

[2023] PBRA 91

Application for Reconsideration by Anderson

Application

1. This is an application by Anderson (the Applicant) for reconsideration of a decision made by a duty member dated the 5 April 2023 not to terminate the licence imposed upon him in connection with a sentence of imprisonment for public protection (IPP).
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:
 - a) The decision dated the 5 April 2023;
 - b) The application produced by the Applicant's legal representative via an email dated the 5 April 2023;
 - c) The IPP licence termination dossier numbered to page 144; and
 - d) An earlier reconsideration decision dated the 23 February 2023.

Background

4. On the 7 August 2008, the Applicant received a sentence of imprisonment for public protection (IPP) following his conviction for robbery. His tariff expiry was set by the court as 7 August 2012 and he was first released at that point on the direction of the Parole Board.
5. The Applicant has now been recalled to custody four times. He is currently in custody, having been recalled in 2022.
6. The Applicant's case was referred to the Parole Board by the Secretary of State (the Respondent) under section 31A of the Crime (Sentences) Act 1997 to consider whether or not it would be appropriate to terminate his IPP licence.
7. A report dated the 9 December 2022 was provided by Probation as a part of the application to terminate the IPP licence.
8. In his personal (undated) and legal representations (19 January 2023), the Applicant provided reasoning as to why his IPP licence should be terminated. At the time of his representations, the Applicant was awaiting the Parole Board's review of

his recall to custody.

9. On the 24 January 2023, a duty member of the Parole Board decided not to terminate the IPP licence.
10. On the 8 February 2023, the Applicant applied for reconsideration of that decision on the basis that it was procedurally unfair.
11. In a reconsideration decision dated the 23 February 2023, the application for reconsideration was granted. It was directed that the case should be considered by a fresh panel on the papers.
12. The case was put to a fresh panel and on the 2 March 2023, a duty member of the Parole Board considered the application. The member determined that there was a need for further information and invited the Secretary of State to review the application to ensure correct information was presented to the Parole Board.
13. An amended Probation report dated the 31 March 2023 was then filed and the case was reviewed by a duty member of the Parole Board on the 5 April 2023 who declined to terminate the IPP licence.

Request for Reconsideration

14. In his application for reconsideration, the Applicant submits that the decision was procedurally unfair because the decision of the 5 April 2023 was made by the same member who made the decision of the 24 January 2023.

The Relevant Law

Crime (Sentences) Act 1997

15. 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.
16. 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)).
17. 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)).
18. If a prisoner has been released on licence (regardless of whether they have been subsequently recalled) and the qualifying period has expired and if the 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)).
19. 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)).

20. 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)).
21. If the Parole Board directs release under section 31A(4B)(ii), that release is unconditional (section 31A(4C)).

Parole Board Rules 2019 (as amended)

22. 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.
23. Decisions concerning preventative sentences (as defined in section 31A(5) of the 1997 Act) are eligible for reconsideration under rule 28(2).

Procedural unfairness

24. 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.
25. 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.
26. The overriding objective is to ensure that the Applicant's case was dealt with justly.

The reply on behalf of the Respondent

27. On the 13 April 2023, the Respondent confirmed that he would not be submitting any representations.

Discussion

28. The first reconsideration decision directed that the Applicant's case should be reconsidered by a fresh panel, i.e. not the panel responsible for the decision dated the 24 January 2023. The reconsideration decision of the 23 February 2023 stated:

"I have considered carefully whether this case should be reconsidered by the original panel or whether it should be considered afresh by another panel. I have no doubt that the original panel would be fully capable of approaching the matter conscientiously and fairly. However, if the original panel were to adhere to its previous decision, there would inevitably be room for suspicion that it had simply been reluctant to admit that its original decision was wrong. However inaccurate or unfair that suspicion might be, it would be preferable to avoid it by directing (as I now do) that the case should be reheard by a fresh panel on the papers."

29. I accept that there was an administrative error in allowing the member who considered the case on the 24 January 2023 to then consider it again on the 5 April 2023. This was against the direction made in the granted reconsideration and therefore it is procedurally unfair. I make no criticism of the duty member who likely did not recall that they had earlier reviewed the Applicant's case.

Decision

30. For the reasons I have given, applying the test as defined in case law, I find that the decision not to terminate the Applicant's licence to be procedurally unfair. The application is granted.

Robert McKeon
11 May 2023