

[2023] PBRA 35

## Application for Reconsideration by Rosenbaum

### Application

1. This is an application by Rosenbaum (the Applicant) for reconsideration of a decision of the Parole Board dated the 25 January 2023 not to direct the release of the Applicant following an oral hearing.
2. The decision is eligible for reconsideration under Rule 28(1) of the Parole Board Rules 2019.
3. I have considered the application on the papers. These are the application for reconsideration, the decision of the panel and the dossier.

### Background

4. On 19 December 2016 the Applicant was sentenced to an extended sentence of 8 ½ years imprisonment for offences of sexual assault, assault occasioning actual bodily harm and false imprisonment. The custodial period was 4 ½ years and the extended licence period was 4 years. The Applicant was released on licence on 5 January 2021 and his licence was revoked on 19 January 2022.
5. The offences for which the Applicant was sentenced concerned an attack on a sex worker who he sexually assaulted and threatened with a knife. Although the Applicant attempted to prevent the sex worker escaping, she succeeded in doing so. The Applicant was suffering from a mental disorder at the time.

### Request for Reconsideration

6. The application for reconsideration is dated 15 February 2023.
7. The grounds for seeking a reconsideration are as follows: the decision of the panel was irrational and procedurally unfair. The grounds are that the panel placed insufficient weight on the Applicant's good behaviour in custody since the last review and takes issue with the findings of the panel that he lacks insight into his risk and the triggers for his offending and that the risk management plan was not sufficient to protect the public.

### Current parole review



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8. This was the Applicant's first parole review following his recall. The panel heard from the Prison Offender Manager and the Community Offender Manager in addition to considering the evidence contained in the dossier. There was a psychologist on the panel as the Applicant had mental health issues.

## The Relevant Law

### *Irrationality*

9. 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."*

10. 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.

### *Procedural unfairness*

11. 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.

12. 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.

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

## The reply on behalf of the Secretary of State.

14. The Secretary of State made no representations in response to the application.

## Discussion

15. There is nothing in the application to support the suggestion that the hearing was procedurally unfair, and it is difficult to see the basis of its inclusion in the application for reconsideration. So far as the suggestion that the decision is irrational, there is no sensible basis on which that can be or is argued. The application simply expresses disagreement with the conclusions reached by the panel. That is not a ground for saying

that the decision was irrational. The panel did take into account the Applicant's good behaviour in custody since recall. (see para 2.7 of the decision letter). The weight to be attached to that good behaviour in the decision whether to release was a matter for the panel on consideration of all of the evidence. The panel was entitled to conclude on the evidence it heard that the Applicant lacked insight into his risk and the triggers for his criminal behaviour. It is accepted that recall was justified. At the time of the recall the Applicant was not taking the medication that was prescribed for his condition and was not attending appointments with Mental Health practitioners. There was offence paralleling behaviour and the Applicant was expressing a desire to return to prison. The panel concluded that the Applicant presents a high risk of causing serious harm to others and a very high risk of committing future contact sexual offences. They were fully entitled to reach that conclusion on the evidence which is clearly set out in the decision letter. The panel was also entitled on the evidence to conclude that that level of risk would continue until the Applicant's core risks were addressed. The panel were entitled to conclude on the evidence, particularly in the light of the previous recall, that the risk management plan would not provide adequate protection to the public and the Applicant's core risks could not be safely addressed in the community.

## Decision

16. For the reasons that I have given I do not consider that the decision was either irrational or procedurally unfair. I consider that the application for reconsideration is misconceived and never had any prospect of success.

**John Saunders**  
**9 March 2023**