the Parole Board

working with others to protect the public

[2022] PBRA 35

Application for Reconsideration by Georgiou

Application

1. This is an Application (the Application) by Georgiou (the Applicant) for reconsideration of a decision by a Panel of the Parole Board dated 31 January 2022 not to direct his release. The decision was made following the oral hearing of the Applicant's life sentence recall review conducted on 26 January 2022.

2. Rule 28(1) of the Parole Board Rules 2019 provides that applications for reconsideration may be made in eligible cases on the basis that the decision is (a) irrational or (b) procedurally unfair.

3. I have considered the Application on the papers. These comprise: the Application for Reconsideration with Representations; the Decision Letter; an email from the Public Protection Casework Section dated 28 February 2022; and the Case Dossier running to 474 pages.

Background

4. On 9 November 1982, the Applicant was sentenced to life imprisonment for the murder of his 20 year old girlfriend. He pleaded not guilty but was convicted by a jury after trial. The trial judge described him as a devious and skilled liar completely devoid of human compassion. The Applicant was, at the same time, convicted of administering a noxious substance and indecent assault. The minimum custodial term under the life sentence was set at 20 years and the Applicant's tariff accordingly expired on 30 November 2001.

5. The murder was committed in November 1981 when the Applicant was aged 27. Along with a friend, he drugged and sexually abused his victim and took indecent photographs with which he threatened to blackmail her. On a later occasion that month, he drugged and sexually abused her again and this time dumped her in a large commercial dustbin. He returned and set fire to the contents, causing the victim extensive burns. He then removed her to hospital where she later died. He continues to deny having committed the index and associated offences.

6. The Applicant had no previous convictions.

7. The Applicant was released on life licence on 29 July 2015, as directed following a post tariff review conducted by a Parole Board panel at an oral hearing on 7 July 2015.

8. On 9 December 2020, the Applicant's licence was revoked as a consequence of his arrest for conspiracy to commit aggravated burglary and he was recalled to prison. The Applicant had driven another man (V) to the address of V's ex-partner where V committed the aggravated burglary with intent to cause her grievous bodily harm. He entered her property armed with a rope but she was not there. The Applicant then drove him home.

9. V was convicted of the aggravated burglary after a trial. The Applicant was interviewed by the police but never charged.

10. The Applicant accepted that the recall had been justified on the basis of the arrest for a serious offence but he denied having been a party to the conspiracy. Having considered the reports before it, the oral evidence which included evidence from the Applicant, and the submissions made by the Applicant's legal representative, the Panel concluded that he had been a fully informed party to V's crime. It decided that the Applicant's risk remained too high for him to be safely managed in the community and concluded that it remained necessary for the protection of the public for him to be confined. Accordingly, the Panel did not direct his release.

Request for Reconsideration

11. The Application for Reconsideration is dated 21 February 2022 and contains detailed representations by the Applicant's Solicitors.

12. It is submitted on the Applicant's behalf that the Decision is procedurally unfair in applying the Parole Board's Guidance on unproven allegations which has been found to be unlawful in the case of **Pearce, R (On the Application of) v Parole Board of England and Wales & Anor [2022] EWCA Civ 4.**

13. It is further submitted that the decision is irrational in that the Panel conflated the fact- finding exercise with the legal test it was required to apply in deciding whether to direct the Applicant's release. It is argued that the Panel should not have conducted the *"trial"* as it did when, after a full police investigation and CPS review a decision had been made that in respect of the Applicant there was *"insufficient evidence to charge let alone convict (and hence denying him the historical protections of a fair criminal justice process)"*

14. It has been confirmed on behalf of the Secretary of State that he did not wish to make representations in response to the Application.

Current Parole Review

15. The Applicant's case was referred to the Parole Board by the Secretary of State to decide whether to direct his release. The terms of reference included an invitation to advise, in the event of release not being directed, whether the Applicant should be

transferred to open conditions. Such advice is not within the remit of a Reconsideration Application.

16. The Panel considered a dossier running to 474 pages. The Part C Report by the Community Offender Manager (COM) was dated 24 November 2021 and the latest assessment of risks and their origin report was dated 21 December 2021. The dossier also contained a report by email sent on 15 April 2021 from a Temporary Detective Constable (TDC) in a Police Acquisitive Crime Team, the Prosecutor's opening note to the jury in V's trial and the Sentencing Remarks of the Judge who sentenced V on 1 October 2021. The TDC was the officer in the case.

17. Oral evidence was given at the hearing by the TDC, by the Prison Offender Manager (POM), by the COM and by the Applicant himself. I have listened to the audio recording of that evidence. The Applicant maintained his denial that he knew the purpose of the journey he undertook with V or was aware of the commission of the aggravated burglary.

18. There was no dispute that the Applicant drove V to the area where V's victim lived. Reference to this in the opening note at V's trial is confined to a statement that he travelled with a man he met in prison.

19. The TDC's email confirmed that call data showed that V and the Applicant were *"in constant communication in the lead up to this offence taking place".* When the download from the Applicant's phone was reviewed it was found that the device had been wiped and cleaned. The Applicant explained in his police interview that he deletes everything due to nuisance calls. The Applicant is shown on CCTV to walk round the corner *"to see if anyone was there".* In his police interview, the Applicant said he was getting suspicious and asked V what was going on, to which V replied that he would find out soon. On the return journey with the Applicant, V disposed of some items of clothing, including plastic gloves and, once back in London, he changed into something else near to waste bins.

20. The Applicant told the Panel that V had asked him to go round the corner to see if there was any traffic. He interpreted this as meaning to see if there was anyone about which might indicate there was a *"block party"* going on.

21. The Applicant also told the Panel that he was told by V to ring him on getting home but that he forgot. The last entry on the phone records obtained by the police was V calling the Applicant late that same evening. The Applicant explained to the Panel that he had restored his phone to the factory settings as a matter of routine before he was unexpectedly visited by the police four days later.

22. The TDC confirmed that "*the threshold of evidence had not met the benchmark for a charging decision."* In other words, there was insufficient evidence to provide a realistic prospect of conviction in a criminal court.

23. Having read the dossier material and heard the oral evidence, the Panel concluded on the balance of probabilities that the Applicant knew at all relevant times that V was going to break into his ex-partner's house and cause her serious injury at the least.

24. There was no dispute that the Applicant had been compliant with supervision in the community and that his custodial behaviour since recall had been of a high standard. According to the COM he had started to take steps to show an awareness that he had acted wrongly in failing to make sufficient enquiries about V's intentions. He had completed in-cell packs to address his problem solving and consequential thinking skills and was prepared to undertake further one to one work in the community.

25. In her report the COM concluded that, whilst there was still more work to be completed by the Applicant following his recall, it was safe to complete it in the community. She therefore recommended the Applicant's release. According to the Decision, the COM stated in answer to Panel questions: *"If he knew more than he is saying today that would make a difference to my recommendation. If the panel does not believe him, if there was anything to state that he knew he was driving towards SP and she might be in danger I would have concerns. If he knew what was going on I would not be recommending release. If he knew something was up and did nothing to tell the police and probation, so he was doing something criminal and he had been convicted of anything I would not be recommending release. My recommendation would not be for release if he was more involved in something criminal. Future risks would be around who he was associating with. The index offence was with someone else. We would need to be sure he was not associating with criminals. I would deem his risk of serious harm to be in terms of females, or it could be the general public. I would say potentially he would not offend alone".*

26. Having reviewed the written and oral evidence of the professional witnesses and the evidence given by the Applicant, the Panel concluded that, without an adverse finding of fact in respect of the alleged conspiracy, there would be no evidence that the Applicant's risk to the public was not manageable in the community, as it had been for the 5½ years he had been on licence. It acknowledged that the Risk Management Plan was robust.

27. The Panel concluded on the balance of probabilities that the Applicant knew at all material times that V was going to break into his ex-partner's house and cause

her really serious injury. It expressly acknowledged that this fact alone would not automatically lead to a refusal to direct release. However, having regard to all the evidence, it concluded that his risk of harm was so high that it could not be managed in the community and declined to direct the Applicant's release.

The Relevant Law

28.The Decision Letter correctly sets out the test for release.

Parole Board Rules 2019

29. Under Rule 28(1) of the Parole Board Rules 2019, the only type 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

30. The issue to be decided under this ground would be whether there is evidence that the correct process was not followed either in the application of the Parole Board Rules or in the fair conduct of the hearing.

Irrationality

31. 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."*

32. This test had been earlier 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 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 uses the same word as is used in judicial review proceedings demonstrates that the same test is to be applied.

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

34. The importance of giving adequate reasons in Parole Board decisions has been made clear in two High Court cases. In **Wells [2019] EWHC 2710 (Admin)** it was suggested that, rather than ask 'was the decision being considered irrational', the better approach is to test the decision maker's ultimate conclusions against all the evidence received and ask whether the conclusions reached can be safely justified on the basis of that evidence, while giving due deference to the panel's experience and expertise.

35. Panels of the Board are wholly independent and are not obliged to adopt the opinions or recommendations of professional witnesses. A panel's duty is to make its own risk assessment and to evaluate the likely effectiveness of any proposed risk management plan. That will require a panel to test and assess the evidence and decide what evidence it accepts and what evidence it rejects. Once that stage has been reached, following the guidance provided by cases such as **Wells** and also **Stokes [2020] EWHC 1885 (Admin),** a panel should explain in its reasons whether or not it is going to follow or depart from the recommendations of professional witnesses.

36. It follows that, in reaching a decision about irrationality on this Application, I am required to decide first, whether I am satisfied that the conclusions reached by the Panel were justified by the evidence and second, whether I am satisfied that the conclusions are adequately and sufficiently explained.

37. In considering the amount of detail needed to be included in a decision letter, there has been guidance from the High Court, 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 require elaborate or impeccable standards of draftsmanship."*

Discussion

38. The Applicant submits that the decision was irrational on the basis set out in paragraph 12 above. Para 13 is also relevant to the issue of irrationality. It is submitted that the Panel made a finding of fact in a wholly unfair manner and in breach of his right to a fair trial. Had the Applicant been subjected to a criminal trial, the process would have involved the production of evidence not provided to him or to the Panel. Each element of the offence was not explored and established as it would have been in a criminal trial.

39. In support of the submission that the Decision was both irrational and procedurally unfair, the Applicant maintains that the Panel did not conscientiously evaluate the information before it and that it made conjectures and suppositions without taking necessary and reasonable steps to satisfy themselves to an appropriate standard. It is submitted that the Panel made assumptions as to V's thoughts and actions without hearing evidence from him.

40. It is further submitted that the Panel made several errors in its interpretation of the Applicant's evidence which impacted on its assessment of risk. In particular, the Decision states at paragraph 28.1, as part of the background to the recall events, that *"other prisoners told you that he (V) had kicked a baby to death by assaulting its mother, his partner, before the baby was born"…* However, it is submitted that the Applicant was clear in his evidence to the Panel that he was unaware it was an unborn baby. The submission refers to Paragraph 30 of the Decision which states *"you drove a man whom you knew to have committed a violent offence against a previous partner..."*

41. In my view, there is no consequential difference between the two versions of the Applicant's evidence.

42. It is further submitted that the quote of the COM's oral evidence at Paragraph 14 of the Decision is inaccurate and misleading. It is conceded on the Applicant's behalf that the COM confirmed that *"if he (the Applicant) knew what was going on [she] would not be recommending release".* However, is submitted that she did not give the same commitment to change her recommendation if his account were disbelieved but not to the extent that he was involved in a conspiracy to commit aggravated burglary. The note made by the Applicant's legal representative of the COM's evidence is that it would depend what conclusions were reached, and thus it is submitted the quote from her evidence is inaccurate.

43. Having listened to the audio recording of the COM's evidence I do not accept that this submission has any validity. What the COM said was that she thought it would concern her if the Applicant knew that something was up and he did nothing about it - if he did not contact probation or the police or someone - and that potentially this would change her recommendation. If the Applicant knew that V was doing something criminal and that he had been convicted in any way, she would not be recommending release. She confirmed that future risks would definitely be around who the Applicant was associating with.

44. Although the Applicant was not himself convicted of any criminal offence, the Panel, when making an assessment of his current risk was entitled to rely on its finding that he knew at the relevant time that V was involved in a criminal act involving potential violence.

45. The Decision Letter provides a detailed analysis of the Applicant's offending behaviour, a review of his risk factors and an assessment of current risk after consideration of the material available to the Panel by way of reports and oral evidence at the Hearing. The Panel expressly took account of the opinions expressed by the professional witnesses, including any revision of the opinions expressed in the written reports. Having done so, it was entitled, as an independent judicial body, to reach its own conclusions.

Decision

46. The Panel expressly acknowledged the fact that the Applicant had not been convicted of any criminal offence. That is not an unusual feature in a case where a prisoner has been recalled following arrest. The Applicant did not deny driving V to the place where he committed the offence but denied knowing what V intended to do and what V in fact did.

47. A criminal trial process is not applicable to a Parole Board Hearing where the standard of proof is not the same. However, such a hearing must be conducted fairly and objectively bearing in mind that the issue of a person's liberty is at stake.

48. It is a matter of record that V committed a serious criminal offence. In this case, there was sufficient evidence for the Panel to make the findings of fact about the Applicant which it did on the balance of probabilities. The Applicant's knowledge of what was happening and the extent of his involvement, both of which the Panel found to have been established on the evidence, was sufficient to justify its conclusion that he does not yet have sufficient internal controls to be safely managed in the community, notwithstanding a robust Risk Management Plan.

49. Based on the evidence before the Panel and applying the test set out in case law, I do not find that the decision not to release the Applicant was irrational. Nor do I find that there was any procedural unfairness. Following the principles declared by Macur LJ in the case of **Pearce,** it conscientiously evaluated, in my judgment, the information before it to make findings of fact upon which to make the assessment of the Applicant's risk. There was sufficient evidence before the Panel to enable it to reach the conclusions it did. Questioning of the professional witnesses and of the Applicant by the Panel and by the Applicant's legal representative was extensive and thorough. The Panel was entitled to weigh the Applicant's account against the other evidence and to make an independent judgment as to his veracity. The Panel was aware of a statement from V's Solicitor that V had said the Applicant was unaware of what he was doing and further evidence from V himself is unlikely to have added to that with any degree of reliability.

50. The Panel followed a fair procedure and applied its independent judgment on the facts to the issue of current risk, reaching its decision not to release the Applicant on an objective and rational basis.

51. The Application for Reconsideration is accordingly refused.

HH Judge Graham White
12 March 2022