

Application for Reconsideration by Diddier

Application

1. This is an application by Diddier (the Applicant) for reconsideration of a decision by a Parole Board panel not to direct his release dated 27th November 2019.
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 irrational (a) and/or that it is procedurally unfair (b).

Background

3. The Applicant is now 57. In 2011 he was sentenced to an extended sentence of 12 years 6 months made up of a custodial period of 2 years 6 months and an extended licence of 10 years.
4. On 19th 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 is dated 27th November 2019. The grounds allege in summary;
 - a. That the panel failed to consider the circumstances of the Applicant's recall properly. Had it done so it must have concluded that the recall was not justified. That should have resulted in the panel directing his release whatever the matters which might otherwise have justified a decision not to do so;
 - b. That in any event the reasons put forward in support of the recall had nothing to do with the risk of serious harm posed by the Applicant whether from sexual or from violent offending;
 - c. That the panel fell into error when concluding that the last time the Applicant had been the subject of an adjudication had been 6 months earlier;
 - d. That the panel fell into error when drawing an adverse conclusion to the Applicant from the fact that the Applicant had said that he "couldn't give a monkeys about being released";



- e. That the panel placed insufficient weight on the fact that the last offending prior to the index offences had been in 1992;
- f. That – first - there was no justification, for the panel’s reliance on the fact that the Applicant is an “untreated sexual offender”, and – second - that in any event one of the courses for which he might yet be assessed as suitable can be accessed in the community;
- g. That there was no properly formulated release plan; and
- h. That the grounds taken together should result in a finding that the decision was both irrational and procedurally unfair and should be reconsidered.

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**.
7. 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.
8. The Grounds submitted in support of the application refer in addition to **R (J) v the Parole Board [2010] EWHC 919** and **R(ex parte Wells) v Parole Board 2019 EWHC 2710** and the test set out at paragraph 32 of that decision.

Discussion

9. Ground a. The recall was in October 2013. The circumstances of the recall had already been considered by the Board in 2015 and 2017 and had not been made the subject of an appeal by way of judicial review. There is nothing in this ground. The panel’s duty was to consider the risk currently posed by the Applicant.
10. Ground b. Although true this fact has no obvious relevance to the duty to assess risk at the time of the hearing.
11. Ground c. The dossier was replete with accounts of aggressive behaviour by the Applicant, e.g. the Offender Supervisor’s Report of 8th November. The panel was



entitled to conclude that the Applicant still posed a significant risk of serious harm to members of the public.

12. Ground d. The Applicant's remark, however it was meant, was not a relevant factor in the decision whether to direct release. It is clear that the Panel based its conclusion on the overall risk which the Applicant posed, both because of his refusal to cooperate with efforts to reduce the risk of sexual offending and his truculent and aggressive attitude to those with whom he disagrees, which, in view of his previous criminal record for violence/threatening behaviour, justified the decision.
13. Ground e. Although the previous sexual offence conviction is now 27 years old, the circumstances of the index offence in 2011 were sufficiently serious to justify the concern of the sentencing judge and the prison and probation services.
14. Ground f(i). On the contrary there was every justification for the finding. Evidence can be found at pp77, 110, 178, 191, 196, 322, 566 of the dossier.
15. Ground f(ii). The Applicant has not displayed a willingness to cooperate with such a programme whether in custody or in the community. A condition on release which required his compliance with such a condition would undoubtedly lead to his recall.
16. Ground g. There was no available accommodation to deal with the risk posed by the Applicant. A key element of any release plan would be a condition that he cooperate with courses designed to reduce his risks. Unfortunately he has shown no sign of being prepared to do so, preferring if necessary – hence no doubt the remark referred to above at paragraph 12-to await his SED in 2023. The Applicant's attitude as evidenced in the dossier and described in the Decision Letter meant that the Panel's decision that an effective release management plan was not a feasible option was 'rational'.

Decision

17. It is therefore impossible to characterise the decision letter, its reasoning and conclusions as 'irrational' or 'procedurally unfair' within the definitions set out above. Accordingly, the application for reconsideration is refused.

Sir David Calvert-Smith
9th December 2019

