

[2020] PBRA 49

Application for Reconsideration by Robinson

Application

1. This is an application by Robinson (the Applicant) for reconsideration of a decision of an oral hearing on 20 January 2020. By way of a decision letter dated 23 January 2020, the panel of the Parole Board that heard the Applicant's case refused to direct his release or recommend his transfer to the open estate.
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. There are 255 pages in a dossier that includes the decision letter of the oral hearing panel and one page of legal representations from Solicitors acting on behalf of the Applicant contained in an email dated 18 February 2020. The Applicant's Solicitor submitted supporting paperwork to the application for reconsideration. The paperwork included a letter from the Public Protection Casework Section (PPCS) dated 27 October 2017, a memorandum from the Applicant's Offender Supervisor to the Applicant dated 27 November 2017, and two letters from psychologists dated 18 December 2017 and 15 January 2018.

Background

4. On 22 July 1999, the Applicant received a mandatory life sentence for murder, two counts of attempted murder, possession of firearms with intent and possession of prohibited weapons. The minimum term was set at eighteen years less time spent on remand and expired in August 2016.
5. The Applicant committed those offences whilst he was under investigation by Post Office Fraud Investigators. A search of the home address of the Applicant was underway by three Fraud Investigators when the Applicant shot the investigators. One of the investigators died from the gunshot wounds.
6. A previous panel of the Parole Board considered the Applicant's case on 2 October 2017. They did not direct release or recommend progress to open conditions. The 2017 panel set out areas of outstanding risk that needed to be addressed in their decision letter, a copy of which was in the dossier before the current (January 2020) oral hearing panel.
7. The oral hearing that was held on 20 January 2020 was the second review of the Applicant's case by the Parole Board since the expiry of his minimum term.



Request for Reconsideration

8. The application for reconsideration is dated 18 February 2020.
9. The grounds for seeking a reconsideration are set out as follows:
 - (a) The Parole Board decision from 2017 said he had “*core*” risk reduction work to do, following from the psychological assessment. The Applicant challenges this on the basis that no interim reports were done there from 2013 until 2017 so he cannot evidence the work completed. Furthermore, he says there is no reference for the report writer.
 - (b) The Parole Board recommended a transfer to a unit with a regime designed and supported by psychologists to help people recognise and deal with their problems to undertake the believed outstanding work (as above 9(a)). The Applicant argues that this is flawed as per the above, but he followed up with an application to the unit.
 - (c) As pointed out by the Parole Board, the Applicant may not qualify for the specified regime, and this transpired to be the case as shown in the response from the unit in the letter dated 15 January 2018.
 - (d) The Applicant says he has fully met all recommendations in the letter from PPCS dated 27 October 2017.
 - (e) The Applicant says he tried for and got the response of being unsuitable for the regime recommended by the Parole Board.
 - (f) For his most recent oral hearing, the Applicant had the full support of all professionals involved (Offender Supervisor, Offender Manager, and Psychologist) to complete an intervention focusing on rehabilitation and the need for positive life plans. A prison had confirmed they could facilitate this intervention.
 - (g) It is further submitted that the decision under challenge is irrational as the panel concluded that the Applicant still had “*core risk reduction*” work to complete.
10. The Applicant does not seek reconsideration on the basis of any ground other than irrationality.

Current parole review

11. The case was referred to the Parole Board by the Secretary of State on 9 January 2019 and required the Board to consider whether the Applicant met the statutory test for release and if not, to consider his suitability for open conditions.
12. The oral hearing panel convened on 20 January 2020 at the prison where the Applicant is (or was then) detained. The panel was comprised of three members, including a psychologist member of the Board. The panel had a dossier which



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included an up to date psychological risk assessment from a Prison Psychologist, and recent reports from the Offender Manager and Offender Supervisor.

13. Oral evidence was heard from the Prison Psychologist, the Offender Manager and Offender Supervisor. No witness supported release. All supported a transfer to open conditions for the Applicant to complete the intervention to be delivered either by his Offender Supervisor or by his Offender Manager in open conditions. The evidence was that the Applicant's custodial behaviour had been unproblematic and pro-social. All witnesses were of the view that the work recommended in the 2017 psychological risk assessment remained "*core risk reduction work*" despite their recommendation for the Applicant to progress to open conditions.
14. The oral hearing panel concluded that given the Applicant's history of "*disguised compliance*", the work to address outstanding risk areas (that all witnesses agreed was "*core*") needed to be completed in closed conditions for the protection of the public. Thus, no direction was made for release or a transfer to open conditions.

The Relevant Law

15. The panel correctly sets out in its decision letter dated 23 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.

Parole Board Rules 2019

16. 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)).
17. A decision to recommend or not to recommend a move to open conditions is not eligible for reconsideration under Rule 28. This has been confirmed by the decision on the previous reconsideration application in **Barclay [2019] PBRA 6**. Accordingly, it is only open to me (as the Reconsideration Assessment Panel) to consider the Applicant's request for reconsideration in respect of the decision of the oral hearing panel not to direct his release.

Irrationality

18. 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 accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it."

19. 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



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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.

20. The application of this test has been confirmed in previous decisions on applications for reconsideration under rule 28: **Preston [2019] PBRA 1** and others.
21. The Secretary of State submitted a response to this application for reconsideration. He submits, correctly, that the Applicant seeks reconsideration of both the decision not to release and the decision not to recommend a transfer to open conditions and, that the latter is not a matter that falls within the reconsideration mechanism.

Discussion

22. The grounds for reconsideration are set out at paragraph 9 above.
23. Taking each submitted ground for reconsideration in turn; it is not even an arguable ground for reconsideration for the Applicant to seek a review of the 2017 oral hearing panel decision that he had outstanding core risk reduction work. The decision of the 2017 panel is not subject to reconsideration. That ground is doomed to fail *ab initio*.
24. The true submission here, in my judgment, is that by inference, the Applicant seeks to argue that it was irrational for the current oral hearing panel to have agreed with the 2017 oral hearing panel's conclusion that core risk reduction work remained outstanding and that the Applicant could not evidence his completion of specific courses to meet the 2017 oral hearing panel's concerns. I have considered with care the supporting documents lodged by, or on behalf of, the Applicant. They detail that he has applied for a transfer to a specified unit without success on the grounds that there is no diagnosis of a personality disorder that would make him eligible for a placement.
25. Simply put, this inferred ground is also doomed to fail. It was properly open to the panel to adopt the conclusion of the 2017 oral hearing panel that there was then, and remains now, areas of outstanding risk that need to be addressed before the Applicant meets the statutory test for release. It was not for the oral hearing panel to specify what particular offending behaviour course might meet the Applicant's need to address those outstanding areas of risk; the referral letter specifically prohibits such comments by the Parole Board. The oral hearing panel, rightly, did not descend into specifying which particular offending behaviour courses could meet the Applicant's need to address those areas of risk and made their own judgement as to the areas of outstanding risk. This is plainly not a case where the oral hearing panel blindly adopted the conclusion of the 2017 oral hearing panel.



26. The oral hearing panel justified their conclusions in a clear and cogent decision letter which gave proper reasons for the conclusion that they came to regarding outstanding areas of risk. This literally stated, and the inferred, ground for reconsideration fails to meet the high test for irrationality by a significant margin.
27. It is also submitted that "*the Parole Board recommended a transfer to [the unit]*" and the Applicant followed that up with an unsuccessful application. The Parole Board do not "*recommend*" specific treatment interventions. The supporting paperwork provided by the Applicant shows that his application was not to the correct unit with a regime designed and supported by psychologists to help people recognise and deal with their problems. In any event the submission that the Applicant met outstanding areas of core risk fails. Whether a particular intervention is available, and whether the Applicant has applied and been rejected for a placement on a particular course or regime, is not the issue. The issue is whether the Applicant had reduced his risks all outstanding core risk areas. It was perfectly proper, and open to the oral hearing panel, to conclude on the evidence before them that the Applicant had not done so.
28. The support that was expressed by witnesses for the Applicant to be transferred to open conditions is irrelevant to this reconsideration application as it is not open to me to consider open conditions as part of this reconsideration review. I note that the witnesses who expressed support for a transfer to open conditions clearly did not support release. The oral hearing panel engaged with the issues and the decision letter amply justifies the conclusion that it came to that core risk areas remained outstanding and must be addressed in closed conditions.
29. The conclusion of the oral hearing panel that there remains outstanding core areas of risk is well reasoned and clearly set out, and it was clearly a decision that the panel were entitled to come to. The submission that the panel reached an irrational conclusion in finding that there were outstanding areas of risk to be addressed fails to meet the high test of irrationality and this ground must fail.
30. This application fails on each individual ground and I judge that cumulatively, the high test for irrationality is not met in this case.

Decision

31. For the reasons I have given, I do not consider that the decision not to release the Applicant was irrational and accordingly, the application for reconsideration is refused.

Judge Robert Smith
6 April 2020

