

[2024] PBRA 90

Application for Reconsideration by Hunter

Application

1. This is an application by Hunter (the Applicant) for reconsideration of a decision of a panel of the Parole Board dated 25 March 2024 making no direction for release and no recommendation for open conditions.
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 of the panel, the application for reconsideration and the dossier.

Background

4. On 29 May 2009 the Applicant was sentenced to a indeterminate sentence of imprisonment for public protection for an offence of section 18 wounding. The minimum term that the Applicant had to serve before he could apply for parole was 4 years. He is very significantly over tariff. During his sentence the Applicant was transferred to open conditions on five occasions. He was returned to closed conditions on each occasion principally because of concerns arising from his drug taking.

Request for Reconsideration

5. The application for reconsideration is undated and unsigned on the copy that I have seen.
6. The grounds for seeking a reconsideration are firstly that the incorrect procedure was followed in that *"the panel had no authority to consider the Applicant for open conditions"*. Secondly it is said that the decision was irrational in that the panel concluded that as a result of his drug use the Applicant was not safe to be released into the community. The panel concluded that the Applicant *"would present a real and imminent threat to the public if he was released because of the connection in this case between drug use in the community and violence"*. That conclusion is said to be irrational.

Current parole review

7. The date of the referral was 8 February 2023. There were a number of adjournments and hearings before the final hearing on 19 March 2024 as set out in the decision letter.
8. The panel heard evidence from the Applicant; a prison based social worker; a life liaison manager; a community offender manager (COM); a community based social worker; a recovery worker; a prison psychologist and a psychology manager.

The Relevant Law

9. The panel correctly sets out in its decision letter dated 25 March 2024 the test for release and the issues to be addressed in making a recommendation to the Secretary of State (the Respondent) for a progressive move to open conditions and applied them in reaching their decision.

Parole Board Rules 2019 (as amended)

10. Under Rule 28(1) of the Parole Board Rules 2019 the only kind of decision which is eligible for reconsideration is a decision that the prisoner is or is not suitable for release on licence. Such a decision is eligible for reconsideration 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)). This application is eligible.

Irrationality

11. 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."

12. 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.

Procedural unfairness

13. 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.

14. 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.

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

The Reply on behalf of the Respondent

16. The Respondent has responded to this application by letter dated 29 April 2024. I am very grateful for his response as without it I would have been unable to understand the basis on which the Applicant claims that the way in which his parole decision was reached was procedurally unfair. The Respondent has explained that his referral of the case to the Board was mistaken in that it invited the Board to consider if it did not release the Applicant whether to recommend a transfer to open conditions. He has explained that this was not an available option as the Applicant has been transferred to Scotland to serve his sentence and Scotland will decide whether the Applicant is moved to open conditions. The Applicant should have explained this in his application.

Discussion

17. The panel were well aware that the Applicant is well over tariff and took that into account. Nevertheless they have to apply the standard release test which is a high threshold. The decision is detailed and demonstrates that they have considered the evidence with care.

18. I will deal with the complaint about procedural unfairness first. While it is accepted by the Respondent that the panel was asked in error to consider making a recommendation for a transfer to open conditions, the panel refused to do so. It never was a viable option in view of the number of times the Applicant had been transferred to open conditions and then returned to closed. No witness supported a transfer to open conditions and the Applicant himself was opposed to it. In the event it is impossible to see that there was any unfairness to the Applicant resulting from this error and that ground is rejected.

19. The complaint of irrationality is also in my view without foundation. The panel decided that the Applicant was not safe to release because of the connection in his case between the use of drugs and violence in the community. While it is true that the Applicant had not been violent in closed conditions despite taking drugs there is every difference between the taking of drugs in closed conditions where presumably there are some controls and in the community where the Applicant has

demonstrated in the past that he can be violent when affected by drugs. Use of drugs is identified as one of his risk factors.

20. There is no basis for suggesting that this conclusion at 4.6 of the decision is one that no reasonable panel could have reached which is the test for irrationality.

21. In my judgment there are no grounds for this application and I reject it.

22. I have not asked for the reason but it would be helpful to have an application typed when it comes from a professional and if that is not possible it would be helpful if it was somewhat more legible.

Decision

23. For the reasons I have given, I do not consider that there is any basis for the suggestion that the decision was irrational or procedurally unfair and accordingly the application for reconsideration is refused.

John Saunders
09 May 2024