

[2021] PBRA 177

## Application for Reconsideration by Chapman

### Application

1. This is an application by Chapman (the Applicant) for reconsideration of a decision of a Panel of the Board contained in a letter dated 8 November 2021 (the Decision Letter) not to release him. This followed an oral hearing held on 3 November 2021 conducted remotely via a video link.
2. The Panel consisted of two independent members.
3. 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.
4. I have considered the application on the papers which comprise the Decision Letter, the Application for Reconsideration and the dossier now paginated to 341 pages.

### Background

5. The Applicant is serving an extended determinate sentence imposed on 17 August 2010, following a trial, comprising a 126 month custodial element and three year extended licence for two counts of rape with a concurrent determinate sentence for witness intimidation ("the index offending"). The victim was his then partner (A) and the Applicant maintains his innocence of the offences.
6. The Applicant was 36 years of age at the time of sentencing and his Tariff Expiry Date is given as 24 February 2023. He is also the subject of an indefinite Sexual Offences Prevention Order (SOPO).
7. The Applicant was initially released on licence in October 2014 but recalled in August 2015 as a result of allegations that he had breached the SOPO. He spent a number of weeks unlawfully at large until his return to prison in October 2015. A refused to support the resulting prosecution and he was re-released by direction of the Board in August 2016.
8. The Applicant was recalled again in August 2019 after he was arrested following the execution of a search warrant under the Misuse of Drugs Act at a female's (B) property. Police found him there in bed fairly early in the morning in sole charge of a two-year-old child. There was a significant amount of drugs in the property, together with equipment used in the manufacture of drugs. He was found in physical

possession of £150 worth of cocaine and he tested positive for cocaine use upon his arrest.

9. The Panel which declined to direct his release in May 2020 found that he had relapsed into drug misuse and did not seek help or disclose the relapse to those supervising him; that he was in an intimate relationship with B and had breached his licence as he had not disclosed the relationship; and that his approach to supervision had been minimal and controlling and as a result his behaviour could not be fully monitored.
10. Prior to the index offending the Applicant had criminal convictions from the age of 16 for over 40 offences which were, for the most part, of an acquisitive nature but also included driving matters, battery and possession, and cultivation, of drugs.
11. The Applicant has not engaged in any offence-focused work to address his sexual offending although he did complete a training course addressing relationships and the handling of emotions in the community in May 2018.
12. His custodial behaviour since his more recent return to custody has raised few concerns and he maintains Enhanced status with no adjudications.

#### **Request for Reconsideration**

13. The application for reconsideration is dated 24 November 2021.
14. It is handwritten and is not made on the published form CPD2, which contains guidance notes to help prospective Applicants ensure their reasons for challenging the decision of the Panel are well-grounded and focused. The document explains how I will look for evidence to sustain the complaints, and reminds Applicants that being unhappy with the decision is not in itself grounds for reconsideration. However, that does not mean that the application was not validly made.
15. The Applicant helpfully sets out his grounds for seeking a reconsideration in 6 numbered and clearly argued points, which I shall address in the Discussion section, and submits that the decision of the Panel was irrational.
16. It is not submitted that there was procedural unfairness.

#### **Current parole review**

17. The Secretary of State referred the Applicant's case to the Parole Board pursuant to **s.256A Criminal Justice Act 2003** to consider whether to direct his re-release.
18. At the hearing on 3 November 2021 the Panel considered a dossier of 332 pages and there was no evidence which could not be disclosed to the Applicant. The Secretary of State did not express a view and was not represented. The Applicant was represented by his solicitor, who sought a direction for release.
19. The Panel heard evidence from:

- a) The Prison Offender Manager (POM);

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- b) The Applicant; and
- c) The Community Offender Manager (COM).

20. The COM supported the Applicant's release on licence.

21. The Panel concluded that it continued to be necessary for the protection of the public that the Applicant should remain confined. Therefore, the Panel did not direct the release of the Applicant.

### The Relevant Law

22. The Panel correctly sets out the test for release in the Decision Letter.

#### *Parole Board Rules 2019*

23. 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)).

#### *Irrationality*

24. 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."*

25. 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.

26. 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

27. By email dated 8 December 2021 it was confirmed by PPCS on behalf of the Secretary of State that no representations are offered in response to the reconsideration application.

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## Discussion

28. In dealing with the grounds for reconsideration, it is necessary to stress certain matters of basic importance. The first is that the Reconsideration Mechanism is not a process by which the judgement of the Panel when assessing risk can be lightly interfered with. Nor is it a mechanism in which, as the member carrying out the reconsideration, I am entitled to substitute my view of the facts in place of those found by the Panel, unless, of course, it is manifestly obvious that there was an error of fact of an egregious nature which can be shown to have directly contributed to the conclusion arrived at by the Panel.
29. The second matter of material importance is that when deciding whether a decision of the Parole Board was irrational, due deference has to be given to the expertise of the Parole Board in making decisions relating to parole.
30. Third, where a Panel arrives at a conclusion, exercising its judgement based on the evidence before it and having regard to the fact they saw and heard the witnesses, it would be inappropriate to direct that the decision be reconsidered unless it is manifestly obvious that there are compelling reasons for interfering with the decision of the Panel.
31. The Applicant understandably focuses in his submissions on the conclusions of the recent Programme Needs Assessment (PRA) in which, although further offending behaviour work was not recommended, it was felt that, while understanding the BBR programme, the Applicant does not apply the skills he has learned. Accordingly, the professional opinion was that he would benefit from spending time within a regime to help people recognise and deal with their problems (PR) which would allow him to consolidate these skills and provide him with the opportunity to demonstrate personal responsibility and greater independence. In addition, it would assist the Applicant to understand and manage his risks and, subsequently, evidence that he is ready for release.
32. The Applicant argues that this work could be done on a 1:1 basis in the community and points to the practical difficulties currently of arranging a prison transfer, the significant effect which the Covid-19 pandemic continues to have on prison establishments and their regimes and the fact that, apparently, he has not yet been assessed for a PR.
33. However, the Referral from the Secretary of State makes it clear that the Panel was not being asked to comment on, or make any recommendation about, the prison in which the Applicant is detained or any specific treatment needs or offending behaviour work required.
34. It is important to remember that the Panel's duty is to decide whether it is satisfied that it is no longer necessary for the protection of the public that the Applicant should be confined.
35. I find that the Panel gave comprehensive and cogent reasons for finding that the Applicant should remain confined. In particular, it found that, having given careful consideration (as it was obliged to) to the Risk Management Plan (RMP) advanced by the COM, these external controls would be insufficient to manage the risk of

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serious harm (which the Panel assessed to be High to the public, a known adult and children) which the Applicant would pose in the community and that he needed to develop sufficiently robust internal controls prior to release. As the Panel made clear in its conclusion, *"It is not a matter for the Panel as to how he [the Applicant] achieves this....."* and it noted that a PR is recommended with which the Applicant was prepared to engage.

36. For completeness I also note that the Applicant prays in aid that he has not been convicted of an offence since the index offending, a matter of which the Panel was obviously aware and the Applicant also repeats in his Application the evidence he gave about the nature of his relationship B. However, the Panel found that the Applicant continued to be dishonest about the nature of this relationship.

### Decision

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

**Peter H.F. Jones**  
**15 December 2021**