

[2019] PBRA 8

Application for Reconsideration by Boddy

Decision of the Assessment Panel

Application

1. This is an application by Boddy (the Applicant) for reconsideration of the decision of a two-member panel not to direct his release, following an oral hearing which convened on 22 July 2019.
2. I have considered this application on the papers. These were the dossier, the provisional decision letter of the panel dated 26 July 2019, the application for reconsideration dated 6 August 2019 and the response of the Secretary of State on 8 September 2019, indicating that he did not offer representations.

Background

3. The Applicant is now 75 years old. He is serving an extended sentence of imprisonment imposed in March 2016 for sexual offences against a girl under 13 between 2010 and 2015. The sentence comprised a 5 year custodial term and a 3 year extension period. He became eligible for parole in June 2019. If not directed by the Parole Board before then, the Applicant can expect to be conditionally released in February 2021. The 'at risk' period for the attention of the panel when it convened was therefore 19 months.

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 documents sent in support of this application are a six-page letter from the Applicant dated 6 August 2019, two earlier prison complaint forms, a response to the first from his Offender Supervisor dated 3 September 2018, an e-mail from the facilitator of the course he attended in 2017 and letters from the Applicant to his Offender Manager in 2018.
6. This composite application makes no specific complaint of procedural unfairness and there is no suggestion that the panel decision was irrational. However, the Applicant's enduring sense of grievance is plain from the correspondence he has



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provided. He is dissatisfied with the Offender Supervisor's handling of his case and the contents of his report in the dossier.

Current parole review

7. In 2018 the Secretary of State referred the Applicant's case to the Parole Board for his first review. The terms of reference asked the panel to consider whether it was appropriate to direct the Applicant's release.
8. The panel heard oral evidence from the Applicant, a colleague of the Offender Supervisor (who was unable to attend), his Offender Manager and a prison psychologist. The Applicant was legally represented at the hearing.
9. The provisional decision letter records that the Applicant told the panel that his progress and engagement on the 2017 course had been unfairly reported (by his Offender Supervisor) and that his Offender Supervisor had not been fair in his past assessment, delaying his re-categorisation (to "D").
10. The panel noted that the Applicant had nevertheless found the course helpful. Its broad aims were said to be to help a male prisoner to improve his skills to cope with problems (especially within relationships), manage unhealthy sexual thoughts, strengthen healthy thoughts and promote a positive identity.
11. There was no support for release from the reporting witnesses. The provisional decision letter goes on to reflect their positive shared views on the merits of open conditions, whilst properly highlighting that a recommendation for progression was outside the remit of the parole review, because the Applicant is serving a determinate term of imprisonment.
12. The panel's own assessment was that the Applicant continued to pose a high risk of serious harm. 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.

The Relevant Law

13. 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.
14. 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.
15. 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

16. Although the Applicant was legally represented at the hearing, he wrote directly to the Board to start this reconsideration process. His long and detailed letter in support of this application is written with moderation and courtesy. I have also studied the accompanying correspondence. I can find within them no description of a specific act or omission in relation to the conduct of the oral hearing or the parole review, as a whole, which could be said to constitute procedural unfairness. The letters are simply re-arguing aspects of his case which were fully and fairly aired at the oral hearing. It is not open to me to reconsider the facts as the Applicant asks me to do. I am not a second reviewing panel. Matters relating to the Applicant's security category were outside the scope of his parole review.
17. The panel explained in its careful reasons how it had analysed, weighed and balanced the competing views and facts. 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 conclusions it did on the facts as it found them to be.

Decision

18. If the extensive correspondence lodged by the Applicant includes (by implication) a complaint of procedural unfairness, it is not sustained on the papers before me. There is no suggestion that the panel acted irrationally.
19. Accordingly, this application is dismissed.

Anthony Bate
9 September 2019