

[2022] PBRA 23

Application for Reconsideration by Bayle

Application

1. This is an application by Bayle (the Applicant) for reconsideration of a decision, dated 18 January 2022, by a 3-member Parole Board Panel, including a Consultant Clinical and Forensic Psychologist, that his recall to prison had been appropriate and to refuse to direct his release but to recommend that he be transferred to open conditions.
2. The review took place by way of oral hearing conducted remotely via video-link on 10 January 2022.
3. I have considered this application on the papers. These comprise of the dossier containing 551 pages, the detailed written legal submissions dated 26 January 2022 consisting of 10 pages of closely argued submissions, the decision of the Panel, and the application for reconsideration.

Background

4. On 24 November 2008, the Applicant, having been convicted of manslaughter, was sentenced to an indefinite term of imprisonment for public protection, with a minimum term of 2 years and 142 days (the tariff) before he was eligible to apply for parole. The tariff term expired on 16 April 2011. A separate charge of assault occasioning actual bodily harm was dismissed on no evidence being offered by the prosecution and a charge of arson ordered to lie on the file. The killing was of a partner, of two months, at a time when the Applicant, addicted to alcohol, amphetamines, cocaine and ecstasy was seriously affected by drugs, attacked her causing extensive injuries, including fracture of the thyroid, through repeated blows and application of pressure to the neck, face and chest. Thereafter he caused a fire and, himself, suffered burns escaping through a window.
5. At that time, the Applicant had no previous convictions.
6. The Applicant was released into the community, on 7 April 2015, following a Parole Board review on 19 January 2015, but recalled on 5 December 2016 following consecutive attacks, in his flat, on a man and woman, in the early hours of 4 December 2016, resulting in charges of wounding with intent (s 18) and unlawful wounding (s 20). The victims had been stabbed in the face. On 18 April 2017, having pleaded guilty,

he received an Extended Sentence of 10 years, comprising a custodial term of 6 years and an extended licence period of 4 years.

7. The detailed legal submissions were divided, notionally, into two categories in accordance with the statutory grounds of irrationality and procedural unfairness but supported by lengthy references to and recitals of evidence which appear to encompass both grounds. The current Reconsideration Assessment Panel (RAP) has read them in detail and, for the purpose of this application, gives only an outline of their purport. It is not necessary to reproduce the application in full, but all sections have been considered.

Request for Reconsideration

8. The formal Grounds submitted:
 - a. That the Decision did not accurately "*summarise or reflect*" the evidence heard, resulting in the raising of the question as to whether the evidence was properly considered, thus supporting the contention of procedural error; and
 - b. That professional witnesses unanimously supported release, the conclusion not to release and reasons for that decision "*could not reasonably be drawn from the evidence*" both oral and written. "*Had the same evidence been heard by a different Panel, it is likely*" that they would have re-directed release. This "*supported the contention that the decision-making processis unreasonable and irrational*"
9. The application for reconsideration comprises a ten-page document, prepared by the Applicant's Legal Representatives, a large part of which comprises quotations from witness evidence said to be derived from handwritten notes prepared by the Legal Representative. It is suggested that the Panel's outline of evidence is insufficiently and inaccurately summarised in the Decision and that, in assessing risk, many (and listed) factors were not taken into account, leading, when considering whether the Applicant would be able himself to manage his own risks, in the community, to a perverse finding.
10. The Applicant's detailed outlines of the evidence and criticism of the Panel contains frequent submissions and comments such as:
 - a. To give a different version of events does not constitute minimisation and that it was "*a misinterpretation of the evidence to suggest otherwise*";
 - b. That the decision gave "*an inaccurate summary*" of the Applicant's evidence and it was "*irrational*" for the Panel to suggest that giving a different version of events provided evidence that the Applicant did not understand the parallels between the index and recall offences or the Panel's concerns. It claims that the decision omitted what are said to be "*key facts*" essential to assess risk. The submissions listed 12 separate factors which, it suggests, had been omitted from a single



paragraph from the Applicant's evidence relating to the lead up to the recall offences and the stresses he was under;

- c. That other evidence was *"similarly diluted and summarised in such a way"* as not accurately to reflect the evidence given. In particular:
- (i) The evidence of a witness who had known the Applicant for over four years as Offender Manager and Manager of the prison's Progressive Regime was summarised in one Paragraph and *"in our opinion, is misrepresented and taken out of context"* with core aspects of evidence being omitted or not referred to. This insufficiency *"raises concerns about what the Panel considered during their deliberations"*.
 - (ii) The Panel's summary of the evidence of the two psychologist witnesses was *"short and failed to correctly refer to"* their evidence.
 - (iii) The submissions contained an additional list setting out over 20 specific instances of matters *"which do not appear to have been taken into account when assessing risk"* including where it was suggested that evidence of the Community Offender Manager was not *"accurately or appropriately summarised."* It concluded with criticism of the Panel's finding that the Risk Management Plan was not effective as misrepresenting legal submissions made after the hearing, and that the Panel's conclusion could not reasonably be drawn from the evidence leading to irrational *"and unreasonable"* conclusions.
 - (iv) Finally, it was submitted: *"a different Panel having heard and read the same evidence would have drawn different conclusions based on the unanimous support for re-release given by professionals, the insight and reflection demonstrated by [the Applicant] and his improved ability to be open and honest with professionals...Another Panel would be more likely to conclude that the evidence...was more indicative of risk being manageable on licence than not and the test for release met."*

11. From the application, it is difficult to identify distinctions between submissions as to the statutory limbs of challenge but, in general terms they appear to be:

Irrationality

- a) That the decision is not founded upon any factual basis that is/ reasonable/rational, and all witnesses recommend release.

Procedural impropriety

- b) The decision did not accurately reflect the evidence heard at the hearing, for example, by not summarising the evidence of the Applicant or witnesses fairly.

Response on behalf of the Secretary of State



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12. The Secretary of State (SoS), by e-mail dated 8 February 2022, indicated that no representations were made in response to the application.

Current parole review

13. The case had been referred to the Parole Board on 13 July 2020, the Board being asked to consider whether to direct release or, in the alternative, to consider whether to recommend that the Applicant be transferred to open conditions. It was not, specifically, asked to rule as to whether the recall had been justified. Nonetheless, having considered the Applicant's admissions, including having spent the night misusing substances and alcohol, and that he confronted his victims in the belief that his wallet had been stolen, formally found that the recall was appropriate.

14. The Panel considered the oral evidence, subsequent written submissions, together with the dossier of 526 pages which included reports from the Community Offender Manager (COM), Prison Offender Manager (POM) and a Prison Psychologist and Independent Psychologist, all of whom recommended release. The COM report contained a Release Management Plan for implementation in the event of release being directed, and which had been considered by the report writers when making their recommendations.

15. In its nine-page decision, the Panel analysed, in detail, past offending behaviour including a careful resume of the index and recall offences and also violence involved in the s 47 assault charge which was not pursued (the Applicant had claimed to be acting in self-defence), a banning for aggressive behaviour in licensed premises and the Applicant's own admission, before the 2015 Panel, that he had used violence to a partner in the past. The Panel gave a comprehensive outline of the Applicant's evidence and that of the various witnesses including positive matters highlighted by them. It acknowledged the "*large amount of rehabilitative work*" leading to the 2015 release and evidence of positive change since recall including commendable progress in the Progression Unit and the view of the witnesses that he had developed further internal strategies including insight into his offending behaviour and a willingness to seek support from professionals, all of which would enable him to manage his risk factors in the community.

16. Nonetheless, having seen and questioned the Applicant, it concluded that, with a history of serious violent offending, including after he had previously satisfied a Parole Board review that it was safe to release him into the community, he continued to minimise his offending during the hearing, nor did he demonstrate clear insight into his risk of serious harm and why the Panel was concerned for the protection of the public.

The Relevant Law

17. 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.



18. 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".

19. 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.

20. 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.

Discussion

Irrationality

21. In my judgment, the decision to refuse release cannot be said to meet the test of irrationality. The Panel considered both written and oral evidence and gave a clear and reasoned decision, adopting a correct test for its decision and setting out its reasons for finding against the recommendations of the professionals. The general thrust of the Application is that the decision was "unreasonable" in the view of the Legal Representative and that, on the same evidence, another Panel might have come to a different conclusion. This falls far below the test of irrationality.

Procedural Unfairness

22. I can find nothing to suggest that the procedure followed by the Panel was unfair. The Applicant was legally represented and there is no suggestion that the witnesses, including the Applicant, did not have a proper opportunity fully to give, and amplify on, their evidence.

23. Much stress is laid, in the application, that the Legal Representative's handwritten notes do not justify conclusions reached by the Panel. The official record of proceedings is the recording, and no application has been made for a transcript to be produced. The Panel's role is not to outline in detail all the minutiae of the evidence and I am



satisfied that the precis of evidence in the decision fairly reflects the evidence heard and justifies conclusions reached.

Decision

24. 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
15 February 2022



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