

[2021] PBRA 111

Application for Reconsideration by Rachidi

Application

1. This is an application by Rachidi (the Applicant) for reconsideration of a decision of the Parole Board, dated 30 April 2021 and made under rule 19(1)(b) of the Parole Board Rules 2019 (the 2019 Rules), that the Applicant was unsuitable for release (the decision) and communicated in a written decision letter of the same date (the decision letter).
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, comprising:
 - a) The parole dossier of 184 numbered pages (including a copy the decision letter);
 - b) Email from Parole Board Case Manager to Offender Management Unit at a Prison Establishment, 9 December 2020;
 - c) Stakeholder Response Form request by Secretary of State (the Respondent) dated 14 April 2021 with response by the Applicant's representatives dated 16 April 2021;
 - d) Duty Member decision dated 14 June 2021 refusing an application by the Applicant for a panel at an oral hearing to determine the case;
 - e) Written representations for the Applicant by the Applicant's solicitors dated 5 July 2021;
 - f) Further written representations for the Applicant by the Applicant's solicitors dated 15 July 2021; and
 - g) Email from Public Protection Casework Section (PPCS) to Parole Board dated 28 July 2021.

Background

4. In July 2015, the Applicant was sentenced to an extended determinate sentence of imprisonment after his conviction for offences of grievous bodily harm with intent and battery.
5. The Applicant became eligible for parole in November 2019. The conditional release date is in March 2022 and the sentence end date is in March 2024.
6. The Applicant was aged 28 when he received the sentence in July 2015 and is now aged 34.


Current parole review

 3rd Floor, 10 South Colonnade, London E14 4PU

 www.gov.uk/government/organisations/parole-board

 info@paroleboard.gov.uk

 @Parole_Board

 0203 880 0885

7. The decision was made on the Respondent's referral of the Applicant's case to the Parole Board to consider whether or not it would be appropriate to direct the Applicant's release.
8. The decision was made by a single-member panel of the Board who considered the Applicant's case on the papers on 30 April 2021 (the Panel).

Application and response

9. It is asserted in the Applicant's representations dated 5 July 2021 that the Decision is marred by irrationality and procedural unfairness.
10. On 13 July 2021, I issued observations and an invitation to the parties make further representations.
11. Further written representations were made for the Applicant by the Applicant's solicitors dated 15 July 2021.
12. By the email dated 28 July 2021, the PPCS made representations for the Respondent.

The Relevant Law

13. Rule 28(1) of the 2019 Rules 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.

Irrationality

14. 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 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."

15. 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.
16. 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. The application of this test has been confirmed in previous decisions on applications for reconsideration under Rule 28: **Preston [2019] PBRA 1** and others.

Procedural unfairness

17. 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.

Consideration

18. It is asserted by the Applicant that the decision is marred by procedural unfairness because the Panel concluded the review after a significant delay in reports being submitted without requesting or receiving legal representations and that the usual process has not been followed, despite numerous efforts to chase reports and deadlines by the Applicant's representatives.

19. Rule 18(1) of the 2019 Rules provides that a party who wishes to make representations to the Board must serve them on the Board and the other party within 4 weeks of the case being referred to the Board where the case relates to the initial release of a prisoner, which is the case for the Applicant as I understand it. The date of the referral of the case appears to be 5 October 2020, which is the date given as the date of preparation of the HMPPS case referral within the dossier. If that is correct, the deadline for making representations would appear to have expired on 2 November 2020.

20. Rule 4(3) of the 2019 Rules provides that the Board chair may delegate to the Board's members of staff the function of the variation of the deadline for representatives to submit written representations and evidence as set in rule 18(1).

21. Rule 6 of the 2019 Rules provides that a panel chair or duty member who has been appointed in accordance with rule 4 to carry out case management functions may at any time make, vary or revoke a direction and that a party or third party who is subject to a direction may apply in writing for a direction to be given, varied or revoked.

22. In the 28 July 2021 representations, the Respondent submits that the core dossier was referred to the Board on 5 October 2020, however the full dossier was referred on 27 November 2020. The Respondent submits that, from the point of referral, the Parole Board is responsible for requesting representations from the prisoner or legal representative and that all representations must be emailed directly to the Parole Board within four weeks of the formal referral of the dossier by PPCS. It is submitted by the Respondent that, in this instance, the four weeks would start from 27 November 2020.

23. The Applicant has not suggested that the deadline for making representations provided by Rule 18 of the 2019 Rules was varied under Rule 4 or Rule 6 of the 2019 Rules.

24. However, I note that it was stated in the email from a Parole Board Case Manager to a prison establishment Offender Management Unit dated 9 December 2020 that the prisoner had until 6 January 2021 to submit representations. 6 January 2021 was the date four weeks after 9 December 2020. I consider that it is correct to describe the contents of that email as a variation under rule 4(3) of the 2019 Rules by a member of the Board's staff of the rule 18(1) deadline for representatives to submit written representations and evidence.

25. In any event, the Applicant's case was allocated to a member to consider on the papers on 15 January 2021. That member adjourned the case with directions for further information. It is an unsatisfactory feature of the case that the direction did not provide

time for the parties to make any written submissions they might have wished to make on the new information prior to the case being decided on the papers.

26. Some of the directed information was provided in response to directions and the case was allocated to a different member to consider on the papers on 30 April 2021. The latter member made the Decision in relation to which the Applicant has applied for reconsideration. The latter member did not consider any written representations by the Applicant, because no such representations had been made by the date on which the member decided the case, which was after the new deadline of 6 January 2021 that was set by the member of the Board's staff.
27. That is not the end of the matter. A Stakeholder Response Form dated 14 April 2021 that has been provided to me was initiated by the Respondent to request the revocation of a direction seeking further information regarding the Applicant's immigration status. The direction in question had a deadline of 12 March 2021 and there were no directions with any later deadline. However, the Stakeholder Response Form dated 14 April 2021 also includes a response by the Applicant's representatives dated 16 April 2021 in which it is stated that the Applicant had no comments to make regarding the Respondent's request, but the response also stated as follows:

"Please can you provide us with the deadline to submit representations as soon as possible?"

28. The decision letter does not reveal whether the Panel was in possession of the version of the form including the response by the Applicant's representatives and the decision letter does not reveal any further details such as the content of the form or the Panel's response to the request that was made in the form. The version of the Stakeholder Response Form request that has been provided to me does not include a response by a member of the Board to the Respondent's request or to the Applicant's response and request for the deadline to submit representations.
29. I consider that it is correct to describe the Applicant's 16 April 2020 request for the deadline to submit representations as an application under rule 6 of the 2019 Rules to vary in the Applicant's case the deadline for making representations provided by rule 18(1) of those Rules. It is apparent that there was no response by the Board to that application. I consider that the failure to determine that application that has effectively denied the Applicant the opportunity to put his case to the Board in the light of the materials within the final version of the dossier, including the materials added in accordance with the directions made by the member who was allocated to consider on the papers on 15 January 2021.
30. The provision of a fair opportunity to a party to put their case is a fundamental requirement of justice. The effective denial of the opportunity to make representations to the Applicant is a matter of procedural impropriety that has rendered the making of the decision resulting in the proceedings being fundamentally flawed.

Decision

31. The decision is marred by procedural unfairness.

Timothy Lawrence

 3rd Floor, 10 South Colonnade, London E14 4PU

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 0203 880 0885

29 July 2021