

[2023] PBRA 139

Application for Reconsideration by Miller

Application

1. This is an application by Miller (the Applicant) for reconsideration of a decision dated 12 May 2023 made by a panel on the papers not to direct his release.
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. This is an eligible case, and the application was made in time.
3. I have considered the application on the papers. These are the decision, the dossier, and the application for reconsideration.

Background

4. The Applicant was sentenced to two life sentences on 24 May 1985 following conviction on two counts of murder to which he pleaded guilty. His tariff expired in September 2004.
5. The Applicant was 25 years old at the time of sentencing and is now 63 years old. This is his second parole review since his second recall.
6. He was most recently released on licence in July 2018 and recalled in October 2018. He was previously in the community from late-2016 until mid-2017

Request for Reconsideration

7. The application for reconsideration is dated 18 July 2023 and has been drafted by solicitors acting for the Applicant.
8. It argues that the decision was irrational. These submissions are supplemented by written arguments to which reference will be made in the **Discussion** section below. No submissions were made regarding procedural unfairness or error of law.

Current Parole Review

9. The Applicant's case was referred to the Parole Board by the Secretary of State in September 2022 to consider whether or not it would be appropriate to direct his release.



10. The review was considered on the papers by a single-member Member Case Assessment (**MCA**) panel on 12 May 2023. A negative decision made on the papers is provisional. Under rule 20(1) of the Parole Board Rules 2019 (as amended), a prisoner may apply in writing for a panel at an oral hearing to determine the case. Any such application must be served within 28 days (rule 20(2)).
11. An application was made for an oral hearing, but it was dismissed by a Duty Member on 26 June 2023. The reasons for the dismissal were provided to the parties on 30 June 2023.
12. Following the refusal of an oral hearing, the initial decision not to direct release remained provisional for a further 21 days to permit an application for reconsideration.

The Relevant Law

13. The Parole Board will direct release if it is no longer necessary for the protection of the public that the prisoner should be confined. The test is automatically set out within the Parole Board's template for oral hearing decisions.

Parole Board Rules 2019 (as amended)

14. Rule 28(1) of the Parole Board Rules provides the types of decision which are eligible for reconsideration. Decisions concerning whether the prisoner is or is not suitable for release on licence are eligible for reconsideration whether 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)). Decisions concerning the termination, amendment, or dismissal of an IPP licence are also eligible for reconsideration (rule 31(6) or rule 31(6A)).
15. Rule 28(2) of the Parole Board Rules provides the sentence types which are eligible for reconsideration. These are indeterminate sentences (rule 28(2)(a)), extended sentences (rule 28(2)(b)), certain types of determinate sentence subject to initial release by the Parole Board (rule 28(2)(c)) and serious terrorism sentences (rule 28(2)(d)).
16. A decision to recommend or not to recommend a move to open conditions is not eligible for reconsideration under rule 28. This has been confirmed by the decision on the previous reconsideration application in **Barclay [2019] PBRA 6**.

Irrationality

17. 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."



18. 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.
19. 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 Secretary of State (the Respondent)

20. The Respondent has submitted representations in response to this application which will be considered in the **Discussion** section which follows.

Discussion

21. A number of points are put forward in support of the submission that the panel's decision not to direct the Applicant's release was irrational.
22. Taken together, these points essentially argue that the decision not to direct release was irrational as the panel should have adjourned for further evidence concerning risk reduction work the Applicant is said to have completed together with an updated report from his Community Offender Manager (**COM**) to address aspects of the proposed risk management plan.
23. Particular submissions are made regarding a communications course that the Applicant has completed. It is said that insufficient efforts were made to obtain full records of the course. The Respondent has confirmed that there was no record of the course other than the Applicant's own course completion certificate. Moreover, the Respondent notes that there are no records concerning the Applicant's engagement with the course.
24. The matters concerning disclosure of the work that the Applicant has done are predominantly concerned with procedural fairness rather than irrationality. The question for this application is whether the decision not to direct release was rational based on the evidence before the MCA panel.
25. The decision very carefully engages with the initial application for an oral hearing and gives clear and logical reasons why it considered such a hearing was not necessary: in short, that the work that the Applicant has done does not address the core risk factors in his case. The arguments for an oral hearing put to the MCA panel were also advanced unsuccessfully before the Duty Member and are, to a large extent, rehearsed before me again.
26. The Applicant seeks to argue that, although core risk reduction work was considered necessary at a previous parole review, it may not be necessary now.

While that is true, there is nothing on the evidence before me in this particular



3rd Floor, 10 South Colonnade, London E14 4PU



www.gov.uk/government/organisations/parole-board

✉ info@paroleboard.gov.uk



@Parole_Board



0203 880 0885

case which persuades me otherwise. Moreover, it cannot be sustainably argued that the work that the Applicant seeks to rely upon is not core risk reduction work.

27. The panel's decision is clear, reasoned and based on sufficient evidence. This is not a case in which every other panel would have concluded that the Applicant met the test for release. The legal test for irrationality sets a very high bar that this case does not meet.

Decision

28. The panel's decision is not irrational and the application for reconsideration is dismissed.

Stefan Fafinski
1 August 2023

