

[2023] PBRA 45

Application for Reconsideration by Siviter

Application

1. This is an application by Siviter (the Applicant) for reconsideration of an oral hearing decision of a panel of the Parole Board (*the Panel*) dated 3 January 2023. The Panel decided not to direct the Applicant's release and not to make a recommendation for a move to open conditions.
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 papers are:
 - a) an application for reconsideration dated 17 January 2023 submitted by the Applicant's solicitors;
 - b) the Panel's decision dated 3 January 2023; and
 - c) a dossier of 384 pages.

Background

4. The Applicant is 41 years old. In September 2007, he was given a sentence of imprisonment for public protection (*IPP*) for attempted robbery and wounding with intent to do grievous bodily harm. The minimum term of four years, less time spent on remand, expired in September 2011. The Applicant threatened a married couple who ran a newsagents with a knife and demanded money from them. When the female shopkeeper asked the Applicant to leave, he pointed the knife at her. The male shopkeeper (her husband) stepped forward and the Applicant stabbed him four times. The female shopkeeper collapsed a few days later and died from a brain haemorrhage.



5. During his IPP sentence, the Applicant has undertaken several accredited programmes including Kaizen which he completed in 2019. He subsequently spent six months on a PIPE unit.

Request for Reconsideration

6. The application for reconsideration is dated 17 January 2023.
7. The application was not made on the published form CPD 2, which contains guidance notes to help prospective applicants ensure their reasons for challenging the decision of the panel are well-grounded and focused. However, that does not mean that the application was not validly made.
8. The application submits that the evidence presented to the Panel identified that there was no core risk reduction work for the Applicant to complete and that any outstanding work was consolidation work which could be undertaken in open conditions alongside testing the Applicant in a less secure environment. It further submits that, on that basis, there is no imminent risk of harm to the public if the Applicant progressed to open conditions and *"therefore the risk to the public should be manageable"*. The application sets out evidence from the Applicant's prison offender manager, the Applicant's community offender manager, and the prison psychologist addressing the criteria for making a recommendation for a move to open conditions.
9. The application argues that the Panel, *"unfairly assessed the evidence of all the professional witnesses and disregarded the recommendations of the witnesses when making their decision"*. It concludes that *"the Parole Board have made an irrational decision and not applied evidence of risk adequately"*.
10. In summary, the application submits that the Panel was irrational in reaching a decision that it could not make a recommendation that the Applicant should move to open conditions.
11. The application does not present any arguments that seek a reconsideration of the Panel's decision not to direct the Applicant's release.

The reply on behalf of the Secretary of State

12. The Secretary of State did not offer any submissions in response to the application.



Current parole review

13. The current parole review is the Applicant's eighth review. The Secretary of State referred the Applicant's case to the Parole Board on 26 August 2021. The Applicant's case was adjourned on 11 February 2022 to allow for a psychological risk assessment (*PRA*) of the Applicant to be submitted; the *PRA* was due to have been completed in December 2021.
14. Following submission of the *PRA*, the Applicant's case was directed to an oral hearing on 8 April 2022.
15. The Applicant's oral hearing, which was conducted remotely by video, took place on 13 December 2022. The Panel comprised a judicial member as chair, a specialist psychiatrist member, and an independent member. The Panel had considered a dossier of 382 pages which included a victim personal statement from the surviving victim of the index offences.
16. The Applicant applied for release at his review. At the hearing, evidence was taken from the Applicant's prison offender manager, the Applicant's community offender manager, and the prison psychologist. The Applicant also gave evidence to the panel.

The Relevant Law

17. The panel correctly sets out in its decision letter dated 3 January 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.
18. The Parole Board will direct release if it is no longer necessary for the protection of the public that the prisoner should be confined. The test is automatically set out in the Parole Board's template for oral hearing decisions.

Parole Board Rules 2019 (as amended)

19. Under Rule 28(1) of the Parole Board Rules 2019 the only types of decisions which are eligible for reconsideration are those concerning whether 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)). Decisions concerning the termination, amendment, or dismissal of an IPP licence are also eligible for reconsideration (Rule 31(6) or Rule 31(6A)).

20. Rule 28(2) of the Parole Board Rules provides the sentence types which are eligible for reconsideration. These are indeterminate sentences (Rule 28(2)(a)), extended sentences (Rule 28(2)(b)), certain types of determinate sentence subject to initial release by the Parole Board (Rule 28(2)(c)) and serious terrorism sentences (Rule 28(2)(d)).

21. 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

22. 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 paragraph 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."

23. 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.

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

Discussion

25. I note that the Panel's decision does not set out the terms of the Secretary of State's referral correctly. In the decision, the Secretary of State's referral is recorded as a referral to consider the Applicant's release only. In fact, the Secretary of State's referral provides that should the Parole Board consider that it is not appropriate to direct release, it is invited to consider whether the Applicant should be transferred to open conditions. I consider this to be an inadvertent error which is not relevant to the making of the Panel's decision and which does not affect the Panel's decision. It does not provide the Applicant with an additional ground for reconsideration of the decision on the ground of an error of law because the Panel and the professionals consider the suitability of the Applicant for open conditions and the key limbs of the test for open conditions are correctly set out and considered by the Panel in its conclusion.

26. The application for reconsideration challenges the Panel's decision not to make a recommendation for the Applicant to move to open conditions. A decision not to recommend a move to open conditions is not eligible for reconsideration under Rule 28 and the application fails on this basis. It is therefore not necessary for me to consider the grounds on which it is argued that the Panel's decision is irrational.

Decision

27. Since a decision not to recommend a move to open conditions is not eligible for reconsideration under the Parole Board Rules 2019, as amended, the application for reconsideration is refused.

H Emrys

21 March 2023

