

[2019] PBRA 21

Application for Reconsideration by Edwards

Decision of the Assessment Panel

Application

1. This is an application by Edwards (the Applicant) for reconsideration of the decision of a three-member panel not to direct his release, following an oral hearing which convened on 9 August 2019.
2. I have considered this application on the papers. These were the dossier, the provisional decision letter of the panel dated 15 August 2019, the application for reconsideration received on 4 September 2019 and the response of the Secretary of State on 16 September 2019, indicating that he did not offer representations.

Background

3. The Applicant is now 65 years old. He is serving a sentence of life imprisonment imposed in 1996 for rape. His 12 year tariff expired in 2008. He had a long record of violent offending, mainly against women, and a conviction for rape in 1984.

Request for Reconsideration

4. The request was not made on the published form CPD 2, which contains guidance notes to help prospective applicants ensure their reasons for challenging the decision of the panel are well-grounded and focused. The document explains how the assessor will look for evidence to sustain the complaints and reminds applicants that being unhappy with the decision is not in itself grounds for reconsideration.
5. The Applicant has submitted a 23-page bundle in which he makes complaints against various organisations that go far beyond the issues of procedural unfairness and irrationality on the part of the panel for which this reconsideration process is designed to cater. His profound and enduring sense of grievance is apparent from the material he has provided.

Current parole review

6. In 2017 the Secretary of State referred the Applicant's case to the Parole Board for his seventh review. The terms of reference asked the panel to consider whether it was appropriate to direct the Applicant's release. If not, the panel was



invited to advise the Secretary of State on whether he should be transferred to open conditions.

7. At the outset of the hearing the Applicant sought an adjournment for legal representation, which the panel refused for the detailed reasons it gave in the provisional decision letter. The Applicant then declared he was not seeking either to be released or to progress to open conditions and left the room. The panel chair had time to warn him that the hearing would proceed in his absence.
8. The panel heard oral evidence from the Offender Supervisor and a colleague of the Offender Manager, standing in for him. They did not support release or progression to open conditions.
9. The panel was told that the Applicant had long since disengaged from sentence planning and refused to see any professionals to enable his risk to be assessed. He would rather stay in custody until what he regarded as a 'flawed' criminal justice system capitulates. He was focused on pursuing legal issues and complaints against several firms of solicitors who have represented him. Although courteous and polite to wing staff, he was steadfastly resistant to interventions that could help him progress. There could be no Risk Management Plan without his input.
10. The panel's own assessment was that the Applicant continued to pose a high risk of serious harm to women. It agreed with the professional witnesses that his identified risk factors were not yet safely manageable in the community. It therefore made no direction as to release, nor did it make any recommendation for progression.

The Relevant Law

11. Rule 25 (decision by a panel at an oral hearing) and Rule 28 (reconsideration of decisions) of the Parole Board Rules 2019 apply to this case.
12. Rule 28(1) provides that applications for reconsideration may be made in eligible cases on the basis that (a) the decision is irrational and/or (b) that it is procedurally unfair. This is an eligible case.
13. In **R (on the application of 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."

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. This strict test for irrationality is not limited to decisions whether to release; it applies to all Parole Board decisions.

Discussion

14. I have studied the bundle lodged by the Applicant. On examination, there is nothing in the conduct of the oral hearing which constitutes procedural unfairness. The panel dealt with his application for an adjournment with conspicuous care and patience. Their decision to proceed was amply justified by the history of this parole review. I am not a second reviewing panel, still less a platform on which the Applicant can ventilate his general grievances against the parole process and other parts of the prison and wider criminal justice system which he regards as unjust.
15. The legal test of irrationality is a very strict one. This case does not meet it. There is no objective basis upon which a valid argument could be grounded. The panel explained in its thorough reasons how it had analysed, weighed and balanced the written and oral evidence presented. The conclusion is a succinct and well-rounded summation of the relevant matters. It stated and applied the right test. It was correctly focused on risk throughout. The panel was reasonably entitled to accept the report authors' consensus against release and reach the decision it did.

Decision

16. In so far as the bundle lodged by the Applicant makes complaints of procedural unfairness and irrationality on the part of the August 2019 panel, they are not sustained on the papers before me.
17. Accordingly, this application is dismissed.

Anthony Bate
20 September 2019