[2020] PBRA 140

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Application for Reconsideration by Taylor

Application

1. This is an application by Taylor (the Applicant) for reconsideration of a decision of the Parole Board dated the 19 August 2020 made following an Oral Hearing held on 24 February 2020 and a paper consideration on 19 August 2020 which decided not to direct his release.

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 the dossier, the Decision Letter dated 19 August 2020 and the application for reconsideration itself, dated 8 September 2020 from solicitors acting on behalf of the Applicant.

Background

4. The Applicant is serving an Indeterminate sentence for Public Protection (IPP) for offences of child sexual abuse, being 2 counts of sexual activity with a child, grooming a child and possession of indecent images of children. He was aged 55 at the time of the offence and conviction in 2007 and is now aged 68.

5. The minimum tariff on the IPP sentence expired on 4 November 2008. The oral hearing on 24 February 2020 and paper consideration on 19 August 2020 together formed his fifth review.

Request for Reconsideration

6. The application for reconsideration is dated 8 September 2020.

7. The grounds for seeking a reconsideration are as follows:

   That the decision was irrational, on the basis that:

   (a) The panel based their decision on concerns relating to the Applicant's contact with other Registered Sex Offenders (RSO'S) that took place 2 years prior to the oral hearing. There was no evidence to support concerns

about a network, with the police not proceeding to investigate such concerns;

(b) That the panel suggest that the Applicant should spend a longer period in open conditions to allow for fuller testing, which can be done at the same level upon release to designated accommodation; and

(c) That adequate weight was not placed upon the risk management plan, which is sufficient to manage risk, and that no reasoning was provided as to why risk could not be managed with the licence conditions proposed.

Current parole review

8. The case was referred to the Parole Board in April 2017. The referral was for the Parole Board to consider whether or not it would be appropriate to direct the Applicant's release. If after considering the case, the Board decided to direct the Applicant's release on licence, the referral invited the Board to make a recommendation in relation to any condition which it considered should be included in the licence.

9. The referral was considered by a Member Case Assessment panel on 13 September 2017. The oral hearing was originally listed for 4 May 2018 and was adjourned on the day for more information and to give the Applicant, who was unrepresented, an opportunity to consider newly presented evidence. The oral hearing was relisted for 12 February 2019, but adjourned a few days before for the second time following legal representations on behalf of the Applicant to enable him to complete more temporary releases. The oral hearing was relisted for 10 October 2019 but adjourned for the third time at the direction of the panel. The oral hearing was then relisted for 25 February 2020 with evidence being heard that day. It was again adjourned on the day with a review date of 14 April 2020, later extended to 10 July 2020 and was finally considered on the papers on 19 August 2020.

10. The oral hearing was heard in person on 25 February 2020 by a two member panel. Oral evidence was heard from the Offender Manager (OM), Offender Supervisor (OS) and the Applicant. The Applicant was legally represented during this hearing and written legal representations were made on his behalf dated 17 April 2020 and 10 July 2020.

The Relevant Law

11. The panel correctly sets out in its decision letter dated 19 August 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

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)). I am satisfied that this decision is eligible for reconsideration.

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.

The Reply on behalf of the Secretary of State

16. The Secretary of State has indicated in an email dated 15 September 2020 that he does not wish to make representations in response to this application for reconsideration.

Discussion

Ground (a)

17. The decision letter set out the concerns of the panel that the Applicant had knowingly remained in contact with sex offenders, and that whilst this contact was occurring there were no warning signs that the Applicant was involved with other sex offenders. The letter recorded the concerns of professionals about him being involved in a developing network of sex offenders, and his implausible explanations. The panel also raised concerns about the cognitive dissonance displayed as the Applicant only stopped the contact when told to do so and either did not appreciate the risks of his actions or was willing to override them.

18. It is apparent from the dossier, particularly in a report from the OM from 2018, a non-disclosure application, and in probation service assessment reports, that there was evidence to support the concerns that the panel had relating to the Applicant's contact with RSO's in 2018 and in the years prior to this. Therefore the submission in ground (a) that *"There was no evidence provided to support concerns about a*

network and the police did not proceed to investigate such concerns" is not borne out in the evidence contained within the dossier.

19. To the contrary, there was evidence of interconnection between the Applicant and other RSO's, (a) linked through A who was visiting the Applicant with 4 others who were RSO's or who had been, and (b) linked through the rental of property from the Applicant, again to A who was associating at the property with another RSO, and previously by the Applicant renting a property to the partner of a different RSO. The application for non-disclosure dated 18 June 2018 did not indicate that police did not proceed to investigate such concerns, stating as it did that the development of knowledge of a potential network of child sex offenders may continue after the oral hearing. It is right that no further intelligence was put before the panel after this application, with evidence that was given by professionals repeating the previous intelligence. The letter recorded that *"The police have looked into this network and have decided not to take further action."*

20. In my view there is nothing in this ground. The decision of the panel was not solely based upon the RSO contact concerns. This was one of the factors, with the decision letter setting out in its conclusion that the panel were also concerned by Applicant's minimisation of his sexual interest in children, his lack of openness with professionals as well as his poor judgment and decision making. When the contact with other RSO's was considered the focus was rightly on its relevance to his risk of harm, with it being identified that there was a *"lack of transparency with professionals, his poor judgment about associates, difficulty anticipating risky scenarios and failure to apply learning from interventions in practice."*

Ground (b)

21. The application states that *"Given that [the Applicant] has completed 5 overnight releases without issue we fail to see what further [temporary releases] achieve"* and that the reservations expressed in the decision *"can be managed more effectively in [designated accommodation] than on occasional [temporary releases]."*

22. The panel did consider that the Applicant should be more fully tested in open conditions. The conclusion of the panel was that to be confident that his risks could be safely managed in the community the Applicant needed to demonstrate that he understood and avoided risky situations, yet he had failed to do this. As a consequence of his behaviours in relation to contact with the RSO's his risk of harm to children had been re-evaluated and increased to high. The panel agreed with this assessment and concluded that as the assessment of risk of re-offending report was of a high risk of harm these factors justified a cautious approach when considering his readiness for release.

23. I find there is nothing in this ground, with it failing to take into account that a prisoner's time in open conditions is the sum of more than 'occasional temporary releases'. Open conditions are a period of extended testing in conditions more similar to those that a prisoner will face in the community. Reintegration into the community, with exposure to more risky situations and successful management of these is more likely to minimise chances of reoffending.

Ground (c)

24. The effectiveness of the risk management plan was evaluated within the decision letter and is a responsibility of a panel of the Parole Board which must also make its own risk assessment. The panel took into consideration the entirety of the evidence they heard, weighing each element of the evidence, concluding that it was not satisfied the risk management plan would be effective until more testing in the community took place.

25. The panel clearly reasoned that confidence in the Applicant's self-management had been reduced by his associations with other RSO's and his lack of openness with professionals. They explained that they had concerns about his internal controls, specifically referring to his poor judgment and decision-making despite his completion of interventions which encouraged him to anticipate and avoid high risk scenarios and people.

26. Taking all this into account, the approach of the panel in its consideration of the risk management plan cannot be said to be irrational. The panel has the expertise to make up its own mind on the totality of the evidence before it, weighing each factor as it thinks appropriate and in this instance, it evaluated the same and set out clear reasons for doing so. I conclude there is nothing in this ground either.

Decision

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

Angharad Davies
7 October 2020