

[2019] PBRA 88

Application for Reconsideration in the case of Alsyed

Application

1. This is an application by the Secretary of State (the Applicant) for reconsideration of a decision of the Parole Board dated 24 November 2019 to direct the release of Alsyed (the Respondent) after an oral hearing.
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 (a) that the decision is irrational and/or (b) that it is procedurally unfair. This case is eligible for reconsideration.
3. I have considered the application on the papers. These are the decision letter, the application for reconsideration, the response to the application and the dossier.

Background

4. On 18 April 2018 the Respondent was sentenced to a total of 4 years 3 months in a Young Offender Institution for offences of engaging in conduct in preparation of terrorist acts, possession of information relating to terrorist offences and dissemination of a terrorist publication. All the offences were contrary to the Terrorist Acts. The Respondent pleaded guilty on a basis of plea which was not accepted by the Judge. The Judge did not find the Respondent to be dangerous. The Judge imposed one year's additional licence as he was required to do. The Respondent has no other convictions recorded against him.

Request for Reconsideration

5. The application for reconsideration is dated 16 December 2019.
6. The grounds for seeking a reconsideration are that the decision of the Board was irrational for the following reasons:
 - (1) There was a lack of sufficient exploration of matters linked to the Respondent's offending behaviour;
 - (2) There was inadequate consideration and exploration of risk assessments (including that it was irrational to consider the lack of previous convictions as a reliable indicator of risk in this case);

- (3) It was irrational to consider behaviour in custody as an indicator of future risk;
- (4) The panel failed to take into account the Respondent's deceptive behaviour when making their decision whether to direct release.

Current parole review

7. The Respondent's case was referred to the Parole Board in October 2018.
8. The panel heard the Respondent's case on 12 November 2019. The panel included a Psychologist. The panel heard from the Offender Supervisor, the Offender Manager, a Psychologist, a Counter Terrorist Analyst from the security department at the prison and from an Imam.

The Relevant Law

9. The panel correctly sets out in its decision letter dated 24 November 2019 the test for release.

Parole Board Rules 2019

Irrationality

10. 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."

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.

The reply on behalf of the Respondent

11. The legal representative of the Respondent submits that the matters complained of by the Applicant do not amount to irrationality.

Discussion

12. I have considered all the evidence in the case and the decision letter. In my judgment the decision letter is detailed, balanced and takes into account all the relevant matters in its assessment of risk.



13. The assessment of risk is never easy in the case of prisoners convicted of terrorist offences. The tools provided to help the Board assess risk are not sufficiently tested to be considered reliable on their own. The panel, therefore, needs to consider all the evidence and, in particular, the evidence of the professionals, to reach an assessment of risk on which they can rely.
14. All the professionals in this case supported release. The panel had the benefit of evidence from a Psychologist, a Terrorist Analyst and an Imam. The Applicant made no submissions to the panel suggesting that he should not be released.
15. The Oral Hearing Panel considered all the matters which are set out in the application for reconsideration; they were given proper weight; the panel weighed the various factors and reached a conclusion that was a perfectly proper one on the evidence.
16. I will deal with the matters specifically raised by the Applicant in order. Ground (1): the panel recognised that the Respondent's desire for status and respect was a risk factor if he were to fail to achieve his aims. The panel recognised that that was one of the factors which had drawn him into terrorist activities. Whether or not he would achieve his ambitions could only be tested when he was at liberty. It was in that context that the panel said these matters "*need further discussion*". Having properly considered this risk factor, the panel along with all the professionals were of the opinion that he could be released. The possibility of risk caused by a failure by the Respondent to achieve his goals was something that those who will supervise his licence will need to be aware of. As is pointed out by the Respondent's representative, there does not appear to be any evidential basis for the assertion by the Secretary of State that the Respondent has had a poor work ethic in prison.
17. Ground (2) relates to the way in which the panel carried out their risk assessment. The panel were correct in saying that for **TACT** offenders the assessments of risks and their origin are not "*very valid*" but that does not mean they should be ignored. Other risk assessments should be looked for to support them or contradict them. The panel did this and, in particular, they looked to the Psychologist's risk assessment and gave an overall view having taken into account all the evidence of continuing risk. Whether or not a prisoner has other convictions apart from the index offences is always relevant to the question of future risk. If the prisoner was young when convicted of the index offences that goes to the weight that should be attached to the lack of other convictions. There is no basis for suggesting that the panel attached excessive weight to the lack of convictions.
18. Ground (3): The panel were perfectly entitled to take into account the Respondent's behaviour in custody when deciding if the Risk Management Plan would be effective. The fact that he has behaved well in custody makes it more likely that he would comply with his licence conditions.
19. Finally, it is suggested in Ground (4) that the panel failed to take into account the Respondent's deceptive behaviour in assessing risk. Panels will always take into account the possibility that the prisoner is trying to deceive them. In considering whether the Respondent's evidence was reliable, the panel were able to rely on



their own assessment as well as the evidence of all the professionals, some of whom had had much greater contact with the Respondent than the panel had and had more opportunity to assess him.

20. Nothing in this application gives rise to any arguable basis for saying that the decision was irrational.

Decision

21. For the reasons I have given above, I do not consider that the decision was irrational. Accordingly, the application for reconsideration is refused.

John Saunders
30 December 2019



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