

[2020] PBRA 39

## Application for Reconsideration by Laws

### Application

1. This is an application by Laws (the Applicant) for reconsideration of a decision of an oral hearing dated the 10 of February 2020 not to direct his release.
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 comprise of the dossier which was before the Oral Hearing Panel, the Decision Letter dated 23 February 2020 and the Application for Reconsideration, dated 4 March 2020.

### Background

4. The Applicant is serving an extended sentence with a custodial term of 4 years and an extension period of 2 years. The sentence was passed on 21 February 2017 (subsequently reviewed by the Court of Appeal (Criminal Division) on the 31 October 2017) for offences of attempted robbery and possession of an offensive weapon. His conditional release date is the 26 March 2021.

### Request for Reconsideration

5. The grounds for seeking a reconsideration are that the decision of the panel was irrational.
6. The particular basis of the application is that the panel did not apply the correct release test as demonstrated by an observation in the Decision Letter that the panel could not ignore the fact that the Applicant had "*continued to avoid the very obviously risk-related and offence-focussed work available to you, namely the Gateway Programme*". It is submitted that this is not a proper basis to found a decision not to direct release.

## Current Parole Review

7. The Applicant's case was referred to the Parole Board on 11 January 2019 to consider whether or not it would be appropriate to direct the prisoner's release.
8. The panel considered the dossier, took evidence from the Applicant and the professional witnesses and heard submissions from the Applicant's legal representative.

## The Relevant Law

9. The panel correctly set out the test for release in its decision letter dated 23 February 2020.

### *Parole Board Rules 2019*

10. 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*

11. 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."*

12. 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.

## The Reply on Behalf of the Secretary of State

13. The Secretary of State has submitted no representations in response to this application.



## Discussion

14. The Panel noted that the Applicant had an entrenched pattern of offending and a poor record of compliance with orders of the court in the community and that his prison behaviour reflected the same non-compliant attitude to rules and requirements. The ongoing nature of his non-compliance was demonstrated by multiple occasions on which illicit alcohol was found in his cell, the most recent of which was three days prior to the hearing.
15. The Decision Letter makes reference to a significant number of risk factors, many of which (including poor self-management and impulsivity) are greatly exacerbated by the use of alcohol or drugs. Negative peer influences, identified by the panel as a further risk factor, may have played a part in the Applicant's decision to allow his cell to be used for the storage of illicit alcohol.
16. The professionals who were supervising the Applicant from both inside and outside prison were agreed that drug abuse was an important factor in the Applicant's offending history. The Decision Letter records the views of both of them, respectively, as "*drug misuse is the enduring theme*" of the Applicant's life and that "*..all of [his] risk is related to drug misuse*".
17. The Decision Letter sets out the progress made by the Applicant in custody, recording his completion of courses to encourage victim awareness and to discourage confrontational violence as well as his engagement with the services available in prison to help and advise him in relation to substance abuse. He had reduced his prescribed methadone steadily over a period of time although he had lapsed recently by using a prohibited drug; he told the panel that this was an opportunistic event but also admitted that if offered an illicit drug by a fellow prisoner in the future it was likely that he would accept it.
18. The panel noted in the Decision Letter that the prison drugs service wanted the Applicant to undertake further drug focussed work. Such work was available in the form of programmes and courses relating to drug misuse. The Applicant had been offered a place on a unit within the prison where this work could be carried out but had declined to accept it, mainly because he did not want to move to another part of the prison for fear of reprisals over debts he had accumulated.
19. The panel had to assess whether the Applicant's risk could be managed within the community to the extent that it was no longer necessary for him to be confined for the protection of the public.
20. On the one hand, the panel had to give weight to the positive factors to which I have made reference, above. They also had to give careful consideration to the views of the professionals that his risk could be managed within the community so that his release, under proposed licence conditions, was appropriate.
21. On the other hand, there was evidence before the panel that the Applicant presented a high risk of serious harm to the public. It was agreed by the professionals that drug misuse was a central risk factor. No courses or programmes had been undertaken in custody to address that risk and the



Applicant, for whatever reason, had declined to engage in them. If the Applicant were released, this risk would have to be addressed by such programmes and courses in the community. This could only be effective if the Applicant were to engage with them and to apply the skills and lessons provided by them.

22. It is in this context that the basis of this application falls to be considered.

23. The Application quotes a part of a single sentence in the Decision Letter: *"...the panel cannot ignore the fact that you have continued to avoid the very obviously risk-related and offence-focused work available to you, namely the [programme available in the prison]"*.

24. This quotation needs to be read in conjunction with the sentence which immediately follows and thus gives context to it: *"Undertaking that work would have demonstrated greater commitment to changing your life around and enhanced your skills and insights required for a drug-free future"*.

25. The Application goes on to submit that the fact that the Applicant did not undertake this work is not a basis upon which to found a decision that he should not be released. It is submitted that this on its own does not increase his risk.

26. It is difficult to fault the submission that his risk did not increase by reason of his failure to undertake this work. The question for the panel, however, was not what his risk was but whether the panel could be satisfied that the risk could be managed within the community. There appears to have been no issue as to the high risk presented by the Applicant.

27. One of the important matters for the panel to consider was the extent to which they were able to rely on predictions made by the professionals and assertions made by the Applicant that if released the Applicant would comply with risk reduction work in relation to substance abuse. The fact that he had declined to undertake work in relation to this within the prison and the reason given by him for so declining (which was ultimately the result of his own imprudent behaviour) were matters which the panel was entitled to weigh in the balance in making its determination on that question. This approach cannot be properly regarded as irrational. The panel also noted evidence, as set out above, of a poor record of compliance in the community and examples of non-compliant conduct in custody.

28. The panel found that these factors did not *"..augur well for your ability to respond appropriately to temptation and negative peer influences in the community or to co-operate reliably with parole licence conditions"*.

29. This determination was clearly based on a balanced and rational assessment of the evidence before the panel.

30. The Application for Reconsideration is essentially founded on a partial and un-contextualised quotation from the Decision Letter. A full and careful reading of the Decision Letter as a whole shows that the approach of the panel and the decision reached by it were properly open to it and were not irrational.



## Decision

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

**Alistair McCreath**  
**19 March 2020**