

[2019] PBRA 29

Decision on Application for Reconsideration by Okoro

Application

1. This is an application by Okoro (the Applicant) for reconsideration of a decision by a Panel of the Parole Board not to direct his release on the basis that the decision was both procedurally unfair and irrational.
2. Rule 28(1) of the Parole Board Rules 2019 provides that applications for reconsideration may be made in eligible cases either on the basis that the decision is (a) irrational or (b) that it is procedurally unfair.


Background

3. The Applicant is currently serving an extended sentence imposed on 2 February 2016 following his pleas of guilty to robbery and possession of an offensive weapon in a public place. The custodial term was set at 4 years to be followed by an extended licence period of 2 years 6 months. The Applicant's Parole Eligibility Date (PED), at which point the Parole Board has a discretion to direct his release, was 31 August 2018. His Conditional Release Date (CRD) when by law he must be released on licence is stated as 26 November 2019. The sentence and any licence under it will expire on 4 May 2022.
4. The index offences involved the Applicant threatening the victim with a knife and demanding his mobile phone.
5. The Applicant was 16 at the time of the index offences. He had previous convictions for robbery, including one with a knife.
6. The Applicant had a disrupted childhood and a history of not being able to manage his emotions and certain aspects of his personality.
7. The Secretary of State referred the Applicant's case to the Parole Board by Notice dated October 2018 to consider whether to direct his release.
8. The review was considered by a panel comprising 2 independent members and a psychiatrist member (the Panel) at an oral hearing on 6 August 2019. The Panel

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decided not to direct the Applicant's release and its reasons are set out in the decision letter dated 15 August 2019 (the Decision Letter).

Request for Reconsideration

9. The Application for Reconsideration is dated 4 September 2019 and is made on the basis that the Panel's Decision not to release him was both procedurally unfair and irrational.
10. It is argued that the incorrect procedure was followed by the Panel by its (1) *Failure to seek additional information as to the mental health of the Applicant while relying on concerns about that in rejecting the application and (2) Failure to seek clarification of the release plan arrangements, while relying on the perceived inadequacy of the release plan in rejecting the application.*
11. As to (1) the Applicant suggests the psychiatrist member appeared to be forming a view about the Applicant's mental health and that if there was uncertainty about this the Panel should have directed the provision of a psychiatric report. It is further submitted that for the Panel to form a view gathered in the process of the hearing and then to rely on that to dismiss the application was inappropriate.
12. In respect of (2) the Applicant complains that the Panel misunderstood the nature of the release plan rather than seeking clarification of it.

Current parole review


13. The Panel heard no oral evidence from any psychiatrist or psychologist witness nor had psychiatric or psychological reports been directed. However, included in the dossier were historic reports from secure and medium secure hospitals which had successively discharged the Applicant in 2017. There was also a Care Plan Review by Barnet, Enfield and Haringey Mental Health NHS Trust dated 16 January 2018.
14. No application was made by the Applicant's legal representative for any expert report to be provided.
15. The release plan described in the Decision Letter is clearly described. It involves release in the first instance to independent accommodation with ancillary support, pending confirmation of a fully funded placement in 24 hour supported

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accommodation. This was rejected by the Panel as being insufficiently robust to manage the Applicant's risks in the community.

The Relevant Law

16. 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 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 uses the same word as is used in judicial review demonstrates that the same test should be applied. This test for irrationality is not limited to decisions whether to release but applies to all Parole Board decisions.

Discussion

17. I can see nothing in the Decision Letter which shows that any of the Panel Members overstepped their role as evaluators of evidence and strayed into the role of an expert witness, as it is suggested the psychiatrist member did.
18. The Decision Letter referred to the fact that the Applicant's behaviour in custody had improved over time and that it had become clear to the Panel he had developed insight into his behaviour. However, the Panel was '*not completely persuaded that his ongoing risk did not include a psychiatric component.*' It did not base its decision on the presence of any current psychiatric condition.
19. I do not consider that the absence of a further psychiatric report amounts to a procedural irregularity or that it contributed to an irrational decision. Had the Applicant's legal representative considered a further report was necessary she should have applied for one.

20. The Offender Manager and the Offender Supervisor confirmed to the Panel at the hearing their respective opinions that Applicant's risks were manageable in the community and they both recommended his release. Any panel is entitled to accept or reject such evidence and/or opinions. The Panel expressed concern that the Risk Management Plan might not effectively manage the Applicant's risk in the community, but I can see no evidence that the Plan was misunderstood.
21. However, there is nothing in the Decision Letter to show that the Panel applied the correct test for determining whether or not the Applicant should be released at the PED stage. A specific determination should have been made as to **whether or not his risks could be safely managed in the community specifically for the period between the date of release and the CRD of 26 November 2019** when the Applicant will be entitled to be released in any event. The Panel failed to do so. In this case the period is very short, and the failure is significant.

Decision

22. Accordingly, whilst I do not find there to have been any procedural irregularity I do consider, applying the test as defined in case law, that the decision not to direct release was irrational. I do so solely for the reasons set out in Paragraph 21 above. The application for reconsideration is therefore granted and the case should be reviewed by a fresh panel by way of an oral hearing to be listed as a matter of urgency.

HH Judge Graham White
2 October 2019