

Application for Reconsideration by Arshad

Application

1. This is an application by Arshad (the Applicant) for reconsideration of a decision not to direct his release following an oral hearing on 24 October 2019.

Background

2. The Applicant is serving an Extended Determinate Sentence (EDS). The custodial period is 7 years and the extension period is 5 years. His conditional release date is on 18 January 2022. The sentence was passed on 26 June 2017 for three offences of attempted robbery, one offence of robbery and one offence of theft.

Request for Reconsideration

3. The application for reconsideration is dated 14 November 2019.

Current parole review

4. In December 2018 the Secretary of State referred the Applicant's case to the Parole Board for his first review. The Board were asked to consider whether or not it would be appropriate to direct the Applicant's release.

The Relevant Law

5. 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.
6. 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.
7. 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.

Discussion

8. The submission made on behalf of the Applicant is set out at paragraph 7 of the representations thus: *"We submit that the Parole Board's decision is both flawed and they have fettered their discretion on the basis that the decision to which the panel considering this case has come to is irrational on the basis of the evidence [to] which was put before them"*.
9. Complaint is made that there was no psychologist member on the Panel, that no psychological assessment as to further risk reduction work was obtained, that the Panel should have adjourned the hearing for a full psychological risk assessment and, that the Panel ought not to have concluded that further core risk reduction work is necessary *"when they are not trained to do so"*. They should have obtained relevant information from a psychologist, thus equipping them properly to make their decision.
10. These alleged failures are submitted to amount to procedural unfairness. Whilst it is not expressly asserted, it is to be inferred that it is also submitted that a decision made by a panel on inadequate information is also to be regarded as irrational.
11. This submission is ill-founded.
12. The question of whether a psychological risk assessment was necessary in this case was expressly considered at the hearing. The Decision Letter records that the Offender Manager and the Offender Supervisor did not consider it necessary to obtain one, a view with which the Panel agreed. Other than references to some unusual behaviour on the part of the Applicant around the time of his sentence for the index offence there is nothing in the dossier to suggest that in present circumstances there was any necessity for psychological reports or for the Panel to have psychological input from a Specialist Member.
13. As to this the Panel acted rationally in that this was a decision which in all of the circumstances it was open to them to make. Where a panel makes a procedural decision which is rational, it is difficult to understand how making it can be regarded as procedurally unfair. It is also to be noted that it is not suggested, either in the Decision Letter or in the representations in support of this



Application, that at any stage the Applicant's representative invited the Panel to adjourn for this purpose. Even if she did, the Panel would have been entitled to reject the invitation, exercising their own judgment and/or accepting the informed views of the professionals.

14. The Applicant's representations make specific complaints about certain aspects of the decision. They appear to focus on two related topics, namely whether the Panel was justified in differing from the views of the Offender Manager and the Offender Supervisor, who favoured release, and whether it was appropriate for the Panel to make reference to uncompleted core treatment/therapy.
15. The Panel set out in considerable detail in the Decision Letter the evidence given to them by the Applicant. It is clear that, despite the Panel making due allowance for the stressful nature of the hearing, he did not make a good impression. For example, they found:
 - (a) that his evidence about the index offences lacked credibility;
 - (b) that he had not provided an active account of his offending;
 - (c) that he did not appear able to verbalise the skills and strategies he would use to remain drug and offence free if released;
 - (d) that he had used manipulative and instrumental behaviour to achieve objectives during his sentence, including deliberate misbehaviour to avoid recategorization and transfer;
 - (e) that he found it difficult to be open and honest about issues of concern, as to which the Panel noted that effective supervision and risk management relied upon him engaging positively and being able to be open and honest with those charged with the protection of the public;
 - (f) that he had difficulty in verbalising occasions when he has successfully used the skills and strategies he said he had learned from a training course addressing the tendency to use violence.
16. The Panel balanced against that the evidence of the Offender Manager and the Offender Supervisor. They took account of the support given by both to the Applicant's release but also identified areas of concern. It was common ground that further work was necessary to manage the Applicant's risk. The Panel observed that the Offender Manager proposed to carry out One-to-One work with the Applicant in the community but also noted (and set this in direct quotation) that this was "*on the areas he is willing to address*". The Panel also set out the static and dynamic risk assessments, including a high/medium risk of harm to known adults and the public.
17. The Panel concluded that on all of the evidence it was premature to implement any risk management or release plan. Outstanding work remained to be completed and it was difficult to envisage a risk management plan that would be able to manage the Applicant's current risks. It noted the absence of any evidence of an internalised reduction in the risks posed by him and assessed that the risks would be unmanageable and imminent if the Applicant were to be released.



18. These conclusions were based on consideration of all of the evidence, written and oral, as well as the submissions made on behalf of the Applicant. It is not suggested that the Panel failed to take account of any relevant material nor that they took into account any irrelevant material. It was a matter for the Panel to make their own assessment of all of the evidence and to accord it the weight which they considered appropriate. They were entitled to form their own impression, for example, of the likelihood that the Applicant, if released, would engage with his Offender Manager, would be open and honest with her and, more generally, would present a manageable risk. They were not bound to agree with the views of the Offender Manager or the Offender Supervisor. In the event, they did not and they set out with clarity their reasons for coming to a different view. The approach which they took to their consideration of the issues before them and the decision which they reached cannot, in those circumstances, be characterised as irrational.
19. The complaint that they should not have taken account of uncompleted core re-offending work appears to lose any significance in the light of the evidence of the Offender Manager on this topic to the effect that work did indeed remain to be done. The issue was not whether work needed to be done, it was whether it should be done in the community or would have to be done in custody if the decision of the Panel was that the release test was not met.

Decision

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

Alistair McCreath
05 December 2019

