

[2020] PBRA 12

Application for Reconsideration by Williamson

Application

1. This is an application by Williamson (the Applicant) for reconsideration of a decision by a Panel of the Parole Board dated 25 November 2019 not to direct his release. The decision is challenged on the basis that it was both irrational and procedurally unfair.
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 (b) procedurally unfair.

Background

3. On 19 June 2015, the Applicant received an extended sentence, comprising a four-year custodial term and an extended licence period of six years, for the sexual assault of a child under 13 and making indecent photographs of a child. He had touched the genitals of his daughter, when she was asleep, and taken indecent images for uploading to the internet as a means of gaining access to pornographic material on the dark web.
4. At the time of the index offences, the Applicant was married with two children, one of whom was his victim. He had previous convictions namely, in 2000 for using his computer to access indecent images of children for which he was fined, and in 2005 for downloading indecent images of children for which he was sentenced to 12 months imprisonment with an extended licence period of 2 years.
5. In June 2017, the Applicant was sentenced to a term of 3 years' imprisonment for fraud by way of misrepresentation. That had the effect of putting back the potential release dates under the extended sentence.
6. The Applicant's Parole Eligibility Date (PED) under the extended sentence was in November 2017. His conditional release date was 11 March 2019, and the sentence, together with any licence under it, will expire on 11 March 2025.
7. The Parole Board panel conducting his PED Review directed his release on licence by letter dated 17 December 2018. The Applicant was accordingly released on 24 January 2019 but was returned to custody following the revocation of his licence on 15 February 2019 for breach of the condition to be of good behaviour and not behaving in way which undermines the purpose of the licence period. The Applicant had failed to notify his Supervising Officer of his ownership of a device capable of making or storing digital images (a smart watch) and had attempted to



prevent inspection of his email account by the Designated Accommodation Manager. It was discovered that, in breach of the Safety Plan in place, he had sent an email to his wife and furthermore, calls from his personal phone number were being diverted to a number answered by her.

8. The Secretary of State duly referred the Applicant's case to the Parole Board to consider whether to direct his re-release. A Panel of the Board, comprising three independent members, conducted the review by way of an oral hearing on 6 November 2019 at which the Applicant gave evidence. He was not legally represented.
9. The case was adjourned for further information and submissions, and in due course the Panel decided not to direct the Applicant's release. Its reasons are set out in the Decision Letter dated 25 November 2019 (the Decision Letter).

Request for Reconsideration

10. The application for reconsideration is dated 11 December 2019 and has been submitted by Solicitors now instructed by the Applicant. It is made on the basis that the Panel's Decision not to release the Applicant was (a) procedurally unfair and (b) irrational.
11. In respect of (a) the Applicant submits that, following the conclusion of the hearing on 6 November 2019, an adjournment notice was issued by the Panel to allow concurrent proceedings in the Family Court to be concluded and for the Applicant then to provide further submissions. The Applicant argues that the Decision Letter was issued before the Family Court Proceedings were concluded and without him having had the opportunity to provide further submissions.
12. In respect of (b), the Applicant submits that paperwork relating to work he had undertaken to reduce his risk had not been added to the dossier. This submission is supplemented by written representations by the Applicant himself dated 2 December 2019 in which he provides an explanation for purchasing the smart watch, passwords for his email accounts, the sending of the email to his wife, the number diverted to her, and the reason for asking his Offender Supervisor prior to the Hearing for permission to call her.
13. The purchase of the smart watch was also in breach of the Sexual Harm Prevention Order imposed by the sentencing judge. The Applicant was duly convicted of this breach and sentenced in the Magistrates' Court to a concurrent term of 17 weeks' imprisonment which has now expired.

Current parole review

14. The Decision Letter records the fact that the Panel considered a dossier of 224 pages. The documents in it included: an assessment of the Applicant's risks by a Prison Psychologist (the Psychologist) dated 11 July 2019 which was the last document in the dossier; a Release and Risk Management Report from the Applicant's Offender Manager dated 6 June 2019; and a Report from his Offender Supervisor dated 7 October 2019. It also contained the Decision Letter dated 17



December 2018 by a previous Parole Board panel which directed the Applicant's release.

15. The Psychologist referred to completion by the Applicant of the training course addressing sex offending during his 2005 sentence, and completion prior to release under the extended sentence of both the training course addressing decision making and better ways of thinking and another training course addressing sex offending. A post-programme Psychological Risk Assessment dated 17 July 2017 had suggested that the Applicant had no outstanding treatment needs in relation to his emotional management and that he had strategies in place for managing unhealthy sexual thoughts and unhelpful ways of thinking.
16. In her report, the Psychologist considered the perpetuating and protective factors relating to risks as well as the static risk assessments. She concluded that the Applicant's risk was at a level that is manageable in the community. At the hearing, she confirmed both her opinion that no further core risk reduction work was necessary and her belief that the proposed Risk Management Plan was adequate to manage the Applicant's risks.
17. The Risk Management Plan put forward by the Offender Manager involved residence initially at Designated Accommodation and the imposition of stringent revised licence conditions. These were designed to minimise and control the risk of contact with his victim and other children under the age of 18, access to the internet and possession of mobile phones, SIM Cards and camera devices. In addition, the Applicant would be required to comply with polygraph testing, electronic tagging and trail monitoring. A designated accommodation place had been secured for a period of 12 weeks and any subsequent accommodation would have to be sanctioned by the Applicant's Supervising Officer.
18. In her report, the Offender Manager expressed support for the Applicant's re-release. She commented that the Applicant appeared to understand the reasons for his recall and to accept responsibility for the behaviour which led to it. She drew attention to the fact that, whilst the Applicant breached the terms of his Sexual Harm Prevention Order, there was no evidence of any attempted contact with his victim or any other child.
19. By the time of his report, the Applicant's Offender Supervisor had met with him on two occasions since being allocated to that position in August 2019. However, he already had a working knowledge of the Applicant from the 6-month period prior to the original release. He recalled the Applicant being extremely confident at that time about his ability to comply with licence conditions. The Applicant's focus had been on resolving the financial difficulties of his wife and their joint business.
20. The Offender Supervisor drew attention to the fact that in prison following his recall, the Applicant had tested boundaries in respect of restrictions placed on his communications. However, there was no evidence that he had been in breach. In his report, he expressed tentative support for the Applicant's re-release, based on the proposed robust risk management plan. According to the Decision Letter, that opinion was repeated at the hearing.



21. The latest assessment of risks and their origin report dated 6 June 2019 assessed the Applicant as presenting a low risk of re-offending. The risk of serious harm to the general public in the event of any re-offending was assessed as low, but to children the assessment of serious harm was high. Those assessments were agreed by the Panel.
22. The Applicant did not challenge the appropriateness of the recall either at the hearing or in his current submissions. He gave a detailed explanation of the circumstance of the index offence. He also explained how he had come to breach the licence conditions which he put down to a combination of mistake and overconfidence. He accepted that the proposed licence conditions were fair, that he had previously pushed boundaries and that he now needed to take a different perspective. It was not clear to the Panel to what extent this represented a change in outlook since his original release.
23. The Panel was not persuaded that the proposed licence conditions, notwithstanding the number and range of them, would be effective in managing the Applicant's risk. The Decision Letter concluded that it was not clear that he had developed the insight and internal controls to avoid breaching the licence conditions in order to pursue his business interests, and to have contact with his family despite the potential impact on his victim. The Panel was not satisfied that there was evidence of a change in approach since recall which would support a conclusion that the Applicant would comply.

The Relevant Law

24. 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 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.

Discussion

25. During the hearing on 6 November 2019 it came to light that proceedings in the Family Court relating to the victim were scheduled to take place between 11 and 15 November 2019. Those proceedings would undoubtedly include consideration of an up to date Safety Plan. On 15 November 2019, the Panel Chair issued Directions confirming an adjournment. The Notice states that, as the outcome of



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the Family Court Proceedings was germane to the Panel's decision making, this would be awaited before the Panel concluded whether to direct the Applicant's release.

26. The Offender Manager was directed to provide, by 21 November 2019, an update outlining the decision of the Family Court and commenting on the implications for risk. Additional submissions were invited by 28 November 2019. The Notice confirmed that the Panel would conclude the case on the papers.
27. The Decision Letter refers to an email from the Solicitors acting for the Applicant in the Family Court Proceedings received on 20 November 2019 confirming that those proceedings had been adjourned to await the Parole Board's Decision. That email has been provided to me and I do not know whether it was provided to the Applicant. However, as he was represented in the Family Court, he will have been aware of the position himself.
28. The Report from the Offender Manager consists of a short email dated 18 November 2019, comprising 7 lines, which states that the Family Court Judge had adjourned the case before him to 26 November 2019 in order to review the evidence. The Offender Manager stated that "*the recommendations of the Board in relation to the Applicant's possible release are a significant piece of information in the decision making of the Family Court and if the Parole Board have not made a decision by 26/11/19 it is possible that the Judge will adjourn again*". The Offender Manager commented that it would appear that both the Court and the Board were awaiting the decision of the other.
29. The final document in the updated dossier which immediately follows the Offender Manager's email runs from Page 233 to Page 250. It comprises written representations from the Applicant headed August to October 2019 "THE GOOD LIVES MODEL – PERSONAL OVERVIEW." He describes in detail his understanding of how the Model applies to him as a strength-based approach to rehabilitation which helps people to develop life plans that are not compatible with offending. It addresses issues of risk, insight and compliance. It was not in the original dossier and is not referred to at all in the Decision Letter which was dated 25 November 2019, 3 days before the deadline for representations.
30. If the representations had been received before the date of the decision they should have been considered and referred to in it. If they had not been received, the Panel should have waited until the 28 November 2019 deadline before reaching a decision.
31. Furthermore, the Offender Manager's Report, brief as it is, does not comply fully with the 15 November 2019 direction. Crucially, it fails to address the question posed about the impact of the Family Court decision on risk. The decision of that Court was to adjourn with no certainty as to when its proceedings would be concluded.
32. The Decision Letter demonstrates that the Panel expressly took into account, not only the written reports by the three professional witnesses, but also their oral evidence. The risks identified were set out in the Decision Letter. The fact that the Panel disagreed with the recommendations of two out of the three professional



witnesses does not, of itself, mean that the conclusion it reached about the Applicant's risk and its manageability in the community was irrational. A Panel is entitled to reach its own conclusion based on all the evidence read and heard. A view about an individual's insight, motivation and likelihood of compliance can be reached after hearing his oral evidence and putting it in context.

33. However, in this case the Panel failed to address the shortcomings in the Offender Manager's Report and did not take into account any further representations from the Applicant. It should have directed a further detailed report from the Offender Manager confirming the result of the Family Court Judge's review of the evidence, commenting on the implications for risk, confirming the Risk Management Plan and how it might address current risk, and stating her recommendation about the Applicant's release.

Decision

34. Applying the test as set out in case law I do not find that, on the basis of the evidence and submissions before the Panel when it issued the Decision Letter, the Panel's decision was irrational. However, it was procedurally unfair for the reasons set out in paragraph 33. A further oral hearing was not essential but the provision of further necessary material was. The application for reconsideration is therefore granted.

Directions

35. I make the following directions:

- (i) The Offender Manager shall, by 21 January 2020, provide an updated report: confirming the latest position under the Family Court Proceedings, including details of the current Safety Plan in force; commenting on the consequential implications for risk, setting out any revisions to the Applicant's Risk Management Plan and how it might address his current risk; and stating her recommendation about release.
- (ii) The material submitted by the Applicant with the Reconsideration Application dated 11 December 2019 is to be added to the dossier.
- (iii) Any further written representations by the Applicant must be provided by 7 February 2020.
- (iv) The review is to be further considered by the original Panel on the papers and a Decision issued 14 days after receiving all the relevant documents as above, absent special circumstances.
- (v) The Panel Chair may wish to add further directions of their own motion or on request by the Applicant.
- (vi) The Decision Letter dated 25 November 2019 be kept in the dossier; this reconsideration decision dated 6 January 2020 should be added to the dossier.

HH Judge Graham White
12 January 2020