

Application for Reconsideration by Hickinbottom

Introduction

1. This is an application by an indeterminate sentence prisoner, Mr Hickinbottom ("the Applicant"), for reconsideration of the decision of a panel of the Board which, after an oral hearing, did not direct his release on licence and did not recommend a transfer to open conditions.
2. The case has been reviewed by a Reconsideration Assessment Panel ("RAP") which has considered the following material:
 - Dossier containing 368 numbered pages;
 - Decision of the Oral Hearing Panel ("OHP") dated 2 November 2019;
 - Handwritten representations by the Applicant himself dated 11 November 2019;
 - E-mail from the Applicant's solicitors dated 26 November 2019 enclosing his handwritten representations;
 - E-mail from the Secretary of State dated 4 December 2019 stating that they offer no representations in response to the application.

Background

3. The Applicant is aged 38. He has an extensive criminal record, and is currently serving a sentence of Imprisonment for Public Protection ("IPP"). This sentence was imposed on 8 December 2010 for possession of a sawn-off shotgun with intent to cause fear of violence. His tariff was set at 4 years and 6 months and expired on 8 June 2015.
4. Whilst serving this sentence the Applicant has received a further determinate sentence of 7 years and 2 months for his part in a conspiracy to bring drugs and mobile phones into prison. His earliest release date from that sentence is 14 July 2021. He cannot therefore be released on licence from his IPP sentence before that date.
5. His case was referred by the Secretary of State to the Board in October 2018. MCA directions issued on 4 April 2019 directed an oral hearing, which was conducted by the OHP on 23 September 2019. The Applicant was legally represented, and it was agreed that - as he was not eligible for re-release on licence - the only issue for the OHP to decide was whether it should recommend a transfer to open conditions. The dossier at the time of the hearing contained 282 numbered pages.



6. The panel adjourned the case for more evidence to be obtained, and on 7 October 2019 adjournment directions were issued. The panel members required further time to discuss their decision, and it was not until 2 November 2019 that they finalised it. The decision was issued to the parties on 5 November 2019 and was first seen by the Applicant on the following day.
7. By the time the decision was finalised and issued the dossier ran to 368 pages. The Applicant says that he had not been provided with copies of the additional pages which had been added since the hearing (most of which consisted of an updated assessment of risks and their origin).

The Relevant Law

8. The principles relating to reconsideration of decisions are to be found in Rule 28 of the Parole Board Rules 2019. The only two grounds for reconsideration under that rule are (a) that the decision was irrational and/or (b) that it was procedurally unfair.
9. Under Rule 28(1) the only decisions which are eligible for reconsideration are those which relate to a prisoner's suitability for release on licence. The OHP's decision not to recommend transfer to open conditions is therefore not eligible for reconsideration.

The Applicant's Representations

10. The Applicant's representations are well presented, and he is to be complimented on them. He makes a complaint of procedural unfairness, namely that some of the evidence considered by the OHP was not disclosed to him (see above).
11. He also makes a number of complaints about the decision itself which he submits was irrational.

Discussion

12. There is not, nor could there be, any basis for reconsideration of the OHP's decision not to direct release on licence. The Applicant was not seeking such a direction, which the OHP could not have made as he is not eligible for release on licence.
13. Since the decision not to recommend a transfer to open conditions is not eligible for reconsideration, it is unnecessary to discuss the merits of the Applicant's complaints of procedural unfairness and irrationality.
14. The Reconsideration Assessment Panel has no reason to question the Applicant's statement that he had not seen the additional pages provided to the panel after the hearing. Assuming that to be correct, there was clearly a regrettable failure on somebody's part, but is worth pointing out that the OHP's decision would clearly have been exactly the same if that failure had not occurred. Whilst regrettable, therefore, the failure would not have afforded a basis for reconsideration if the decision not to recommend a transfer to open conditions had been eligible.



Decision

15. For the reasons set out above the decision about which the Applicant complains is not eligible for reconsideration, and his application must therefore be refused.

Jeremy Roberts
10 December 2019



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