[2019] PBRA 56

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Application for Reconsideration by Willard

Application

1. This is an application by Willard (the Applicant) for reconsideration of a decision of a Parole Board Panel, following a hearing on 1 October 2019, not to direct his release from custody nor to recommend a transfer to open conditions.

2. I have considered the application on the papers. These comprise of the dossier, the provisional decision of the panel dated 8 October 2019, the application for reconsideration dated 19 October 2019, and the response of the Secretary of State dated 1 November 2019.

3. 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 is (a) irrational and/or (b) that it is procedurally unfair.

Background

4. On 2 May 2008, the Applicant was sentenced to Imprisonment for Public Protection (IPP) with a minimum period to serve of 7 years and 50 days (the tariff) before he was eligible to apply for parole, having been convicted at trial, of arson (incorporating arson with intent to endanger life, reckless arson and manslaughter. That minimum period expired on 22 June 2015.

5. Following Parole Board reviews, the Applicant was transferred to open conditions in 2015 and 2017, but returned to closed conditions: on the first occasion for making threats to kill whilst on temporary licence and the second, having failed to disclose regular meetings, at a work placement, with a vulnerable female.

Request for Reconsideration

6. The application for reconsideration, made by the Applicant in person, consists of a 9 page handwritten document incorporating a detailed "Relapse Prevention Plan." 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. That the Applicant had not been supplied with a copy of the dossier prior to the hearing.
b. That the preparation of the Release Management Plan (RMP), considered by the Panel not to provide the necessary level of support for the Applicant, was the

"whole responsibility" of the Offender Manager who should have provided a suitable RMP.

c. That the Applicant's Relapse Prevention Plan had been forwarded by him to an earlier Offender Supervisor and not included in the dossier and the dossier did not include a full list of employment and behaviour courses.
d. That the Applicant's Offender Manager had failed to provide him with the psychological support, considered by the Panel to be necessary.
e. That the Applicant's Offender Manager and Offender Supervisor, had failed to clarify and arrange appropriate courses for progression, resulting in continuing delay.
f. That the positive aspects, found by the Panel to be in the Applicant's favour, when combined with post decision information that transfer to a prison which provided a regime designed and supported by psychologists to help people recognise and deal with their problems, was not appropriate, justified a reconsideration.

7. The Secretary of State indicated that he did not wish to make submissions specifically on the application but provided factual responses in relation to the Applicant's claim that he had not had sight of the dossier prior to the hearing and of his claims of failures to incorporate his own relapse plan and information as to courses.

Current parole review

8. The Secretary of State referred the Applicant's case to the Parole Board in July 2018. It was originally listed for 20 June 2019 but deferred. This was the 5th Parole Board Review.

9. At the hearing on 1 October 2019, the Applicant was assisted by a Legal Representative and an application was made for release. The application was supported in evidence by an Independent Psychologist instructed by your Solicitors, but both your Offender Manager and Offender Supervisor both advised that further work was necessary before you should progress. Additional factual evidence was given by a representative of a "not for profit organisation" specialising in projects relating to rehabilitation and resettlement which had done work with the Applicant in prison and could provide support were he to be released. The Applicant, himself, had accepted, in previous reviews, his responsibility for the index offences and spoke to the Panel of his frustration in relation to the long delay in attending a prison regime designed and supported by psychologists to help people recognise and deal with their problems and suggested that because of this failure to progress and because of benefits gained from counselling, he felt ready for release. The Panel recorded detailed information given by him as to his plans after release, including potential family contacts, employment qualifications and employment plans. It also recorded his acknowledgment of practical difficulties which he would face on release.

10. In its decision, the Panel found that the Applicant continued to pose a high risk of serious harm and that there were not many protective factors in place. It found that his previous failures in open conditions had evidenced the need for him to learn to manage his relationships with others and to manage his

emotions. Despite the work undertaken by him to address his offending behaviour and despite positive matters listed in his favour, he had been unable, since return to closed conditions, to cope with the stress of complications relating to his potential progression, particularly to a prison regime designed and supported by psychologists to help people recognise and deal with their problems and had been unable to work consistently with those responsible for his supervision. It concluded that further work was required to strengthen his problem solving and coping abilities, and for the RMP to provide appropriate support on release.

The Relevant Law

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

<u>Irrationality:</u>

13. In my judgment, the decision 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. In dealing with release and transfer to open conditions, it placed emphasis on the undisputed fact that potential progression opportunities had not yet been implemented, that the Applicant continued to have problems in working with those responsible for his supervision, that the proposed RMP did not meet, even, the level of support outlined by the Independent Psychologist as necessary

for his safe release and, that the Applicant was unwilling to carry out core risk offending behaviour work in closed conditions.

14. I further 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. In particular, the RMP, which is the responsibility of the Offender Manager and is to be implemented only in the event that release is directed by the Panel, was properly drafted to outline such measures as could then be put in place and not to meet a hypothetical ideal scenario. Similarly, the Panel can consider only the current situation and its effect upon risk. It is not part of the Panel's duty to adjudicate on any alleged professional failures on the part of the Offender Managers or Offender Supervisors.

Procedural unfairness:

15. I find that no valid complaint can be made as to failure to include the Applicant's detailed Release and Prevention Plan in the dossier. The Applicant was legally represented at the hearing; no objection was raised as to the sufficiency of the dossier information or as to any failure to produce it to him in time for his case to be properly put and, he gave detailed evidence as to both his plans and potential problems on release.

Decision

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

Edward Slinger
11 November 2019