

[2020] PBRA 30

Application for Reconsideration by Abdalla

Application

1. This is an application by Abdalla (the Applicant) for Reconsideration of a Decision of an Oral Hearing Panel dated the 20 January 2020 not to direct the Applicant's release.
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.
3. I have considered the application on the papers. These are the dossier of 335 pages, an addendum report from the Offender Supervisor which the Panel considered, the provisional Decision Letter dated the 22 January 2020 and the application for Reconsideration, drafted by Solicitors, dated the 13 February 2020.

Background

4. On the 7 November 2016, the Applicant was sentenced to a Special Custodial Sentence of imprisonment for an offence under section 5 of the Terrorism Act 2006.
5. The custodial period of the sentence was 5 years with an extended licence period of 1 year.
6. The Applicant's Conditional Release Date is the 15 April 2020 when, in normal circumstances, the Applicant will be entitled to be released on licence.
7. The index offence concerned the Applicant and another attempting to leave the country, covertly, hidden in the back of a lorry. The prosecution case was that the intended destination was one where the Applicant wanted to lend support to a terrorist organisation.

Current Parole Review

8. The Secretary of State referred the case to the Parole Board in the following terms:

This case is hereby referred to the Parole Board to consider whether or not it would be appropriate to direct the prisoner's release.



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If, after considering the case, the Board decide to direct the prisoner's release on licence, it is invited to make a recommendation in relation to any condition which it considers should be included in the licence.

The Board is asked to give full reasons – which will be disclosed to the prisoner – for any recommendation it makes.

9. At the Oral Hearing on the 20 January 2020, the Applicant's Solicitor applied for an adjournment on the ground of the late and incomplete disclosure of intelligence material.
10. The Panel refused the application because, first, an adjournment would take the case beyond the 15 April 2020 and, secondly, the intelligence material did not materially affect the Applicant's level of risk.
11. The Applicant's Solicitor informed the Panel that in the event the application to adjourn is refused, the Applicant did not wish to be released.
12. The Panel continued with the Oral Hearing and heard evidence and decided not to direct the Applicant's release. However, the Panel approved all bar one of a number of licence conditions which the Offender Manager proposed should be additional to the standard conditions as and when the Applicant was released on licence.

Request for Reconsideration

13. The application does not expressly state that the Applicant does not challenge the primary decision not to direct his release. The only reference to the primary decision is "*The Decision found that [the Applicant] was not eligible for early release*". No argument is put forward why the Panel should not have come to that decision.
14. The representations made on behalf of the Applicant relate to the additional licence conditions proposed by the Offender Manager and approved by the Panel.
15. The burden of those representations is, firstly, the additional conditions have been imposed as a result of a blanket national policy and not attached to the licence to meet the individual risks posed by the Applicant; secondly, some of the conditions may place the Applicant in a situation where they are "set up to fail" because of the Applicant's psychological vulnerabilities.

Response from the Secretary of State

16. The Secretary of State declined to make representations on the basis the application did not meet the eligibility criteria.

The Relevant Law



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17. As has been said, Rule 28 (1) of the Parole Board Rules 2019 provides that applications for Reconsideration may be made in eligible cases.
18. The eligible cases are confined to four categories set out in Rules 19(1)(a) or (b), 21(7) or 25(1).
19. All four categories of eligibility concern decisions whether a prisoner is "suitable or unsuitable" for release. The Rules do not provide for any other decision to be open to reconsideration.
20. Further, Rule 25(5) states "*Where the Board receives a request for advice with respect to any matter referred to it by the Secretary of State, any recommendations made in respect of their request is final.*"

Discussion

21. The application for Reconsideration rests wholly on the criticism made of the additional conditions. The Panel's views on those conditions cannot amount to more than an (uninvited) recommendation to the Secretary of State and, as such, are not subject to Reconsideration.
22. I deal with one further matter. The application complains that the Panel made no mention of a report from a consultant Psychiatrist nor of a risk assessment from a Psychologist.
23. The author of the application for Reconsideration says "*In the interests of fairness we respectfully ask that the omission be rectified*" but does not say how.
24. The Psychiatric report answered five questions asked by the Applicant's Solicitors concerning the Applicant's psychiatric state. The report is undated but the interviews for it were conducted in November 2015 (approximately a year prior to sentence) and the report is intended to assist the lawyers prepare the Applicant's case for trial.
25. The Psychological Risk Assessment is dated 11 December 2019. It expresses an opinion that the Applicant's risk of further terrorism had reduced significantly and made a number of suggestions for the Applicants' management in the community.
26. Given that the hearing before the Panel did not involve an application for release, it is perhaps unsurprising that no mention is made of either report in the Decision Letter. The application for Reconsideration refers to the two reports only in the context of the additional licence conditions and the Applicants' management in the community.
27. In any event, the failure to mention either report takes this case nowhere near the high level of irrationality that would have to be established before reconsideration could be directed.



28. I do not say that the issues raised in the case are unimportant; however, I have come to the conclusion that this application does not fall into any of the categories of eligibility and has to fail.

Decision

29. For the reasons I have given, I do not consider that the decision was either irrational or procedurally unfair and accordingly the application for Reconsideration is refused.

James Orrell
26 February 2020