

[2023] PBRA 158**Application for Reconsideration by Saillet****Application**

1. This is an application by Saillet (the Applicant), for reconsideration of the decision of a Parole Board panel of 9th August 2023 not to direct his release.
2. Rule 28(1) of the Parole Board Rules 2019 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, and/or (c) that the decision contains an error of law.
3. I have considered the application on the papers. These are:
 - a. The dossier of 195 pages.
 - b. The Decision Letter (DL) the subject of this application.
 - c. The Grounds of Appeal submitted on his behalf by his legal representative.
4. No submission has been received from the Secretary of State for Justice (the Respondent).

Background

5. The Applicant is now 70 and was, until his convictions for the index offences, a man of good character.
6. The Applicant's index offences and the subsequent sentence and parole history are accurately set out in the DL. In summary, on 11th May 2017 he was convicted of four offences of sexual assault on four females without penetration committed in 2016. He was sentenced to 10 years imprisonment on each count comprising a custodial term of eight years and an extension period of two years. His Conditional Release Date is in March 2025. His case was considered by a two-member panel including a psychologist member. This was his second parole hearing, a panel having refused to direct his release at a paper hearing on 14th March 2022.

Request for Reconsideration

7. The grounds for reconsideration are in summary that the decision not to direct release was '*irrational*'. It is claimed that the panel placed:
 - a. Undue weight on alleged sexual interests "*not necessarily borne out*" by the evidence.



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- b. Insufficient weight on:
- (i) The professional assessments of risk,
 - (ii) The professional opinion of the psychologist, and
 - (iii) The existence of a robust Risk Management Plan.

8. The principal focus of the request is on paragraph 2.9 of the DL.

Current parole review

9. The applicant's case was referred to the Parole Board by the Secretary of State for Justice (SoSJ) on 9th November 2021 – the Applicant's Parole Eligibility Date being the 23rd July 2022.

The Relevant Law

10. The panel correctly set out in its Decision Letter (DL) dated 9th August 2023 the test for release.

Parole Board Rules 2019 (as amended)

11. Under Rule 28(1) of the Parole Board Rules 2019 the only kind of decision which is eligible for reconsideration is a decision that the prisoner is or is not suitable for release on licence. Such a decision is eligible for reconsideration whether it is 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)). This is thus an eligible decision.

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.

Other

15.In **Oyston [2000] PLR 45**, at paragraph 47 Lord Bingham said: "*It seems to me generally desirable that the Board should identify in broad terms the matters judged by the Board as pointing towards and against a continuing risk of offending and the Board's reasons for striking the balance that it does. Needless to say, the letter should summarise the considerations which have in fact led to the final decision. It would be wrong to prescribe any standard form of Decision Letter and it would be wrong to require elaborate or impeccable standards of draftsmanship.*"

The reply on behalf of the Respondent

16.No reply has been received from the Respondent.

Discussion

17.I have carefully considered the terms of the DL – in particular the passages dealing specifically with the question of the degree of risk of serious harm which is central to the Parole decision process and to this appeal.

18.As to Ground 7a. In my judgment the panel dealt with the issue fairly and correctly at paragraphs 2.6 and 2.7. It is clear that the panel concluded that the Applicant himself was not a persuasive witness on this topic. A panel is entitled to draw its own conclusions as to the frankness and self-awareness of offenders who give evidence at hearings.

19.As to Ground 7b(i). The professional assessments of risk and the panel's assessment of them and of the Applicant's own assessment of his risk of further such offending were clearly set out within the DL at:

- a. Paragraph 2.2 where the panel notes the absence of any specific work done to reduce his risk of sexual offending, and so far as it is relevant his refusal to accept the seriousness of his offending at paragraph 2.5.
- b. Paragraph 2.9 where the panel sets out the various predictions of the risk of further offending set out in the Offender Assessment System (OASys) report within the dossier and explains why it set its assessment as '*medium*' against the background of admitted attempts to identify older women online with a view to having sexual relations with them.
- c. Paragraph 2.10, where the panel records the risk of serious harm to the public as '*high*'. It is clear too from the DL and passages within the reports – e.g at page 57 - within the dossier that the Applicant is considered to pose a risk to



vulnerable females and has expressed the opinion that external events, such as a family bereavement, were responsible for his offending behaviour.

- d. It is clear too that the professional witnesses believed that further work needed to be done to reduce the risk posed by the applicant. The Community Offender Manager (COM) expressed the view that such work needed to be done while the Applicant was in custody. It was equally clear to the panel from material within the dossier that the Applicant believes that he is the only person who should decide what he will and will not do.

20. Ground 7b(ii). Parole Board panels are frequently faced with differing recommendations from witnesses as to whether the risk posed by an offender is or is not such as to cause them to direct or not direct release. At paragraphs 3.1 and 3.9 of the DL the panel explained clearly why it had decided that it could not accept the recommendation of the psychologist and agreed with the Prison Offender Manager (POM) and COM that the additional work needed to reduce the risk still posed by the Applicant needed to be done while he was in prison.

21. Ground 7b(iii). Again, it is clear from the terms of the DL – in particular at paragraph 3.9 set out below – that the panel carefully considered the evidence and the conflicting opinions of the 3 relevant witnesses – and of course of the Applicant. In the latter's it explained clearly why it could not accept his own claims that his risk to the public was such as to require a direction for his release:

"Because of the nature of the index offending, the lack of accredited interventions to address risks, the lack of testing of the associated relevant coping skills, the ongoing evidence of minimisation, entitlement, and victim and police blaming, the panel agreed that [the Applicant] still poses a significant risk. The panel also accepts that serious offending could occur at any time, but may not be imminent. The panel was not convinced by [the Applicant's] arguments for early release; and was not persuaded by the evidence of the psychologist. The panel considered the views of the POM and COM (in identifying concerns around outstanding risks, the need for further interventions and consolidation work in custody, the benefits of reintegration via RoTL [Release on Temporary Licence], and the opportunity to develop open and honest relationships with those responsible for his supervision) as more persuasive."

22. In summary therefore I find that the grounds of appeal fall far short of passing the tests set out at paragraphs 12-15 above.

Decision

23. Accordingly, I refuse this application.

Sir David Calvert-Smith
19 September 2023

