

[2022] PBRA 55

## Application for Reconsideration by Cekic

### Application

1. This is an application by Cekic (the Applicant) for reconsideration of a provisional decision by the Parole Board under Rule 19 of the Parole Board Rules 2019 ("the 2019 Rules") that the Applicant was unsuitable for release ("the Decision"). The letter by which the Decision was communicated is dated 17 March 2022.

### Background

2. The Applicant was sentenced on 28 May 2013 to an extended determinate sentence comprising 10 years custodial element and 5 years extended licence following his conviction for wounding contrary to section 18 of the Offences Against the Person Act 1861 and false imprisonment. He became eligible for parole on 26 January 2020, the conditional release date is in May 2023 and the sentence expiry date is in May 2028.
3. The Applicant was aged 24 when he was sentenced and is now aged 33.

### Current parole review

4. The Decision was made on the Secretary of State's second referral of the Applicant's case to the Parole Board during the sentence referred to above.
5. The Decision was made on the papers by a member of the Board sitting alone, after that member directed that the Applicant's case should be decided on the papers, following the Applicant's application that his case should be determined on the papers notwithstanding an earlier direction by a different member that the case should be determined at an oral hearing.
6. The parole dossier has 485 numbered pages.

### Application and response

7. The Applicant was represented at the review of his case by solicitors but has applied for reconsideration in person without the assistance of a representative in handwritten submissions dated 3 April 2022.
8. By an email dated 27 April 2022, the Secretary of State has stated that it makes no submissions on the application.



## The Relevant Law

10. 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*

11. 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."*

12. 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.
13. 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*

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.

## Consideration

15. The Applicant submits that the Decision is procedurally unfair and irrational in its treatment of the incident that led to his return to closed conditions from open conditions in October 2021 and he notes that an allegation that he assaulted another prisoner at that time was not proven. However, it is acknowledged in the decision, reasons that the allegation was unproven and the concern that is expressed in the reasons that the incident evidenced poor emotional control, and deficits in the Applicant's problem-solving skills is fair and rational on the Applicant's own account of events shortly before his return to closed conditions.
16. The Applicant submits, essentially, that the concerns expressed in the decision reasons regarding his ongoing animosity towards the victim were irrational and that it was procedurally unfair to give weight to an allegation that he was involved in a recent attack on the victim. He submits that there was no basis for the concerns on the part of his Community Offender Manager that are referred to in the Decision that he continues to hold negative feelings towards the victim, and he refers to

reports in the dossier that he has displayed genuine remorse towards the victim, which post-date the previous review by the Board and which are not referred to in the decision reasons (see pages 95, 106, 327). It is stated in the decision reasons that the panel was '*particularly concerned about the intelligence report suggesting that [the victim of the index offence] had been the victim of an assault, possibly linked to [the Applicant]*', and also that the Applicant has questioned the necessity of the exclusion zone, evidencing little empathy towards the victim's request. However, the decision reasons plainly attach material weight to the allegation, which is unproven and was not subject to any fact-finding exercise by the Board. Such an allegation should have been subject to a fact-finding exercise or disregarded: **Pearce, R (On the Application Of) v Parole Board of England and Wales & Anor [2022] EWCA Civ 4**. The same error is made in relation to the concerns expressed in the decision reasons regarding persistent security reports suggesting involvement in mobile phones and drugs, which is not corrected by the acknowledgment that none of the reports had been corroborated.

17. The decision reasons state that the Board was concerned by the Applicant's apparent reluctance to comply with the proposed exclusion zone, which is a rational concern.
18. However, the decision reasons also state that the Board considered that the absence of any overnight releases on temporary licence meant that the Applicant had not been sufficiently tested in the community. I consider that that conclusion is marred by the irrational approach to unproven allegations that is described above.
19. I note that the Applicant requested through his representatives shortly before the hearing that his case be concluded on the papers, on the basis that continuing with the review would not be effective given the recommendation made by the Probation Service together with Approved Premises requiring an Adult Social Care Assessment and the timescales for these to be explored. However, it is not in the gift of a prisoner to request that their review is discontinued, and a request for a review to be concluded without a hearing does not preclude a request for reconsideration of the decision on a review, whether or not it is concluded following an oral hearing (which need not involve the attendance of the prisoner or their representative).

## Decision

20. Reconsideration is accordingly directed.

**Timothy Lawrence**  
**4 May 2022**