

[2021] PBRA 8

## Application for Reconsideration by MURRAIN

### Application

1. This is an application by Murrain (the Applicant) for reconsideration of a decision of a single-member MCA panel dated 17 December 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 are the decision letter, the dossier and the application for reconsideration.

### Background

4. The Applicant received an extended sentence consisting of a custodial period of ten years and six months followed by an extended licence period of four and a half years on 10 June 2014 following conviction for assault by penetration and two counts of rape to which he pleaded guilty. His parole eligibility date is 13 January 2021, conditional release date 15 July 2024 and sentence expiry date 9 August 2029. The Applicant was 19 years old at the time of sentencing and is now 26 years old. This is his first parole review.
5. On 17 December 2020, a single Member Case Assessment panel of the Parole Board considered his case on the papers and made no direction for release. The decision was issued the same day. Following the issue of a negative MCA decision, a prisoner may apply for consideration at a full oral hearing within 28 days. This period expired on 14 January 2021 with no such application being made.
6. After this time, the decision remains provisional for a further 21 days, within which an application for reconsideration can be made. The deadline for application in this case was therefore 4 February 2021.

### Request for Reconsideration

7. The application for reconsideration is dated 18 January 2021 and has been submitted by the Applicant.
8. The ground for seeking a reconsideration is that the decision was procedurally unfair.



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9. The application was not made on the published form CPD2. Whilst this is not a mandatory requirement, it does contain guidance notes to help prospective applicants ensure their reasons for challenging the decision of the panel are well-grounded and focused. The document explains how I will look for evidence to sustain the complaints and, reminds applicants that being unhappy with the decision is not in itself grounds for reconsideration. However, although the application was not made on the CPD2 form, I am satisfied that the application is valid.

## **Current Parole Review**

10. The Applicant's case was referred to the Parole Board by the Secretary of State in February 2020 to consider whether or not it would be appropriate to direct his release.
11. A single-member MCA panel considered his case on 17 December 2020 and made no direction for release. The dossier considered by the panel contained no legal or personal representations.

## **The Relevant Law**

12. The panel correctly sets out the test for release in its decision letter dated 17 December 2020.

### *Parole Board Rules 2019*

13. 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)). This is an eligible decision.

### *Procedural unfairness*

14. 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.
15. In summary an Applicant seeking to complain of procedural unfairness under rule 28 must satisfy me that either:
  - (a) express procedures laid down by law were not followed in the making of the relevant decision;
  - (b) they were not given a fair hearing;
  - (c) they were not properly informed of the case against them;
  - (d) they were prevented from putting their case properly; and/or
  - (e) the panel was not impartial.

The overriding objective is to ensure that the Applicant's case was dealt with justly.

### **The reply on behalf of the Secretary of State**

16. The Secretary of State has confirmed that no representations will be submitted in response to the application.

### **Discussion**

17. The application offers no reasons as to why the Applicant considered the decision was procedurally unfair. It is not for me to speculate on such reasons. In any event, on the papers before me, I see nothing to suggest that the panel did anything that could remotely be said to be procedurally unfair.

### **Decision**

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

**Stefan Fafinski**  
**10 February 2021**