[2020] PBRA 144

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Application for Reconsideration by the Secretary of State in the case of Causley

Application

1. This is an application by the Secretary of State (the Applicant) for reconsideration of a decision dated the 7 September 2020 following an oral hearing directing the release of Causley (the Respondent).

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 (a) that the decision is irrational and/or (b) that it is procedurally unfair.

3. I have considered the application on the papers. These are: the application for reconsideration; the decision letter; the dossier and representations opposing reconsideration made on behalf of the Respondent.

Background

4. In 1985 the Respondent murdered his wife. He was 42 at the time. He was convicted of the murder in 1996. That conviction was quashed in June 2003. The Respondent was convicted again on a re-trial in 2004. He was sentenced to Life Imprisonment with a minimum term of 16 years to run from the date of the first conviction. The minimum period ended in June 2012. The Respondent has now served in excess of 23 years in prison. He is 77 and in poor health.

Request for Reconsideration

5. The application for reconsideration is dated 29 September 2020.

6. The grounds for seeking reconsideration are that the decision to direct release was irrational because:
   (i) There was insufficient evidence on which the panel could conclude that the Respondent's risk had sufficiently reduced since the last Parole decision to meet the test for release; and
   (ii) The weight attached by the Panel to the points supportive of release are misplaced and/or have been applied inappropriately against the test for release.
7. I have re-worded the first ground of appeal to better reflect in my view what is being argued. It is not contended that the hearing was procedurally unfair.

Current parole review

8. This was the sixth Parole Board Review for the Respondent. Evidence was heard on 19 June 2020 and 25 August 2020.

9. The panel heard evidence from the Respondent, the Offender Manager (OM), Offender Supervisor (OS) and two psychologists; one instructed by the Secretary of State and one by the Respondent.

The Relevant Law

10. The panel correctly sets out in its decision letter the test for release and the issues to be addressed in making a recommendation to the Secretary of State for a progressive move to open conditions.

Parole Board Rules 2019

11. Under Rule 28(1) of the Parole Board Rules 2019 the only kind of decision which is eligible for reconsideration is a decision that the prisoner is or is not suitable for release on licence. Such a decision is eligible for reconsideration whether it is made by a paper panel (Rule 19(1)(a) or (b)) or by an oral hearing panel after an oral hearing (Rule 25(1)) or by an oral hearing panel which makes the decision on the papers (Rule 21(7)).

Irrationality

12. In **R (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."*

13. 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.

14. The application of this test has been confirmed in previous decisions on applications for reconsideration under rule 28: **Preston [2019] PBRA 1** and others.

15. In considering the amount of detail needed to be included in a decision letter, there has been guidance from the High Court. In **Oyston [2000] PLR 45**, at paragraph

47 Lord Bingham said: "*It seems to me generally desirable that the Board should identify in broad terms the matters judged by the Board as pointing towards and against a continuing risk of offending and the Board's reasons for striking the balance that it does. Needless to say, the letter should summarise the considerations which have in fact led to the final decision. It would be wrong to prescribe any standard form of Decision Letter and it would be wrong to require elaborate or impeccable standards of draftsmanship.*"

The reply on behalf of the Respondent

16. By letter dated 30 September 2020 the Respondent has set out detailed grounds of opposition to the application. The representations conclude by saying that *'the panel took a rational decision for a medium risk offender and the application submitted should be dismissed.'*

Discussion

17. At para 6 of his grounds the Applicant takes a partial quote from part of the decision letter of the 2018 panel which refers to the difficulty in doing risk reduction work because of the Respondent's denials and inconsistent accounts. The full passage includes, at the end of the sentence, a reference to the Respondent's reduction in risk due to his age and time served in custody. While continued denial of an offence and/or inconsistent accounts can make it more difficult to conclude that the relevant risk has been reduced as appropriate risk reduction work cannot be completed, it does not mean that a denier can never meet the test for release. That has been made clear on a number of occasions by the higher courts. It can be more difficult to identify what the triggers for an offence may have been which can make it difficult to ensure that relevant courses are undertaken. In this case there does not seem to have been much dispute as to what led up to the Respondent killing his wife even though no courses have been completed.

18. At para 7 the Applicant quotes a passage from the instant decision letter in which the panel speaks of the Respondent's '*continuing lack of remorse, insight and victim empathy*'. This relates to the failure of the Respondent to reveal where or how the body of his wife was disposed of. The conclusion of the panel is a proper one, but again the higher courts have made clear that while a failure to say where a body has been disposed of is an indication of callous behaviour, it is one of the factors to consider when deciding on release but not the only one. The panel indicated that they followed the Board's guidance as to this aspect of this case which the High Court has recently approved.

19. The panel clearly considered the possibility of the Respondent causing harm to his former partner, his daughter or grandson if released. It does not follow that because he has shown callousness to them by not disclosing the whereabouts of the body that he will cause them serious harm if released. The panel considered this, but in the light of their views of the evidence they heard as well as other factors they were satisfied it wasn't going to happen. They were entitled to reach that conclusion.

20. It is clear from the Respondent's submission that the question of the involvement of the media if the Respondent was released was discussed. If the Respondent is

correct and these submissions have not been discussed with the Applicant's representative at the hearing before they were submitted then in my view they should have been. It is however clear that the panel did discuss the role of the media (see paras 6 and 7 of the decision letter) and it would be surprising in any high profile case if the panel had not considered the possible effect of media intervention. Whether the Applicant is correct to interpret what the psychologist reported the Respondent saying in her report as '*enjoying media interest*' is more doubtful. That conclusion is not drawn by the psychologist which you would have expected her to do if that was her view. The panel quite rightly considered the problems which could be caused by the media on release but decided they could be coped with.

21. The panel did indicate matters which suggested to them a reduction of risk. The Respondent had 'consistently engaged' with his OM and OS. That was one of the matters which the last panel and the Applicant had suggested should be improved. He had engaged well with the new key worker scheme and was polite. He had suffered a heart attack which had required 3 stents to be fitted which the panel were entitled to consider was likely to reduce the risk of causing serious harm and he was now 77 year of age which again is capable of being a factor likely to reduce risk. It seems that the intervention suggested by the Applicant when turning down the recommendation to transfer the Respondent to open prison made after the last parole hearing was unsuitable and everyone is in agreement about that.

22. Further, and complaint is made of this in ground 2 of the application, the panel relied on the Respondent's continued compliance in custody as a factor supporting the suggestion that he would comply with supervision in the community. The panel was perfectly entitled to take that into account. Of course, the situation is different when on licence to being in custody but that does not mean it is irrelevant to the decision whether to release. Compliance and good behaviour in prison is a factor in support of compliance on licence, just as bad behaviour would be an indicator against it. The two psychologists disagreed as to the need for the Respondent to spend time in open. The prison psychologist was concerned that in the community the Respondent would not keep up a good and supportive relationship with the OM. The independent psychologist disagreed. While it used to be that it was unusual for a long term prisoner to be released straight into the community from a closed prison, it is now recognised that in a percentage of cases that gives a better chance of rehabilitation. It also can be very difficult for high profile prisoners to escape the attentions of the press in an open prison because other prisoners reveal their whereabouts in exchange for payment.

23. The panel having heard the evidence was quite entitled to prefer the view of the independent psychologist as to whether a period in open prison was required but the ultimate question for the panel was whether it was necessary for the protection of the public that he remained in custody. His risk was assessed as medium. All the witnesses agreed his risk was not imminent and there should be warning signs if that risk became imminent.

24. There was ample material on which the panel could reach its decision.

Decision

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

John Saunders
06 October 2020