

[2019] PBRA 25

Application for Reconsideration by Lynch

Application

1. This is an application by Lynch (the Applicant) for reconsideration of a decision by a panel, that his recall to prison had been appropriate and neither to direct his release nor to recommend that he be transferred to open conditions, following a hearing on 29 August 2019.
2. I have considered this application on the papers. These comprise of the dossier, the provisional decision of the Panel dated 30 August 2019, the application for reconsideration dated 8 September 2019 (received 12 September 2019) and the Response of the Secretary of State by e-mail dated 19 September 2019.

Background

3. On 23 September 1993, the Applicant, having pleaded not guilty and been convicted by a Jury, was sentenced to life imprisonment, for the murder of his wife, with a minimum term of 9 years (the tariff) before he was eligible to apply for parole. The tariff period expired on 14 April 2002.
4. He was released on 29 April 2003 but recalled in October 2009 for breaches of his Life Licence and subsequently sentenced to a determinate sentence of 5 years (reduced to three years on appeal) for an offence of making a threat to kill.

Request for Reconsideration

5. The application for reconsideration, made by the Applicant in person, having indicated that he no longer has contact with his Legal Representative, consists of a two page document to which a copy of the panel decision, with highlighted sections, and a copy of the Secretary of State notification of Licence Revocation and Return to Custody, are attached. It is not necessary to reproduce the application in full, but all sections have been considered and aspects relevant to issues of irrationality or procedural unfairness are dealt with below:
 - (a) A series of complaints are made as to factual matters both relating to the contents of the dossier and as to specific matters set out in evidence, much of which was historical, some relating to correspondence with the Parole Board in 2017/2018. The Applicant requests a copy of his testimony at the hearing.



- (b) The Applicant accused the Applicant's Legal Representative of writing answers to the Chair's questions and showing them to the Applicant.
 - (c) He complains that "the microphones were turned off at one point, why, and what was said by the Panel that others were not allowed to hear. My understanding that everything said was to be recorded verbatim."
6. The Secretary of State, having clarified the breaches of licence leading to recall, indicated that he offered no further representations in response to the application.

Current parole review

- 7. Although not specifically confirmed in the formal decision, it appears clear that an application was made for release.
- 8. Any progression to open conditions or release was not supported by the professional witnesses, Offender Manager, Offender Supervisor or Prison Psychologist all of whom considered that the Applicant should carry out complete identified core risk reduction work. The Applicant is reported as having told the panel, in evidence, that he would address issues of alcohol use and offending behaviour in the community if released.
- 9. The panel found a clear link between the Applicant's index and recall offences. It judged that, having been assessed with problematic personality traits, the Applicant refused to accept that he presented a high risk of serious harm to others and that work was required to address the areas of risk. It concluded that until the Applicant demonstrated evidence of a reduction in risk no direction for release or recommendation for transfer to open conditions could be made.

The Relevant Law

- 10. 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. This is an eligible case.
- 11. 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 uses the same word as is used in judicial review demonstrates that the same test



should be applied. This test for irrationality is not limited to decisions whether to release but applies to all Parole Board decisions.

12. Procedural unfairness under the Parole Board Rules relates to the making of the decision by the Parole Board and an assessment is required as to whether the procedure followed by the Panel was unfair.

Discussion

13. In my judgment, the decision to approve the recall and to refuse release or to make a recommendation for transfer to open conditions cannot be said, in any way, to meet the test of irrationality. The panel, having clearly considered with care the documents in the dossier and the oral evidence, gave a clear and reasoned decision:

- (a) In approving the recall, it made findings of fact which it was clearly entitled to do.
- (b) In dealing with release and transfer to open conditions, it placed emphasis on the undisputed fact that the Applicant was unwilling to carry out core risk offending behaviour work in closed conditions.

14. I find that the detailed complaints made in the Applicant's reconsideration application, do not, at their highest, affect the basic issues to be addressed by the panel and cannot be said, in any way to affect the rationality of the decision. Accordingly, no order will be made for a production of a full transcript of the Applicant's evidence.

15. Procedural unfairness:

- (a) I find that no valid complaint can be made of any reprimand by the Panel Chair for any attempt by the Legal Representative to pass to him notes of answers to panel questions. I judge that it would have been remiss of the Panel Chair not to have done so.
- (b) The purpose of recording the oral hearing is to enable an unchallenged record of evidence to be retained. It is proper procedure for the recording to be stopped at either a break in the evidence or at the end of proceedings. The recording is relevant only if it is suggested that evidence material to the rationality of the decision has been given in or omitted from the panel decision. I find nothing in the application or in consideration of the decision to suggest that this is the case.

Decision

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

Edward Slinger



30 September 2019

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