

[2020] PBRA 103

Application for Reconsideration by Wildman

Application

1. This is an application by Wildman (the Applicant) for reconsideration of a decision dated 24 June 2020 following an oral hearing. The outcome of the decision was not to direct release. The application for reconsideration was made on the Applicant's behalf by his legal representatives.
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 which consist of the Application, the decision of the panel and the dossier.

Background

4. The Applicant is serving an indeterminate sentence for public protection (IPP) imposed in April 2010 for the offences of robbery and aggravated vehicle taking. He was sentenced concurrently for affray at the same time, this latter offence was committed while on bail for the index offences. The Applicant's minimum term expired in March 2014. The Applicant was released on licence in December 2018, but his licence was revoked and he was recalled to custody in August 2020. The Applicant was unlawfully at large for 10 days until arrested and returned to custody.

Request for Reconsideration

5. The application for reconsideration is undated but I am told that it was received by the Parole Board on 15 July 2020.
6. The grounds for seeking a reconsideration are as follows:
 - (a) That the outcome does not appear to be reflective of the evidence that was presented during the hearing (as risk was not perceived to be imminent); and
 - (b) That the enhanced Risk Management Plan (RMP) appears to have been dismissed without clarity or consultation.

Current parole review



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



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



info@paroleboard.gov.uk



[@Parole_Board](https://twitter.com/Parole_Board)



0203 880 0885



INVESTORS
IN PEOPLE | Bronze

7. The Secretary of State had referred the Applicant's case to the Parole Board to consider whether to re-release him following his recall, or if it considered that release was not appropriate, to consider whether to recommend that he be transferred to open conditions and to comment on areas of continued risk.
8. The Applicant's case was directed to a face-to-face oral hearing. However, by the date of the scheduled hearing steps taken to deal with the COVID-19 pandemic meant that face-to-face hearings were no longer available, but the Board was conducting oral hearings remotely. The three member panel of the Parole Board considered a dossier of 423 pages and took oral evidence over the telephone on 12 May 2020. Evidence was provided from the Applicant, his Offender Supervisor and Offender Manager and from a Forensic Psychologist. Neither the Offender Supervisor nor Offender Manager supported release or progression to open conditions. The Psychologist tentatively supported release on the basis of particular arrangements they suggested in the risk management plan. These arrangements were not available in the plan provided by the Offender Manager at the hearing. After evidence had been taken at the hearing, including on the risk management plan, the panel determined to adjourn in order that the Offender Manager could consider further the risk management plan in light of the Psychologist's recommendations. Following the adjournment the panel re-convened via Skype on 18 June to conclude the review and came to a decision. The panel decided neither to release nor to recommend that the Applicant be transferred to open conditions.

The Relevant Law

9. The panel correctly sets out in its decision letter dated 24 June 2020 the test for release and the issues to be addressed in making a recommendation to the Secretary of State for a progressive move to open conditions.

Parole Board Rules 2019

10. 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)).
11. A decision to recommend or not to recommend a move to open conditions is not eligible for reconsideration under Rule 28. This has been confirmed by the decision on the previous reconsideration application in **Barclay [2019] PBRA 6**.

Irrationality

12. 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."

13. 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.
14. The application of this test has been confirmed in previous decisions on applications for reconsideration under rule 28: **Preston [2019] PBRA 1** and others.
15. 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 Secretary of State

16. The Secretary of State offered no representations in response to the application.

Discussion

17. The main thrust of the Applicant's complaint hinges around the panel making a decision not to release despite the recommendation of the Psychologist that he could be released subject to an enhanced form of RMP.
18. It is the case that the panel decided to adjourn the hearing after taking evidence in order that more work could be carried out on the RMP by the Offender Manager (OM). The application also states that the panel had been told that the relationship between the Applicant and the OM had effectively broken down, hinting therefore at a possible bias (presumably from the OM, as no panel bias is complained of in the application). The Applicant submits that the panel relied heavily on the availability (or otherwise) of the RMP from an OM who did not invest time in exploring the suggestions of the Psychologist.
19. In support of their argument, the Applicant points out in their application that the panel found the Psychologist's *"evidence persuasive, yet they were concerned that the community-based safeguards – referred to within her report – had neither been effectively explored or adopted by the OM."*
20. I have read the panel's reasons for their decision. In relation to finding the Psychologist persuasive, I find that there is no evidence that the panel found that



the Psychologist's recommendation for release persuasive. The letter states clearly that the panel found the Psychologist's "*analysis of the Applicant's continued difficulties*", persuasive. The letter cites a number of factors that the Psychologist assessed as being related to risk and the management of risk, including the Applicant's wellbeing, limited personal support, problems with responding to treatment and problems with his attitude towards professional services and supervision. The letter goes on to indicate that the Psychologist reported that the Applicant was unable to use skills learnt from programmes to avoid aggression or violence consistently.

21. It is entirely reasonable for a panel to find parts of a witness's evidence persuasive, and not others.
22. It is accurate for the Applicant to state that the Psychologist's recommendation for release was on the basis of her recommended RMP. The plan put forward by the OM at the time of the hearing was insufficient, in the Psychologist's view, to manage the Applicant's risk. The panel adjourned the hearing in order that the OM could further consider the RMP in view of the Psychologist's comments. In itself, this adjournment for further information does not offer any indication of what decision a panel might make, but is indicative of a panel making reasonable enquiries in fairness to the Applicant. I note that the adjournment notice refers to other material being directed, so this was not the only reason for adjourning the hearing. The panel was taking a 'belt and braces' approach.
23. Having received further information from the OM (which I have not seen and do not consider necessary for me to see), the panel noted that the OM had consulted with his manager and had indicated that key elements of the Psychologist's recommended RMP, much of which centred around suitable accommodation, was not likely to be available to the Applicant. There were other elements of that plan that would not be available or would not be available on release.
24. On the issue of whether the OM had a bias against the Applicant, the panel does note that further work was necessary in order that what another witness termed a 'therapeutic alliance' could be built, but there is nothing to indicate that the panel felt that it was up to the OM alone that this had yet to be established. Such relationships can regrettably be difficult given the OM's duties to manage risk and both parties need to work towards a good working relationship. There is no evidence that the panel was concerned that the OM was in some way deliberately undermining the Applicant's chance for release. It accepted the plan presented to it and the reasons given for it.
25. I consider that a panel is entitled to make a decision as to whether or not a plan is effective based on the information before it. In this case, the panel had in fact gone further in asking the OM to investigate if any of the recommendations in the Psychologist's report were possible to implement. Having received a response further to the adjournment, the panel was entitled to accept the information. The OM is a professional providing evidence to the panel and the panel took reasonable account of their evidence.
26. Having made those further enquiries, the panel then considered the case in its entirety without another hearing. I note that the panel held a Skype post-hearing

discussion. The concluding section of the letter clearly takes note of the submissions made by the Applicant for release as well as the evidence before it. In this concluding section, the panel expresses concern that the Applicant had not evidenced sufficient reduction in risk of serious harm to be safely managed in the community. It clearly indicates that a period of stability in custody is required before the Applicant could be released to the current RMP. It also indicates that there are outstanding risk factors that need to be addressed, although it correctly does not seek to identify a particular programme of work. In the final section of the letter which asks the panel to suggest what might be useful to a future panel, it indicates that evidence of this further work would be useful. All this points to a logically arrived conclusion.

27. I have in mind Lord Diplock's test for irrationality. The bar is set high and worth repeating here: *"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"*.
28. I cannot find anywhere in the comprehensive decision that the test for irrationality is met. The panel made a decision that is logical, taking into account the evidence and weighing it accordingly. Without their own recommended RMP even the Psychologist was not in favour of release. Neither were the OM and the OS. The panel had attempted to see if the recommendations made by the Psychologist were viable, they were not. It was entitled then to make a decision on the information before it. It is not the job of the panel to develop a RMP, but to consider whether the plan before them is capable of managing risk effectively.

Decision

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

Chitra Karve
4 August 2020