

[2023] PBRA 191**Application for Reconsideration by Cannan****Application**

1. This is an application by Cannan (the Applicant) for reconsideration of a decision of a panel of the Parole Board not to direct the Applicant's release and not to recommend a transfer to open conditions dated 22 September 2023 following an oral hearing on 20 September 2023.
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. This is an eligible case in relation to the decision not to direct release but not in relation to the decision not to recommend a transfer to open conditions.
4. I have considered the application on the papers. These are the decision, the application for reconsideration and the dossier consisting of 1701 pages.

Background

5. On 28 April 1989 the Applicant was sentenced to life imprisonment for offences of murder, rape, buggery, abduction and kidnapping. The minimum term that he should serve was subsequently set at 35 years less time spent on remand and it expired in November 2022.

Request for Reconsideration

6. The application for reconsideration is dated 27 October 2023.
7. The ground for seeking a reconsideration is that the hearing was procedurally unfair.

Current parole review


8. The case was referred to the Board on 22 July 2022.
9. The case was first heard on 28 November 2022 and was part heard. Between that date and the date the hearing was due to continue, the psychological member of the panel had to withdraw for personal reasons. After considering representations,

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the other two remaining members decided they should not continue with the hearing and the case was re-heard afresh on 20 September 2023 before a different panel consisting of a judicial member, a psychologist and a lay member.

10. At the hearing, the panel heard from the Community Offender Manager (COM), two Prison Offender Managers (POM), a key worker and two psychologists: a prison psychologist and an independent psychologist instructed by the Applicant.

The Relevant Law

11. The panel correctly sets out in its decision letter dated 22 September 2023 the test for release and the issues to be addressed in making a recommendation to the Secretary of State (the Respondent) for a progressive move to open conditions and correctly applied those tests.

Parole Board Rules 2019 (as amended)

12. Under Rule 28(1) of the Parole Board Rules 2019 (as amended) 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. A decision to recommend or not to recommend a move to open conditions is not eligible for reconsideration under Rule 28.

Procedural unfairness

13. 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.
14. 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.

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

The Reply on behalf of the Respondent

16. The Respondent has made no submissions in response to this application.

Discussion

17. In order to understand the basis of the challenge to this decision it is necessary to set out some of what happened at the hearing. The application was for release and, if that was refused, a recommendation for transfer to an open prison was sought.



18. Prior to the hearing the COM, POM and the prison psychologist did not consider the Applicant met the test for release but did support a transfer to open conditions. The psychologist instructed by the Applicant supported release.
19. At the time of committing the offences some of the evidence suggested that the Applicant had a strong sex drive and was obsessed with sex. His account to the professional witnesses when they were preparing their reports was that he no longer felt the sexual urges that he had felt at the time of his offending.
20. Part of the Applicant's evidence was that he spent much of his time in prison writing novels. A significant part of one of his novels was included in the dossier in which some of the characters displayed a dismissive attitude towards women.
21. As part of his evidence at the hearing the Applicant revealed that there was another novel of his which included scenes of sexual violence including rape.
22. Both the COM and the prison psychologist gave evidence after the Applicant and in the light of his evidence about the other novel they decided they could no longer support a transfer to open conditions as, in their opinion, there was core work arising out of the evidence of the graphic scenes of sexual violence which needed to be done in closed conditions. The POM gave evidence before the Applicant and therefore did not comment on the contents of the novel. The psychologist instructed by the Applicant heard the Applicant's evidence before she gave hers. While the revelation about the contents of the book caused her some surprise it did not cause her to change her recommendation for release.
23. After the conclusion of the evidence, the POM submitted an additional report in which she recorded that in light of the evidence about the content of the book she did not consider that there should be a recommendation for a transfer to open conditions. The COM also submitted a further report saying the same thing which, as I understand it, he had already said during the hearing.
24. In addition to submissions made by his legal representative, the Applicant also put in his own comments about the contents of the book saying that the sexual element in his book was 'contextual' rather than 'gratuitous' and therefore was not relevant to his risk. He also included with his comments the relevant parts of the novel which the panel were then able to read.
25. In his closing submissions, the Applicant's legal representative argued that the hearing should be adjourned so that a proper review could be carried out of the novel and the professionals could interview the Applicant about it to gain a better understanding of its relevance to risk. In that way a proper judgment could be formed as to whether the contents of the book amounted to offence paralleling behaviour. It was also said that the Applicant was not given an opportunity at the end of the hearing to have the final word.
26. The panel considered these submissions but concluded that, if it was considered that the Applicant should give further evidence about the writings, then his representative should have asked at the time rather than doing so after the adjournment. There is nothing procedurally unfair about that. The panel pointed out that it had considered not only the submissions of the legal representative but also



the contents of the book and that it had sufficient information to make a fair decision.

27. The Applicant argues that the conduct of the hearing as I have outlined above was procedurally unfair and as a result the Applicant did not have a fair hearing. In particular he complains that he should have been given an opportunity to comment further on the evidence relating to the sexual scenes in the book at the end of the hearing. Further it is argued that the panel should have granted an adjournment to allow the professionals to consider the content of the book and decide whether it was offence paralleling and increased risk.
28. Having considered all the submissions I am satisfied that there was no procedural unfairness to the Applicant. Adjourning a case particularly at this late stage should only be done when absolutely necessary. The Board correctly does not encourage adjournments if they can be avoided. It is likely that any adjournment would have been for some time. The panel considered that they could properly and fairly conclude the case without any further adjournment for more investigation. In my judgment they were correct to reach that conclusion. They were also correct to say that if the Applicant had wanted to say anything further at the end of the hearing, he should have asked through his legal representative. In any event the Applicant put what he wanted to say in writing and that was considered by the panel.
29. It was the Applicant who introduced the contents of this particular book and gave evidence about it. There was an opportunity at the hearing to ask questions of the COM and the prison psychologist as to why they had changed their minds about recommending open having heard evidence of the contents of the book. It is unlikely that the reasons of the POM would have been any different. The submissions by the legal representative and the Applicant put forward their argument as to why the contents of the book were not significant. The Applicant himself submitted a document setting out his evidence in relation to the relevance of the contents of the book.
30. Having considered the opportunities that there were to deal with the consequences of this evidence during the hearing and in submissions after the hearing was over, in my judgment the Applicant had a fair hearing.

Decision

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

Sir John Saunders
13 November 2023

