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[2024] PBRA 10

Application for Reconsideration by Walford

Application

1. This is an application by Walford, (the Applicant), for reconsideration of the decision of a Parole Board panel of 22nd November 2023 not to direct his release but to recommend his transfer to open conditions.

2. Rule 28(1) of the Parole Board Rules 2019 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.

3. I have considered the application on the papers. These are:
   a. The dossier of 533 pages - now including the Decision Letter (DL).
   b. The application for reconsideration dated 8th December 2023 submitted by the Applicant himself.

4. No submission has been received from the Secretary of State (the Respondent).

Background

5. The Applicant is now 52 and had a number of convictions for serious offences prior to his convictions for the index offences.

6. The Applicant's index offences and the subsequent sentence and parole history are accurately set out in the DL. In summary, on 12th August 2010 he was convicted of offences of sexual activity with a child and breaches of a Sexual Harm Prevention order. The victim was a 15 year old boy. He had previous convictions for sexual offences against children in 2003. He received an indeterminate sentence of imprisonment for public protection, with a minimum term of 43 months. In 2016 he was sentenced again – this time to 16 years imprisonment for buggery, attempted buggery and attempted rape of males under 16, these being offences committed prior to his earlier sentence against the same victims. His case was considered by a three-member panel including a psychologist member and a psychiatrist member.

Request for Reconsideration

7. The grounds for reconsideration have been submitted by the Applicant in person. They are, in summary, that the decision not to direct release was 'irrational'.

8. The Applicant claims that the panel's decision can be characterised as "irrational" because:

    a. The hearing was put back at the Applicant's request so that he could complete a course.
    b. He tried unsuccessfully to obtain legal representation.
    c. Any suggestion that the Applicant still harbours thoughts of sexual abuse of children is false. Had the COM believed that this was a problem he would have said so in his report or at the hearing.
    d. If released there would not be any problem with "*resettlement*" issues bearing in mind the support he would receive from professionals and members of his family.
    e. The IPP sentence has been abolished since it was passed on the Applicant.
    f. The "*probation report*" was only served on the Applicant the day before the hearing. It contained false allegations concerning drugs.
    g. (As b above) He would have wished to be legally represented but it proved impossible.
    h. The suggestion that there may have been some evidence that the Applicant had been recently involved with drugs or drug dealing in some way was unfounded.
    i. Paragraph 4.3 of the DL is factually inaccurate. There would be no difficulty for the Applicant in resettling in the community with a supportive keyworker, family members and no intention of starting any sexual relationships.
    j. The "*inside probation report*" was only served the day before the hearing. It contained a number of inaccuracies.

9. In addition, the Applicant states that he now has no family to support him having lost his son and his father and, having done his best in prison, is still a prisoner. The Parole Board members, one of whom was changed before the hearing did not know enough about him. He also asks whether he is able to object to the recommendation that he be transferred to open conditions.

Current parole review

10. The Applicant's case was referred to the Parole Board by the Secretary of State for Justice (SoSJ) on 6th May 2021.

The Relevant Law

11. The panel correctly set out in its Decision Letter (DL) dated 5th December 2023 the test for release.

Parole Board Rules 2019

12. Under Rule 28(1) of the Parole Board Rules 2019 the only kind 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)). This is thus an eligible decision. However a recommendation for transfer to open conditions is not amenable to the reconsideration procedure.

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.

Other

16. 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 prescribe any standard form of Decision Letter and it would be wrong to require elaborate or impeccable standards of draftsmanship.*"

The reply on behalf of the Respondent

17. No reply has been received from the Respondent.

Discussion

18. I have carefully considered the terms of the DL in the light of the grounds submitted.

19. The DL provides a very full summary of the evidence presented on paper and orally at the hearing.

20. As to Ground 8 a, while it is possible to understand the Applicant's disappointment that, having completed the course and thus spent more time in custody in advance of his hearing, the completion of a course cannot be more than one of the factors

for a panel to consider when looking at the overall situation and its eventual decision on the risk posed by an offender.

21. Ground 8 b and g. The lack of legal representation cannot of itself found a ground of appeal. I note at pp505 to 523 of the dossier the question of whether he did or did not wish to be represented at the hearing was raised on a number of occasions before, and then discussed with him at, the hearing. The Applicant then did not wish to be represented.

22. Ground 8 c. The DL deals thoroughly with the current state of the evidence concerning sexual offences against children and explains why its view , in spite of the evidence of the Applicant it considered that his risk of reoffending against children had not been reduced sufficiently to direct release.

23. Ground 8 d. The panel - and the professionals concerned with the case - were not as confident of this as the Applicant. They were entitled to come to that conclusion on the evidence.

24. Ground 8 e. While it is of course true that the IPP sentence is no longer on the statute book, its abolition was not retrospective and thus its terms have to be adhered to.

25. Grounds 8 f and j. The most recent report from the Community Offender Manager which was only completed and served on the panela and the Applicant shortly before the hearing was discussed at paragraphs 2.12.and 2.13 of the DL. The panel dealt with the arguments for and against release carefully in the following paragraphs 2.14-3.8 and explained why it had reached the conclusion that it did in its conclusion at paragraphs 4.1-16.

26. Ground 8 i. The panel was entitled to come to the conclusion it did as to the support available to the Applicant in the event of his release – as against a gradual transition to the community via the "Category D" route. Its decision to decline to direct the Applicant's release was not irrational in the terms set out above.

27. This was – like so many cases – one which required, and clearly received, considerable care from the witnesses, including the offender who was complimented on his presentation, and the panel in its DL. I refer back to the strong words of the Divisional Court and House of Lords quoted above at paragraphs 11 above. The Applicant should also be aware that the question of whether or not he is in fact transferred to Category D conditions is not a matter upon which the Parole Board can rule.

28. In summary therefore I find that the application for reconsideration falls short of passing the test required for an order for reconsideration.

Decision

29. Accordingly, I refuse this application.

Sir David Calvert-Smith
09 January 2024