

[2021] PBRA 52

Application for Reconsideration by Price

Application

1. This is an application by Price (the Applicant) for reconsideration of a decision of a decision by the Parole Board under Rule 25(1) of the Parole Board Rules 2019 (the 2019 Rules) that the Applicant was unsuitable for release (the Decision). The letter by which the Decision was communicated is dated 29 March 2021 (the Decision Letter).
2. I have considered the application on the papers comprising: a dossier of 759 numbered pages, the Decision Letter and written submissions dated 1 April 2021 by the Applicant's solicitors that request reconsideration.

Background

3. In April 2002 the Applicant was sentenced to life imprisonment for murder, with a minimum tariff that expired in November 2012. The Applicant was aged 25 when he received the sentence in April 2002, and he is now aged 45.

Current parole review

4. The Decision was made on the Secretary of State's referral of the Applicant's case to the Parole Board to consider whether or not it would be appropriate to direct the Applicant's release, and if not to advise on suitability for open conditions. That was said to be the seventh such referral of the Applicant's case by the Secretary of State during the sentence received by the Applicant in April 2002.
5. The Decision was made by a panel of the Board that considered the Applicant's case at an oral hearing on 23 March 2021 (the Panel). The Panel was comprised of three members of the Board, one of whom was a psychologist member. The hearing was conducted remotely by video link.

Application and response

6. The 1 April 2021 written submissions assert that the Decision is marred by irrationality and/or procedural unfairness and request an order for reconsideration.
7. By an email dated 14 April 2021, the Public Protection Casework Section notified the Board that The Secretary of State offered no representations in response to the Applicant's reconsideration application.



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The Relevant Law

8. 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.

Irrationality

9. 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."

10. 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.

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

Procedural unfairness

12. 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.

Discussion

13. The Applicant's submissions are lacking in focus and do not include any discernible grounds relating to procedural fairness.
14. I am, moreover, not persuaded that the Decision is marred by irrationality, for the following reasons.
15. Three of the four professional witnesses considered the Applicant to meet the applicable test for release. It is important that a panel should explain clearly a decision that is contrary to the opinions and recommendations of professional witnesses. That is especially so in the case of unanimity among professional witnesses: **R (Wells) v Parole Board 2019 EWHC 2710**. However, the Parole Board is not obliged to adopt the opinions and recommendations of professional witnesses and it is a panel's responsibility to make its own risk assessment and to evaluate the likely effectiveness of any risk management plan proposed on the totality of the evidence, which it may be expected to perform with the benefit of its expertise in the realm of risk assessment; see **DSD**, for example.

16. In the Applicant's case, I consider the reasons stated within the Decision Letter are adequate.
17. The material reasoning in the Decision Letter includes an assessment that the Applicant lacked a genuine commitment to compliance, leading to a conclusion that he would not comply with the risk management plan, which is considered to be necessary for public protection.
18. The Applicant is given credit for an absence of violence for 10 years and his positive custodial conduct since his return to closed conditions in November 2019. The Decision Letter contains an obvious typing error regarding the year in which the Applicant's releases on temporary licence were suspended, stating that that had occurred in October 2020 whereas the suspension was in October 2019, but the error is immaterial.
19. The Decision Letter identifies concerns about the Applicant's openness and honesty in evidence and about the Applicant's level of insight into the risks and challenges around alcohol use and his relationship with his partner and her children.
20. Those concerns cannot, in my consideration, properly be described as irrational given the Applicant's admitted two breaches of the conditions of his releases on temporary licence in October and November 2019 when he, respectively, chose to drink alcohol and breached a condition of no-contact with one of his partner's children. There is no arguable irrationality in the rejection of the Applicant's claim that he thought that the condition of no-contact did not apply to the child, which was a matter of considerable concern to the Panel. There is no arguable irrationality in the consideration of other alleged breaches of conditions relating to contact with the partner and her children as being matters of concern, albeit unproven. The independent psychologist witness acknowledged that there would always be tensions around compliance and the Applicant living how he wanted, and anticipated future issues around manageability if he could not move in with his partner and her children on the basis that the Applicant saw licence breaches as minor in context of his index offence and that he failed to acknowledge the context and the wider views of professionals around this. The identified antisocial personality traits are also relevant to and supportive of that assessment.
21. There is no arguable irrationality in the Panel's assessment of the Applicant's level of insight into the risks and challenges around alcohol use and his relationship with his partner and her children. The Panel heard the Applicant's oral evidence from which it concluded that the Applicant showed no understanding of the assessment of risk of harm to his partner's children, despite that having been explained to him at length. A naivety about the challenges of family life had been identified by the independent psychologist witness, who cautioned against the Applicant's stated plan to move in with his partner and her children at an early stage of his resettlement. The Applicant's apparent reconsideration of that plan after giving evidence in the hearing is acknowledged in the Decision Letter.
22. There is, moreover, no arguable irrationality in the Panel's assessment that the Applicant's risk of future violence was not imminent but that violence could occur very quickly in the event of the Applicant beginning to struggle to cope and/or use alcohol.

The Applicant himself identified alcohol use as a risk factor, and the relatively recent temporary licence breach is relevant to that risk. The identified lack of insight as to how the Applicant's presentation might cause problems in interpersonal relationships, emotional management and risk of violence is relevant to the assessment that risk could swiftly escalate in the event of him struggling to cope.

Decision

23.The Decision is not marred by irrationality or procedural unfairness.

24.The application for reconsideration is accordingly dismissed.

Timothy Lawrence
26 April 2021