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[2023] PBRA 198

Application for Reconsideration by Ecer

Application

1. This is an application by Ecer, (the Applicant), for reconsideration of the decision of a Parole Board panel of 5th September 2023 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 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 352 pages - now including the Decision Letter (DL) and the submissions submitted to the panel on behalf of the Applicant.
   b. The application for reconsideration dated 2nd November 2023 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 39 and had a number of convictions for serious offences prior to his convictions for the index offences.

6. The Applicant's index offences and the subsequent sentence and parole history are accurately set out in the DL. In summary, on 5th October 2018 he was convicted of an offence of causing grievous harm with intent to do so. He was sentenced to imprisonment for 7 years 2 months with an extension period of 5 years. His Conditional Release Date is in April 2025 . His case was considered by a three-member panel including a psychologist member. This was his first parole hearing.

Request for Reconsideration

7. The grounds for reconsideration are in summary that the decision not to direct release was 'irrational'.

8. It is claimed that the panel's decision can be characterised as "irrational" because:

a. The panel's concern that the Applicant may not be open and honest with professionals upon his release was unfounded.
b. The panel's concern that the Applicant's understanding of and insight into his risks was irrational because:
   i. The Applicant had completed accredited work in prison which was designed to address the issues concerning those risks. The fact that when giving evidence to the panel at the hearing he may not have set out that understanding and insight as clearly as he would have liked should not have led to the adverse conclusion of the panel.
   ii. The panel placed undue weight on the evidence he gave at the hearing as against the background evidence in the dossier when he was understandably anxious and thus unable to give the best account of himself.
   iii. The panel failed to attribute the appropriate weight to the work the Applicant had done in custody.
   iv. The professional witnesses – with the exception of the Community I Manager (COM) who had only recently taken over his case – unanimously advised that the risk he may still pose of serious harm would only become significant if he were to engage in an intimate relationship.
   v. In general, the panel's analysis of the evidence was flawed and should have led to the conclusion that the Applicant's release should be directed.

Current parole review

9. The Applicant's case was referred to the Parole Board by the Respondent on 4th March 2022 – the Applicant's Parole Eligibility Date being 19th November 2022.

The Relevant Law

10. The panel correctly set out in its DL dated 13th October 2023 the test for release.

Parole Board Rules 2019

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. PPCS confirmed on 8th November 2023 that the Respondent would not be submitting any representations.

Discussion

17. I have carefully considered the terms of the DL in the light of the grounds submitted.

18. The DL provides a very full summary of the evidence presented on paper and orally at the hearing.

19. As to Ground 8 a:
    While there was praise for some of the work the Applicant had done in prison there were also concerns that following a period in Approved Premises the risk he posed would be much harder to monitor and, if necessary, to eliminate, by further measures short of recall. 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 and will always make allowances for the fact that they will be under a deal of nervous strain when doing so.

20. Ground 8 b i and ii:
    The dossier contained references to the work which the Applicant had done while in prison and the DL summarised it fully as well the evidence about it given by the professional witnesses. As set out above, panels will always make allowances for the fact that offenders will be under a deal of nervous strain when giving evidence at hearings. Understandably–and rightly–the panel's concerns focused on the

circumstances of the index offence and other matters indicative of risk at paragraphs 1.7-10 of the DL.

21. Ground 8 b iii:
The DL – in particular at paragraphs 2.3, 2.7 and 2.10 – set out in summary the work which had been completed in prison and its conclusions on the degree to which his risk had been reduced.

22. Ground 8 b iv:
This conclusion was indeed reached at paragraphs 2.12.and 2.13 of the DL. The panel dealt with the arguments for and against release carefully in the following paragraphs 2.14-3.8 and explained why it had reached the conclusion that it did in its conclusion at paragraphs 4.1-16.

23. Ground 8 b v:
This ground does not specify - save in that it repeats the contents of the earlier grounds - in what respects the panel's analysis was flawed.

24. This was - like so many cases - one which required, and clearly received, considerable care from the witnesses, including the offender, and the panel in its DL. I refer back to the strong words of the Divisional Court and House of Lords quoted above at paragraphs 11 & 12 above.

25. In summary therefore I find that the grounds for reconsideration fall short of passing the test required for an order for reconsideration.

Decision

26. Accordingly, I refuse this application.

Sir David Calvert-Smith
15 November 2023