

[2019] PBRA 22

Application for Reconsideration by Oldham

Application

1. This is an application by Mr Oldham (the Applicant) for reconsideration of a decision not to direct his release after an Oral Hearing of a Parole Board panel held on 13 August 2019 given in a decision letter dated 14 August 2019 (the Decision Letter). The application was made on 1 September 2019 on behalf of the Applicant through his legal representatives.

Background

2. The Applicant is serving an indeterminate sentence for public protection. He was sentenced on 18 May 2007 for an offence of wounding with intent to cause grievous bodily harm and assault occasioning actual bodily harm. His tariff expired in November 2008. He was also at the same time convicted of arson but no separate sentence was imposed in respect of that offence.

Request for Reconsideration

3. The application for reconsideration is dated 1 September 2019 supported by written submissions. The grounds on which the application was made may be summarised as follows, namely that the decision was irrational and "*procedurally flawed*". It is not clear from the written submissions that the second ground added anything to the first. The substance of the complaint is that the panel was unconvinced that the Applicant could not account for the injuries sustained by his ex-partner whilst on licence given his (the Applicant's) position was that he had not caused those injuries, had not been present when they were caused, and was unaware of them. The Secretary of State has declined to offer any representations in consequence of the application.

Current parole review

4. In November 2018 the Secretary of State referred the Applicant's case to the Parole Board for his third review. He had been released following a previous Parole Board Oral Hearing on 18 June 2012 but recalled on 11 September 2018 following disclosure of a previously undisclosed long-term relationship with his ex-partner, in breach of his licence conditions.
5. The panel heard evidence from the Offender Manager, Offender Supervisor, a Consultant Forensic Psychologist and from the Applicant, who was represented by Solicitors throughout. They had a dossier of some 420 pages and were also



presented with other material including written representations (the written representations).

The Relevant Law

6. Rule 25 (decision by a panel at an oral hearing) and Rule 28 (reconsideration of decisions) of the Parole Board Rules 2019 apply to this case.
7. Rule 28(1) provides that applications for reconsideration may be made in eligible cases on the basis that (a) the decision is irrational and/or (b) that it is procedurally unfair. This is an eligible case.
8. In **R (on the application of 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."

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. This strict test for irrationality is not limited to decisions whether to release; it applies to all Parole Board decisions.

Discussion

9. It is submitted on the Applicant's behalf that although he does not dispute his ex-partner suffered injuries, these were not, contrary to her allegations, caused by him (as above-mentioned). It is submitted, however, that although no charges were made against the Applicant in respect of these allegations, nevertheless the panel gave undue weight to the allegations and found his own explanation unconvincing. This view, it was submitted, underpinned the entirety of the panel's conclusion that it remained necessary for the protection of the public that he should continue to be confined and that despite the robust risk management plan the risk remained unmanageable in the community. In consequence this rendered, it was submitted, the entire decision irrational.
10. The written submissions on behalf of the Applicant drew attention to the panel having been referred to the case of **R (Delaney) v The Parole Board [2019] EWHC 779 (Admin)**, where Baker J overturned a decision of the parole board not to release the Claimant. It is plain from a consideration of that case that the entire decision of the panel had been underpinned by unproven and untested allegations of domestic violence which the panel chose (or seemingly chose) to believe, despite the fact that they remained just that: allegations.



11. True it is in this case that the ex-partner provided no statement, was not a witness and her allegations also resulted in no charges or trial.
12. The panel in this case were careful to point out that they were not in a position to make a finding of fact. All they did was note that they did not find the Applicant's evidence convincing. He was not able to explain why he was unaware of the significant injury to his ex-partner. They gave weight to the allegations and concluded on balance that it was likely he was violent during his relationship with his ex-partner. That is not the same thing as concluding that the specific allegations of the ex-partner were found by the panel to be true.
13. There was, in any event, ample material before the Panel to justify their overall conclusion and decision. For example: there was no recommendation for release; despite the robust risk management plan, the Offender Manager still considered the risk unmanageable in the community; the ex-partner reported the injuries to the hospital and to the police (verified by separate records); the Applicant admitted taking presents for his daughter out of the boot of a car (his daughter being in the car) and stamping on them; there was a history of deceit, deception, lying, non-disclosure of relationships or sexual encounters and other matters, manipulative and threatening behaviour, and previous violence against intimate partners.
14. In short, there was ample material before the panel to justify their conclusions and decision. It was certainly not irrational or procedurally flawed.

Decision

15. For the reasons I have given, I consider that the decision was neither irrational nor unfair and accordingly the application for reconsideration is refused.

HH Roger Kaye QC
24 September 2019

