

[2023] PBRA 66

Application for Reconsideration by Senior

Application

1. This is an application by Senior (the Applicant) for reconsideration of a decision of a panel of the Parole Board dated the 13 March 2023 not to direct release following an oral hearing held on 9 March 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 23 April 2015 the Applicant was sentenced to an extended determinate sentence of 16 years for offences of rape and assault. The custodial part was 12 years with an extended licence of 4 years. The victim of the offences was the Applicant's partner at the time. The offences continued over a period of 6 months. The Applicant was transferred to open conditions on 1 October 2021.

Request for Reconsideration

5. The application for reconsideration is dated 2 April 2023.
6. The grounds for seeking a reconsideration are as follows:
 - (a) It is submitted that there was procedural unfairness in that the panel failed to take into account in their consideration of the evidence, difficulties that the Applicant has in expressing himself because of cognitive difficulties that he has.

- (b) It is further submitted that the decision was irrational in that it gave too much weight in its decision to his past behaviours and insufficient weight to recent evidence of his change in attitudes and failed to give sufficient weight to his evidence or the difficulties of achieving change in custody.

Current parole review

7. This was the first parole review to consider early release for the Applicant.
8. The panel heard evidence from the Applicant, the COM; the POM and a psychologist. The panel adjourned to allow for written submissions from the Applicant's legal representative to be considered.

The Relevant Law

9. The panel correctly sets out in its decision letter dated 13 March 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.

Procedural unfairness

12. 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. These issues (which focus on

how the decision was made) are entirely separate to the issue of irrationality which focusses on the actual decision.

13. In summary an Applicant seeking to complain of procedural unfairness under Rule 28 must satisfy me that either:

- (a) express procedures laid down by law were not followed in the making of the relevant decision;
- (b) they were not given a fair hearing;
- (c) they were not properly informed of the case against them;
- (d) they were prevented from putting their case properly; and/or
- (e) the panel was not impartial.

14. The overriding objective is to ensure that the Applicant's case was dealt with justly.

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

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

Discussion

16. **Procedural unfairness:** It is suggested that the panel failed to take any or any sufficient account of the difficulties that the Applicant has in explaining himself. If that were supported by the evidence then it would be capable of rendering the hearing unfair. At 6.25 of the psychologist report, the psychologist says '*[the Applicant's] cognitive abilities are within the low average range and although I note that he has described some difficulty in articulating himself and that ensuring that he is understood has been a long standing issue for him*'. There is no suggestion that any special measures were required to assist the Applicant in giving evidence and he was represented. I have no doubt that the Applicant's representative would have intervened at the time to ensure that the Applicant had a fair hearing and that his evidence was being understood. The representative could and would have ensured that the Applicant was giving all the evidence he wished to by asking questions herself if it was required. Accordingly, I do not consider that any procedural unfairness has been established on the available evidence.

17. **Irrationality:** As has been made clear in all the authorities, making good an allegation of irrationality is a high bar. There were sufficient caveats in the reports of both the psychologist and the COM to support the decision of the panel. Both considered that there was further work to be done, which in itself justified the decision. The fact that there were no facilities within the Applicant's prison where that work could be carried out in a reasonable time, does not mean that they should direct release even though it may concern the panel. The focus of the panel has to be solely on the safety of the public. The panel reflected in its decision that it had taken into account the progress that the Applicant had made recently during his



3rd Floor, 10 South Colonnade, London E14 4PU



www.gov.uk/government/organisations/parole-board



info@paroleboard.gov.uk



@Parole_Board



0203 880 0885



INVESTORS
IN PEOPLE | Bronze

sentence. Balancing that as they had to against his previous behaviour and conduct they concluded that it was not safe for him to be released. There is no evidence to support the suggestion that they attached insufficient weight to his recent improvement. The panel set out their reasons for their decision not to release the Applicant and in my judgment there was evidence which supported that decision. The fact that the Applicant disagrees with that decision does not mean it is irrational.

Decision

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

John Saunders
12 April 2023