

[2023] PBRA 75

Application for Reconsideration by Camilis

Application

1. This is an application by Camilis (the Applicant) for reconsideration of a decision of an oral hearing (by an oversight, no doubt, undated) not to direct release.
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 Letter, received by the Applicant on 28 March 2023
 - Representations for Reconsideration dated 18 April 2023
 - The dossier, which now runs to 912 numbered pages, the last document being the Decision Letter.

Background

4. The Applicant is now 29 years old. In 2014, when he was 21, he received an extended sentence totalling 10 years, of which 7 years was the custodial element, with a 3 year extension period. The offences were attempted robbery, possession of an imitation firearm with intent to cause fear of violence, and possession of an imitation firearm on arrest.
5. With an accomplice, he demanded money at gunpoint from a woman walking in the street with her 12 year old daughter. The Applicant had previous convictions, including attempted robbery and robbery, assault, and possession of a bladed article. He committed the index offences on licence after release from a 6 year custodial sentence. His offending was for personal gain and to support his drug habit. He has had contact with mental health services since before his teens, but has no mental health diagnoses.
6. The Applicant was released on licence on 1 September 2020 and recalled on 27 November 2020, returning to custody on 5 January 2021, after choosing to spend time unlawfully at large with his family.

Request for Reconsideration

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7. The application for reconsideration is dated 18 April 2023.
8. The Representations are lengthy, repetitive and disorganised. This means that rather than record the grounds, I have to disentangle them. The grounds for seeking a reconsideration are, as well as I can discern them, all based on dissent from the panel's findings of fact. Somewhat remarkably, given that some at least of the challenges relate to the approach the panel took to unproven allegations, although there are references to authority in the Representations, there is no mention of the leading case of **Pearce**, decided in the Court of Appeal on 14 January 2022, and in the Supreme Court on 5 April 2023: ***R (on the application of Pearce and another) v Parole Board [2023] UKSC 13***. I will apply the Supreme Court's approach where appropriate.
9. Doing the best I can, I set out the grounds advanced for reconsideration as follows:
- (1) The panel was wrong to reject the Applicant's account that he did not know his partner had a child, and did not adequately explain why it did so;
 - (2) The panel gave undue weight to the Applicant's tendency to issue threats;
 - (3) His partner's allegations that the Applicant had threatened her in January 2023 were not tested;
 - (4) There was no evidence to support any allegation that his partner felt under threat from the Applicant, or that she was at significant risk from him;
 - (5) The panel failed to take properly into account the Applicant's evidence that some of the threats he issued in prison were within the context of the prison supplying him with his medication late or not at all, when at other prisons he had had control of his own medication;
 - (6) Although the Applicant accepted he had made threats, he did not accept any specific security entries, to which the panel should have referred him;
 - (7) The panel was inconsistent in basing its findings on security reports while giving little weight to security reports;
 - (8) The panel found that the Applicant had used threatening language to his partner's mother and former partner despite the fact that he denied doing so;
 - (9) The panel failed to give sufficient weight to a statement from his partner in the dossier to the effect that she did not feel under threat from the Applicant and regretted calling the police about him;
 - (10) The allegations were untested because the panel did not hear direct oral evidence from either of the relevant two parties [sic] in this case;
 - (11) The panel effectively found the Applicant had acted against relevant parties by reference to a finding of propensity based on other materials in the case;
 - (12) There is a complete absence of reasoning from the panel which can logically justify a finding on the balance of probabilities that the Applicant has engaged in such behaviour;
 - (13) The panel was wrong to find that the Applicant failed to take advantage of psychological support provided in the community, when the Community Offender Manager gave evidence that the psychology support that had been anticipated for the Applicant in the community had not materialised as hoped;
 - (14) The panel overlooked points made on the Applicant's behalf relating to the exacerbation of his symptoms relating to personality disorder in the event of stress and vulnerability as well as the need for ongoing support in custody;

(15) The possibility of support via the intervention of a particular pathway was not acknowledged in terms of management in the community.

10. Each of these grounds seems to be concerned with irrationality, rather than procedural unfairness. The Representations summarise the complaint as a failure to take into account "*material consideration*" [sic] which flaws the quality of the ultimate decision, and assert that the assessment of evidence also fails in its reasonableness or logicity to the extent that the decision should not stand.

Current parole review

11. This is the first parole review since the Applicant's recall. The oral hearing took place on 15 March 2023, before a panel consisting of two independent members and a psychologist member of the Parole Board. The Prison Offender Manager (POM), the Community Offender Manager (COM), and the Applicant all gave evidence. At that stage the dossier consisted of 882 pages, to which were added written closing submissions from the Applicant's representative.

12. The Applicant was represented throughout. His representative had the opportunity to ask questions of all witnesses. He could, therefore, have asked the Applicant for the information the absence of which is complained of in Ground (6) above. Again, bearing in mind that the Parole Board has no power to compel the attendance of witnesses and is often faced with evidence from witnesses who make complaints and then do not wish to pursue them (see **Pearce** above, in the Supreme Court, at Paragraph 76), it is noteworthy that no application was made on behalf of the Applicant to call any witness. The statements of his partner and the Applicant's father were placed before the Parole Board in the dossier, in written form.

The Relevant Law

13. The panel correctly sets out in its decision letter the test for release.

14. 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 within the Parole Board's template for oral hearing decisions.

15. The case of **Johnson [2022] EWHC 1282 (Admin)** does not change the test, but adds the following gloss:

"The statutory test to be applied by the Board when considering whether a prisoner should be released does not entail a balancing exercise where the risk to the public is weighed against the benefits of release to the prisoner. The exclusive question for the Board when applying the test for release in any context is whether the prisoner's release would cause a more than minimal risk of serious harm to the public."

Parole Board Rules 2019 (as amended)

16. 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

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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)).

17. 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)).

Irrationality

18. 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."

19. 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.

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

21. In **R (Wells) v Parole Board [2019] EWHC 2710** Saini J. articulated a modern approach to the issue of irrationality:

*"A more nuanced approach in modern public law is to test the decision-maker's ultimate conclusion against the evidence before it and to ask whether the conclusion can (with due deference and with respect to the panel's expertise) be safely justified on the basis of that evidence, particularly in a context where anxious scrutiny needs to be applied. ... [T]his approach is simply another way of applying Lord Greene MR's famous dictum in *Wednesbury* ... but it is preferable in my view to put the test in more practical and structured terms on the following lines: does the conclusion follow from the evidence or is there an unexplained evidential gap or leap in reasoning which fails to justify the conclusion."*

22. In **Oyston [2000] PLR 45**, at paragraph 47 Lord Bingham said: *"It seems to me generally desirable that the Board should identify in broad terms the matters judged by the Board as pointing towards and against a continuing risk of offending and the Board's reasons for striking the balance that it does. Needless to say, the letter should summarise the considerations which have in fact led to the final decision. It would be wrong to prescribe any standard form of Decision Letter and it would be wrong to require elaborate or impeccable standards of draftsmanship."*

The reply on behalf of the Secretary of State (the Respondent)

23. The Respondent has indicated that he does not intend to make any representations on this Application.

Discussion

24. The panel discussed in detail the allegations, denials and counter-allegations with regard to the Applicant's partner.

25. The panel discussed the Applicant's behaviour in custody. As the Representations point out, the panel placed little weight on allegations which were uncorroborated by sanctions or other information. Importantly, the panel noted (Paragraph 2.7 of the Decision Letter) that the Applicant both denied making threats and admitted making threats because he was hurt and frustrated about his partner telling him about her other relationships. He accepted that he had said some serious things but did not mean them. He accepted that he was aware that, before the criminal case was discontinued, he was not permitted to contact his partner and took steps, with the assistance of his father, to get round this.

26. The Applicant explained when he made threats he was effectively warning others to leave him alone, or "venting". He had been told by clinicians that this was positive for him, though he accepted he might not be doing it the right way. He said that in the community he could walk away from situations so would not need to vent. Sometimes he was aware that he should not make threats but did not want to lose face. He did not direct his threats at anyone specific but felt that officers were onto him 24/7. If he was feeling stressed or anxious, by the time he had processed what he was saying, he had already said it.

27. The COM said the Applicant could become obsessive, and she was concerned about future risk of stalking or harassment. She considered that his partner remained at risk, and gave reasons for that opinion. She considered that the Applicant was unable to identify the triggers or early warning signs that led to him making threats, and lacked appropriate self-management strategies. She assessed his risk of re-offending as at least medium and potentially higher.

28. The panel carefully set out and considered the proposed Risk Management Plan (RMP), and the lengthy submissions of the Applicant's representative. It pointed out that the Applicant's offending history involved persistent use of instrumental threats of violence to get what he wants. It commented that *"Since his recall he has repeatedly made reactive threats to prison staff when he has been unable to manage feelings of frustration, and he has also admitted making threats to [his partner] from prison, which he attributed to feeling hurt and frustrated over her behaviour. [He] has acknowledged that he has limited self-control over his propensity to make verbal threats, which is an entrenched pattern of behaviour."*

29. The panel went on to find, on the balance of probabilities, that it was likely that the Applicant had used threatening language towards his partner's mother and her former partner. Some of the complaints in the Representations are about this

finding. Bearing in mind the Applicant's acceptance of a propensity to make verbal threats, and his acknowledged limited self-control under stress, this was a conclusion open to the panel on the evidence.

30. Similarly, the panel considered it likely, on the balance of probabilities, that the Applicant's behaviour towards his partner caused her to become fearful of him. Bearing in mind that she called the police about him, this too was a conclusion open to the panel on the totality of the evidence.
31. Turning away from the contested areas of evidence, the panel found that the recall was appropriate, because the Applicant failed to return to his approved accommodation and could no longer be contacted. Risk, as the panel said, cannot be managed in those circumstances. He remained unlawfully at large despite being asked to hand himself by his COM, with whom he said he had a good working relationship. The panel's finding that the Applicant was not motivated to engage in psychological support, preferring to spend his time with his partner, is, again, supported by evidence, regardless of the details of how much support was actually on offer.
32. The panel found that there was still core risk reduction work for the Applicant to do, which should be completed in closed conditions; that he has limited insight into the impact of his threatening behaviour on others; that there is an emerging area of risk concerning his inability to manage difficulties in or the ending of intimate relationships, so that work on relationships is required; that his risk of re-offending is medium, with a high risk of causing serious harm to members of the public, known adults and children; that his risk could escalate rapidly in the community, and that the panel could not be satisfied that professionals would be able to identify warning signs and take rapid steps to mitigate risk.
33. All these were conclusions properly and fairly open to the panel on the evidence, and mean that the panel's overall decision not to direct release cannot be described as irrational. The panel carefully weighed the evidence. The fact that the Applicant disagrees with the weight the panel attached to some of the evidence does not make the panel's conclusion irrational.

Decision

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

Patrick Thomas KC
25 April 2023