

[2022] PBRA 33

Application for Reconsideration by Taylor

Application

1. This is an application by Taylor (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 notice by which the Decision was communicated is dated 9 February 2022 (the Decision).
2. I have considered the application on the papers comprising:
 - a) A dossier of 497 numbered pages including a copy of the Decision; and
 - b) Written submissions by the Applicant’s solicitors, by which reconsideration is requested, dated 28 February 2022.

Background

3. The Applicant was sentenced to imprisonment for public protection in September 2007 after his conviction for assault with intent to rob. The minimum tariff expired in September 2009.
4. The Applicant was aged 24 when he was sentenced and is now aged 39.
5. The Applicant was released on indefinite licence for the first time on the current sentence on 9 April 2018, which licence was revoked on 13 July 2018 leading to his return to custody on that same date. He was released again on indefinite licence 9 June 2020 which licence was revoked on 6 November 2020, leading to his return to custody on 9 November 2020.

Current parole review

6. The Decision was made on the Secretary of State’s first referral of the Applicant’s case to the Parole Board since the return to custody in November 2020.
7. The Decision was made by a three-member panel of the Board that considered the Applicant’s case at an oral hearing conducted by remote video links in January 2022. The panel comprised of a Judicial Member of the Board, who chaired the panel, and two Independent Members of the Board.



Application and response

8. The Applicant's submissions assert that the Decision is marred by irrationality.
9. The Public Protection Casework Section has confirmed by email dated 4 March 2022 that the Secretary of State offers no representations in response to the application.

The Relevant Law

10. 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

11. 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."

12. 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.
13. 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

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.

Consideration

15. The 28 February 2022 submissions assert that the Board erred in its approach to the assessment of the Appellant's risk by having regard to allegations of intimate partner violence, robbery, and attempted robbery, that had not been proven.
16. However, the Board acknowledged that the Applicant had no convictions for those matters and noted, having read police reports in the dossier concerning callouts to incidents involving the Applicant and his partner in 2020 and having heard the Applicant's account, that on either version there were clearly heated exchanges between the couple. I cannot fault the Board's identification of a risk of further

arguments and risk of violence in the future was on the basis of that evidence and because they have a son together. The Board also noted that the Prison Offender Manager was of the same view that further intervention was required to address that risk.

17. The allegations of robbery and attempted robbery did not feature in the Board's reasons for reaching the Decision.
18. The submissions also assert that the Board failed to afford the appropriate weight to the recommendations of the psychologist witnesses, who recommended the Applicant's release, and that the Board erred by focusing on the negatives of the witness's evidence.
19. 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.
20. In the Applicant's case, the Board acknowledged the opinions and recommendations of the professional witnesses, and provided clear, coherent and detailed reasons for its disagreement with the same, in which it acknowledged that, to the Applicant's credit, there was no evidence of violence or drug use in custody since recall and that he had completed work on substance misuse during that time.

Decision

21. The Decision is not marred by irrationality. Reconsideration is not directed.

Timothy Lawrence
9 March 2022