

[2021] PBRA 156

Application for Reconsideration by Saunders

Application

1. This is an application by Saunders (the Applicant) for reconsideration of a decision of an oral hearing panel dated the 11 October 2021 not to direct release or to recommend progression 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.
3. I have considered the application on the papers. These are the dossier of 627 pages (including the decision letter) and the application.

Background

4. The Applicant is 47 years old. He is serving a sentence of mandatory life imprisonment for murder, imposed on the 22 July 1996, with a tariff expiry date of the 13 October 2009. The Applicant was aged 21 at the date of his sentence.
5. The Applicant sprayed the interior of the deceased's flat with petrol and then set fire to it. It was a revenge attack.
6. On the 5 October 2010, he was released on licence, but was recalled on the 12 November 2010 for committing a further offence.
7. On the 3 May 2018, he was again released but recalled on the 29 October 2019. On this occasion, the Applicant did not commit a further offence but was recalled for a breach of the licence condition to be of good behaviour.

Request for Reconsideration

8. The application for reconsideration is dated the 25 October 2021.
9. The grounds for seeking a reconsideration are brought under procedural unfairness and are as follows:

- a) The panel prevented the legal representative from asking witnesses whether the Applicant's recall had been appropriate, saying that the question was a matter of fact and not opinion. In taking this course, the panel misapplied **R (Calder) v Secretary of State for Justice**; and

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- b) The panel failed to observe or take into account that the Community Offender Manager had applied the wrong test in respect of the recall.

Current parole review

10. The Secretary of State's referral required the panel to consider the Applicant's release or, in the alternative, to make a recommendation for a move to open conditions.
11. The hearing had been listed for 7 June 2021, but was deferred because a material witness had not been warned to attend; the hearing took place on 5 October 2021 and the panel consisted of three members, one of whom was a psychological member, one was an independent member and one was a judicial member. The panel heard evidence from five professional witnesses, one of whom supported release and the other four supported progression to open conditions.

The Relevant Law

12. The panel correctly sets out in its decision letter dated 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

13. 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)).

Procedural unfairness

14. 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.
15. 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.
16. The overriding objective is to ensure that the Applicant's case was dealt with justly.



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The reply on behalf of the Secretary of State

17. The Secretary of State has not chosen to make any representations in respect of the application.

Discussion

18. One preliminary matter is that by a Stake Holder Response Form, dated the 8 September 2021, the Applicant sought the attendance of a social worker and the attendance of his partner. The response of the chair was that the proposed witnesses should not be warned to attend at that stage but should file statements; it was observed that the Applicant was making serious allegations without supporting evidence, but if at the oral hearing it appeared there was substance in those allegations, the panel would adjourn for the witnesses to be called.

19. The Applicant's partner did file a statement but was not called. In the undated, closing, written submissions on behalf of the Applicant it was said she should have been called. It is not clear whether an application for an adjournment was made before the panel but the matter is not pursued in the grounds.

20. The Applicant's legal representative does not develop the submission precisely how the panel misapplied the well-known case of **Calder**. Mr Calder's case was similar to the instant case, in that he had been recalled for allegedly breaching the condition to be of good behaviour. The case raised three questions, two of which may be pertinent to the Applicant's case: was the Secretary of State entitled to conclude on the evidence available that the Applicant was in breach of his licence conditions; were the reasons given by the Secretary of State adequate and was the judge (in the Administrative Court) wrong in concluding the Parole Board would scrutinise the initial recall decision, and therefore wrong by relying on an alternative remedy.

In Section 5 of the decision letter, the panel reproduces the Secretary of State's reasons for recalling the Applicant. The reasons were:

- a) A sudden deterioration in the Applicant's presentation;
- b) Allegedly sending veiled threats and perceived grievances to the probation officer;
- c) Spending considerable time with his partner who has two vulnerable children;
- d) Angry presentation at the point of recall, and
- e) "[The Applicant's] current presentation which include grievance thinking, rumination, failed threats, emotional well-being issues and significant anger reflects the circumstances that led to the index offence and emergency recall in 2015".

21. The panel scrutinised those reasons and heard evidence particularly from the former Community Offender Manager, and the Applicant. At pages 5 to 6 of the decision letter, the panel sets out the evidence of the former Community Offender Manager. The panel accepted her evidence and firmly rejected that of the Applicant. They were entitled to come to that conclusion; there is no hint of irrationality in the process the panel followed and this panel will not interfere with that conclusion.

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22. The contents of the decision letter of the previous panel and the evidence before this panel of the two psychologists demonstrated that the Applicant has problems with engaging with supervision and support because of numerous psychological difficulties. He suffers from paranoia, hostility and feels persecuted by the system. Apparently, he has a lack of insight, indulges in grievance thinking and has a lack of emotional regulation and a lack of empathy for partners and professionals.
23. The panel identified these features among others. The former Community Offender Manager had believed her professional relationship with the Applicant was breaking down at a time when she was trying to increase the level of supervision. He would use meetings only to discuss grievances, frequently refusing to remain and on occasions being rude to staff. He made it clear by text that he was not prepared for the former Community Offender Manager to make contact with him, thus undermining her position as the person charged with managing his risk.
24. The panel concluded that part of the section by saying *"taking all these matters and the overall evidence into account, the panel is satisfied on the balance of probabilities that [the Applicant's] recall was not only lawful, but justified, necessary and the only logical next step for the probation service to have taken, having regard to its duty to manage [the Applicant], a mandatory life sentence prisoner, when on licence and in the community"*.
25. Reading the decision letter as a whole, it is apparent it is a comprehensive, fair and balanced document and I am unable to identify sensible grounds for saying that the panel was not entitled to find the Secretary of State had been entitled to conclude on the evidence available that the Applicant was in breach of his licence conditions and the reasons given by the Secretary of State were adequate.
26. It seems that the intention of the legal representative had been to ask each professional witness, and probably the Applicant, whether they thought the recall was justified. The approach taken by the panel was completely correct. The witnesses gave evidence of what did or did not take place and of course the psychologists would give their opinions on psychological matters, but it was for the panel and not the witnesses to decide whether the recall was in fact justified.
27. Turning to the second ground, once again the legal representations do not specify how the Community Offender Manager applied the wrong test. However, as it was the panel's task to decide whether the recall was correct and not hers, the important factor was whether the panel applied the correct test. Plainly it did. I can see no merit whatsoever in the second ground.
28. The decision of the panel must have been a great disappointment to the Applicant and one can well understand how a person with his psychological problems will have great difficulty coming to terms with it. The plain fact is he received a very thorough and fair hearing and the decision on the recall was entirely consistent with the evidence.

Decision

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

James Orrell
15 November 2021