

[2022] PBRA 14

## Application for Reconsideration by Beazley

### Application

1. This is an application by Beazley (the Applicant) for reconsideration of a decision of a Panel of the Board contained in a letter dated 22 December 2021 (the Decision Letter) not to release him. This followed an oral hearing held on 10 December 2021 conducted remotely via a video link.
2. The Panel consisted of a psychologist member and two independent members.
3. 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.
4. I have considered the application on the papers which comprise the Decision Letter, the Application for Reconsideration and the dossier now paginated to 636 pages.

### Background

5. The Applicant is serving an extended determinate sentence of 13 years comprising a custodial element of 10 years and an extended licence period of 3 years. The sentence was imposed, upon his guilty plea, in October 2012 for an offence of wounding with intent to cause grievous bodily harm contrary to the Offences against the Person Act 1861.
6. The Applicant was 22 years of age at the time of sentencing and is now 31 years old. The Sentence Expiry Date is March 2025.
7. The offence took place in the early hours of the morning of 4 March 2012. The Applicant and the victim, who were not previously known to each other, had been drinking with other men in a club and consumed a considerable amount of alcohol. There had been no problems but, when, later, the victim attended at the Applicant's home and was invited in, a scuffle took place between the Applicant and the victim who then left the property. The Applicant, having taken a knife from his kitchen, followed the victim into the street and stabbed him several times. The victim was subsequently found slumped on the ground with serious, life-threatening injuries to his abdomen and wounds to his chest and face.



8. The Applicant had a criminal record of convictions for 13 separate offences including affray, violent disorder, criminal damage, assault occasioning actual bodily harm, drunk and disorderly and failing to surrender to bail. He was cautioned for criminal damage at the age of 13.
9. He had offended whilst on bail and alcohol played a part in the two ABH offences in 2008.

### **Request for Reconsideration**

10. The application for reconsideration is dated 10 January 2022.
11. A single ground of irrationality is relied on by the Applicant in that it is suggested that, given the totality of evidence from witnesses, the Applicant does meet the test for release.
12. The Applicant then goes on to refer to 6 specific paragraphs in the Decision Letter before making further submissions in support of the application for release which was made to the Panel.
13. It is not submitted that there was procedural unfairness.

### **Current parole review**

14. The Applicant was released from prison on licence in March 2017 and recalled in December 2018. The Secretary of State referred the Applicant's case to the Parole Board to consider whether to direct his re-release. This was the second review of the Applicant's case as a previous Panel (the 2019 Panel) had declined to direct re-release in November 2019
15. At the hearing on 10 December 2021 the Panel considered a dossier of 621 pages. The Secretary of State did not express a view and was not represented. The Applicant was represented by his solicitor, who sought a direction for release.
16. The Panel heard evidence from:
  - a) The Prison Offender Manager (POM);
  - b) The Applicant; and
  - c) The Community Offender Manager. (COM)
17. The professional witnesses were supportive of release. However, the Panel concluded that it continued to be necessary for the protection of the public that the Applicant should remain confined. Therefore, the Panel did not direct the release of the Applicant.

### **The Relevant Law**

18. The Panel correctly sets out in the Decision Letter the test for release.

#### *Parole Board Rules 2019*

19. 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*

20. 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."*

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 contains the same adjective as is used in judicial review shows that the same test is to be applied.

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

#### *Other*

23. It is possible to argue that mistakes in findings of fact made by a decision maker result in the final decision being irrational, but the mistake of fact must be fundamental. The case of **E v Secretary of State for the Home Department [2004] QB 1044** sets out the preconditions for such a conclusion: *"there must have been a mistake as to an existing fact, including a mistake as to the availability of evidence on a particular matter; the fact or evidence must have been "established", in the sense that it was uncontroversial and objectively verifiable; the appellant (or his advisors) must not have been responsible for the mistake; and the mistake must have played a material (though not necessarily decisive) part in the tribunal's reasoning."* See also **R (Alconbury Developments Ltd) v Secretary of State for the Environment, Transport and the Regions [2003] AC 295**, which said that in order to establish that there was a demonstrable mistake of fact in the decision of the panel, an Applicant will have to provide *"objectively verifiable evidence"* of what is asserted to be the true picture.

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

24. The Secretary of State confirmed via PPCS by email on 14 January 2022 that no representations were offered in response to the Application.

## Discussion

25. In dealing with the grounds for reconsideration, it is necessary to stress certain matters of basic importance. The first is that the Reconsideration Mechanism is not a process by which the judgement of the Panel when assessing risk can be lightly interfered with. Nor is it a mechanism in which the member carrying out the reconsideration was entitled to substitute his view of the facts in place of those found by the Panel, unless, of course, it is manifestly obvious that there was an error of fact of an egregious nature which can be shown to have directly contributed to the conclusion arrived at by the Panel.

26. The second matter of material importance is that when deciding whether a decision of the Parole Board was irrational, due deference has to be given to the expertise of the Parole Board in making decisions relating to parole.

27. Third, where a Panel arrives at a conclusion, exercising its judgement based on the evidence before it and having regard to the fact they saw and heard the witnesses, it would be inappropriate to direct that the decision be reconsidered unless it is manifestly obvious that there are compelling reasons for interfering with the decision of the Panel.

## Decision

28. The specific issues raised by the Applicant amount, in essence, to further submissions that the Panel should have arrived at a different decision, accepted the professional recommendations and directed release on the basis of the Risk Management Plan. It is also suggested that the Panel has placed either undue or insufficient weight on particular aspects of the evidence which I address individually, and which are, of course, peculiarly, matters for the Panel.

29. The Panel was well aware that both the COM and POM supported release and it acknowledged that the Applicant had made considerable progress. He had engaged in risk reduction work since his return to custody, including a training course addressing the tendency to use violence, reportedly to an excellent standard. His recent behaviour had improved significantly, he had received a number of positive entries and he had engaged well with his keyworker.

30. **Para 1.3** The Panel noted the Applicant's view of the reasons for him committing the index offence but it found that he was unable to identify specific triggers to anger or violence and that he acknowledged this was a "confusing" area for him. It also found that he did not appear to have an understanding of his own emotional functioning or of potential triggers to violent or aggressive behaviour within relationships.

31. In relation to **Para 1.4** there is no indication that the Panel gave undue weight to the police call-outs relating to a former partner given the evidence in the dossier

that these were numerous, that they involved physical assaults on his former partner and that the Applicant had been in contact with her recently.

32. **Para 1.5** This is simply a further submission in support of the application for release. The Panel considered all the evidence, both written and oral, and made a clear finding that the Applicant was unable to describe triggers to violence within intimate relationships and that relevant core risk reduction work remained outstanding which needed to be completed in custody.
33. **Para 2.5** It is a bold argument to suggest that the Panel was "*overly focused*" on the hearing before the 2019 Panel and gave undue weight and significance to it.
34. The Applicant was recalled when he was charged with assaulting his current partner who subsequently refused to make a statement to the police so that the charges could not be pursued. The Applicant maintained his innocence and the 2019 Panel explored the incident thoroughly, viewed CCTV footage and took evidence from the arresting officer. The evidence disclosed a prolonged attack in the street including his partner being thrown to the ground and being kicked several times. The Applicant gave evidence but the 2019 Panel did not believe his account and found that he had assaulted the victim.
35. The Applicant now accepts that he told "*a pack of lies*" to the 2019 Panel and gave a further and different account to the Panel, suggesting that he could remember nothing of the assault which he now, however, accepts and for which he takes responsibility.
36. The Panel did not find this explanation credible and were concerned that the Applicant had not been entirely truthful in his claim that he could remember nothing of the incident.
37. Issues of the risk of serious harm within intimate relationships, the Applicant's understanding of the specific triggers for this and his capacity to be open and honest were central to the Panel's decision and I find that it was entitled to rely on the clear finding of the 2019 Panel and to make its own findings in relation to the Applicant's evidence to it.
38. **2.6** In my view, the Panel's findings can hardly be said to be materially undermined by this apparent error since it is common ground that the Applicant accrued 6 adjudications after recall (rather than 7) and two of these were for the unauthorised possession of a mobile phone.
39. **2.6** The Panel noted that the Applicant denies harassing his current partner by telephone from prison and he gave evidence that he has not been in touch with her since July 2020. Given his acknowledgement of previous dishonesty and manipulative behaviour, it is unsurprising that the Panel felt able to conclude that his account of the nature of his relationship with his current partner following his recall and his loss of contact with her were not entirely credible.

40. **2.16** This is simply a further submission in support of the Risk Management Plan and contains nothing which is suggestive of irrationality. The Panel obviously gave the Plan careful consideration and found that it was robust and appropriate to risk. However, the Panel noted their concerns and found that, despite the progress he had made, the Applicant continued to pose a significant risk of harm, particularly to women in intimate relationships, and that until the Applicant completed the relevant risk reduction work in custody, the risk management plan was not sufficiently robust to manage his risk in the community.

41. In my view, the Panel came to cogent findings to support its decision and arrived at a conclusion, exercising its judgement based on the evidence before it. Accordingly, having regard to the fact that the Panel considered the dossier and saw and heard the witnesses, it would be inappropriate, I find, to direct that the decision be reconsidered unless it is manifestly obvious that there are compelling reasons for interfering with the decision of the Panel. I find that, in this case, there are no such reasons.

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

**PETER H.F. JONES**  
**27 January 2022**