

[2024] PBRA 40

Application for Reconsideration by Say

Application

1. This is an application by Say (the Applicant) for reconsideration of a decision of a panel of the Parole Board not to terminate his licence or remove the supervision element of his licence dated the 12 January 2024 following a paper review.
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, answers to queries that I have raised and the dossier.

Background

4. The Applicant was sentenced on 23 June 2006 to imprisonment for public protection for an offence of arson being reckless as to whether life was endangered with a minimum of 3 years and 50 days to serve before he was eligible for parole. The Applicant was released on licence on 3 December 2012 and has remained on licence since then. The Applicant has had a further conviction on 16 April 2021 for racially aggravated harassment for which he was fined with an alternative of one day's custody which would have been the time spent at the Magistrates' Court.

Request for Reconsideration

5. The application for reconsideration is dated 29 January 2024.
6. The grounds for seeking a reconsideration are that the decision was procedurally unfair as it was based on incorrect facts. The application was made by the Applicant's key worker on his behalf.

Current parole review

7. The case was referred to the Board to consider termination of the licence on 4 May 2023. On 12 May 2023 a duty member of the Board granted a non-disclosure application and directed that a gist should be served on the Applicant. There were two directions which were given as a result of that hearing. A direction entitled 'SoS



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referral' required amongst things that he should confirm that the 'gist has been served'. Although the Secretary of State (SoS) has stated in correspondence that all the directions were complied with and are recorded in the dossier, there is no reference to the gist being served nor is there a copy of the gist in the dossier that I can find, and the Applicant asserts that he has never been shown it. I think that it is probable that the Applicant is correct about that and the SoS' assertion in correspondence is incorrect. The MG5 (a police report) which was also ordered is in the dossier.

The Relevant Law

Parole Board Rules 2019

8. Under Rule 31 of the Parole Board Rules 2019 a decision by the panel whether to terminate the licence or to amend the offender's licence is eligible for reconsideration.

Procedural unfairness

9. 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.
10. 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.
11. The overriding objective is to ensure that the Applicant's case was dealt with justly.

The Reply on behalf of the Secretary of State

12. While the Secretary of State (Respondent) has answered questions that I have asked of him he has not made any representations within the time allowed in response to the application. It would have helped if he had.

Discussion

13. It is very difficult to understand exactly what has gone on in this case as the dossier does not seem to me to have been kept up to date and the relevant papers have come to me piecemeal as a result of my requests. Following the directions hearing referenced in paragraph 8 above the application was considered on the papers and on 16 August 2023 the application for termination of the licence or the suspension of supervision were both refused. The panel relied in particular on the account of the offence for which the Applicant was convicted in 2021 in justifying refusal. The

Applicant was unrepresented, and he had not seen the gist of the Victim Personal Statement (VPS), nor it seems likely had he seen any of the contents of the dossier including in particular the MG5. Both as a matter of common law fairness and under the European Convention on Human Rights the prisoner has the right to know the case that he has to meet. It is apparent from the application for reconsideration that the Applicant does not agree with the account in the MG5 and the penalty which was imposed suggests that the Court may have accepted his account that the disturbance was six to one and half a dozen to the other.

14. On 12 December 2023 the case was referred back to a duty member because PPCS (Public Protection Casework Section) raised a query as to whether the panel who made the decision on 16 August 2023 had seen the VPS. As neither the VPS or a gist were in the dossier the duty member decided that the case must be considered afresh. There is no mention in the dossier or elsewhere of a new referral by the Secretary of State (the Respondent) nor does the duty member say where she derived the power to refer the matter back to be re-heard.
15. The matter was reviewed again on the papers and on 12 January 2024 a new panel reached the same decision and refused the application. It appears that the Applicant had still not seen the contents of the dossier, the MG5 or the gist of the VPS.
16. On the basis of the information that I have seen, a number of things have gone wrong in this case. It may well be that the problem which has arisen and the failure to serve documents is because the Applicant is unrepresented and is not in custody but this cannot be a unique situation. The Applicant was still reporting to his key worker so contact could be made with him. It is essential that the Applicant should have known the case that he met and, on the balance of probabilities, on the information that I have been supplied with, he didn't. The whole way the reference has been dealt with has been procedurally unfair.
17. In normal circumstances I would have had no hesitation in directing that the decision is reconsidered after the Applicant has been served and has acknowledged receipt of all the contents of the dossier and the gist which does not appear there.
18. However, there is a further complication. On the information that I have been supplied with, I do not consider that the member who ordered a re-hearing on 12 December 2023 had any power to do so. I therefore consider that that hearing was a nullity and the decision made in August still stands. It is too late to reconsider that decision and as the decision in January was a nullity there is nothing to reconsider.
19. In those circumstances it seems to me that I cannot make an order for reconsideration although I would if I had the power to do so. I consider that this should be remedied by the SoS making a further reference as soon as possible. This Applicant has been on licence for a very long time, and it is important that proper consideration is given to whether the licence should continue. Through no fault of his own, the Applicant has not had a fair hearing and it is important that he has one as soon as possible. In the circumstances because of the complexities of the case I do think it would be helpful if the Applicant was legally represented.

Decision

20. For the reasons I have given, and with considerable regret, the application for reconsideration is refused.

John Saunders
26 February 2024