

[2020] PBRA 174

Application for Reconsideration by Ibbitson

Application

1. This is an application by Ibbitson (the Applicant) for reconsideration of a decision of an oral hearing dated the 8th October 2020, not to direct 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 Decision Letter dated 8 October 2020 [this was the final version, amended to correct slips];
 - The Application for Reconsideration dated 23 October 2020; and
 - The Dossier, which now contains 564 numbered pages, of which the original and amended Decision Letters are the final part.

Background

4. The Applicant was 33 when he committed the index offence and is now 45. He was sentenced on 25 May 2011 to imprisonment for public protection, with a minimum term of 6 years, for a sexual offence against a child. The sentence reflected the facts that the offence was the culmination of a number of sexual offences against the same victim, and that at the time of the offence he was on bail for sexual offences against another child in similar circumstances, historical offences for which he received a 9 year sentence of imprisonment. His tariff expiry date was 25 May 2017.
5. The Applicant pleaded Guilty to the index offence, but now denies it, saying he only admitted it for a reduction in his sentence. He now admits the earlier offences, having previously denied them. He has previous convictions for offences including robbery and assault occasioning actual bodily harm.
6. The Applicant was released on licence on 9 September 2019 and recalled on 30 September 2019 after he was arrested for a breach of his Sexual Offences Prevention Order (for which he was later convicted and received a 10 week prison



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sentence) and for a further historic sexual offence (in respect of which the police have decided to take no further action).

Request for Reconsideration

7. The application for reconsideration is dated 23 October 2020.
8. The grounds for seeking a reconsideration are as follows:
 - (1) The current panel noted the same issue as an earlier panel in 2019, which directed the Applicant's release, but reached a vastly different decision to that of the earlier panel, which is irrational; and
 - (2) The panel placed undue weight on the circumstances of the Applicant's recall.

There is no suggestion of procedural unfairness.

Current parole review

9. The Applicant's case was referred to the Parole Board by the Secretary of State after his recall for consideration of re-release or a recommendation for transfer to open conditions.
10. The panel, consisting of two independent members and a psychiatrist member, considered the case on 29 September 2020. Because of the coronavirus pandemic this was a remote video link hearing. The Applicant was legally represented throughout. The Secretary of State was not represented and made no representations. Evidence was given by the Applicant's Prison Offender Manager (POM), his Community Offender Manager (COM), and by the Applicant himself.

The Relevant Law

11. The panel correctly sets out in its decision letter dated 8 October 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)).
13. 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

14. 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."

15. 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.
16. 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

17. The Secretary of State has indicated that he does not intend to respond to the application.

Discussion

18. The 2020 panel heard different evidence from that heard by the 2019 panel. It is in no sense irrational for the two panels to have come to different conclusions on different evidence. At the 2019 hearing all the professional witnesses supported release. At the 2020 hearing, after the Applicant had breached the terms of his Sexual Offences Prevention Order and of his licence, the professional witnesses did not recommend release, and gave their reasons, which included the Applicant's lack of openness and honesty in dealing with those supervising him. The panel considered all the evidence, including that of the Applicant, and carefully assessed it. The panel's conclusion was that until the Applicant developed strategies to identify and manage his risk of sexual reoffending in the community, he presented an ongoing risk of serious harm which could not be managed in the community. Accordingly, he did not meet the test for release. This was a decision to which the panel was entitled to come to on the evidence.
19. The panel was entitled, indeed obliged, to make its own assessment of the Applicant's explanation for his breaches of his Sexual Offences Prevention Order and licence conditions. The fact that his explanation was consistent over time does not necessarily mean that it was true. There is no basis for the suggestion that the panel placed undue weight on the circumstances of the recall.

Decision

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

Patrick Thomas
16 November 2020