

[2020] PBRA 31

Application for Reconsideration by Askham

Introduction

1. This is an application by Askham (the Applicant) who has applied on 11 February 2020 for reconsideration of an Oral Hearing decision of the Parole Board, dated 15 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, which has included perusal of the following documents: Handwritten submissions by the Applicant dated 8 February 2020; The Parole Board Oral Hearing Decision Letter dated 15 January 2020 following the Applicant's parole review; A dossier prepared by the Secretary of State comprising 440 numbered pages (pages 439 and 440 are Panel Chair Directions that appear to have been added to the version of the dossier that was considered by the panel at the oral hearing on 8 January 2020), and a copy of a report from the Substance Misuse Service concerning the Applicant's work as a Recovery Mentor, which is referred to in the Decision Letter as having been provided to the panel during the hearing on 8 January 2020.
4. The Applicant has also supplied four documents that were not before the 8 January 2020 panel: a National Probation Service letter dated 20 May 2019 responding to a complaint by the Applicant, a schedule of the Applicant's daily routine recorded by a Consultant Psychiatrist attached to the Mental health Team at the prison establishment (undated), a Memorandum by a training course addressing decision making and better ways of thinking facilitated at the prison dated 5 May 2019, an email by a Substance Misuse Practitioner at the prison dated 17 May.

Background

5. The Applicant is serving an indeterminate sentence of Imprisonment for Public Protection, imposed in 2007 with a minimum tariff of three years nine months, which expired in August 2011. The sentence was imposed after the Applicant pleaded guilty to three counts of robbery relating to the same incident, with three individual victims.



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The Applicant's history of offending prior to the robberies included acquisitive offending, several convictions for common assault (some of which involved the use of a weapon), battery, unlawful sexual intercourse, aggravated vehicle taking, disqualified driving, possessing an offensive weapon and breach of court and community orders.

6. The Applicant was reported to have been released and recalled to custody on three occasions during the current sentence. The first release was in 2013, from which he was recalled in October 2015. The Applicant's second release was reported to have been in January 2017, from which the Applicant was recalled in February 2018. The most recent release is reported to have been on 30 November 2018, from which the Applicant was recalled on 20 December 2018, but remained unlawfully at large until being apprehended and returned to custody on 9 February 2019.

Current Parole Review

7. The Applicant's case was referred to the Parole Board by the Secretary of State to consider whether or not it would be appropriate to direct the Applicant's release. The Board was also invited to advise the Secretary of State whether, in the event that it did not direct the Applicant's release, it would be appropriate for the Applicant to be transferred to open conditions.
8. On 17 May 2019, a member of the Board directed the review to an Oral Hearing.
9. The Hearing took place at the prison on 8 January 2020 before a panel of three members of the Parole Board. The panel considered a parole dossier of 438 pages and a copy of a report from the Substance Misuse Service concerning the Applicant's work as a Recovery Mentor. The panel also heard oral evidence from the Applicant's Offender Supervisor, a member of the prison Mental Health In-Reach Team, a prison Psychiatrist and from the Applicant's Offender Manager. The Applicant was professionally represented but the Secretary of State was not represented.

The Relevant Law

10. The panel correctly sets out in its decision letter dated 15 January 2020 the test for release and the issues to be addressed in making a recommendation to the Secretary of State for a progressive move to open conditions.
11. Under Rule 28(1) of the Parole Board Rules 2019 the only kind of decision which is eligible for reconsideration is a decision that the prisoner is or is not suitable for release on licence. Such a decision is eligible for reconsideration whether it is made by a paper panel (Rule 19(1)(a) or (b)) or by an oral hearing panel after an oral hearing (Rule 25(1)) or by an oral hearing panel which makes the decision on the papers (Rule 21(7)).

12. 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 paragraph 116:

*"The issue is whether the release decision was "so outrageous in its defiance of logic or of accepted moral standards that no sensible person [here, the Parole Board] who had applied his mind to the question to be decided could have arrived at it": see Lord Diplock in **CCSU v Minister for the Civil Service [1985] AC 374 at 410G.**"*

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.

Grounds for Reconsideration

14. The Applicant's grounds for seeking a reconsideration may be summarised as follows:

- 14.1 The Applicant submits that the designated accommodation provided to him during the recent licenced release was unsuitable and he was not provided with mental health support.
- 14.2 The Applicant asserts that his Offender Manager and the Parole Board agreed that 'a developing relationship' would include something more than 'a one-night stand', and he had told his Offender Manager about the one-night stand, so he had not breached his licence conditions in that regard.
- 14.3 The Applicant submits that he is unable to complete further work on alcohol or thinking skills because the alcohol team has stated that he has no need for treatment relating to the use of alcohol and the relevant thinking skills programme is not available to him as he has a health issue which cannot be accommodated by the course provider and the healthcare department.
- 14.4 The Applicant also complains that it would be unfair and unjust to require him to complete further work relating to alcohol, thinking skills or relationships, because such work would not be completed before his next Parole review because of his health, and that such work is unnecessary given that he has not committed any crime since the offence in 2007.
- 14.5 The Applicant also requests that, if his application is refused, the review period is limited to 6-12 months.

Representations by the Secretary of State

15. On 17 February 2020, the Secretary of State confirmed that it would offer no representations in response to the Applicant's reconsideration application.

Discussion

16. The Applicant's grounds refer to a claimed unsuitability of his designated accommodation and a lack of mental health support. However, the 8 January 2020 panel expressly recognised in its written reasons of the Decision Letter that the severity of the Applicant's health disorder and related issues affected his risks and what can be done to address them. However, the panel explained that it had formed the view on the evidence before it that the range of bad decisions taken by the Applicant on the most recent and the earlier periods on licence were not convincingly explained by that disorder alone. That was a rational conclusion given the Applicant's use of alcohol, which was reportedly a factor in the index offending, his stated intention on release to abstain from the use of alcohol, and his failure to comply with the residence and supervision conditions of his licence to the extent that he disengaged from supervision completely for a period of several weeks when he was unlawfully at large, during which his whereabouts remain unknown.

17. The 8 January 2020 panel was concerned about the Applicant having formed casual sexual relationships about which he did not see an immediate need to tell his Probation Officer, and that was not an irrational concern given the Applicant's history of convicted domestic violence and the risk factors that are described in the Decision Letter. The panel did not rely in its reasoning on a failure to disclose a one-night stand being a breach of licence conditions.

18. The panel's reasons show that it had regard to the Applicant's engagement in work on substance misuse, and the potential difficulty in him being able to repeat the relevant decision making training course. However, the panel's concerns included that the Applicant's recognition of his risk factors remained limited, for example that he had decided that he would no longer see the necessity of a licence condition which barred him from alcohol, saying clearly in his evidence that he would now drink, and that he did not consider himself as posing any risk to the public, as opposed to himself.

19. The panel considered that it could not be confident, on the evidence of the Applicant's behaviour on the previous releases and in the Oral Hearing, of the Applicant's ability and willingness to fully comply with future licence conditions. That was a consideration that was adequately supported by the reasoning stated in the Decision Letter, as was the panel's conclusion that such ability and willingness on the Applicant's part was essential to the success of the plan to manage his assessed risk in the community.

20. The duration of the next review period is a matter for the Secretary of State and is not a matter that the Parole Board has any jurisdiction over.

Decision

21. For the reasons I have given, I do not consider that the decision by the 9 January 2020 panel to refuse to direct the Applicant's release was irrational or procedurally unfair and the application for reconsideration is accordingly refused.

Timothy Lawrence
27 February 2020