

[2019] PRBA 89

## Application for Reconsideration by Steele

### Application

1. This is an application by Steele (the Applicant) for reconsideration of a decision of an Oral Hearing Panel dated the 22 November 2019 not to direct his release or recommend open conditions.
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.

### Background

3. On 20 January 1998, the Applicant was sentenced to life imprisonment for three offences of murder. The original minimum term to be served before becoming eligible for consideration for parole was increased and was finally set at 23 years less time spent in custody on remand. That minimum term expired on the 19 May 2019.

### Request for Reconsideration

4. The application for reconsideration was received on 9 December 2019. The Applicant does not rely on irrationality. However, the Applicant relies on four specific grounds to support the allegation of procedural unfairness. These can be summarised in this way:
  - (i) The Offender Supervisor and the Prison Psychologist were permitted to read entries from an offender management database which had not been disclosed previously to the Panel nor the Parties;
  - (ii) A breach of a Prison Service Instruction, PSI 22/2015, in respect of rules relating to the composition of reports from offender supervisors;
  - (iii) Persistent interruptions by the Parole Board Panel; and
  - (iv) Refusal by the Parole Board to permit the Applicant to call evidence from senior Prison Managers.

I will deal with these in turn later in this decision.

## Current Parole Review

5. The Secretary of State's Referral does not bear a precise date but states "*Date prepared: June 2018 (updated on 08/03/2019)*". It refers the Applicant's case to the Board to decide whether to direct release or if that was not appropriate, to recommend a transfer to open conditions.
6. The hearing took place on 8 November 2019 and 13 November 2019. On the first day, the Panel heard from the Offender Supervisor, the Applicant and a Prison Psychologist; at the adjourned hearing, the Panel heard from a Psychologist instructed on behalf of the Applicant, the Offender Manager, and submissions made on behalf of the Secretary of State and from the Applicant.

## Discussion

7. I now deal with the Applicant's first ground in support of his application. The objection to the reference by the Offender Supervisor and the Prison Psychologist to undisclosed entries in the computer system was first raised by the Applicant between the two hearings. On 13 November 2019, he sent the Panel an email in which he said the witnesses had been "*allowed to rely on fraudulent, contrived [offender management database] entries that were not disclosed and thereby not included in the parole board dossier. The fraudulent nature of the [database] evidence can be forcefully impugned from genuine [database] entries and witness statements from other prison staff*".
8. The Applicant then requested that the witnesses be recalled, and that three further Prison Officers should be called to give evidence in contradiction of the evidence already given.
9. At the adjourned hearing, the Judicial Chair refused the Applicant's request "*as irrelevant to the issues to be decided by the panel*".
10. The Applicant does not explain in his written grounds why he says that decision was wrong. The Decision Letter does not identify the offending entries and the Panel may not have taken notice of them.
11. As to the actual entries, the Applicant has identified an alleged caution in respect of the receipt of mail. This alleged incident is undated. The other two entries relate to observations that may suggest the Applicant could be entering the very early stages of dementia; that was a extremely worrying suggestion for the Applicant to cope with; happily, subsequent investigation has shown the suggestion was not correct; but importantly for this exercise, it is plain that this was not a factor in the decision making process one way or the other. Additionally, two matters persuade me the Panel did not take any account of the alleged caution:
  - (i) The Decision Letter states that the Applicant's last adjudication was "*back in 2002*".
  - (ii) In Section 6, the Panel said it had to balance the Applicant's "*sustained positive behaviour over many years in custody*" against the risk factors.

Additionally, the panel quoted extensively from the statement of one of the additional witnesses whom the Applicant had wanted to call.

12. The Applicant's written submissions in respect of his second ground (the alleged breach of PSI 22/2015), are not easy to follow. He commences with a complaint about delay in obtaining a Pre-Tariff Sift (PTS) which he suggests led to either confused or inconsistent referrals to the Board by the Secretary of State.
13. The purpose of a PTS is to decide whether to refer an indeterminate prisoner to a pre-tariff review by the Parole Board which will then decide whether to recommend transfer to open conditions or not. The process is conducted within the prison system under the direction of the Governor. The Parole Board cannot direct release and, if it recommends open conditions, the final decision is made by a representative of the Public Protection Casework Section (PPCS) on behalf of the Secretary of State.
14. A prisoner who is aggrieved with any aspect of the process can appeal but they do so within the internal complaints procedure. Questions relating to the correctness of the PTS are not for the Parole Board.
15. It seems uncontroversial that the PTS was held late, in fact on 23 January 2018.
16. The first referral from the Secretary of State which has been provided for this application by the Applicant is dated June 2018. As the Applicant's tariff did not expire until the 19 May 2019, the first referral was for a non-tariff expiry and sought a view on transfer to open conditions only.
17. The second referral, following the usual procedure, anticipated the tariff expiry date and, contrary to the Applicant's contention in his written submissions, sought a decision on release and also a view on transfer to open conditions.
18. The unusual feature was the very short length of time between the two referrals, caused, I imagine, by the PTS being held as late as it was. As far as I can see, none of this concerns the Panel's task in deciding whether the Applicant's risk was manageable in the community.
19. The Applicant then relies on alleged breaches of the Prison Service Instruction itself. The instruction introduced the Generic Parole Process: the purpose of which is to provide a parole process which is more efficient and transparent than the series of separate instructions it replaced. Among many matters, it produced new guidance for the reports of the professional witnesses.
20. The Applicant describes its provisions as mandatory, relying on a decision of HHJ Pelling. They are not mandatory as far as the Parole Board is concerned: part of the object of the guidance is to provide good quality information for the panel but not to tell the panel how to evaluate that information.
21. If a report has not followed the guidance, a panel can bear that in mind when assessing the quality and reliability of the information contained in the particular report. However, that would be something for the individual panel to decide. A

breach of the guidance does not of itself invalidate the Parole Board review process.

22. The Applicant does not say in his grounds (a) if he raised any breach of the guidance with the Panel, (b) if he did, what was the Panel's response and (c) whether he alleges (and if so, how) the response provides evidence of either irrationality or procedural unfairness.
23. The Decision Letter which has been written with pellucid clarity does not deal with PSI 22/2015. It seems the Panel must have taken the view the document had no or only peripheral relevance in these proceedings; I am not able to disagree.
24. The third ground alleges persistent interruptions by the Parole Board Panel.
25. Parole Board hearings are generally conducted in a more relaxed manner than court proceedings. This is not only consistent with the more informal surroundings of the hearing, but it is also intended to put prisoners at their ease and encourage them to say what they wish.
26. The relaxed atmosphere can lead to a higher level of interruptions and cross conversation. The level of interruption can be a matter of individual perception, the person making the interruption frequently regarding it as necessary and helpful and the person being interrupted taking a diametrically opposing view.
27. Litigants in person, through lack of experience and the stress of conducting their own case, can fail to keep to the main, important matters which will be troubling the Panel. The Panel noted the Applicant's preoccupation with less important details and his rigid style of thinking. Reading all the papers, I have detected a preoccupation with at least five topics: his belief in his wrongful conviction for murder, the failure to be transferred to open conditions, the failure to be downgraded to Category B status, corruption within a named Police force and lately a preoccupation that witnesses at the oral hearing committed perjury. I wonder whether his manner of presentation quite naturally attracted interruption.
28. The Applicant has helpfully given examples of the interruptions. He is aggrieved that a Panel Member said, *"That's not correct Mr Steele; Parole Board Oral Hearings for POST-TARIFF offenders happen AUTOMATICALLY."*
29. The Applicant submits that that assertion was *"an irrational notion"*. As I read the written submissions, the Applicant was yet again exploring what had taken place in the PTS. A post-tariff prisoner may require the Secretary of State to refer his case to the Parole Board once the minimum term has been served and thereafter, at least every two years. However, in practice, the referral is made by the PPCS on behalf of the Secretary of State without the prisoner having to make any application. The intervention therefore, as far as it went, was correct.
30. The Applicant complains that whilst the Offender Supervisor was giving evidence, the Panel Chair interrupted the flow of questions to insist that the Applicant put questions to the Offender Supervisor only. It is difficult to understand the burden of this complaint because the universal rule is that questions must to be directed

only to the witness actually giving evidence and must be about his evidence and not that of a different witness.

31. A possible explanation for a number of the interruptions is that the Applicant seems to have thought it necessary to read out all the passages in a witness's statement which he wanted to be "*on the minutes*" by which I think he meant in the tape-recording of the hearing. This approach would quickly lead to interruptions from the Panel. The evidence for the Panel to consider was, first, the material in the dossier and, secondly, the oral evidence of the individual witnesses actually called. In those circumstances it would be unnecessary and even otiose to question a witness about passages in the reports simply to get them on the record because they were automatically on the record by virtue of being in the dossier.
32. The Applicant submits he was unfairly interrupted when he attempted to demonstrate (a) he had not refused to be assessed for an offending behaviour programme to address the tendency to use violence, (b) he did not have a conviction for a firearms offence and (c) he was not serving a 25 year minimum period.
33. The Panel accepted there had been a dispute about the offending behaviour programme but identified the important factors as, first, the Applicant was currently prepared to go on the programme but, secondly, he did not think it was necessary. Those two factors were in the Panel's opinion, subject to the overarching problem that during the course of his sentence, the Applicant had done no offending behaviour work designed to reduce his risk of causing serious harm.
34. As to the suggestions he had a firearms conviction and was serving a 25 year minimum period, the Police National Computer printout of the Applicant's previous convictions had been included in the dossier and that showed the correct position without the need to question any of the witnesses.
35. As has been observed elsewhere, the fairness of proceedings is viewed in the round, having regard to the interests both of the prisoner and the general public. The Decision Letter contains a balanced and comprehensive narrative as well as an assessment of the relevant factors, many of which are favourable to the Applicant. I can find no basis for saying that the Applicant failed to make submissions he would otherwise have made but for the alleged interruptions, or that the Panel failed to acknowledge his submissions and fell into error because of the alleged interruptions. Equally, I can see aspects of the Applicant's presentation and selection of what he thought were important that might well have attracted helpful interruptions. In the end I do not find that this ground has been made out.
36. The fourth ground is the alleged failure "*to call salient witness evidence from senior prison managers*". The Applicant's written submissions in respect of this ground run to 17 paragraphs. Unfortunately, notwithstanding that, the precise nature of the complaint remains unclear. What is clear is there is an overlap between this ground and the first.

37. In a letter dated 26 March 2019, the Applicant asked to call two additional witnesses, a Security Custodial Manager who was said to have *"a wealth of experience regards 'Open Prison' criteria and expectations"*, and the Custodial Manager in charge of the Applicant's wing. This officer had been a panel member on the PTS review.
38. On 8 April 2019, the Panel Chair directed that, provided the statements were filed by 19 April 2019, they could be added to the dossier. However, he was not prepared to give directions about attendance until the statements had been filed.
39. On 23 April 2019 (or shortly afterwards), the Panel Chair directed that the Custodial Manager's statement should be added to the dossier but noted that she was not required to attend. The directions further provided that the Security Custodial Manager *"may attend the hearing to give evidence in accordance with his representations [in his statement] dated 5 April 2019"*.
40. On 27 April 2019, the Oral Hearing was adjourned because the Psychologist instructed on behalf of the Applicant was ill. On that day, the Panel Chair directed that the Security Custodial Manager should file a further full statement setting out his knowledge of the Applicant.
41. By a letter dated Wednesday 13 November 2019, the Applicant asked for the earlier witnesses to be recalled and requested the attendance of the two managers and a third Prison Officer who the Applicant said would be able to impugn the testimony of the Offender Supervisor in an unspecified way.
42. There is no further reference to this request in the dossier, but the Decision Letter in Section 2 recorded: *"At the adjourned hearing on 15 November 2019 the panel chair refused your requests as irrelevant to the issues to be decided by the panel"*.
43. At Paragraph 22 of the grounds, the Applicant asserted: *"Not once did the Parole Board Panel make reference to either witness statements that happen to be the most accurate, rational assessments in the entire Dossier in respect to the RISK posed by M/S"*.
44. That assertion ignores completely the fact that at page 8 of the Decision Letter there is a long and favourable quotation from the Custody Manager's report written in April 2019. The Panel appears to have accepted what was said in that report.
45. The Decision Letter makes clear that Panel took into account the positive matters raised by the Security Custodial Manager and the Custodial Manager. There is no suggestion in the papers that the Senior Custodial Manager's knowledge about open prison criteria and expectations was information essential for the Panel to hear or that, if it was essential, it could only be given by that witness.
46. The Applicant complains that the Panel failed to call a potential witness who appears not to have been referred to in the dossier and the grounds do not deal with the third Prison Officer referred to in the letter dated 13 November 2019. In those circumstances, it is not possible to form any sensible, evidence-based view as to whether they should have been included.

47. The Panel must ensure the hearing is fair but ultimately, it is for the Panel to decide what evidence should be considered at a review. I am satisfied there is no basis for saying the hearing was unfair because these witnesses were not called.
48. The Applicant has spent a long time in prison, and this was his first application for parole; the outcome must be extremely disappointing for him. That is entirely understandable. I gather the Applicant represented himself because he believed he was the best person to do so. In the future I would ask him to reconsider that position because in this application it has led him to expend a huge amount of effort pursuing lines of enquiry which the Panel correctly thought irrelevant or insignificant. The assistance of a Lawyer, even in just the preparation of the case, might have avoided that happening.

## Decision

49. For the reasons I have given, I do not consider that the decision was procedurally unfair and accordingly the application for reconsideration is refused.

James Orrell  
24 December 2019