Application for Reconsideration by Parfitt

Decision of the Assessment Panel

Application

1. This is an application by Parfitt (the Applicant) for reconsideration of the decision of a three-member panel not to direct his release, following an oral hearing at which the Applicant was legally represented.

2. I have considered this application on the papers. These were the provisional decision letter of the panel dated 29 November 2019 and the following three documents all dated 20 December 2019: an e-mail from the Applicant's solicitors requesting an extension of time, the decision of a Duty Member of the Board refusing to grant an extension and the application for reconsideration on prescribed form CPD2. The Secretary of State did not wish to offer any representations.

Background

3. The Applicant was born in 1959 and is now 60 years old. He is serving a sentence of Imprisonment for Public Protection imposed in 2008 after being convicted of sexual offences against children.

Request for Reconsideration

4. The request for reconsideration contends that the provisional decision of the panel not to direct release was irrational. No grounds for that complaint have been lodged.

5. A postscript to the provisional decision letter issued on 29 November 2019 reminded both parties that either may apply for the decision to be reconsidered within 21 days from the date of issue. That period was due to expire on 20 December 2019. If no applications were received within the 21 days, the provisional decision would then become final.

6. The request for reconsideration was served by the same firm of solicitors who represented the Applicant at the oral hearing. The solicitors therefore had their own copy of the dossier and were sent the decision letter when it was issued. They did not have to wait for instructions from their lay client to be able to form a preliminary view on the legal merits of any challenge to the provisional decision on Rule 28 grounds.

7. However, the solicitors sent only a 'holding' e-mail to the Board on 20 December 2019 (the deadline day) requesting an extension. It simply asked,

> *"If we could have an extension of time to submit an appeal because our client has sent us instructions however they have not arrived to our office yet."*

8. The e-mail was brought promptly to the attention of a Duty Member of the Board, who refused the extension request in a ruling issued on the same day. No exceptional circumstances and/or other need for an extension had been shown.

9. Later on 20 December 2019, the solicitors served the application on prescribed form CPD2. The 'procedural unfairness' box was left empty. Under the second heading ('the decision was irrational'), the solicitors wrote,

> *"[The Applicant] wishes to appeal this decision because he feels that the decision is irrational and that the Panel have relied upon inaccurate evidence. We are awaiting the full instructions from [the Applicant] to appeal and after which we will submit further representations."*

   The solicitors made an additional comment on the form that,

> *"The member of the Parole Board who is reviewing this must note that we have applied for an extension of time to respond, for [the Applicant] to send further representations to us, but that we have not been allowed a short extension of time. This will affect the fairness of the review."*

10. No further written representations have been submitted to the Board in support of this application since it was lodged on 20 December 2019.

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.

14. The Courts have in the past refused permission to apply for judicial review where the decision would be the same even if the public body had not made the error.

15. Section 31(3C) to (3F) of the **Senior Courts Act 1981** now provides that the Courts must refuse permission to apply for judicial review if it appears to the Court highly likely that the outcome for the claimant would not have been substantially different even if the conduct complained about had not occurred. The Court has discretion to allow the claim to proceed if there is an exceptional public interest in doing so. See paragraph 5.3.5 of the **Administrative Court Guide to Judicial Review 2019**.

Discussion

16. The Rule 28 reconsideration procedure was introduced to provide a speedy process for correcting errors in the decision of a panel. It is essential that the timetable is adhered to; extending it lengthens the period over which a decision remains provisional. There may be occasions when an extension is justified under Rule 9, but if there are good reasons for granting one, these need to be set out. There still has to be a timely determination of each parole review. Cases must not drift. Experience of the new procedure since it began in July 2019 has shown that the Rule 28(3) deadline is fair. Three weeks is generally sufficient for the parties to make these applications; requests for an extension of time are rare.

17. The facts as found by the panel are set out in a clear and coherent narrative in the provisional decision letter. The decision logically follows from the stated reasons. The statutory test for release was correctly cited and applied. The panel explained with care how it had analysed, weighed and balanced the written and oral evidence presented to it. There was no support for release amongst the reporting witnesses. The conclusion is a succinct and well-rounded summation of the relevant matters that makes the rationale of the decision letter obvious to the reader.

Decision

18. On the papers before me, I can see no objective basis for arguing that the decision of the panel was irrational.

19. Accordingly, this application must be dismissed.

Anthony Bate
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