

[2020] PBRA 5

## Application for Reconsideration by Hussain

### Application

1. This is an application by Hussain (the Applicant) for reconsideration of a decision of an Oral Hearing Panel in November 2019 not to direct his release.

### Background

2. In December 2006 the Applicant was sentenced to Imprisonment for Public Protection with a minimum term of 2½ years; he was given credit for 208 days spent on remand. His tariff expired in November 2008. He was released on licence in February 2018 but was recalled in May 2018, having breached his licence conditions by committing further offences of assault, in respect of which he was convicted and sentenced to 6 months imprisonment in July 2018.

### Request for Reconsideration

3. The application for reconsideration is dated 12 December 2019.

### Current parole review

4. In June 2018 the Secretary of State referred the Applicant's case to the Parole Board to consider whether or not to direct his immediate release.

### The Relevant Law

5. Rule 25 (decision by a panel at an oral hearing) and Rule 28 (reconsideration of decisions) of the Parole Board Rules 2019 apply to this case.
6. Rule 28(1) provides that applications for reconsideration may be made in eligible cases on the basis that (a) the decision is irrational and/or (b) that it is procedurally unfair. This is an eligible case.
7. In **R (on the application of 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 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."*

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. 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. This strict test for irrationality is not limited to decisions whether to release; it applies to all Parole Board decisions.

## Discussion

8. The Applicant, in grounds of his own making, complains that the psychology report contained information as to the circumstances of the offence which led to his recall which was inaccurate in two respects, by asserting that (a) he had forced his way into his ex-partner's residence; and (b) he had found out her address and made his way there.
9. His complaints in this respect go both to irrationality and to procedural unfairness.
10. As to irrationality, it is to be noted that no reference is made to either of these pieces of information in the Decision Letter. It can be safely concluded, therefore, that they played no part in the decision reached by the Oral Hearing Panel (OHP).
11. In any event as to (a), the reporting Psychologist did not state as a fact that the Applicant had forced his way into the house but set it out as part of the history recorded in documentation placed before her to assist her in making her report. She also took care to set out the Applicant's denial of having done this and to record his belief that the Criminal Justice System is against him.
12. As to (b), if this assertion was erroneous, it was an error which had no bearing on the decision of the OHP. It is to be noted that the Applicant did indeed discover the address of his ex-partner and did indeed go there. If there was an error, it was only as to whether he went there and committed the assaults immediately after discovering the address or did so at some later date.
13. The Applicant asserts that he was effectively denied the opportunity to challenge these matters because he was interrupted by a panel member as he put questions to the Psychologist and because the Panel Chair at that point called for a brief adjournment. He submits that by reason of this procedural unfairness he was prevented from correcting these alleged errors.
14. It is by no means clear on the face of the application what it was that prevented him from resuming his questioning of the Psychologist after the short



adjournment; his grounds are silent on this topic. In addition, the Decision Letter states that he elected to give the OHP his own account of these events. His account, albeit in summarised form, is clearly set out, amounting to a denial of the offences of which he was convicted and (directly quoted in the Decision Letter) his unwillingness to “*talk about it too much*”.

15. In all of those circumstances, there is no sustainable basis for finding any procedural unfairness. The Applicant was afforded opportunities to make a challenge to these matters, whether by questioning witnesses or by giving his own account.
16. He also makes a wider complaint to the effect that if the Psychologist’s report contained the two alleged errors “*it makes the whole of the report questionable to say the least*”, thus undermining the rationality of the OHP’s decision, at least to the extent that the Panel relied on the report. This complaint is demonstrated to be ill-founded; the alleged errors were trivial and of no materiality to the decision. The report as a whole was carefully and accurately prepared and the OHP were fully entitled to rely on it.
17. The Applicant further complains that the findings of the OHP as to the risk he presents were wrong; he sets out his reasons for asserting that his conduct whilst on licence does not support a finding that he presents a high risk of causing serious harm to members of the public by committing offences of robbery or burglary. In fact, the OHP found that he presented such a risk in that way but also in other ways, including violence and abuse to domestic partners and physical or emotional abuse to his children. These risk assessments were supported by the Offender Manager and the Offender Supervisor. The Psychologist’s assessment was also set out in the Decision Letter. The OHP accepted these assessments and were fully entitled to do so. Their decision to that effect may not have accorded with the Applicant’s view of the matter but is not a decision that can possibly be characterised as irrational. It was a rational finding, based on an assessment of the evidence before them.
18. For the sake of completeness, this Reconsideration Assessment Panel (RAP) has noted the Applicant’s complaint that his use of inappropriate phraseology was given undue weight by the OHP; when asked how his behaviour would change if he were released, he said “*only a dog returns to its own vomit*”. The Decision Letter refers to this phrase, thought it a curious expression for him to have used, acknowledged in terms that it would be wrong to take the remark in isolation but connected it to a thread running through his evidence, indicative of a lack of empathy and insight. This approach was balanced, fair and supported by clear evidence. It was one which the OHP were entitled to take and cannot be regarded as irrational in itself nor to infect the decision as a whole with irrationality.



19. This RAP has also read a document submitted by the Applicant, described by him as a statement of truth. Its contents set out assertions of fact and arguments supporting his submission that the OHP should have directed his release. None of this is relevant to the function of this RAP, which is limited by the principles of law set out above. The reconsideration procedure is not in itself a rehearing of the case.
20. The Applicant submits as to the Decision Letter that "*it is self evident that there was no careful consideration given...it's therefore procedurally unfair and irrational...*". This RAP has considered the Decision Letter as a whole and in the light of the material before the OHP for its consideration, noting that none of the professional witnesses supported release and were unanimous in their opinion that core offending work, identified by the Psychologist, needed to be completed before re-release. It can find no basis on which this complaint can be sustained. On the contrary, it is clear that the decision was founded on the evidence before the OHP, carefully considered by them and resulting in a decision which was wholly rational. No basis has been made out for a finding of procedural unfairness.

## Decision

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

Alistair McCreath  
30 December 2019

