

[2023] PBRA 104

Application for Reconsideration by Mortimer**Application**

1. This is an application by Mortimer (the Applicant) for reconsideration of a decision of a panel of the Parole Board dated the 24 April 2023 not to release the Applicant following an oral hearing on 30 March 2023.
2. Rule 28(1) of the Parole Board Rules 2019 (as amended by the Parole Board (Amendment) Rules 2022) (the Parole Board Rules) provides that applications for reconsideration may be made in eligible cases (as set out in rule 28(2)) either on the basis (a) that the decision contains an error of law, (b) that it is irrational and/or (c) that it is procedurally unfair.
3. I have considered the application on the papers. These are the application for reconsideration, the response from the Secretary of State (the Respondent), the dossier, and the decision dated 24 April 2023.

Background

4. On 14 December 2001 the Applicant was detained at Her Majesty's Pleasure for the offence of murder. The applicant was aged 17 when the index offence was committed. The Applicant's minimum term of imprisonment expired on 28 June 2016. The Applicant has twice been progressed to open conditions, first in November 2018 and then again in April 2021. In February 2022 the Applicant absconded from open conditions and remained unlawfully at large for some 24 hours before being returned to closed conditions. The Applicant was subsequently charged with escape from lawful custody and received a further 6 months imprisonment, now served, on 16 August 2021. Due to this conviction the Applicant is deemed ineligible for open conditions.

Request for Reconsideration

5. The application for reconsideration is dated 12 May 2023.
6. The grounds for seeking a reconsideration are that the panel acted irrationally by not directing the Applicant's release. This is on the basis that the panel placed insufficient weight on the professional recommendation of the witnesses. The Applicant's legal representatives argue in particular that:



- (a) All professional witnesses agreed that no core risk reduction work is necessary.
- (b) All professional witnesses agreed that a progression regime would not necessarily help reduce the applicant's risks.
- (c) All professional witnesses agreed that remaining risk is not imminent.
- (d) All professionals agreed that the Applicant could succeed in the community with the correct support and stringent monitoring in place.
- (e) All professionals and the panel agreed that the risk management plan (RMP) was as robust as it could be.

Current parole review

7. This is the Applicant's third parole review. His case was considered at the Member Case Assessment (MCA) stage on 23 May 2022 at which time it was sent to an oral hearing.
8. At the oral hearing on 20 March 2023 the panel heard evidence from the Prison Offender Manager (POM); the Community Offender Manager (COM); a prison psychologist and a psychologist commissioned by the prison. The oral hearing took place over video-link. The panel consisted of two independent panel members and a psychologist panel member.
9. On 30 March 2023 the Applicant's case was technically adjourned for updated written submissions. These were duly provided on 3 April 2023. The decision was issued on 24 April 2023.

The Relevant Law

10. The panel correctly sets out in its decision letter dated 24 April 2023 the test for release.

Parole Board Rules 2019 (as amended)

11. The application for reconsideration is made uniquely on the grounds of irrationality.

Irrationality

12. 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."

13. 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.

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

The reply on behalf of the Respondent

15. By email dated 17 May 2023 it was confirmed that the Respondent offered no representations in response to the Applicant's reconsideration application.

Discussion

16. The applicant's oral hearing took place on 30 March 2023 over video-link. The case was listed for some four hours, and the panel took comprehensive evidence from all professional witnesses and the Applicant.

17. The decision produced on 24 April 2023 is comprehensive and detailed in my view. It helpfully sets out the views of professional witnesses, which it seems to me are largely non contentious and, in effect, reflect the submissions made by those representing the Applicant at paragraph 6 [a-e] above. For example:

(a) Paragraph 2.20 sets out the views of the POM in relation to the Applicant's positive progress in prison during the review period.

(b) Paragraph 2.21 confirms professionals' views that all core work has been completed.

(c) Paragraph 3.3 confirms that professionals consider that the "*risk management plan was robust and could be expected to contain risk, subject to the Applicant's ability to comply*".

(d) Paragraph 3.8 confirms that the POM and COM recommend release.

18. It is clear from an everyday reading of the decision that the panel was alive to the recommendations and views of professional witnesses at the hearing.

19. This is evidenced by the recommendations and views being incorporated and referred to in the panel's decision.

20. Having reassured myself that the panel was alive to the recommendations and views of professional witnesses when completing their risk assessment, I must now consider specifically whether the panel placed insufficient weight on those views, as is submitted in the reconsideration application.

21. Having carefully considered all the evidence before me I am not so satisfied.

22. As noted, the recommendations and views of professional witnesses are referred to throughout the decision and appropriately scrutinised, in my view. However, in addition to the matters discussed with the professional witnesses, it is also clear from the decision that during the hearing the panel itself identified other areas of concern, which it considered required further exploration. These concerns are



helpfully listed at paragraphs 4.5.1 through to paragraph 4.5.6 of the decision and are linked primarily to *'gaps of understanding in the case'*. This includes concerns linked to what triggered the extreme violence used in index offence, what triggered the Applicant to feel so emotionally aroused when propositioned by another prisoner in open conditions (which led to feelings akin to the feelings at the time of the index offence) and what is the significance of the sexual aspect of both the index offence and abscond incident. It is these concerns, along with certain other issues linked to non-compliance arising out of the Applicant's abscond in 2022 (referred to at paragraph 4.5.7 of the decision) which appear to have led the panel to conclude that the Applicant did not meet the test for release.

23. I find that in this case the panel has quite properly completed its own risk assessment, based on all the evidence before it. Whilst the views of professional witnesses are important, of course, the decision to release must lie finally with the panel. In this instance, after hearing extensive evidence from all parties and completing its own risk assessment, the panel concluded that there was not yet a full understanding of the Applicant's risk, or what triggered the exceptional levels of emotional arousal seen in the index offence and the relatively recent abscond. Something neither the Applicant nor the professional witnesses were able to speak to at the hearing. In such circumstances, it seems to me that the panel has simply preferred its own risk assessment, over the recommendations and views of professional witnesses. Panels are not bound by the recommendations of witnesses and, indeed, would be failing in its duty if it did not complete its own independent assessment of risk in this case. The key question is whether the decision letter explains the panel's reasoning for reaching an alternative view. This was by any reading a difficult and complex case. I'm satisfied that the panel properly explained its reasons for not directing release in this case within its lengthy and detailed conclusion.

Decision

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

Heidi Leavesley
30 May 2023

