

[2022] PBRA 168

Application for Reconsideration by Reeves

Application

1. This is an application by Reeves (the Applicant) for reconsideration of a decision made by an oral hearing panel dated 18 October 2022 not to direct his release.
2. Rule 28(1) of the Parole Board Rules 2019 (as amended by the Parole Board (Amendment) Rules 2022) (the **Parole Board Rules**) provides that applications for reconsideration may be made in eligible cases (as set out in rule 28(2)) either on the basis (a) that the decision contains an error of law, (b) that it is irrational and/or (c) that it is procedurally unfair.
3. I have considered the application on the papers. These are the oral hearing decision, the dossier, and the application for reconsideration. The Secretary of State has submitted no representations in response.

Background

4. The Applicant was born in 1958 and is now 64 years old. In 1983 he was convicted of the murder of his ex-fiancée and was sentenced to life imprisonment. His ten-year tariff expired in December 1992.
5. He was released on licence following an oral hearing in 2015 and recalled to custody in June 2020.

Request for Reconsideration

6. The application for reconsideration was received on 7 November 2022 and has been drafted and lodged by solicitors acting on the Applicant's behalf. It submits that the decision was irrational. There is no complaint of procedural unfairness or error of law.

Current Parole Review

7. The Applicant's case was referred to the Parole Board by the Secretary of State to consider whether or not it would be appropriate to direct his release. If the Board did not consider it appropriate to direct release it was invited to advise the Secretary of State whether the Applicant should be transferred to open conditions.



8. The case proceeded to an oral hearing on 18 August 2022 before a three-member panel, including a psychiatrist and judicial member. The Applicant was legally represented throughout. The panel heard oral evidence from the Applicant's Community Offender Manager (**COM**), his Prison Offender Manager (**POM**), a psychologist from HMPPS and a psychologist instructed by the Applicant's solicitors. The Applicant only sought release; he was opposed to a progressive move to open conditions.
9. The panel identified key risk factors that characterised the index offence and were likely to lead to re-offending as including deteriorating mental health, non-compliance with prescribed medication, relationship breakdown and other difficulties in relationships, lack of emotional self-control and willingness to attempt to resolve conflict by violence inflicted using a weapon, low self-esteem, jealousy, grievance thinking and inability to cope with stress.
10. The panel did not direct the Applicant's release, nor did it recommend a transfer to open conditions.

The Relevant Law

11. The Parole Board will direct release if it is no longer necessary for the protection of the public that the prisoner should be confined. The test is automatically set out within the Parole Board's template for oral hearing decisions.
12. The panel's decision not to release the Applicant was made under rule 25(1) of the Parole Board Rules 2019 and is therefore eligible for reconsideration under rule 28.

Irrationality

13. 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."

14. 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.
15. The application of this test has been confirmed in previous decisions on applications for reconsideration under rule 28: **Preston [2019] PBRA 1** and others.



Discussion

16. The panel summarised the period the Applicant spent on life licence following his initial release in 2015 and the disputed events leading to his recall in June 2020 at paragraphs 2.2 to 2.11 of its written Reasons for its decision (*'the Reasons'*).
17. The Applicant told the panel that *'he felt he had done nothing that merited recall'*. Adverse events documented in official records had simply never happened, there had been no justification for his temporary return to the approved premises in January 2020 and there had been no difficulties after his return to the community. He claimed that the complaints were concocted by his then COM, the warden of his supported accommodation and/or by the police.
18. The panel was unable to accept the Applicant's contention. It concluded that recall had been avoided until the point when those responsible for his supervision had no alternative but to take executive action. The panel found that recall was both appropriate and inevitable in the circumstances.
19. It is said on behalf of the Applicant that the panel failed to give sufficient reasons for its decision. It is argued that it was irrational for the panel to deem there was outstanding core risk reduction work to be completed yet make no findings regarding the behaviour displayed in the community prior to recall. The submission highlights this phrase taken from paragraph 4.2 of the Reasons,

"... On the evidential material available the panel cannot make detailed findings as to the precise sequence of events between January 2020 and June 2020"
20. It is said that the panel ought to have enquired further into – and made specific findings of fact about – disputed incidents such as the claims that the Applicant had thrown a coffee table at his close friend Ms F in early June 2020 and that they fought in the street during the weekend of 26 June 2020. The panel noted the careful approach of the present COM, who declared herself reluctant to make any assumption about these two controversial matters and was keeping an open mind. Nevertheless, this experienced professional was of the view that the biggest challenge to the Applicant if re-released was managing relationships. She felt that he did not understand sufficiently the potential risks that relationships posed for him and he currently could not cope if they started to go wrong. The reservations of the COM about the adequacy of her draft Risk Management Plan were fully set out in section 3 of the Reasons. A plan for moving on from approved premises had yet to be devised. The COM accepted that she could not deliver an intervention at the level considered necessary by the prison psychologist, nor was she confident that she could source third party provision.
21. Whilst the panel declared itself unable to make detailed findings of fact as to the precise sequence of events between January and June 2020, it did reach

broader thematic factual conclusions – first, it found that there was during this six-month period considerable disruption and instability around the then relationship between the Applicant and Ms F and, second, were the Applicant to be released the panel had no doubt he would wish to resume the relationship with Ms F.

22. These stated findings are consistent with a measured and objective appraisal of the available written and oral evidence and they align with the assessments of reporting professionals. The panel was entitled to conclude from all that it had read and seen of the Applicant that he lacked sufficient insight into the difficulties that relationships pose for him and that the Risk Management Plan was too dependent on him honouring his pledge to keep taking his anti-psychotic medication. It lacked robust external controls.
23. The panel analysed the material well and made findings of fact where it was appropriate to do so. This was a clear and cogent set of Reasons to support a justified decision.

Decision

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

Judge Anthony Bate
22 November 2022

