

[2025] PBRA 15

Application for Reconsideration by Simpson

Application

1. This is an application by Simpson (the Applicant) for reconsideration of a decision dated 12 November 2024 not to direct his release. The decision was made by a panel on the papers.
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.
3. I have considered the application on the papers. These are the decision, the dossier (consisting of 261 numbered pages), and the application for reconsideration.

Background

4. On 4 June 2008, the Applicant was sentenced to imprisonment for public protection following conviction for wounding/inflicting grievous bodily harm, assault occasioning actual bodily harm, battery, and attempted robbery. He pleaded guilty to all charges. His tariff was set at three years (less time spent on remand) and expired in December 2010.
5. The Applicant was 19 years old at the time of sentencing and is now 36 years old.
6. The Applicant has been released and recalled twice on this sentence, most recently in April 2022. He spent 10 months unlawfully at large and returned to custody in February 2023.
7. During his time unlawfully at large, it is alleged that he was involved in a knifepoint robbery. He has been remanded in custody for impeding the apprehension of an offender; all other charges relating to the matter having been reportedly filed no further action. He has a provisional trial date of March 2025 and remains remanded in custody until then.

Request for Reconsideration



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8. The application for reconsideration has been submitted by solicitors on behalf of the Applicant and submits that the decision was procedurally unfair.
9. These grounds are supplemented by written arguments to which reference will be made in the **Discussion** section below.

Current Parole Review

10. The Applicant's case was referred to the Parole Board by the Secretary of State (the Respondent) in December 2023 to consider whether or not it would be appropriate to direct his release. This is the Applicant's second parole review since his second recall.
11. On 12 November 2024, a single-member panel (the MCA panel) reviewed his case on the papers and made no direction for release. In doing so the panel noted current Parole Board guidance stating that "*where matters are unlikely to be resolved in around 8 weeks' time and where adjournments beyond 4 months should not usually be considered, it is appropriate that this review is now concluded on the papers*".

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.

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.

Procedural unfairness

16. 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.

17. 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.

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

The reply on behalf of the Respondent

19. The Respondent has advised that no representations will be submitted in response to this application.

Discussion

20. Submissions on behalf of the Applicant argue as follows:

- a) The paper decision was based upon inaccurate information in the dossier; and
- b) The Applicant has instructed that "*he no longer has any outstanding matters as everything has been resolved*".

21. It is submitted that the main reason that the panel did not direct release was that the Applicant had core risk reduction work outstanding. However, the Applicant states that he has, in fact, completed the Thinking Skills Programme (TSP) and that information had not been disclosed (and therefore not considered by the MCA panel). The Applicant also states that he has completed work with the Substance Misuse Service and addressed his substance misuse.

22. The dossier is clear (and states in multiple places) that the Applicant completed TSP on 12 July 2023. The decision, however, states (at para. 4.9) that the Applicant "*has not completed that work*".

23. The panel also noted that further interventions were also needed regarding relationships and substance misuse. While the Applicant states he has addressed his substance misuse, there was no evidence before the panel to support this, and the panel's decision can only be made on the basis of the evidence before it.

24. Finally, the Applicant's unsubstantiated assertion that "*everything has been resolved*" is far from being sufficient evidence for me to find procedural unfairness.

25. While I find that the MCA panel appears to have made an error in relation to the status of TSP, reconsideration is a discretionary remedy, and it does not seem to me that its decision would have been substantially different, even if it had noted TSP correctly. Not only is broader risk reduction work mentioned, but the panel's view is also primarily based on the fact that conclusion on the papers is fair and appropriate

when there are outstanding charges, particularly, as in the Applicant's case, when a prisoner is being held on remand with a hearing date several months in the future. That is a view that the panel was legitimately allowed to take.

Decision

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

Stefan Fafinski
21 January 2025