

[2023] PBRA 193

Application for Reconsideration by Khubaib

Application

1. This is an application by Khubaib (the Applicant) for reconsideration of a decision dated 29 September 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.
3. I have considered the application on the papers. These are the decision, the dossier, and the application for reconsideration.

Background

4. The Applicant received an extended sentence comprising 13 years in custody followed by a five-year extended licence period on 15 May 2015 following conviction after trial for rape and nine counts of trafficking for sexual exploitation. Two of the nine counts were specimen counts. According to the trial judge's sentencing remarks, the offending took place over a period of 16 months.
5. His parole eligibility date is in December 2023. His conditional release date is in April 2028 and his sentence expires in April 2033.
6. The Applicant was 43 years old at the time of sentencing and is now 52 years old.

Request for Reconsideration

7. The application for reconsideration is dated 16 October 2023. It has been drafted by a prisoner support worker on behalf of the applicant. It submits that the decision was procedurally unfair.
8. This submission is supplemented by written arguments to which reference will be made in the **Discussion** section below. No submissions were made regarding irrationality or error of law.

Current Reference



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9. The Applicant's case was referred to the Parole Board by the Secretary of State in March 2023 to consider whether or not it would be appropriate to direct his release.
10. This is the Applicant's first parole review.
11. The review was considered on the papers by a single-member Member Case Assessment (MCA) panel on 29 September 2023 which made no direction for release. A negative decision made on the papers is provisional. Under rule 20(1) of the Parole Board Rules, 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)); that is, by 27 October 2023.
12. No application was made for an oral hearing.
13. As the case is eligible for reconsideration under rule 28, the decision remains provisional for a further 21 days (until 17 November 2023).
14. The application is dated 16 October 2023, but was sent to the Parole Board on 31 October 2023 (within the reconsideration window). I am therefore treating it as a valid application for reconsideration.

The Relevant Law

15. 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 decisions.

Parole Board Rules 2019

16. 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)).
17. 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)).
18. 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**.

Procedural unfairness

19.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. These issues (which focus on how the decision was made) are entirely separate to the issue of irrationality which focusses on the actual decision.

20.In summary an Applicant seeking to complain of procedural unfairness under rule 28 must satisfy me that either:

- (a) express procedures laid down by law were not followed in the making of the relevant decision
- (b) they were not given a fair hearing
- (c) they were not properly informed of the case against them
- (d) they were prevented from putting their case properly; and/or
- (e) the panel was not impartial.

21.The overriding objective is to ensure that the Applicant's case was dealt with justly.

The reply on behalf of the Respondent

22.The Respondent has submitted no representations in response to this application.

Discussion

23.The application is very brief. It states that the decision was based on outdated information; that the Applicant had completed work to address his offending behaviour and that a psychological risk assessment had been completed.

24.It does not offer any argument as to why this would be procedurally unfair in law. It is not for me to create an argument on behalf of the Applicant.

25.I have read the dossier that would have been the basis for the decision made by the MCA panel. The most recent report from his Community Offender Manager (COM) dated 25 May 2023 does not support release, noting that the Applicant needed to engage in offending behaviour work. A psychology case advice note dated 18 April 2023 noted that a psychological risk assessment could be considered after the Applicant had completed an offending behaviour programme. There was no evidence to suggest that the Applicant has commenced work on any such programme.

26.On the evidence before the panel, the Applicant had not completed any such work, neither was there a psychological risk assessment. There was no basis for the panel to consider seeking updated evidence.

27.The Applicant and Respondent are responsible for ensuring that any developments in the case considered to be relevant to risk are reported to the Parole Board within 48 hours of either party becoming aware of them. The Parole Board should be notified by way of addendum reports or representations.

28.While there may be further evidence on which the Applicant wished to rely, I find no procedural flaw on the part of the MCA panel that would give rise to a basis for a

successful reconsideration of its decision not to direct the Applicant's release. Moreover, the Applicant had an opportunity to apply for an oral hearing and did not do so.

Decision

29. For the reasons I have given, I do not find the decision was procedurally unfair and accordingly the application for reconsideration is refused.

Stefan Fafinski
07 November 2023