

[2021] PBRA 22

Application for Reconsideration by Williams

Application

1. This is an application by Williams (the Applicant) for reconsideration of a decision by a Parole Board Panel to conclude his case on the papers by way of a Decision, dated 31 December 2020, refusing to direct his release but to recommend that he be transferred to open conditions.
2. The review was listed for oral hearing on 26 October 2020 but was concluded on the papers, on the application of the Applicant's Legal Representative (LR) made on that day and confirmed in written legal submissions dated 15 November 2020.
3. I have considered this application on the papers. These comprise of the dossier containing 1431 pages, the detailed written legal submissions dated 15 November 2020 consisting of 10 pages of closely argued submissions, the provisional decision of the Panel dated 31 December 2020, and the application for reconsideration.

Background

4. On 3 June 1999, the Applicant, having been convicted by a Jury of a series of historical rapes and of indecent assault, was sentenced, for rape, to a sentence of imprisonment for Life with a minimum term of 3 years and 1 day (the tariff) before he was eligible to apply for parole. The tariff term expired on 31 March 2005. In addition, he was sentenced to a determinate sentence of 3 years for indecent assault.
5. Amongst other previous convictions, the Applicant had been fined at Crown Court, on 27 October 1975, for abduction of a female under the age of 16 under the Sexual Offences Act 1955, Indecent Assault, Criminal Damage, possession of an offensive weapon in a public place and theft. These offences were referred to by the Trial Judge in sentencing, on 3 June 1999, as having been committed with two others.
6. The Applicant was released into the community, on 5 June 2014, following a Parole Board oral review on 21 May 2014, but recalled on 9 October 2015 following allegations of frequenting a local red-light district and aggressive conduct towards a sex worker. The recall was considered by a Panel on 9 September 2016 which described his account of events as "*incredulous*" and, in ordering his continued detention, found that he had "*still done no significant work*" on outstanding risk factors.

7. The case was listed for oral hearing, on 26 October 2020, by video link and witnesses were available but the Panel was informed that, due to a COVID-19 outbreak, the Applicant could not be produced. The Panel decided that a telephone link hearing was inappropriate for the case. At that stage the Applicant's Legal Representative was said to have acknowledged that "*a face to face hearing was required*" but, following the taking of instructions, sought a decision on the papers to be preceded by written representations.
8. The detailed legal submissions were divided into a number of categories. The current Reconsideration Assessment Panel has read them in detail and, for the purpose of this application, gives only a brief outline of their purport:
 - (i) Offending Behaviour: It is accepted that due to the Applicant's "*immutable*" maintenance of innocence, it has not been possible to meet required standards of risk reduction. Furthermore, the sentencing Judge had made an error of fact when referring to the 1975 offences to which he had pleaded guilty.
 - (ii) Recall: A detailed account was provided as to the Applicant's conduct after release culminating in a comprehensive denial of the allegations of breach of licence conditions in his behaviour towards the female alleged to have been a sex worker.
 - (iii) Psychological Assessments: Reference is made to a "*panoply of opinion contained within the wealth of psychological risk assessments*" and to factual issues both as to the severity of alleged behaviour in the index offence and that leading to recall. The Panel's decision making would need to focus on whether the Applicant displayed personality disorder traits and core beliefs which required treatment.
 - (iv) Risk Management Plan: The Applicant would "*without hesitation*" accept the proposed risk management plans providing both support and "a more robust means of managing his risk" dependent on his being able "*to be more trusting and open about what happens in his life, the decisions he makes and the setbacks he experiences*".

Request for Reconsideration

9. The application for reconsideration comprises a six page document, prepared by the Applicant's Legal Representatives, consisting of three sections:
 - (i) Background;
 - (ii) Six alleged factual errors in the Decision incorporating under a heading of Non-Disclosure comments as to the circumstances of the Applicant's non-attendance at the hearing but accepting that "*this information does not form part of the rationale for reconsideration*";
 - (iii) Summary.



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10. The application's introduction submits that the decision was "*founded upon a series of factual errors which have informed a flawed assessment of risk to the public. The decision is therefore irrational and the result of procedural impropriety.*" It further contends that the legal representatives' detailed written representations "*were not properly taken into account*" and that factual information in the dossier had "*been given insufficient attention such that some of the Panel's findings are both incorrect and damaging.*"
11. The application summarises the distinctions between submissions as to the statutory limbs of challenge as:

Irrationality

- a) That the decision is not founded upon any factual basis that is rational.

Procedural impropriety

- b) The decision had not been "*formed as a result of engagement with the processes demanded by a parole board review, which entails careful reading of documentation, proper account being taken of legal representations and a careful drafting of decision making to avoid misrepresentation.*"
12. In so far as the summary seeks to distinguish between the separate statutory limbs of challenge, it does not altogether accord with the introduction. It is not necessary to reproduce the application in full, but all sections have been considered and the aspects relevant to the issues of irrationality or procedural unfairness are dealt with below.

Response on behalf of the Secretary of State

13. The Secretary of State (SoS) submitted representations, by letter dated 2 February 2021 with Annexes dealing with information from the Senior Probation Officer at the prison as to matters relating to the non-production of the Applicant for the video hearing.
14. The SoS, concentrated only on two issues, both factual, raised by the Applicant:
 - (i) Risk factors. It was submitted that a full risk assessment had been included in the Offender Assessment system within the dossier, covering the issues raised said to be without evidence save that it was accepted that the decision reference to relationship problems with professionals was not supported by any evidence.
 - (ii) Circumstances of the Applicant's non-production at the hearing. Factual assertions made by the Applicant were challenged.

No representations were made in relation to other issues.

Applicant's Submissions in Response



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15. Further representations, dated 8 February 2021 and (by e-mail) 10 February 2021, were made in reply to the SoS submissions. These dealt with:

- (i) Risk factors - whilst accepting that, factually, the SoS was correct, challenged the relevance of some items of risk describing them as "*not live risk factors*".
- (ii) Made further comment regarding the Applicant's non-attendance.

Current parole review

- 16. The case had been referred to the Parole Board in August 2017, the Board being asked to consider whether to direct the Applicant's release or, in the alternative, to consider whether to recommend that the Applicant be transferred to open conditions. It was not, specifically, asked to rule as to whether the recall had been justified. Since referral, there were a considerable number of applications, listings for hearing and adjournments.
- 17. The Panel ultimately considered the written submissions together with the dossier of 1431 pages which included an Offender Manager report dated 6 October 2020 recommending transfer to open conditions and containing an risk management plan for implementation in the event of release being directed, an Offender Supervisor report dated 8 October 2020, which also recommended a transfer to open conditions and psychological assessments by an independent Consultant Psychologist (recommending release), an independent Psychologist in training supervised by him (recommending release), and a prison Psychologist in training (recommending that the Applicant would benefit from further interventions).
- 18. In its decision, the Panel, in light of the written submissions relating to the recall, itself considered the necessity for the recall and found it to have been appropriate but did not engage in discussion about it, save to outline past information, on the basis that it had already been examined "*by previous Panels and the current Panel*". The Panel made it clear that its duty was to review the Applicant's case in accordance with the SoS referral. In doing so, it considered specifically reports of independent Psychologists that further testing was not required, factors supportive of the Applicant's application for release including protective factors and gave credit for evidence of maturity and an ability to seek advice and better manage emotions. It found, however, that these were not yet sufficiently developed to reduce risk of further violence and serious harm. More work was needed in areas such as thinking, attitudes and beliefs, sexual offending and on the skills necessary to manage the Applicant's risks. It found that the risk management plan, at this stage, would not be sufficient to manage the Applicant's risks but that an initial period in open conditions would enable a fully formed risk management plan to be developed. Accordingly, it declined to direct release. In coming to its decision, it found that aspects of his personality had been assessed and were fully understood by those supervising him. Witnesses/key report writers advised that there were no outstanding training targets for him.

The Relevant Law



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19. Rule 28(1) of the Parole Board Rules provides that applications for reconsideration may be made in eligible cases either on the basis that the decision was (a) irrational or that it is (b) procedurally unfair. This is an eligible case.
20. 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".
21. 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 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.
22. Procedural unfairness under the Parole Board Rules relates to the making of the decision by the Parole Board and an assessment is required as to whether the procedure followed by the Panel was unfair.

Discussion

Irrationality

23. In my judgment, the decision to refuse release cannot be said to meet the test of irrationality. The Panel, having been responsible for the case for over two years, its being first listed for hearing in December 2018, was clearly fully familiar with and considered, the substantial number of documents in the dossier and gave a clear and reasoned decision, on that basis, and adopted a correct test for its decision. The Applicant's Legal Representative had acknowledged that the assessment of risk was problematical because of the Applicant's maintenance of innocence and the Panel emphasised its finding that there was outstanding work to be completed, albeit not in closed conditions. I find that the detailed factual complaints made in the Applicant's lengthy application do not affect the rationality of the decision.

Procedural Unfairness

24. The Applicant was represented by an experienced Legal Representative from a firm of Solicitors who, the dossier shows had represented him in this case for some years. She was aware that an oral hearing by, at least, a video hearing was considered important but, nonetheless, on specific instructions, sought a decision on the papers. In written representations, prior to the decision, she sought to raise issues of fact relating to the index offence, previous convictions and the reasons for recall, in effect challenging decisions made by Panels over a number of years. To rule on past issues, in this way, was not the function of the Panel and, in any event, if the Panel

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had permitted such evidence to be adduced, it would have required scrutiny of the Applicant's evidence at an oral hearing, as opposed to written assertions, and this had been specifically rejected by him.

25. The issues of fact and an examination of the circumstances of the Applicant's decision to seek a paper finding do not affect the basic issues of risk on which the Panel's decision was founded. I find nothing to suggest that the relevant issues raised in the written representations were not taken properly into account or that there is any suggestion of procedural unfairness in the approach of the Panel and the way in which the decision was made.

Decision

26. For the reasons I have given, I do not find that the Panel's decision was irrational or procedurally unfair and, accordingly, the application for reconsideration is refused.

Edward Slinger
25 February 2021



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