

[2020] PBRA 37

## Application for Reconsideration by Mault

### Application

1. This is an application by Mault (the Applicant) for reconsideration of a Decision of an Oral Hearing Panel dated 7 February 2020 not to direct release. The Panel did go on to make a recommendation for transfer to 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. This is an eligible case.
3. The Applicant's case has been reviewed by a Reconsideration Assessment Panel which has considered the following material:
  - The Dossier
  - The Decision Letter
  - The Application for Reconsideration
  - Various emails provided at the request of the Reconsideration Assessment Panel
  - Confirmation that certain emails were not added to the dossier.

### Background

4. The Applicant was sentenced to life imprisonment on 6 October 1998 following conviction after trial for murder.
5. In brief, the victim was someone whom the Applicant met after drinking together. Following an argument, the Applicant inflicted multiple stab wounds to the victim.
6. The Applicant's tariff of 15 years expired on 6 October 2013.

### Request for Reconsideration

7. The Application for Reconsideration is dated 28 February 2020 and has been submitted by Solicitors acting for the Applicant.
8. The grounds for seeking a Reconsideration are as follows:



That the Applicant was deprived of a proper opportunity to participate in the Parole Board's decision-making following the adjournment directions 4 September 2019 and therefore it was procedurally unfair:

Particularly:

- (a) That he was not given an opportunity to comment on and make submissions on the three addendum reports provided by his Offender Manager;
- (b) There was material seen by the Panel that was not provided to the Applicant, specifically two emails from his Offender Manager to the panel dated 3 and 4 February 2020; and
- (c) That the Offender Manager did not provide much information in relation to application rejections from various Designated Accommodations.

### **Current parole review**

9. There was an Oral Hearing on 4 September 2019 when all the oral evidence was heard. On that date, the Applicant was due be represented, but the Legal Representative did not attend due to a diary error and the Applicant wished to proceed unrepresented.
10. Following that hearing, by way of Panel Chair Directions dated 17 September 2019, the case was adjourned to 11 December 2019 to allow the Applicant's Offender Manager to update the Risk Management Plan and specifically consider accommodation that provides psychological support, allows for extended stay and may well be in other areas of the country than had previously been considered.
11. Due to the Offender Manager needing further time to explore Designated Accommodation options, that adjournment date was extended to 4 February 2020 by way of Panel Chair Directions dated 10 December 2019.

### **The Relevant Law**

12. The Panel correctly sets out in its Decision Letter dated 7 February 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.

#### *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.
14. In summary, an Applicant seeking to complain of procedural unfairness under Rule 28 must satisfy me that either:
  - (a) Express procedures laid down by law were not followed in the making of the relevant decision;



- (b) They were not given a fair hearing;
- (c) They were not properly informed of the case against them;
- (d) They were prevented from putting their case properly; and/or
- (e) The panel was not impartial.

15. The overriding objective is to ensure that the Applicant's case was dealt with justly.

### **The reply on behalf of the Secretary of State**

16. The Secretary of State has submitted no representations in response to this application save for confirming that emails dated 3 and 4 February 2020 were not added to the Dossier.

### **Discussion**

17. Following the Oral Hearing, the case was adjourned for further enquiries. During the time between the Oral Hearing and the Decision being made, the following documents were submitted and placed in the dossier;

- Sentence planning report from the Applicant's Offender Supervisor dated 1.11.19;
- Addendum Probation Officer's report from the Applicant's Offender Manager dated 31.10.19;
- A Probation Service assessment report of risks and their origin dated 1.11.19;
- An email dated 31.10.19 from the Lead Probation Officer of a particular Designated Accommodation to the Applicant's Offender Manager regarding the reasons why they were declining the referral made on the Applicant's behalf;
- Addendum Probation Officer's report from the Applicant's Offender Manager dated 28.11.19; and
- Addendum Probation Officer's report from the Applicant's Offender Manager dated 22.1.20.

18. The Applicant submits that he was not given the opportunity to comment upon or make submissions about these further documents, in particular the three reports from his Offender Manager which set out the different lines of enquiry made to find suitable accommodation as part of the proposed Risk Management Plan.

19. The Reconsideration Assessment panel has considered all Panel Chair Directions and has seen emails between the Panel and Parole Board Case Manager. It is clear that there had not been a direction or suggestion at any point to ask the Applicant for his views on the further reports, either as and when they were added, or before the Panel made their final Decision.

20. In addition to the further documents added to the Dossier, the Panel received two emails dated 3 and 4 February that were sent directly from the Applicant's Offender Manager to the Parole Board Case Manager and then passed to the Panel.

21. The email on 3 February 2020 confirmed that a further Designated Accommodation would not accept the Applicant. The email on 4 February 2020 detailed what would happen regarding accommodation if the Panel were to direct release.



22. Those emails were not sent to the Public Protection Casework Section (PPCS) for inclusion in the Dossier. The Applicant submits that the Panel therefore saw documentation that he did not and is a further ground amounting to procedural unfairness.
23. The panel specifically referred to the Offender Manager's addendum reports dated 31.10.19, 28.11.19 and 22.1.20 and the two emails from February 2020 as evidence considered by the Panel before coming to their Decision.
24. I find that the failure to disclose the emails and the omission by the Panel to obtain the views of the Applicant regarding all the further evidence received and included in the Dossier clearly amount to procedural irregularity. The Applicant was not fully informed as a result of the failure to disclose information and was not given the opportunity to put his case properly following substantial further evidence being obtained.
25. I also form the view that the procedural irregularity was a significant one as the Panel adjourned specifically for further information regarding the Risk Management Plan and appears to have attached some weight to the three additional reports and emails. Whether the Panel might have decided to hold a further Oral Hearing or the Panel's Decision might have been different if the Applicant had seen the further reports and emails and had made representations in response it is impossible to say. However, the principle that justice must not only be done but be seen to be done means that the Panel's Decision cannot be allowed to stand.
26. In the circumstances it is unnecessary to go into any detail about the final ground for reconsideration advanced by the Solicitors on behalf of the Applicant.

## Decision

27. For the reasons set out above there was procedural unfairness requiring Reconsideration of the Panel's Decision. Therefore, the Reconsideration Assessment Panel has decided that this application must be granted.

## Directions

28. I have given careful consideration to whether this case should be reconsidered by the original Panel or whether it should be considered afresh by another Panel.
29. I have no doubt that the original Panel would be fully capable of approaching the matter conscientiously and fairly. However, the question of justice being seen to be done arises again. If the original Panel were to adhere to its previous Decision, there would inevitably be room for suspicion that it had simply been reluctant to admit that its original Decision was wrong. However inaccurate or unfair that suspicion might be, it would be preferable to avoid it by directing (as I now do) that the case should be reheard by a fresh Panel.
30. The following further Directions are now made:



- (a) The re-hearing should be expedited.
- (b) The original Decision must be removed from the Dossier and must not be seen by the new Panel.
- (c) The new Panel should be told that this is a Reconsideration but not made aware of the reasons why it was ordered.
- (d) The new Panel should also be advised that the fact that this is a Reconsideration should not in any way affect their Decision. It is a complete re-hearing.

**Cassie Williams**  
**23 March 2020**