

[2020] PBRA 141

Application for Reconsideration by Bucknor

Application

1. This is an application by Bucknor (the Applicant) for reconsideration of a decision of the Parole Board made under rule 25(1) of the Parole Board Rules 2019 (the 2019 Rules) that the Applicant was unsuitable for release (the Decision).
2. Rule 28(1) of the 2019 Rules 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.
3. I have considered the application on the papers, comprising a dossier of 165 numbered pages including the letter giving notice of the Decision with reasons dated 23 August 2020, and written submissions by the legal representative on behalf of the Applicant dated 14 September 2020.

Background

4. The Applicant is serving an indeterminate (Life) sentence with a minimum tariff of seven years that expired in June 2020. The sentence was given to the Applicant in June 2013, at which time he was 48 years' old, following conviction for a series of robberies committed between June 2012 and January 2013.

Request for Reconsideration

5. The application for reconsideration was received by the Board on 14 September 2020.
6. The Applicant's written submissions assert that the Decision was marred by irrationality.

Current parole review

7. The Decision was made on the Secretary of State's referral of the Applicant's case to the Parole Board to consider whether or not it would be appropriate to direct the Applicant's release.



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8. The Decision was made by a panel that considered the Applicant's case at an oral hearing on 20 August 2020 that was conducted remotely by video link, apparently due to restrictions on social contact due to the COVID-19 pandemic. The Applicant was 56 years' old at the date of the hearing, and the date of the Decision.

Relevant Law

9. Rule 28 of the Parole Board Rules 2019 provides that a party may apply to the Board for the case of a prisoner who is serving a sentence of a type that is specified by the rule to be reconsidered on the grounds that a decision on the prisoner's suitability for release is irrational or procedurally unfair.

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 review 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."

11. 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.

12. The application of this test in applications for reconsideration under rule 28 has been confirmed in previous decisions, such as **Preston [2019] PBRA 1**.

Procedural Unfairness

13. Procedural unfairness means that there was some procedural impropriety or unfairness resulting in the proceedings being fundamentally flawed and therefore, producing a manifestly unfair, flawed or unjust result. These issues (which focus on how the decision was made) are entirely separate to the issue of irrationality which focusses on the actual decision.

The Reply on behalf of the Secretary of State

14. On 25 September 2020, the Board was informed by the Public Protection Casework Section, on behalf of the Secretary of State, that no representations were offered in response to the Applicant's reconsideration application.



Discussion

15. The Applicant's written submissions assert that the Board should have given limited weight to the assessments of the Applicant's mindset and change by the two professional witnesses, because those witnesses had only been involved in the Applicant's case for a short period of time and had not had any significant contact with the Applicant.
16. The submissions assert that the only significant evidence of the Applicant's mindset and change was the evidence given by the Applicant himself and that the Board gave insufficient weight to that evidence.
17. The submissions assert that the Board gave insufficient weight to the Applicant's increased age which, it is asserted, '*is a clear stabilising factor*' [sic].
18. The submissions assert that the Board indicated that it considered an intervention to address instrumental violence was a requirement to direct release, and that the Board failed to properly consider the evidence that the Applicant's risk had reduced from his own evidence and the evidence of his behaviour in prison in relation to drugs, violence and education.
19. The submissions assert that the Board assessed the Applicant's risk of reoffending as low.
20. The submissions assert that the Board gave no, or no adequate, consideration to the Applicant having been through and been released from open conditions three times but not having had a placement in designated accommodation. The submissions assert that the Applicant was clearly able to demonstrate his compliance is open conditions and that a further period would not decrease his risk. The submissions assert that, should the Panel consider testing important, it should be via designated accommodation. The submissions assert that it is irrational to recommend open conditions when progress through the open estate will not inform a risk management plan nor decrease risk.
21. The weight given by the panel to the assessment by the professional witnesses cannot properly be described as irrational, nor can the weight given by the panel to the prisoner's claimed motivation to change and any reduction in risk that might have resulted from his increase in age.
22. Contrary to the submissions, the Board did not indicate that it considered an intervention to address instrumental violence was a requirement to direct release. The Board's material, and rational, reasoning was that it could not currently be satisfied that the prisoner had fully addressed his internal controls, or that external controls could be relied upon to manage his residual risk, given the absence of an intervention to address his use of instrumental violence during this sentence, and his past pattern



of poor engagement on licence and failure to seek support from probation and others when he had lapsed into substance misuse.

23. The Decision letter made express reference to the Applicant's age, to a placement in designated accommodation forming part of the proposed risk management plan in the event of a direction for the Applicant's release at this time, and to the Applicant's completion of a period in open conditions during his previous sentence, during which by his own admission he had used illicit drugs, and after which he had been released and reoffended. The Board also referred to the previous release having been to the address of a family member. It was not irrational for the Board to consider that a further period in an open prison was necessary to test whether the Applicant had internalised the need to manage his risk factors and evidence that his past relationship with substance misuse had been addressed.

24. The Board's assessment was that the Applicant's risk of reoffending violently as low potentially underestimated his risks, but determined that the Applicant was rightly assessed to pose a high risk of serious harm to others, and there is no irrationality in the Board's assessment that it could not be confident that release to designated accommodation would provide adequate protection to the public from that risk.

25. I do not therefore consider the Decision is marred by irrationality.

Decision

26. The application for reconsideration is accordingly refused.

Timothy Lawrence
2 October 2020