

[2019] PBRA 48

Application for Reconsideration by McCauliffe

Application

1. This is an application by McCauliffe (the Applicant) made under Rule 28 of the Parole Board Rules 2019 for reconsideration of a decision of an oral hearing panel dated the 2 October 2019 not to direct his release or recommend open conditions.
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 or (b) that it is procedurally unfair.

Background

3. On the 16 May 1988, the Applicant was sentenced to life imprisonment with a minimum tariff of eight years and one day for two offences of aggravated burglary and attempted rape. The Applicant received a concurrent sentence of 6 years for indecent assault.

Application for reconsideration

4. The application for reconsideration is dated the 22 October 2019.
5. The grounds for seeking reconsideration were substantiated as follows: (i) that the panel failed to take into account the fact that the Applicant is significantly over tariff and there has been a long time since the index offences; (ii) that the panel concluded that the Applicant's immobility could lead potentially to increased risk; (iii) the panel failed to take account of the Applicant's age. The Applicant relies on the ground of irrationality only.

The Relevant Law

6. In order to be "irrational" within the meaning of Rule 28 (1) (a) the decision in question must be so outrageous as to defy logic, accepted moral standards or one at which no sensible person could have arrived. Moreover, in considering the assessment of the decision, due deference is to be given to the expertise of the Parole Board in making decisions relating to parole. It will also be borne in mind that in the case of oral hearings it is the panel members who saw heard and assessed the evidence of witnesses before them: see **R (on the application of DSD and others) v the Parole Board [2018] EWHC 694 (Admin), CCSU v Minister for the Civil Service [1985] AC 374.**



Discussion

7. As to the first ground and third ground, the dossier of 391 pages speaks repeatedly of the very long time the Applicant has spent in prison (both during this sentence and previous sentences), his age and the absence of observable change or improvement.
8. By way of illustration, the Offender Supervisor in recommending that the Applicant remain in closed conditions, said (at page 264) "I remain mindful that he is a 66 year old man who has served 31 years in custody on this sentence and is now 24 years beyond his original tariff date."
9. The panel observed in section 3 of the Decision Letter that the Applicant had been 35 years old when sentenced, that he had committed the index offences 19 days after his release from a sentence of 10 years imprisonment for sexual offences and that he was now age 66.
10. In section 8 of the Decision Letter, the panel said "Your case is a complex one. You are many years over tariff and your evidence to the panel showed your distress and your continued detention."
11. The decision not to direct release must have been a very hard one for this Applicant to accept; he is very anxious to gain his release and has enlisted considerable support to that end. However, it seems to me there was abundant evidence to demonstrate that the panel was acutely aware of the Applicant's age and the fact that he was significantly over tariff and had been in prison for many years.
12. As to the second ground, the panel observed that the Applicant's immobility could potentially lead to increased risk in the context of their primary finding that he still remained a risk. What the panel actually said is to be found on page 11 of the Decision Letter "The panel did not consider your reduced mobility and age to offer any significant reduction in risk, given the method by which you created the opportunities to sexually offend, by the use of weapons and a ruse to gain access to the victim's homes. Such a ruse may in fact prove more effective now that you are older and suffer some health conditions."
13. It is not for me to say whether I agree or disagree with that finding. The question is whether that conclusion was one at which no sensible person could have arrived.
14. The recent history which the panel had to consider included chronic sexualised and offensive behaviour towards females, including visitors to the prison chapel, a chaplain, the offender manager, nurses at a hospital where the Applicant was an inpatient early in 2019 and more recently female members of the wing staff.
15. In February 2019, a complex case panel considered a psychiatric assessment of the Applicant to be necessary; the Applicant has refused to cooperate with this proposal and indeed refuses to consider any proposal either for an assessment or work directed at offending behaviour, unless that can be achieved outside on



licence. The panel came to the view that his risk could not be managed in the community and it was difficult to justify moving the Applicant beyond the category B estate.

16. An assessment of risks and their origin dated the 5 September 2019 said that the Applicant's risk had not changed during his sentence. He has a very high risk of harm to the public (particularly females). The risk of serious harm would be imminent on release.
17. These are examples of a body of evidence supporting the panel's opinion that the Applicant posed a very high risk even with his lack of mobility. The further opinion that those disabilities might increase the risk does not seem to me to take the matter very much further.
18. The panel clearly had in mind two aspects of the index offences, the use of a knife and feigning illness. The panel was entitled to take these into account.
19. It is worth noting that there may be some doubt as to the severity of the Applicant's immobility; it is reported in the dossier that in hospital in January 2019, the Applicant was examined by a doctor who opined that he had full mobility in his legs and hips but that he needed to get out of bed and walk in order to regain his mobility. The Applicant seems not to have agreed with the doctor.
20. In addition to considering the dossier, the panel took oral evidence from the Applicant (who was legally represented), and from the Offender Manager and the Offender Supervisor. I have considered the dossier and read the decision letter and the Applicant's written representations and I have come to the conclusion that there was ample material in the dossier and in the evidence given to the panel to justify the panel members making the decision they did.
21. For the reasons I have given, I do not consider that the decision was irrational and accordingly the application for reconsideration is refused.

James Orrell
1 November 2019

