

[2019] PBRA 61

Application for Reconsideration by Hibberd

Application

1. This is an application by Hibberd (the Applicant) for reconsideration of a decision by a Parole Board panel not to direct his release.
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 that the decision is (a) irrational or that it is (b) procedurally unfair.

Background

3. The Applicant is now 22. In October 2016 he was sentenced to an extended sentence of 12 years made up of a custodial period of 4 years and an extended licence of 8 years. His conditional release date is in June 2020.
4. On 28 October 2019 a panel considered the Applicant's case at an oral hearing. It declined to order his release.

Request for reconsideration

5. The application for reconsideration is dated 12 November 2019. The grounds allege in summary:
 - (a) That the panel placed undue weight on the fact that the Applicant, through no fault of his own, had not completed a particular course whilst in prison.
 - (b) That the panel's finding that the Applicant was not "*remorseful, insightful or reflective*" was irrational.
 - (c) That the panel's finding that the Applicant's parents' attitude to his conviction and the victim of his offending reduced their value as "*protective factors*" was irrational.

The relevant law

6. 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.

Discussion

7. Ground (a) Both the Offender Supervisor and the Offender Manager had recommended that the Applicant not be released until his risk had been reduced by successful completion of the course. While it was a matter of regret that the prison had not yet been able to provide this course, the panel was obliged to assess the (admittedly high) risk of serious harm to children posed by the Applicant at the time of the hearing and whether it could be safely managed in the community. To follow the recommendations of the professionals directly concerned with the Applicant's case cannot be characterised as irrational.
8. Ground (b) The panel came to the conclusion complained of after hearing the Applicant in person. The assessment of the presentation of a witness at a hearing is a matter exclusively for the panel. A bare assertion to the contrary cannot make the panel's conclusion irrational.
9. Ground (c) The panel's summary of the evidence from the Offender Manager and the Applicant concerning his parents' attitude to his offences is not challenged as inaccurate. The fact that his parents had attended his trial is no indication of their attitude to his offences or, in particular, to the victim.

Decision

10. It is impossible to characterise the reasoning and conclusions of the Decision Letter as 'irrational' within the definition set out above. Accordingly, the application for reconsideration is refused.

Sir David Calvert-Smith
19 November 2019

