

[2021] PBRA 39

Application for Reconsideration by Hassett

Application

1. This is an application by Hassett (the Applicant) for reconsideration of a decision dated 4 March 2021 by a Parole Board Panel refusing to direct his release or to recommend his transfer to open conditions.
2. The review was by way of oral hearing on 6 January 2021, at which detailed evidence was given before adjournment for a fully formed Risk Management Plan (RMP). The RMP was contained in an updated Community Offender Manager (COM) report dated 10 February 2021, followed by Legal Submissions dated 25 February 2021 and the review then concluded on the papers.
3. I have considered this application and the relevant papers comprising the dossier which contains 398 pages (including, the written legal submissions of 25 February 2021), the decision of the Panel, dated 4 March 2021, and the application for reconsideration, dated 15 March 2021, consisting of 2 pages of closely argued submissions.

Background

4. On 18 March 1992, the Applicant, having been convicted by a Jury of a murder committed almost 14 years earlier on 24 July 1978, was sentenced to imprisonment for Life with a minimum term of 15 years and 1 day (the tariff) before he was eligible to apply for parole. The tariff term expired on 1 March 2006. He was 33 years old at the time of conviction and is now 62.
5. Amongst other previous convictions, the Applicant had in 1973, at the age of 12, received Supervision Orders for offences of indecent assault on young girls and, separately, for indecent assault on a female and, during the lengthy period between committing the index offence and sentence, had, in 1983, been sentenced to 18 months imprisonment for abduction, kidnap and assault on a vulnerable woman and, in 1985, to 10 years imprisonment for abduction, buggery and indecent assault on a teenage girl, offences committed within 2 months after release from the 1983 sentence. These offences were all admitted by him.
6. The Applicant who had, on a number of occasions, been interviewed on suspicion of the murder (index offence) was finally arrested on leaving prison at the conclusion of the 10 year sentence. He denied the charge at his trial and has maintained that denial ever since.



7. The index offence involved the disappearance of a female under the age of 16 (CW) after she had left a recreation ground alone, her body being discovered the following day on the stairway leading to a block of high story flats. She had been raped and strangled using a ligature.
8. The Applicant was finally arrested and charged after further forensic examination of samples which, with the aid of advanced technology, identified the Applicant as perpetrator.

Request for Reconsideration

9. The application for reconsideration, prepared by the Applicant's Legal Representatives, raises issues both of Irrationality and Procedural Unfairness.

Irrationality

10. That the "*dominating factor*" of the decision was the Applicant's continuing denial of the index offence and that the Panel's concerns as to lack of understanding of how and why he "*killed and went on to kidnap*" were "*little more than a fig leaf*". The submission referred to established case law, including **R v Secretary of State, ex parte Zulfikar (No 2)** - that the Board would be "*in error if it denied a person parole on the sole ground or.....the dominating ground of his attitude to the offence*" and **R v Parole Board ex parte Oyston** "*it would be quite wrong to treat a prisoner's denial as necessarily conclusive against the grant of parole.*"

Procedural impropriety

11. The psychologist who prepared a dossier report and gave oral evidence had, the Panel concluded, assessed risk of future sexual offending but not the risk of future violent sexual offending. That latter assessment was not precluded by his denial of the index offence and, in finding her opinions to be "qualified with caveats and hypotheses" disagreed with her recommendation. Given such concerns, the Panel ought to have set further directions for these perceived gaps to be specifically addressed and, thereafter, to reconvene to hear further evidence.
12. It is not necessary to reproduce the application in full, but all aspects have been considered and the issues of irrationality and procedural unfairness are dealt with below.

Response on behalf of the Secretary of State

13. The Secretary of State, by e-mail dated 24 March 2021, indicated that there were no submissions.

Current parole review

14. The case had been referred to the Parole Board in April 2019, 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.

15. The Panel ultimately considered the written submissions together with the dossier of 379 pages which included COM reports dated 15 July 2020 and 10 February 2021 recommending transfer to open conditions and containing an RMP for implementation in the event of release being directed, and psychological assessments, in December 2019 and July 2020, by a Prison Psychologist in training also recommending a transfer to open conditions. These recommendations and a similar recommendation from your Prison Offender Manager (POM) were repeated in evidence.
16. In its decision, the Panel, in its analysis of the Applicant's offending, considered not only the circumstances of the index offence but also those of the convictions in 1982 and 1985, respectively, commentating as to their significance in that the offences occurring between the period of the index offence and the Applicant's final arrest and at a time when "[the Applicant] must have known [he was] a suspect." It specifically acknowledged that it had not been possible to explore the factors surrounding the index offence due to his maintenance of innocence. Having considered the totality of the evidence before it, including the Applicant's oral evidence, it found that poor coping continued to be a major trigger affecting his conduct and, in examining the circumstances leading to his removal from the prison unit designed and supported by psychologists and to his subsequent behaviour in the prison Segregation Unit, found that he displayed evidence of grievance thinking and an unrealistic expectation of the difficulties he was likely to face in the community.
17. It was with this background that it came to its decision not to direct release, including that the decision was taken "in the absence of any understanding of how and why [the Applicant] killed and went on to kidnap" resulting in the Panel being unable to conclude "that [the Applicant's] risks had been sufficiently identified or reduced" as to enable release to be directed.

The Relevant Law

18. The Panel correctly sets out in its decision letter the test for release.
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. A decision to recommend or not to recommend a move to open conditions is not eligible for reconsideration under Rule 28. For the avoidance of doubt, however, it is noted that this issue, also, was separately considered by the Panel.
21. 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".



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22. 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.
23. 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.*"
24. 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.
25. Procedural unfairness means that there was some procedural impropriety or unfairness resulting in the proceedings being fundamentally flawed and therefore, producing a manifestly unfair, flawed or unjust result. These issues (which focus on how the decision was made) are entirely separate to the issue of irrationality which focusses on the actual decision.

Discussion

Irrationality

26. In my judgment, the decision to refuse release cannot be said, in any way, to meet the test of irrationality. The Panel, having clearly considered, with care, the documents in the dossier and the oral evidence, gave a clear and reasoned decision. The complained of choice of words, do not, in my view indicate that the Applicant's continued denial of guilt to the index offence was the dominating or conclusive factor in its decision but makes it clear that the index offence had to be considered in the context of the two other subsequent serious offences to which he had pleaded guilty.

Procedural Unfairness

26. The Applicant was represented by an experienced Legal Representative. The psychologist, having earlier submitted detailed reports, gave oral evidence and would be open to questioning not only by the Panel but also by the Legal Representative. Although the Panel identified what they considered to be gaps in her assessment, this was of significance only in relation to disagreement with her recommendation for transfer to open conditions. She, like other professional witnesses, did not support release, which was the primary application by the Applicant and in relation to which the current application for reconsideration relates.



Decision

28. 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
30 March 2021