

[2022] PBRA 16

Application for Reconsideration by Sefton

Application

1. This is an application by Sefton (the Applicant) for reconsideration of a provisional 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 27 December 2021 (the Decision Letter).
2. I have considered the application on the papers comprising:
 - a) A dossier of 473 numbered pages;
 - b) The Decision Letter;
 - c) Written submissions by the Applicant's solicitors, by which reconsideration is requested, dated 17 January 2022; and
 - d) Written submissions by the Public Protection Casework Section for the Secretary of State dated 27 January 2021.

Background

5. The Applicant is currently subject to two Extended Determinate Sentences (EDS).
6. The first EDS was imposed on 30 July 2010 for the offences of Sexual Assault by Penetration on a Female child under 13, Sexual Activity with a Female Child under 13, Distributing Indecent Photographs of Children x 3, and Making Indecent Photographs of Children x 14. He was released on licence on that sentence on 29 July 2014 and recalled to prison on 22 January 2019. The sentence is due to expire on 29 July 2022.
7. The second EDS was imposed on 18 March 2019 for Breach of Sexual Offence Prevention Order (SOPO), Attempting to Arrange Sexual Activity with a Child under 13 x 2, which were offences committed in the community on licence on the first EDS sentence. The second EDS sentence expires on 16 November 2026 and the Applicant became eligible for parole on that sentence on 26 December 2020.
8. The Applicant is presently aged 57.

Current parole review



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9. The decision was made on the second of the Secretary of State's referrals of the Applicant's case to the Parole Board since the recall to custody that is mentioned above.
10. The decision was made by a two-member panel of the Board that considered the Applicant's case at an oral hearing, conducted by remote video-links on 22 December 2021. The panel comprised of a Judicial Member of the Board and a Psychologist Member of the Board.

Application and response

11. The Applicant's submissions assert that the decision is marred by irrationality.
12. The Public Protection Casework Section has provided representations for the Secretary of State in response to some of the Applicant's reconsideration grounds.

The Relevant Law

13. Rule 28(1) of the 2019 Rules 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

14. 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."

15. 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.
16. 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. 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

17. 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.

Consideration

18. The Applicant submits that the Decision is marred by inaccuracies.
19. He asserts that the details of the offence are inaccurately recorded in that the Decision reasons state that he was convicted of contact offences, whereby he asserts that he was convicted of '*Aide and Abet only*' and that no contact offences were committed. I find that there is no merit to those grounds: the Decision Letter records that '*the contact offences*' involved the Applicant viewing and encouraging the abuse of a male's daughter via webcam as well as attempting to secure a hotel near to his address in order to perpetuate further abuse, thus revealing that the panel's understanding of the Applicant's offending was accurate.
20. The Applicant asserts that there is inaccuracy in the record in the Decision that he '*did not quite complete*' a sex offenders treatment programme and what he claims is the correct position that he '*did not even half complete this course*' but there is no material difference between those two propositions.
21. The Applicant asserts that there is inaccuracy in the record in the Decision that the community offender manager and his predecessor had had limited recent contact with the Applicant and what he claims is the correct position that he had never had contact with the predecessor community offender manager. Any such inaccuracy is immaterial to the reasons for the Decision.
22. The Applicant 'highlights' that the Offender Assessment System indicated a low likelihood of further violence reconviction. However, the Decision records that and properly notes that such actuarial scores are partly based upon number of previous convictions, and as circumstances vary, these assessments may not accurately reflect the risk of further offending, particularly as the risk to children is concerned.
23. The Applicant also 'highlights' that no report writers considered the risk to be imminent and submits that due to the low imminence of risk of serious harm occurring in his case, his risk of serious harm can be managed in the community given that his 'at risk' period is not long and will be spent at the Approved Premises in the main and that it was identified that he was in the community years prior to an escalation of risk occurring and his at risk period. However, the Decision reveals that the panel correctly identified that the at risk period was to the sentence expiry date of 29 July 2022 and the reasons given in the Decision for considering that the assessed risk of harm posed by the Applicant in the community was nevertheless unmanageable have not been criticised in the Applicant's submissions and cannot be said to be irrational.

Decision

24. Reconsideration is therefore not directed.

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2 February 2022

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