

[2021] PBRA 75

## Application for Reconsideration by Weatherson

### Application

1. This is an application by Weatherson (the Applicant) for reconsideration of a decision of an oral hearing panel dated 12 April 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 consisting of 361 pages, the decision letter and the Applicant's grounds set out clearly in a handwritten letter.

### Background

4. On 14 January 2008, following his plea of guilty to wounding with intent to cause grievous bodily harm, the Applicant was sentenced to an indeterminate sentence of Imprisonment for Public Protection.
5. The period the Applicant had to serve in prison before his case could be considered by the Parole Board was set at 18 months and expired on 14 July 2009.
6. The Applicant was aged 22 at the time.
7. He has been released on licence and then recalled six times. The last release was on 4 August 2020 and the recall was on 15 August 2020.
8. The Applicant was recalled on the last occasion because early in the morning, the police received a complaint that he had assaulted his companion, R. When the police arrived, she did in fact say she had been assaulted and had visible injuries but refused to pursue the allegation.
9. Both R and the Applicant were drunk. The Applicant was aggressive towards the police and wanted to fight. At the police station he had to be taken to the ground and restrained by the police.

## Request for Reconsideration

10. The application for reconsideration was received on the 30 April 2021.
11. The ground for seeking a reconsideration is irrationality and the Applicant makes a number of points in his letter as follows:
  - a) The Applicant struggles with his emotions due to abuse in childhood.
  - b) He did not breach his licence conditions: The Applicant and R were not in a relationship.
  - c) The person who made a witness statement about the incident has for many years pursued a vendetta against the Applicant.
  - d) Many of the comments in the reports are untrue.
  - e) The Applicant has never been charged with an offence against a woman. In those circumstances, he was wrongly assessed as a risk to females.
  - f) Some of the professional witnesses supported release.
  - g) The Applicant did not commit a crime whilst on licence, did not break any licence conditions and is not a danger.

## Current parole review

12. The Secretary of State referred the case to the Parole Board in September 2020 to consider release or recommendation for progression to open conditions.
13. The oral hearing took place on 29 March 2021 and the panel heard from the Applicant, the Prison Offender Manager, the Community Offender Manager and a prison psychologist. The Applicant was legally represented. Because of the pandemic, the hearing took place remotely by way of video link.
14. The Applicant is now aged 37.

## The Relevant Law

15. The panel correctly sets out in its decision letter 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**.

### *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 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."*

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 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. In **R (ex parte Wells) v Parole Board [2019] EWHC 2710 (Admin)** it was suggested that a proper approach to deciding whether a decision is irrational is to test a panel's ultimate conclusions against the evidence before it and to ask whether the conclusion can be safely justified on the basis of that evidence while giving due deference to the panel's expertise.

### *Other*

22. In **Oyston [2000] PLR 45**, at paragraph 47 Lord Bingham said: *"It seems to me generally desirable that the Board should identify in broad terms the matters judged by the Board as pointing towards and against a continuing risk of offending and the Board's reasons for striking the balance that it does. Needless to say, the letter should summarise the considerations which have in fact led to the final decision. It would be wrong to prescribe any standard form of Decision Letter and it would be wrong to require elaborate or impeccable standards of draftsmanship."*

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

23. The Secretary of State has not filed a reply to this application nor was he represented at the hearing.

### **Discussion**

24. The tenor of the Applicant's letter suggests he may think the reconsideration process involves the reconsideration member looking at the decision and deciding whether he/she agrees with it. That is not the case; coming to a different conclusion from that argued on behalf of the Applicant is not irrational. The key questions I am required to answer in this application are (a) do the conclusions of the panel follow from the evidence, (b) is there an unexplained evidential gap which fails to justify the conclusion and (c) is there a particular finding that is unsupported by any evidence.
25. Perhaps the most important point raised by the Applicant is that two professional witnesses supported release. Panels of the Parole Board are not obliged to adopt the opinions and recommendations of professional witnesses. The panel has to make its own assessment and evaluation and make up its own mind on the totality of the evidence. It is however important that it should explain clearly its reasons for doing so and that its stated reasons should be sufficient to justify its conclusions.
26. The Prison Offender Manager and the Community Offender Manager both supported release.
27. The Community Offender Manager has known the Applicant from before the index offence. He accepted the Applicant posed a risk of serious harm but did not regard that risk as imminent. He placed weight on the fact the Applicant initially would live in designated accommodation and identified a training course addressing relationships and the handling of emotions which the Applicant would find beneficial.
28. The Prison Offender Manager had considered recommending progress to open conditions but decided the Applicant needed the structure and support of a place in designated accommodation and the proposed training course was not available in open prison.
29. The prison psychiatrist assessed the likelihood of the Applicant committing an act of future general violence as medium and the likelihood of committing an act of intimate partner violence as high. She considered the Applicant's risk against a partner as imminent and concluded, at page 256 of the dossier,

*"I do not consider that the risk that [the Applicant] presents at this time can be safely managed within the community and therefore recommend further treatment within the closed prison estate".*

30. The psychologist said the Applicant had said he disagreed with parts of the report but, when invited, did not identify which parts.
31. The panel gave its reasons for preferring the psychologist's opinion to that of the managers:
- The success of the risk management plan depended on external controls and the Applicant's compliance with them. Given his record on licence, the panel doubted he would comply.

- There was evidence the Applicant had poor emotional control, poor self-management and inadequate insight.
- The Applicant needed to do something about his thinking, his behaviour and attitudes, otherwise he was likely to return to his old ways.

32. In the circumstances, the panel preferred the psychologist's analysis of the Applicant's situation and his need for treatment in custody before he would be safe to be released into the community.

33. In my view, these were adequate reasons for coming to that decision.

34. Dealing with the Applicant's other points. It is encouraging that within the last two years, the Applicant has been able to make the very difficult decision to disclose the abuse in his childhood. However, that is not a reason for saying he meets the test for release. The panel was entitled to say it remained necessary for the protection of the public that he should remain confined until he has done further work.

35. The Applicant said he did not breach a licence condition and that R and he were not in a relationship. The decision letter makes it clear first, R said they had been in a relationship and, second, the Applicant has said very different things about this on different occasions, including that they had been in a relationship.

36. It may be a particular woman has pursued a vendetta against the Applicant and has then made an incriminating statement against him. However, the evidence in support of the recall included statements from police officers.

37. The Applicant has said many of the comments in the reports are untrue. I assume he is referring principally to the psychological risk assessment. However, he has given me no particulars, nor did he give the author of the report any particulars. In those circumstances it is not possible to deal with this allegation.

38. The decision letter sets out very clearly the various factors which entitled the authorities to recall the Applicant, in the main, his failure to disclose the relationship with R, being drunk early in the morning and being aggressive with the police and failing to be honest about what had taken place.

39. The Applicant had been charged with an assault on a former partner and although he was found not guilty, he admitted pushing her, so she went over some furniture. More significantly, the psychologist has set out extensively at paragraphs 6.27 – 6.33 of her report (pages 241 – 244 of the dossier) the reasons for assessing him as a risk to partners.

40.The Applicant says in his letter he is not dangerous. He is serving an indeterminate sentence because he was found to be dangerous. The evidence which the panel was entitled to accept from the psychologist was that his risk of causing serious harm remained and at present that risk is not manageable in the community.

41.In my opinion, the conclusions of the panel were based on the evidence before it and were conclusions which could proceed logically from that evidence.

## **Decision**

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

**James Orrell**  
**14 June 2021**