

[2024] PBRA 137

Application for Reconsideration by Sokoli

Application

1. This is an application by Sokoli (the Applicant) for reconsideration of a decision of a panel of the Parole Board dated the 11th June 2024 making no direction for release following an oral hearing on 25th April 2024.
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. This is an eligible case, and the application was made in time.
3. I have considered the application on the papers. These are the application for reconsideration; the decision of the panel and the contents of the dossier.

Request for Reconsideration

4. The application for reconsideration is undated.
5. The grounds for seeking a reconsideration are that the decision of the panel was irrational in that it failed to properly consider and take into account the progress in reducing his risk that the Applicant has made during the latter part of his prison sentence.

Background

6. The Applicant was 18 years old when he was sentenced on 6th April 2018 to an extended sentence of 15 years imprisonment for an offence of causing grievous bodily harm with intent. That sentence was reduced by the Court of Appeal to an extended sentence of 12 years comprised of 9 years custodial and a 3 year licence extension. The Applicant transferred to an open prison in May 2023.

Current parole review

7. This is the Applicant's first parole review since he became eligible for release on licence. The hearing was adjourned to try and get information from the police about the Applicant's home address and family background.
8. The panel heard evidence from the Prison Offender Manager (POM); the Community Offender Manager (COM) and a prison instructed forensic psychologist. The panel chairman was a psychologist.



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The Relevant Law

9. The panel correctly sets out in its decision letter dated 11th June 2024 the test for release.

Parole Board Rules 2019 (as amended)

10. Rule 28(1) of the Parole Board Rules provides the types of decision which are eligible for reconsideration. Decisions concerning whether the prisoner is or is not suitable for release on licence are eligible for reconsideration whether 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)).
11. 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

12. The power of the courts to interfere with a decision of a competent tribunal on the ground of irrationality was defined in *Associated Provincial Houses Ltd -v- Wednesbury Corporation* 1948 1 KB 223 by Lord Greene in these words *"if a decision on a competent matter is so unreasonable that no reasonable authority could ever have come to it, then the courts can interfere"*. The same test applies to a reconsideration panel when determining an application on the basis of irrationality.
13. In *R(DSD and others) -v- the Parole Board* 2018 EWHC 694 (Admin) a Divisional Court applied this test to parole board hearings in these words 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."*
14. In *R(on the application of Wells) -v- Parole Board* 2019 EWHC 2710 (Admin) Saini J set out what he described as a more nuanced approach in modern public law which was *"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 regard 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"*. This test was adopted by a Divisional Court in the case of *R(on the application of the Secretary of State for Justice) -v- the Parole Board* 2022 EWHC 1282(Admin).
15. As was made clear by Saini J this is not a different test to the *Wednesbury* test. The interpretation of and application of the *Wednesbury* test in Parole hearings as explained in *DSD* was binding on Saini J.



16. It follows from those principles that in considering an application for reconsideration the reconsideration panel will not substitute its view of the evidence for that of the panel who heard the witnesses.
17. Further while the views of the professional witnesses must be properly considered by a panel deciding on release, the panel is not bound to accept their assessment. The panel must however make clear in its reasons why it is disagreeing with the assessment of the witnesses.
18. 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)

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

Discussion

20. The essence of the Applicant's complaint is that insufficient weight has been attached to the progress that he has made; the fact that he was young when he was sentenced and has matured since and that the POM supported the Applicant's release. The Applicant has attended a number of courses, got qualifications and has engaged in rehabilitation during his sentence.
21. The panel did take into account the progress the Applicant has made as is clear from para 2 of the decision.
22. The panel nevertheless decided that at the moment the Applicant did not meet the test for release. There have been some problems even while he has been at an open prison.
23. In my judgment the panel were entitled to reach that conclusion. The psychologist who carried out a detailed risk assessment gave her opinion that there was further work which needed to be completed before it was safe to release the Applicant. While the POM thought that that work suggested by the psychologist could be carried out on licence the COM also had reservations about releasing the Applicant at the moment.
24. Although the failure of the police to provide the information asked for was frustrating for the panel, they concluded that it did not prevent them from making a decision on the evidence that they did have. Sometimes there are good reasons why the police cannot comply with a request for information which the panel then needs to ignore.
25. In my judgment there was clearly material that the panel had which justified the decision that the panel made and it cannot be properly described as irrational within



the meaning set out above. The reasons for their decision are clearly set out in the decision and were supported by evidence. The Applicant's frustration is understandable as he appears to have taken considerable strides towards his release.

26. The Applicant in his application refers to two cases. The first was R(Hardial Singh) -v- Governor of Durham Prison 1984 1 WLR 704. The reference was not provided.

Decision

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

John Saunders
26 July 2024