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[2024] PBRA 142

Application for Reconsideration by Camara

Application

1. This is an application by Camara (the Applicant) for reconsideration of the decision made by an oral hearing panel dated 13 June 2024 not to direct his 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, the dossier (consisting of 376 pages), and the application for reconsideration (dated 1 July 2024).

Background

4. The Applicant received an extended sentence comprising a custodial period of four years with an extended licence period of one year on 2 August 2021 following conviction for assault occasioning actual bodily harm. He was also convicted of taking a vehicle without consent and two breaches of a restraining order.

5. The Applicant was 42 years old at the time of sentencing and is now 45 years old.

6. His conditional release date is reported to be in May 2025, and his sentence expiry date is reported to be in May 2026.

Request for Reconsideration

7. The application for reconsideration has been drafted and submitted by the Applicant without the benefit of legal representation. It argues that the decision not to release him was irrational.

8. These grounds are supplemented by written arguments to which reference will be made in the **Discussion** section below.

Current Parole Review

9. The Applicant's case was referred to the Parole Board by the Secretary of State (the Respondent) in April 2023 to consider whether or not it would be appropriate to direct his release. This is the Applicant's first parole review.

10. The case proceeded to an oral hearing before a two-member panel on 12 June 2024. Oral evidence was taken from the Applicant, together with his Prison Offender Manager (POM) and Community Offender Manager (COM). The Applicant was legally represented throughout the hearing.

11. In the professional opinion of both the POM and COM, the Applicant was suitable for release. The panel did not direct his release.

The Relevant Law

12. 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 decision templates.

Parole Board Rules 2019 (as amended)

13. 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)).

14. 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)).

15. 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

16. 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 (CA) 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.

17. In *R(DSD and others) v Parole Board* [2018] EWHC 694 (Admin) the Divisional Court applied this test to Parole Board hearings in these words (at [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."

18. In *R(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 the Divisional Court in *R(Secretary of State for Justice) v Parole Board* [2022] EWHC 1282(Admin).

19. As was made clear by Saini J in *Wells,* 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.

20. 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.

21. 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.

The reply on behalf of the Respondent

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

Discussion

23. The Applicant argues that the decision not to release him was irrational because both POM and COM were supporting release, and they know him "*fairly well*". It is also argued that the panel's decision was made before the hearing as the Applicant was "*hardly asked any questions"* and the hearing took around an hour and a half with the decision following two days later. The application also restates information that the panel would have known, including elements of the proposed risk management plan, the Applicant's adjudication history, his community support network, his future relationship plans and his willingness to undertake accredited programme work in the community.

24. I shall deal first with the argument that the panel's decision had already been made. Although the application does not explicitly plead procedural unfairness, this argument would fall under that hearing. In fairness to the Applicant, who is not legally represented in this reconsideration application, I will consider it.

25. Other than the relative short duration of the hearing and the prompt issuing of the decision, there is no evidence to suggest that the panel had already made up its mind. The Applicant was legally represented at the hearing, and if his legal representative had thought that the Applicant (or other witnesses) had more to say than the panel asked, it was the legal representative's job to ask those questions. A panel need only ask questions that it considers necessary to make its assessment of

risk, and no more. Efficiency on the panel's part in the issuing of the decision is not indicative of procedural unfairness. This argument therefore fails.

26. Returning to the primary argument (that as the professional witnesses were supporting release then the panel's contrary decision was irrational) this view fundamentally misunderstands the panel's purpose.

27. 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 that they hear, including any evidence from the Applicant. They would be failing in their duty to protect the public from serious harm 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 all the professional witnesses, it is important that, following *Wells*, it should explain clearly its reasons for doing so and that its stated reasons should be sufficient to justify its conclusions.

28. In this case, the Applicant's POM and COM were both supporting release. The panel disagreed. It was perfectly entitled to do so. The decision letter sets out its reasons for doing so. These reasons are based on evidence as well as being rational and reasonable or at least not so outrageous in the sense expressed above.

29. Although not specifically submitted as part of the Application, I also find that the reasons given by the panel in supporting its conclusions were sufficiently clear and thorough for the panel to have discharged its procedural obligation to give reasons.

30. Therefore, I do not find that the panel's decision was irrational (nor procedurally unfair).

Decision

31. For the reasons set out above, the application for reconsideration is refused.

Stefan Fafinski
29 July 2024