBRA 190

Application for Reconsideration by McNeil**Application**

1. This is an application by McNeil (the Applicant) for reconsideration of a decision dated 6 October 2023 not to terminate the licence imposed upon him in connection with a sentence of imprisonment for public protection (the **IPP licence**).
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 the decision and the IPP licence termination dossier, consisting of 29 pages (the **dossier**).

Background

4. The Applicant received a sentence of imprisonment for public protection (**IPP**) on 21 December 2007 following conviction for robbery to which he pleaded guilty. The minimum tariff was set at two years, less time spent on remand.
5. He was released on licence on 15 February 2013 following an oral hearing.
6. The Applicant was 24 years old at the time of sentencing and is now 40 years old.

Request for Reconsideration

7. The application for reconsideration is dated 22 October 2023. It has been drafted by the Applicant. It submits that the decision was irrational.
8. This submission is supplemented by written arguments to which reference will be made in the **Discussion** section below. No submissions were made regarding procedural unfairness or error of law.

Current Reference

9. The Applicant's case was referred to the Parole Board by the Secretary of State (the Respondent) on 15 September 2023 under section 31A of the Crime (Sentences) Act 1997 to consider whether or not it would be appropriate to terminate his licence.



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

www.gov.uk/government/organisations/parole-boardinfo@paroleboard.gov.uk

@Parole_Board



0203 880 0885

10. If the Parole Board did not agree to termination of the licence, it was asked to consider whether or not it would be appropriate to suspend the supervisory elements of the licence or add/amend/vary any additional conditions contained within the licence.
11. On 6 October 2023, a single-member panel decided not to terminate the licence, nor to vary it.

The Relevant Law

Crime (Sentences) Act 1997

12. Section 31A of the Crime (Sentences) Act 1997 provides the process for consideration of licences by the Parole Board which relate to 'preventative sentences' after the 'qualifying period' has passed.
13. The 'qualifying period' is ten years beginning with the date of release on licence, regardless of whether the prisoner has subsequently been recalled to prison (section 31A(5)).
14. A 'preventative sentence' is a sentence of imprisonment for public protection or a sentence of detention for public protection (including such a sentence of imprisonment or detention in a young offender institution or detention passed as a result of section 219 or 221 of the Armed Forces Act 2006) (section 31A(5)).
15. If a prisoner has been released on licence (regardless of whether they have been subsequently recalled) and the qualifying period has expired and if Secretary of State has previously referred the case to the Parole Board, the case must be re-referred 12 months from the date of the previous determination (section 31A(3)).
16. The Parole Board shall direct the Secretary of State to make an order that the licence is to cease to have effect if it is satisfied that it is no longer necessary for the protection of the public that the licence should remain in force (section 31A(4)(a)).
17. If the prisoner is in prison having been recalled, the test is different. The Parole Board must decide whether it is not necessary for the protection of the public for the prisoner, when released, to be released on licence in respect of the preventative sentence or sentences (section 31A(4B)(b)(ii)).
18. If the Parole Board directs release under section 31A(4B)(ii), that release is unconditional (section 31A(4C)).

Parole Board Rules 2019 (as amended)

19. Rule 28(1) of the Parole Board Rules provides the types of decision which may be considered for reconsideration, including decisions made in response to a referral by the Secretary of State under section 31A of the 1997 Act (rule 31(6) or rule 31(6A)): specifically, a decision to terminate a licence or a decision to dismiss the Secretary of State's reference.

20. Decisions concerning preventative sentences (as defined in section 31A(5) of the 1997 Act) are eligible for reconsideration under rule 28(2).

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.

The reply on behalf of the Respondent

24. The Respondent has submitted representations in response to this application to which I will also refer in the **Discussion** section.

Discussion

25. The Applicant makes a number of points within his submissions. These question the rationality of some of the decisions made by the current offender management team.
26. First, the Applicant claims that the Probation Service contradicts his licence conditions by permitting him to be seen at a probation office which is in his exclusion zone. The Respondent notes that the Applicant was given permission to attend supervision within the exclusion zone twice and this does not contradict the Applicant's licence as the exclusion zone can be entered with approval of the supervising officer.
27. The Respondent is correct. There is no contradiction on the part of the Probation Service.
28. Second, the Applicant notes that his Community Offender Manager (**COM**) told him that he supported licence termination, yet he did not do so in his report to the panel. The Termination Report within the dossier is clear that the COM (and his Team Manager) do not support licence termination. It notes that the Applicant had come to the attention of the police in connection with allegations of further offending linked to financial gain. The Respondent states that the COM told the Applicant that the

report had been submitted, that there was as *“good a chance as any”* but that ultimately the decision was for the Parole Board.

29. The Applicant can only be successful in his application for reconsideration if he can establish that the panel’s decision was irrational based on the evidence before it. On the evidence before it, the COM was not supporting licence termination and the panel agreed. This is a reasonable response on the panel’s part and its decision cannot be said to be irrational on the basis of the conversation that the Applicant says took place.
30. Third, the Applicant puts forward reasons why his licence should be amended to permit overseas holidays.
31. In doing so, he notes that having his licence terminated is *“probably unlikely at this time, which is why I am asking for just one condition to be removed or altered to allow me to travel more freely”*.
32. The Respondent states that the Applicant has not requested permission to travel abroad in writing, nor provided any detail of where he hoped to go. The COM is said to have advised the Applicant that he was unaware of anyone else being approved on licence in the Applicant’s current location but was happy to put his case forward when the Applicant provided details.
33. It is only the decision not to terminate supervision that can be considered within the scope of rule 28. Decisions concerning licence variations or suspension of supervision do not fall within the rule. The Applicant acknowledges that licence termination is unlikely, and he cannot therefore say that the panel acted irrationally in its decision not to terminate his licence.
34. I also cannot consider whether the Probation Service has, as claimed, made irrational decisions. It is only the panel’s decision that is open to reconsideration, and I find that it was not irrational. The legal test for irrationality sets a high bar. This case does not meet it.

Decision

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

Stefan Fafinski
06 November 2023