

[2023] PBRA 155

Application for Reconsideration by Mather

Application

1. This is an application by Mather (the Applicant) for reconsideration of a decision of a panel of the Parole Board dated the 27 July 2023 not to direct release or recommend a move to open conditions following an oral hearing held on 2 May 2023.
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 application for reconsideration; the decision letter and the dossier.

Background

4. On 7 September 2009, when the Applicant was 26 years old, he was sentenced to an indeterminate sentence of imprisonment for public protection with a minimum period to serve of 42 months for offences of causing grievous bodily harm with intent and robbery. The minimum period expired on 7 September 2012. The Applicant attacked the licensee of a public house after having sex with him with a view to taking any valuable property that he could find. The victim suffered serious injuries. The Applicant had numerous previous convictions. In February 2014 the Applicant was transferred to open conditions but was returned to closed and sentenced to 6 months' imprisonment for absconding. He was released on licence in November 2015 but was recalled in July 2016. The Applicant was re-released in March 2017 but was recalled in June 2017. The Applicant was again released on 30 July 2021 and returned to custody on 20 August 2021.

Request for Reconsideration

5. The application for reconsideration is dated 14 August 2023.
6. The grounds for seeking a reconsideration are that the decision not to release was irrational in that too much weight was placed by the panel on certain aspects of the evidence and not enough on other parts of the evidence.

Current parole review



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7. The Applicant is now 40 years old. This was the first parole review after the Applicant's third recall in August 2021.
8. The panel heard evidence from the Applicant, the Community Offender Manager (COM); the Prison Offender Manager (POM); a psychologist and a psychiatrist. The panel considered submissions in writing from the Applicant's legal representative.

The Relevant Law

9. The panel correctly sets out in its decision letter dated 27 July 2023 the test for release.

Parole Board Rules 2019 (as amended)

Irrationality

10. 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."

11. 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.

The reply on behalf of the Secretary of State (the Respondent)

12. The Respondent has not made any submissions in response to the application for reconsideration.

Discussion

13. As has been made clear in the authorities, establishing that a decision is irrational is a high bar. The panel has the necessary expertise to assess risk and it has had the opportunity to see and weigh the evidence of the witnesses. What evidence is accepted and what weight to attach to it is primarily a matter for the panel unless errors can be clearly demonstrated. The witnesses were divided in their recommendations to the panel whether the test for release was met. The POM considered that the test for release was met while the psychologist and the COM were of the view that the Applicant's risk could not be safely managed in the community at present.



14. It is not the function of the panel to count up recommendations, they look at the reasons for the recommendations and form their own conclusion as to whether the test for release was met. They were perfectly entitled on the evidence to conclude that the Applicant could not be safely released and agree with the reasoning of the COM and the psychologist. The Applicant complains that not enough weight was attached to the evidence of the POM. The panel clearly considered her evidence with care as is apparent from the decision letter but ultimately didn't agree with her conclusion. They were entitled to do that in exercising their judgment. Further complaint was made that the panel put too much emphasis on the Applicant's behaviour in custody since the last recall. The panel concluded "*behaviour since the last recall has been mixed with at times a poor response to staff particularly [the psychologist] ... At a time when [the Applicant] should be displaying commitment to future plans and good prison conduct, the evidence has been disappointing.*" The panel were entitled to take that view even though taking into account that it was a stressful time for the Applicant. There will be stressful times if and when the Applicant is released and the Panel had to consider how he would react to stress particularly bearing in mind the previous recalls.
15. I have carefully considered all the matters set out in the application for reconsideration. Taken individually and cumulatively they do not begin to support a finding of irrationality as it has been defined by the High Court.

Decision

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

John Saunders
05 September 2023

