

[2021] PBRA 06

Application for Reconsideration by Ali

Application

1. This is an application by Ali (the Applicant) for reconsideration of a decision of a panel of the Parole Board (the OHP) dated 23 December 2020, which followed a hearing conducted by agreement via telephone on 17 December 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 application for reconsideration prepared by the Applicant's legal representatives, the Decision Letter and the contents of the dossier.

Background

4. The Applicant is now 34 years of age. On 24 June 2016, having pleaded guilty, he was sentenced to an extended sentence of imprisonment for an offence of causing death by dangerous driving. The sentence comprised of a custodial term of six years and six months and an extension period of four years. The sentence expiry date is recorded as being 25 November 2026. The hearing before the OHP was the Applicant's first parole review. He had been transferred to open conditions in February 2020.
5. The Applicant's conviction followed a fatal road accident which took place in February 2015. The evidence presented to the court revealed that the Applicant's vehicle which he was driving was travelling at a speed between 69 and 74 mph. The legal speed limit was 40 mph. Expert evidence was to the effect that had the Applicant been complying with the speed limit the collision would not have occurred. The judge when sentencing described the Applicant's speed as "*grossly excessive*". The Applicant did not stop at the scene, surrendering to police the following day.
6. While on bail for this offence the Applicant committed a further offence of dangerous driving, when on a motorway, he drove at speeds in excess of 140 mph. For this offence he received a sentence of twelve months imprisonment.



7. The Applicant had six previous convictions for 10 offences. In respect of two of them in 2006 and 2010 the vehicles he was driving were in effect used as weapons in incidents where individuals were directly or indirectly injured.
8. The OHP found that the Applicant's risk factors, that is to say, matters that made it more likely that he would offend in the future, included concerns regarding relationships, associates, drug misuse, emotional wellbeing, impulsivity, behaviour and attitudes.

The Request for Reconsideration

9. The Applicant submits that I, as the Reconsideration Assessment Panel, should find that the OHP's decision was irrational. It is submitted that there was no rational justification for and no adequate explanation of the decision by the OHP to depart from the unanimous opinion of the professional witnesses that the Applicant should be released into the community.

The Relevant Law

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)).

Irrationality

11. 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. 11:

"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."

12. 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.
13. The application of this test has been confirmed in previous decisions on applications for reconsideration under rule 28: see for example **Preston [2019] PBRA 1** and others.

The reply on behalf of the Secretary of State

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14. On behalf of the Secretary of State it has been indicated that he does not wish to make any representations regarding this application.

Discussion

15. Panels of the Board are not obliged to adopt the opinions and recommendations of professional witnesses. It is their responsibility to make their own risk assessment and to evaluate the likely effectiveness of any proposed risk management plan. If an OHP is going to depart from the recommendations of experienced professionals, it is required to explain clearly its reasons for so doing and ensure as best it can that its stated reasons are sufficient to justify its conclusions.

16. The importance of giving adequate reasons in decisions of the Parole Board as has been made clear in two authorities heard in the High Court within the space of nine months. The first decision was in the case of **R (ex parte Wells) v The Parole Board [2019] EWHC 2710 (Admin)** which contains helpful guidance on the correct approach to deciding whether a decision made by a panel in the face of evidence from professional witnesses can be regarded as irrational. It is a decision I am bound to follow as is the decision which followed in the case of **R (On the application of Stokes v The Parole Board and The Secretary of State [2020] EWHC 1885 Admin** in which it was decided that the oral hearing panel and the reconsideration panel had failed to identify and explain its reasons.

17. The judgment in **Stokes** cited the judgment in **Wells** and also the case of **R (PL) v Parole Board and Secretary of State for Justice [2019] EWHC 3306 (Admin)** in which the High Court quashed a decision of the Board on grounds which included that it had failed to identify concerns about the prisoner's behaviour, re-emphasising that the reasoning of panels must reach an acceptable standard in public law by providing the prisoner and the public with adequate reasons for their decisions.

18. It is suggested in **Wells** that rather than ask the simple question "*was the decision being considered irrational*", the better approach, which I intend to adopt in this case, is to test the panel's ultimate conclusions against the evidence before it and ask whether their conclusions can be safely justified on the basis of that evidence while giving due deference to the panel's experience and expertise.

19. The Reconsideration mechanism is not a process whereby the judgement of a panel when assessing risk can be lightly interfered with. Nor is it a mechanism whereby I can or should be expected to substitute my own views on the facts as found by the panel. The test is not whether another panel would have come to the same or a different decision, but rather whether this OHP can be said to have reached an irrational one as that term is now understood.

20. With all these matters in mind I turn to consider the grounds advanced in support of the Applicant's case for reconsideration. In effect there is a single ground and that is that the OHP were not justified in departing from the unanimous opinions of the professional witnesses who supported release into the community and further that the OHP failed to provide an adequate explanation justifying their conclusions. The Applicant's representatives highlight in particular two aspects of the decision in



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support of their overall submission. It is submitted that the OHP erred in finding first, that there was further work on particular issues to be done by the Applicant and secondly erred in placing too much emphasis on the fact that the Applicant was unable to benefit from periods of release on temporary licence.

21. In addition to the Dossier, which ran to over 300 pages, the OHP had the considerable advantage of hearing live evidence from the Applicant himself and all of the professional witnesses as well as considering the submissions made by his legal representative. In my judgement, a careful reading of the Decision Letter as whole demonstrates that the OHP:

- (i) Noted and took account of all of the relevant evidence.
- (ii) Applied the correct legal test regarding release.
- (iii) Considered carefully but did not over emphasise the position regarding the lack of temporary releases into the community.
- (iv) Whilst acknowledging that the proposed risk management plan was robust, found that there had been insufficient assessment of the need for the Applicant to address issues which in their judgement underpinned his offending.
- (v) Doubted that the Applicant had demonstrated that he could put into practice what he had learnt from interventions he had undertaken during his sentence.
- (vi) Expressed its concerns regarding what it found to be the Applicant's continuing lack of insight into his offending behaviour.
- (vii) Particularly noted that witnesses had expressed doubts as to the Applicant's willingness to commit to ongoing therapeutic work.

22. I am satisfied that the OHP took into account all of the relevant evidence and reached their conclusions based upon that evidence. The reasons given by the OHP for refusing the application for release in my view justified their final decision. In my judgment the OHP were entitled to reach the conclusions that they identified and sufficiently explained in their detailed decision. It follows that I am unable to accept the grounds put forward on behalf of the Applicant.

Decision

23. For the reasons I have given, I do not find that the OHP's decision was irrational and accordingly the application for reconsideration is refused.

Michael Topolski

28 January 2021