

[2023] PBRA 81

Application for Reconsideration by Beyioku

Application

1. This is an application by Beyioku (the Applicant) for reconsideration of a decision of an oral hearing panel dated 6 April 2023 not to direct 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 Letter
 - Representations seeking Reconsideration dated 25 April 2023
 - The Dossier, which currently runs to 738 numbered pages, ending with the Decision Letter

Background

4. The Applicant is now 32 years old. In 2013, when he was 22, he received an extended sentence of 18 years' imprisonment, consisting of a 12-year custodial period and a 6-year extension period. The index offences were specimen charges of rape of a female relative, when she was aged between 9 and 11. He has no other convictions. His Parole Eligibility Date was 6 September 2020, his Conditional Release Date is in September 2024, and his Sentence Expiry Date will be in September 2030.

Request for Reconsideration

5. The application for reconsideration is dated 25 April 2023.
6. The grounds for seeking a reconsideration are that "*the decision was procedurally unfair, in that the Panel failed to take account of all relevant evidence in coming to the decision not to direct release, namely the oral closing submissions which were given at the end of the Hearing.*"
7. There is a short and simple answer to this complaint. Oral submissions are not evidence.



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

www.gov.uk/government/organisations/parole-boardinfo@paroleboard.gov.uk

@Parole_Board



0203 880 0885

8. The Representations go on to suggest that there is no evidence that the closing submissions were considered or properly considered by the panel, because there is no reference to the closing submissions in the Decision Letter.
9. There is no necessity for an Oral Hearing Panel of the Parole Board to refer to closing submissions in its Decision Letter. There may be many reasons why it does not. Provided that the panel hears any oral submissions on the prisoner's behalf and reads any submissions in writing that may be directed or permitted, it has complied with its duty of procedural fairness. It is not obliged to prove it by saying so.
10. I have asked the Panel Chair in this case, through the Parole Board secretariat, for his comments. I wanted to be sure that nothing had gone wrong in the process of this remote hearing, for example, one or more of the participants dropping out of the link. He replies that the Panel heard the oral submissions. They are on the recording of the hearing. The Panel Chair explained why the Decision Letter does not specifically refer to the submissions. I do not think it is necessary or desirable for me to set out those reasons, because they do not matter. A Decision Letter should stand for itself in setting out the background to the case, the test to be applied to the reference and application before the panel, the evidence the panel considered, and its conclusions based on that evidence. This Decision Letter does all that clearly and carefully. There is no complaint raised that the panel took into account any evidence it should not have, or that it failed to take account of any relevant evidence. Nor is there any complaint about the panel's approach to the legal issues, or, indeed, anything else.
11. The Representations conclude (in substance) by submitting that the failure of the panel to consider the oral closing submissions is procedurally unfair to the Applicant. The panel did consider the closing submissions.

Current parole review

12. This was the second review by the Parole Board. The Secretary of State referred the Applicant's case for consideration of release, and that was the application before the Board. The review was convened on 29 July 2022, but adjourned. It was relisted and reconvened on 18 November 2022. Issues were raised before the hearing, which did not take place. The hearing eventually took place, remotely, on 5 April 2023.
13. The Oral Hearing Panel consisted of one independent member of the Parole Board, a Psychologist member and a Psychiatrist member. The panel considered a dossier then consisting of 726 pages. The following witnesses gave oral evidence: the Programme Manager, the Stand-in Prison Offender Manager, a Psychologist instructed on the Applicant's behalf, the Applicant, and a stand-in for the Community Offender Manager. The professional witnesses all agreed that the Applicant needed to complete treatment in custody.
14. The Applicant was represented throughout, and his representative was able to ask questions of all the witnesses, including the Applicant, and as is plainly accepted, to make oral submissions to the panel at the end of the evidence.

The Relevant Law

15. The panel correctly sets out in its decision letter dated 6 April 2023 the test for release and the issues to be addressed in making a recommendation to the Secretary of State for a progressive move to open conditions.
16. 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.
17. The case of **Johnson [2022] EWHC 1282 (Admin)** does not change the test, but adds the following gloss:

"The statutory test to be applied by the Board when considering whether a prisoner should be released does not entail a balancing exercise where the risk to the public is weighed against the benefits of release to the prisoner. The exclusive question for the Board when applying the test for release in any context is whether the prisoner's release would cause a more than minimal risk of serious harm to the public."

Parole Board Rules 2019 (as amended)

18. Under Rule 28(1) and (2) of the Parole Board Rules 2019 this decision is eligible for reconsideration.

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.
22. 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 Secretary of State (the Respondent)

23.The Respondent has indicated that he does not wish to make any representations about this application.

Discussion

24.This application for reconsideration is, for the reasons I have set out above, misconceived. I have looked at the case as a whole, and found no basis for reconsideration, whether as pleaded or otherwise.

Decision

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

Patrick Thomas KC
03 May 2023