

[2024] PBRA 254

Application for Reconsideration by Taylor

Application

1. This is an application by Taylor (the Applicant) for reconsideration of a decision made by a panel member dated 20 September 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, 2023 and 2024) (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 paper decision, the dossier consisting of 173 pages and the application for reconsideration.

Request for Reconsideration

4. The application for reconsideration is dated 28 November 2024. It has been drafted by representatives on behalf of the Applicant. It submits that the decision was procedurally unfair and erred in law.
5. The grounds for seeking a reconsideration are that the panel did not consider the Applicant's custodial behaviour, mischaracterised his submissions and failed to direct an oral hearing.

Background

6. The Applicant received an extended sentence on 29 September 2011 for seven counts of rape of a female under the age of 16. The sentence was varied on appeal in May 2013. His extended sentence comprises 11 years 6 months imprisonment with an extended licence period of 4 years. He also received a concurrent sentence of 3 years imprisonment for assaults occasioning actual bodily harm.
7. The Applicant was aged 18 years at the time of his sentencing in 2011. He is now aged 31 years old.



8. He was released automatically in December 2016 and recalled in June 2017. He was released after a Parole Board hearing in October 2018 and recalled in January 2019. He was released again after a Parole Board hearing in June 2021 and recalled in November 2021. This is his second review after his third recall.
9. The Applicant's case was referred to the Parole Board by the Secretary of State (the Respondent) to consider whether or not it would be appropriate to direct his release.
10. After considering the principles in the case of *Osborn, Booth & Reilly* [201] UKSC 61 the panel member, giving reasons for doing so, considered the case on the papers.

The Relevant Law

11. The panel correctly sets out in its decision letter of 20 September 2024 the test for release.

Parole Board Rules 2019 (as amended)

12. 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)).
13. [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)).]

Procedural unfairness

14. 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.
15. 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;
 - (e) the panel did not properly record the reasons for any findings or conclusion; and/or



(f) the panel was not impartial.

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

Error of law

17. An administrative decision is unlawful under the broad heading of illegality if the panel:

- a) misinterprets a legal instrument relevant to the function being performed;
- b) has no legal authority to make the decision;
- c) fails to fulfil a legal duty;
- d) exercises discretionary power for an extraneous purpose;
- e) takes into account irrelevant considerations or fails to take account of relevant considerations; and/or
- f) improperly delegates decision-making power.

18. The task in evaluating whether a decision is illegal is essentially one of construing the content and scope of the instrument conferring the duty or power upon the panel. The instrument will normally be the Parole Board Rules, but it may also be an enunciated policy, or some other common law power.

The reply on behalf of the Secretary of State

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

Discussion

20. First Ground: Failure to consider custodial conduct. The Applicant argues that his custodial progress has not been fully considered, nor how it could impact on risk and the panel decision does not adequately explain why good custodial behaviour does not equate to a reduction in risk.

21. Unfortunately, the Applicant's belief in and understanding of good behaviour is not reflected in the same terms in the August 2024 report of the Community Offender Manager (COM). Whilst the COM acknowledges that he has "*demonstrated some stability in his behaviour and engagement with the prison regime which is positive, he has not completed any of the work which was discussed within the previous hearing. This lack of progression has been largely due to unstable behaviours preventing him from being eligible for assessments*". This failure to complete work to address areas of risk indicates, as the decision letter notes, that he has continuing outstanding treatment needs and therefore continues to present a risk. The panel decision did not need to give any further explanation of that risk.

22. In his submissions of 19 September 2024 the Applicant states that "*compared to his historical behaviour this is a marked improvement*". In those submissions he goes on to state that there is a further period of good behaviour since then. There may well be, but it would not be over a sufficient period of time on which the panel could have determined sustained engagement.



23. This ground is based on the Applicant's misguided interpretation of his own custodial behaviour, his failure to acknowledge the importance and necessity to complete risk reduction work and his lack of insight into the risk he presents.
24. There was no procedural unfairness or error of law in the conclusions reached by the panel which were soundly and clearly based on all the documents in the dossier.
25. Second ground: Mischaracterisation of submissions. The basis of this submission is not entirely clear. The decision letter records that in a meeting with his COM the Applicant accepted becoming frustrated when told what to do. The decision notes that the COM has concluded that compliance on licence is unlikely. In the written submissions to the panel the Applicant's representative notes that the meeting with the COM did not go well but makes no comment about being frustrated when told what to do. The application submits that the panel should not have relied on a statement that was never made to support the COM's conclusion that the Applicant is unlikely to comply with his licence.
26. At page 4 of 12 of the Part C Ongoing Reviews – Release & Risk Management Report, the COM noted the Applicant's frustration during the course of their meeting and reported the Applicant's comment "*I don't like being told no so yes I get frustrated*". The COM continues that it is apparent that the Applicant continues to struggle to comply with instructions and that his behaviour deteriorates when he does not agree with a decision made. The COM's conclusion that "*compliance on licence is unlikely*" is accurately recorded in the decision letter and given weight by the panel. It clearly was not a statement relied upon on behalf of the Applicant but that does not mean that the panel should ignore it. The panel has to conduct an assessment based on all the evidence presented and not just on the passages relied upon by the Applicant.
27. There is no error of law or procedural unfairness in the panel's approach or conclusion.
28. Third ground: Errors in law. This ground argues that the failure to direct an oral hearing amounts to an error in law. It does not. The panel considered the principles set out in the case of Osborn Booth & Reilly and did not find any reasons for directing an oral hearing. That decision was challenged and considered by a duty member who also refused the request for an oral hearing. Whilst accepting that the decision regarding a request for an oral hearing is not open to reconsideration, the Applicant submits that the decision is superficial and lacking in detail.
29. The Applicant is correct in submitting that the decision not to direct an oral hearing, made under rule 20 and is not one that can be challenged via the reconsideration mechanism (which only applies to the decision not to direct release). However, the panel's reasons are clear; the work to reduce his areas of risk and reduce his risk of serious harm had not been completed. Improvement in behaviour, even if accepted could not negate the need for risk reduction work to take place. There is no basis for this ground and accordingly it fails.
30. I am satisfied that the decision not to direct an oral hearing did not amount to an error of law.



Decision

31. For the reasons I have given, I do not consider that the decision was procedurally unfair or contained any errors of law and accordingly the application for reconsideration is refused.

Barbara Mensah
20 December 2024