

[2019] PBRA 36

## Application for Reconsideration by Hassan

### Application

1. This is an application by Hassan (the Applicant) dated 4 September for reconsideration of a decision by a Parole Board panel not to direct his release on the basis that the decision was irrational and procedurally unfair.
2. Rule 28(1) of the Parole Board Rules 2019 provides that applications for reconsideration may be made in eligible cases on the basis either that the decision was irrational or that it was procedurally unfair. The eligible cases are confined to those set out in Rules 19(1)(a) or (b), 21(7) or 25(1). There are further restrictions upon eligibility set out in Rule 25(2) as to the type of sentence being served by the prisoner. The Applicant is serving an eligible sentence.
3. All four of the decisions which are amenable to reconsideration, concern decisions whether a person is 'suitable or unsuitable' for release, and not a decision whether or not to direct an oral hearing. The principal thrust of the grounds submitted in an email from the Applicant's representative is aimed at the decision not to grant an oral hearing. Such submissions should be made – as is clear from the second and fourth paragraphs of the decision letter – by way of a request for an oral hearing. However, some of the grounds may be interpreted as an attack on the merits of the decision not to direct release as being 'irrational'. I have therefore considered them.

### Background

4. In February 2011 the Applicant was sentenced to an Indeterminate Sentence for Public Protection (IPP) with a tariff set at 3 years less time on remand. The Applicant's case has now been considered 4 times by the Parole Board. In 2015 release was not directed at an oral hearing. The same happened following a decision on the papers in 2017.
5. The index offences concerned rape and possession of an offensive weapon. The Applicant had a previous conviction for harassment and possession of a bladed instrument committed against a female. During the course of this sentence, in 2015, the Applicant was convicted of an offence of common assault.

### Request for Reconsideration

6. The application is dated 4 September 2019. In summary the grounds are as follows:



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- (a) The Applicant has not been given proper access to courses while in prison which would have assisted him to address his offending behaviour and his risk to the public.
- (b) The Applicant has concerns that his conviction for rape will affect his ability to find employment upon his release.
- (c) The Applicant wishes to mount an appeal against his sentence.
- (d) The Applicant was not guilty of the index offence of rape.
- (e) The Applicant has benefited from his time in prison to the extent that he is now determined to live a law-abiding life with his family.
- (f) Plans are in place for him to attend college and then to be supported financially by his sister when setting up a business.
- (g) The psychological report prepared is wrong to suggest that he remains a risk to the public if released, in particular because there is currently no identifiable person said to be at risk of serious harm if he were to be released.
- (h) The large number of adjudications he has accumulated during his sentence (often for violent behaviour);
  - (i) Often contained allegations which were exaggerated.
  - (ii) To the extent that they were based on actual behaviour they took place at a time when the Applicant was in a different frame of mind than the one he is in now.
- (i) In any event he is now resolved to put this phase of his life behind him.
- (j) That the Board should have directed his release on licence to assist with the Applicant's long-term rehabilitation.

7. The Secretary of State submitted that the application was not one which was amenable to the reconsideration process since it concerned the question of whether an oral hearing should have been granted, and therefore did not wish to comment upon the particular grounds.

## The Relevant Law

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 had first been 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.



9. There is no valid ground of appeal concerning procedural irregularity. The Applicant, as stated above, may apply for an oral hearing following a decision on the papers.

## Discussion

10. Grounds (a)-(f) and (i), have no relevance to an application for reconsideration as explained above.
11. Ground (g) would be a matter for a panel at an oral hearing if one were granted. The panel's decision cannot be faulted for relying on its terms and the recommendation that the training course addressing the use of violence and sex offending might offer a way of reducing the Applicant's risk to the public upon release. The fact is, as the ground itself concedes, that the report highlights the risk to any future actual or potential partner of the Applicant. The panel's decision on this matter was entirely rational.
12. As to ground (h), while there may have been a reduction in the number of adjudications, the Applicant's behaviour in prison is still a major cause of concern. Again, the decision letter's finding was entirely rational.

As to ground (j), this ground is expressed in general terms. There is nothing in the terms of the decision letter to suggest that that the decision not to direct release was 'irrational' as described in paragraph 7 above.

## Decision

13. Accordingly, this application for reconsideration is refused.

Sir David Calvert-Smith  
11 October 2019

