

[2019] PBRA 53

## Application for Reconsideration by Jones

### Application

1. This is an application by Jones (the Applicant) for reconsideration of a decision of the Parole Board given in a decision letter dated 13 October 2019 (the decision letter) following an oral hearing on 8 October 2019. The decision given was not to release the Applicant but to recommend his transfer to open conditions.

### Background

2. The Applicant is serving a Life Sentence, with a tariff set at 11 years and a day which expired on 15 April 1993, for an offence of murder. He was released from custody on 5 November 2018 (following a previous review hearing) but his licence was revoked, and he was recalled to prison on 5 February 2019 after breach of his licence conditions.

### Request for Reconsideration

3. The Applicant submitted his request for reconsideration on 18 October 2019 and supported it by his own written representations.
4. The Applicant contends that the decision was irrational and procedurally unfair on substantially the following grounds:
  - a. Not all the facts were disclosed by the Offender Manager who had attended the hearing in place of his usual Offender Manager (who was off ill);
  - b. His solicitor representative failed to ask the questions the Applicant requested him to ask at the oral hearing.
5. The apparent failings at the hearing were failures to adduce the fact that, according to the Applicant, he had been compliant with the robust management plan in place having received final warnings before his recall and that his previous misconduct had been fully understood following discussions with his Key Worker who, and which discussions, were not mentioned at the hearing. In particular, he maintains he had stopped his alcohol misuse and was progressing for which, implicitly, he says he did not get sufficient credit.
6. The Applicant also made a number of criticisms of the panel's decision particularly in concluding that he did not understand the link between his alcohol misuse and risk to the public which he felt was unfair.



7. The Secretary of State has offered no representations in response.

### Current parole review

8. The panel, consisting of three independent members, had a dossier of 288 pages including two sets of written representations from the Applicant who was represented by his solicitor at the hearing. The panel heard evidence from the Applicant's Offender Supervisor, the stand in Offender Manager, a Substance Misuse Worker, and from the Applicant himself. The Secretary of State was not represented and submitted no view.

### The Relevant Law

9. 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.

10. 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.

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 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.

12. Procedural unfairness essentially means there must have been some procedural impropriety or unfairness resulting in the proceedings being fundamentally flawed and therefore, producing a manifestly unfair, flawed or unjust result. Obvious examples are failure to take into account matters which the panel ought to have taken into account or taking into account matters they ought not.

13. This does not mean that every single minor detail if omitted or mentioned (as the case may be) will render the proceedings procedurally unfair. It is a matter of degree. It must be something which if mentioned, or if omitted (again, as the case may be) is so significant as to render the decision flawed or manifestly unfair leading effectively to an irrational result or actual or perceived injustice.



## Discussion

14. The panel, of course, in considering the Applicant's case, will not just look at his most recent conduct but will have to reach a fair and balanced decision having regard to the totality of the evidence, not only to his present but also his past conduct in assessing the risk to the public.
15. Although it is fair to say that the Applicant's Key Worker did not give evidence at the hearing it is plain from the carefully written decision letter that the Applicant's representations regarding his improved conduct after recall were fully taken into account, in particular his evidence that he had been progressing well.
16. The panel also noted, however, that they felt that the Applicant had no real insight into why alcohol was considered a risk for the Applicant. The panel carefully noted the Applicant's own evidence and representations given to them (including the matters touched on in his application for reconsideration above-mentioned) which they had to balance against the recommendations (which they plainly accepted) of both the Offender Manager and Offender Supervisor that the Applicant should remain in custody to undergo further work, but could be tested in open conditions whilst developing his release plan and gradually becoming more familiar with the outside world.
17. At the end of the day, the panel heard the evidence (including that of the Applicant), had the dossier, and it was up to them to decide having seen and heard the witnesses which evidence they preferred and decided to accept. The conclusions reached in the decision letter were fair, balanced, rational and reasonable, and justified on that evidence. I cannot see that the absence of evidence from the Key Worker or any mention of her, questions about her and the substitution of an Offender Manager for the one who was ill made any difference to the result. All the Applicant's points were considered by and reflected in the decision letter. An attempt to re-argue the hearing is not a basis for reconsideration.
18. Given the very detailed as well as balanced reasons and conclusions set out in the decision letter it is therefore impossible to say the decision was irrational. Given, too, that all his points seem to have been put to the panel and taken into consideration by them I cannot perceive there was any procedural unfairness resulting in an irrational or manifestly unjust result.

## Decision

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

HH Roger Kaye QC  
6 November 2019



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