

[2019] PBRA 54

Application for Reconsideration by Astley

Application:

1. This is an application by Astley (the Applicant) for reconsideration of the decision of the Parole Board dated 12th October 2019 not to direct his release or recommend his transfer to open conditions.
2. In reaching my decision I have considered the decision letter, the dossier and the representations made in support of the application by the Applicant's legal representative. The Secretary of State has made no representations in response to the application.

Background:

3. The Applicant was sentenced to an Imprisonment for Public Protection (IPP) with a minimum period to serve of 5 ½ years on 8th November 2011 for an offence of wounding with intent to cause grievous bodily harm. His tariff expired on 4th January 2017.
4. The Applicant applies for reconsideration on the ground that the decision was procedurally unfair, in that the panel took into account matters that they were not entitled to take into account, and that they reached factual conclusions on matters which had not been proved.

Current Parole Review:

5. The Secretary of State referred the Applicant's case to the Parole Board to consider whether it was appropriate to direct the Applicant's release. If not, the panel was invited to advise the Secretary of State on whether he should be transferred to open conditions.
6. At the oral hearing on 10th October 2019 the panel heard evidence from the Applicant, the Offender Supervisor and the Offender Manager. The Offender Supervisor supported the application for release, the Offender Manager did not recommend release.

The Relevant Law:

7. Rules 25 and 28 of the Parole Board Rules 2019 apply to this case.
8. 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



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is procedurally unfair. This is an eligible case. The provisions of Rules 25 and 28 confine reconsideration to decisions whether to release or not. There is no power to make an order for reconsideration of a decision whether to recommend transfer to open conditions.

9. It is not suggested that the decision of the panel was irrational but it is suggested that it was procedurally unfair. The test I have to apply is whether the panel failed to act with procedural fairness to the Applicant. That assessment is for me to make.

Discussion:

10. The first complaint of procedural unfairness is that the panel 'discussed an allegation where it was alleged that the Applicant had assaulted a child'. The Applicant complains that this allegation was never proven and has been removed from the record in his family court proceedings. I have considered his complaint and what the panel said about the alleged assault. The Parole Board is entitled to consider and take into account unproven allegations (**see R(on the application of DSD and others -v- the Parole Board 2018 EWHC 694(Admin))**). It is clear from the decision letter that having asked the Applicant about the allegation they disregarded it.
11. The second complaint is that the Offender Supervisor was unable to remember responses given by the Applicant in discussions that they had had when giving evidence. This would not render the proceedings unfair, unhelpful as it may have been. Even if the matter were reconsidered it is unlikely that he would now be able to remember. In any event the Offender Supervisor supported the Applicant's request for a direction to release.
12. The third complaint is that it was unfair for the panel to conclude that there was evidence that the Applicant may have used drugs since April 2019, which is the last time he admitted to using drugs. In my judgment there was evidence from which the panel were entitled to reach that conclusion. It came from an assessment of the Applicant's evidence, his behaviour in custody and the evidence of the Offender Manager.
13. The final complaint is that it was unfair for the panel to conclude that it was not satisfied that all core reduction work had been completed in relation to the Applicant's violent attitudes and beliefs, in the light of the work that he had completed. In my judgment, on the evidence the panel had relating to the Applicant's recent behaviour in custody, they were perfectly entitled to conclude that more work was required.

Decision:

14. In my judgment there is no basis for suggesting that the hearing was procedurally unfair and accordingly the application for reconsideration is refused.

John Saunders
6 November 2019



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