

[2023] PBRA 22

Application for Reconsideration by Short

Application

1. This is an application by Short (the Applicant) for reconsideration of a decision made by a duty member dated 13 December 2022 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 (the **dossier**).

Background

4. The Applicant received a sentence of imprisonment for public protection (**IPP**) on 18 July 2005 following a conviction for robbery.
5. He was most recently released on licence on 30 November 2016. This is his second request for suspension of supervision.
6. The Applicant was 31 years old at the time of sentencing and is now 48 years old.

Request for Reconsideration

7. The application for reconsideration is dated 30 December 2022 and 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 12 December 2022 under section 31A of the Crime (Sentences) Act 1997 to consider whether or not it would be appropriate to terminate his licence.



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10. On 13 December 2022, a Duty Member dismissed the reference.

The Relevant Law

Crime (Sentences) Act 1997

11. 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.
12. 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)).
13. 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)).
14. 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)).
15. 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)).
16. 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)).
17. If the Parole Board directs release under section 31A(4B)(ii), that release is unconditional (section 31A(4C)).

Parole Board Rules 2019 (as amended)

18. 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.
19. Decisions concerning preventative sentences (as defined in section 31A(5) of the 1997 Act) are eligible for reconsideration under rule 28(2).

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. 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 Respondent has submitted no representations in response to this application.

Discussion

24. The Applicant submits that the decision was irrational.

25. Although the 'reasons' section of the decision is around a page in length, most of the content is descriptive. The reasoning behind the decision is very brief:

"The panel gives [the Applicant] credit for his positive engagement with Probation. However, the panel is of the opinion that a further period of positive behaviour subject to licence conditions is required, especially given [a domestic incident] and the fact that his relationship has only relatively recently ended."

26. The domestic incident reportedly took place in December 2020. Police were called. The Applicant had drunk a significant amount of alcohol. There was no domestic violence, as the Applicant's partner was in bed asleep and was unaware that he had been drinking.

27. The Applicant's relationship with his partner reportedly ended in July 2022.

28. The Applicant states that his relationship ended amicably, and he had started discussions with his partner (who had been unwell) about separating in January 2022. He admitted the incident in December 2020 and explained that his drinking was a situational response to the challenges of caring for his partner at the time. He stated he contacted his Community Offender Manager (**COM**) immediately and began work with drug and alcohol services to reduce the risk of a repeat incident. He stated he was discharged from the service in April 2021 and had been assessed as no longer at risk

from misusing alcohol and that all core risk reduction work needed to aid desistance had been completed.

29. The dossier notes the following:

- a) An IPP progression panel on 28 November 2022 considered the Applicant to have made good progress since his 2016 release;
- b) The Applicant is in full-time employment and has stable accommodation;
- c) There had been no further reportable incidents since December 2020;
- d) The December 2020 incident did not involve domestic violence;
- e) The Applicant completed work with the Probation Service and drug and alcohol services on binge drinking and emotional resilience;
- f) Drug and alcohol services had closed the Applicant's case and were satisfied he could manage his alcohol use successfully;
- g) The IPP progression panel supported the application to suspend supervision;
- h) Engagement with probation has been extremely positive; and
- i) The COM supported a suspension of supervision as the Applicant has *"demonstrated a consistent pattern of positive, pro-social behaviour and positive coping strategies that have supported a commitment to desistance"* and *"has no outstanding needs that would cause concern or increase his risk of reoffending"*.

30. Panels of the Parole Board are not obliged to adopt the opinions and recommendations of professional witnesses. It is their responsibility to make their own risk assessments and to evaluate the likely effectiveness of any risk management plan proposed. They must make up their own minds on the totality of the evidence. They would be failing in their duty to protect the public from serious harm (while also protecting the prisoner's liberty from unnecessary interference) if they failed to do just that. As was observed by the Divisional Court in **DSD**, they have the expertise to do it. However, if a panel were to make a decision contrary to the opinions and recommendations of professional witnesses, it is important that it should explain clearly its reasons for doing so and that its stated reasons should be sufficient to justify its conclusions, following **R (Wells) v Parole Board [2019] EWHC 2710**.

31. It is almost certainly the case that the panel, who I have no doubt approached this review conscientiously, reasonably, and sensibly, had a much firmer and logical set of reasons in its mind when reaching its conclusion not to terminate the Applicant's IPP licence. However, I cannot look into the panel's mind; the only way in which I can determine this application is on the evidence before me and, having carefully considered the decision, cannot find a way in which its conclusion can be rationally and sustainably explained. My conclusion may have been different had the panel's reasons been more prominently and expansively articulated, but, in the absence of this, I cannot find a rational explanation.

Decision

32. Accordingly, applying the test as defined in case law, I find the decision not to terminate the Applicant's licence to be irrational. I do so solely for the reasons set out above. The application for reconsideration is therefore granted and the case should be reviewed by a fresh panel.

Stefan Fafinski
13 February 2023

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