

Application for Reconsideration by Barrett

Application

1. This is an application by Barrett (the Applicant) for reconsideration of a decision by a panel not to direct his release but recommended to the Secretary of State that he should go to an open prison. He applies for reconsideration of that decision on the grounds that the panel applied an incorrect test in deciding not to release him.
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 that the decision is (a) irrational or that it is (b) procedurally unfair.

Background

3. Mr Barrett is serving a sentence of IPP (Imprisonment for Public Protection) with a minimum period to serve of 7 years imposed in 2007 for attempted murder. He was first released on parole in July 2015 and recalled in November 2016. He was then released on parole in October 2017 and recalled in March 2018. He was sentenced to 19 months' imprisonment for offences that he had committed during his second period on licence.
4. It is not necessary to recount the difficulties that the Applicant experienced when on licence for the purposes of this judgment, but it is not proving easy to rehabilitate him into the community.
5. At the hearing the panel heard evidence from the Applicant and considered the evidence and reports of the Offender Manager, the Offender Supervisor and a psychologist. All three considered that the Applicant's risk was manageable in the community and recommended release.

Request for Reconsideration

6. The application for reconsideration is dated 22 August 2019.
7. The conclusion part of the decision letter includes this phrase:

"The panel therefore considered that you have the potential to present a serious risk of harm and you still need to remain confined."



It is submitted on the Applicant's behalf that this phrase indicates that an incorrect test to apply as the test is *"not whether there is a potential to cause serious harm but rather that the prisoner poses a risk of serious harm and that that risk cannot be managed in the community... the test is not whether there is a potential to cause serious harm but rather that the prisoner poses a risk of serious harm and that that risk cannot be managed in the community"*. It is further asserted, *"there is no evidence that Mr Barrett poses an unacceptable risk of serious harm in the community and that that risk cannot be managed"*.

8. The Secretary of State did not wish to make representations in response to the application.

Discussion

9. I accept that the panel should set out the correct test in their decision letter so it is clear that this is the test that they have applied. I also accept that it is preferable to use the statutory language rather than to paraphrase the test. **(R(Sturnham) -v- Parole Board [2013] 2 AC at p. 336 para 53)**. I also accept that if it can be shown that the panel applied an incorrect test then a direction for reconsideration would follow.
10. In order to properly assess this application, it is necessary to consider the decision letter as a whole. In the first paragraph headed 'introduction', the panel said:

"The Parole Board will not give a direction for your release unless it is satisfied that it is no longer necessary for the protection of the public that you should be confined"

That is the correct statutory test. Its inclusion in the first paragraph indicates that the panel had well in mind what the correct test was and that they intended to apply it in making their decision.

11. In order to consider the relevance and weight to be attached to the passage to be complained about, it is necessary to put it into context. It appears in the section headed 'conclusion and decision of the panel'. In the early part of that section of the decision letter, the panel discusses the reasons for the failures of the last two releases which ended in recall. It recounts what the witnesses say about the risks of future failures. It is important to consider the whole paragraph which includes the passage complained of. It reads as follows:

"All of the witnesses supported your re-release. They noted that you do not struggle to cope in prison and suggested that the only way to test your ability to utilise the skills you may have developed is in the community. The panel did not share that view. On the last two occasions you over-reacted to emotional pressures that you faced and rather than seek professional help you resorted to drug use and threats of violence. The panel therefore considered that you have the potential to present a serious risk of harm and you still need to remain confined."

12. When considered in its context, I do not consider that the passage complained of misrepresents the correct test. Clearly, the panel is talking about the potential to



present a serious risk of harm if released at this stage. The panel did not accept that if they directed release now that risk could be contained. That is particularly so within the context of the correct test having been set out at the start of the decision letter. In my judgment, when considered within that context, the phrase complained of does not misrepresent the statutory test.

13. Complaint is also made that there was no evidence that the Applicant presented an unacceptable risk of serious harm. It was accepted by all the witnesses that the Applicant did present a risk of serious harm. The issue was whether the 'professionals' were correct in their assertions that that risk could be managed in the community. They all concluded that it could. One of the purposes of an oral hearing is to challenge those assertions so that the panel can make up its own mind. The fact that all the professionals say that the risk is manageable does not mean that the panel must agree. It is the panel's job to assess the evidence of risk. They are a tribunal who are expert in doing that job which they carry out in the interests of the public. The panel did not agree with the professionals and they gave clear reasons why they did not agree. That does not provide a ground for reconsideration.

Decision

14. Accordingly, the application for reconsideration fails.

John Saunders
11 September 2019

