

[2023] PBRA 96

Application for Reconsideration by Vigrass

Application

1. This is an application by Mr Vigrass ("the Applicant") for reconsideration of a decision of the Parole Board dated 18 April 2023 not to direct his release. The decision followed an oral hearing which took place on 4 April 2023. The panel also declined to recommend a transfer to open conditions; the reconsideration procedure does not apply to that decision.
2. Rule 28(1) of the Parole Board Rules 2019 provides that applications for reconsideration may be made in eligible cases (as set out in rule 28(2)) on the grounds that the decision contains an error of law, or is irrational, or is procedurally unfair.
3. I have considered the application on the papers. These are (1) the dossier, now running to some 391 pages including the decision; and (2) the application for reconsideration supported by written submissions from the Applicant's legal representative. I have also listened to aspects of the recording of the hearing: see further paragraphs 17 and 18 below.

Background

4. On 6 September 2002 the Applicant was sentenced to life imprisonment for an offence of wounding with intent to cause grievous bodily harm. It was a mandatory life sentence, imposed because the Applicant had previous convictions for causing grievous bodily harm with intent and wounding with intent. He also had previous convictions for assault occasioning actual bodily harm, possession of an offensive weapon, common assault, assaulting police officers and affray. The minimum term for his sentence was set at 4 years. This minimum term expired on 6 September 2006.
5. The index offence involved the striking of a doorman with a bottle which broke and caused a neck wound, requiring emergency treatment. The sentencing Judge, who presided over his trial, described him as a dangerous young man and said that, if the mandatory life sentence provisions had not applied, he would have considered a discretionary life sentence. On the Applicant's own account his offending took place against a background of binge drinking, partying, and night clubs.
6. The Applicant was first released on licence in March 2016. He was recalled 2 months later, having assaulted a woman outside a night club, a matter for which he was convicted in the magistrates' court. He was released on licence again in April 2018.



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

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

@Parole_Board



0203 880 0885

INVESTORS
IN PEOPLE | Bronze

He was recalled a second time in September 2020. On this occasion his recall is not associated with any conviction. He was initially recalled because of allegations relating to two incidents: it was said that he had been guilty of smashing a glass in a man's face at a social club and that he had damaged the car of a woman and harassed her, threatening to throw acid in her face. The first alleged victim refused to give a statement and the second changed her statement; no prosecution was brought. However it also came to light that there was police intelligence – some 23 items logged in the period prior to his recall – linking the Applicant with conduct including abusive and threatening behaviour, a serious assault and association with drug dealers. There had also been earlier arrests in June 2019 and November 2019 for alleged assault and burglary.

7. These various allegations were considered fully and with care at a Parole Board oral hearing on 2 July 2021. The panel had evidence from police witnesses, some witness statements and intelligence logs. The panel did not feel that it was able to make findings of fact about these allegations. It found, however, that they raised serious concerns relating to the Applicant's lifestyle, his insight into his own risk and his unwillingness to entertain the views of others. The panel declined to direct his release. Its decision dated 14 July 2021, with its detailed review of the evidence relating to recall and allegations, was before the present panel.

Request for Reconsideration

8. The application for reconsideration is supported by detailed submissions on the Applicant's behalf by his legal representative. I have considered the submissions as a whole. I consider that for the purposes of analysis they can be summarised into three grounds.
 - a. The Applicant's release was unanimously supported by the professional witnesses – the prison offender manager (the POM), the psychologist and the community offender manager (the COM). It was irrational for the panel to decline release in the light of this unanimous support.
 - b. Further, it was incumbent upon the panel to give proper (that is to say, intelligible and adequate) reasons for its reasons and in particular for differing from the position taken by the professionals. The panel failed to do so.
 - c. Further, the panel erred in placing weight upon the Applicant's indication that he would do a Thinking Skills Program (TSP) in the community but not in custody, and upon its own view that "*a prisoner cannot dictate his own progression.*"

Current parole review

9. As noted above, the Applicant's release had been refused on 14 July 2021. His case was referred to the Parole Board again on 28 February 2022. A psychological risk assessment was already under way; it was provided in May 2022. An oral hearing was directed. The oral hearing took place on 4 April 2023 before a panel consisting of an independent chair and two co-panellists – one a judicial member, the other an independent member. The panel had a dossier of 364 pages. It heard from the



POM, the Applicant, the psychologist and the COM. It did not have the police evidence or the intelligence evidence which the previous panel had received.

10. In respect of the findings of the previous panel, the current panel said the following:

"The 2021 Parole panel explored in great depth the matters leading to [the Applicant's] recall, and determined that the recall was appropriate because, although they could not make findings of fact, the information available when taken as a whole raised serious questions about [the Applicant's] lifestyle and insight, as well as the credibility of his evidence. The current panel has not sought to revisit the question of the appropriateness of recall, nor to make findings of fact in respect of the allegations themselves. However, having studied the decision and evidence with care, they adopt the findings of the 2021 panel on those matters."

11. In its conclusions the panel acknowledged that the Applicant had generally behaved in a compliant manner in custody, but said it was not persuaded that this could be taken as an indicator that he would behave pro-socially in the community. The panel was not able to conclude that he had the insight or intention to abandon his criminal lifestyle, noting that he intended to continue visiting a social club where drug dealing was a regular occurrence. The panel continued as follows:

"4.7 He has refused to undertake recommended risk reduction work in prison – described by [the POM] as core risk reduction work, which would "ideally" be done in custody, so that he has the skills prior to release. Although both she and [the COM] felt TSP could be completed in the community, the panel is concerned about the possible lack of depth of [the Applicant's] engagement when previously in the community and concludes that there is no guarantee at all that [the Applicant] would engage with TSP in the community, as flagged by [the psychologist], or that if he did, he would reflect in depth on the content."

4.8 His response to [the psychologist] has been poor, and [the COM] said that when challenged [the Applicant] "gets frustrated and shouts", although he "sometimes" changes his stance afterwards. Similarly, when the previous community offender manager declined to recommend release, it created a major breach in their relationship and a need to reallocate his case."

4.9 In the absence of further risk reduction work, the emphasis would be on the risk management plan to control [the Applicant's] risks. While the panel accepts that the plan has been strengthened with the addition of GPS tagging, which may help to confirm evidence of where [the Applicant] has been and/or with whom, a reliance on external controls is unlikely to protect the public if [the Applicant] has been drinking heavily and/or is angered by a situation. He needs to demonstrate that he has the internal controls to deal with challenge: further risk reduction work has been recommended to help him develop those skills."

4.10 The panel puts only limited weight on the length of time [the Applicant] spent in the community before recall, because of the quantity of Police intelligence accumulated during that period. The panel does not accept [the Applicant's] assertion that this was fabricated because the police wanted him to be recalled."



4.11 *The panel therefore considers it necessary for the protection of the public that [the Applicant] remains confined to custody and does not direct his release."*

The Relevant Law

12. The panel correctly set out the test for release in its decision. The Parole Board will direct release if it is no longer necessary for the protection of the public that the prisoner should be confined.
13. The panel's decision as to release is eligible for reconsideration since the Applicant is serving an indeterminate sentence and the decision was taken under rule 25(1) of the Parole Board Rules: see rule 28(1) and 28(2)(a) of the Rules. The panel's decision not to recommend open conditions is not eligible for reconsideration.
14. It is not necessary to set out an exhaustive statement of the circumstances in which a decision will be unlawful. Broadly, a decision will be unlawful if it is taken in contravention of some legal principle or duty applicable to the case; or if it leaves out of account a factor which the law requires to be taken into account; or if it places weight on a factor which is irrelevant in law; or if the reasons fall short of the standard which the law requires for the decision. A panel is also required by law to give sufficient reasons for its decision. Reasons do not have to be elaborately drafted or to deal with every aspect of the evidence; they must, however, address key issues and explain how the panel reached its decision. If a panel is differing from professional assessments and recommendations its reasons must explain why it has done so.
15. The concept of irrationality is derived from public law. The test is whether the 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."* See **CCSU v Minister for the Civil Service** [1985] AC 374, applied to Parole Board decisions by **R (DSD and others) v the Parole Board** [2018] EWCH 694 (Admin). This is the standard I have applied when considering this application for reconsideration.

The reply on behalf of the Secretary of State (the Respondent)

16. The Respondent has informed the Parole Board that he does not offer any representations concerning this application.

Discussion

Ground 1 – professional support for release

17. I have listened to the portions of the recording where the POM, the COM and the psychologist set out their assessments as to whether the Applicant's risk can safely be managed in the community. The POM (recording 1:52-53) and the COM (recording 3:25-26 and 3:45) said that they considered his risk could safely be managed in the community. They felt that further work – TSP being the accredited course considered appropriate, though face to face work was also considered – could be completed in the community.



18. The psychologist's position was not so straightforward. She said that it depended whether weight was attached to the allegations which were considered by the previous panel. If weight was given to them then there were outstanding treatment needs and further core risk related work for which the Applicant would need to remain in closed conditions; if not, then on the evidence his risk could be managed in the community. The psychologist's report made this distinction (dossier, page 126-127); she maintained it in evidence (recording 2:47-49) and the panel noted it in its reasons (paragraph 3.4).
19. It is plain that the panel, in common with the previous panel which had fully investigated the allegations, did place weight on them. It expressly said that it adopted that panel's conclusions: see the passage which I have quoted in paragraph 10 above. On that footing there was not professional unanimity about release. I do not accept the submission that all the professionals were unanimous that the Applicant's risk could be safely managed in the community.
20. Nor do I accept that the panel acted irrationally in reaching the conclusion that the Applicant's risk could not safely be managed in the community.
21. As identified by the previous panel, there were real concerns about the Applicant's lifestyle, insight and compliance when he was last in the community. The previous panel's approach had been consistent with the Parole Board's Guidance on Allegations. That Guidance has been upheld by the Supreme Court in **R(on the application of Pearce and another) v Parole Board of England and Wales** [2023] UKSC 13: see in particular the summary at paragraph 87. Applying those principles, the previous panel had followed a fair procedure, investigated the facts, reasonably concluded that it could not make findings as to the allegations themselves and looked at the surrounding circumstances to see if there was behaviour which was relevant to the assessment of risk. The present panel was entitled to have regard to those conclusions; it was not bound to call the police evidence and investigate the allegations over again. The present panel gave reasons for its decision, summarised and quoted above, which in my view cannot be characterised as irrational.

Ground 2 – sufficiency of reasons

22. In my view the reasons given by the panel, summarised in section 4 of its decision, are sufficient to justify and explain its conclusions. Those reasons addressed the key issues in the Applicant's case and explained how it reached its decision. The reasons also explained why the panel differed from the view of the POM and the COM. It was common ground that the Applicant needed to do further risk reduction work; the panel, unlike the POM and the COM, was not satisfied that he would engage with that work – see paragraph 4.7, quoted above, which built upon an earlier passage in the reasons at paragraph 2.11. There was a rational basis in the evidence for that conclusion. At the time of the previous panel the Applicant had said he would not co-operate with additional licence conditions imposed to manage his risk; the present panel was entitled to question whether he had really changed in that respect, or whether he might revert to his previous stance.

Ground 3 – refusal to do work in custody



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



www.gov.uk/government/organisations/parole-board



info@paroleboard.gov.uk



@Parole_Board



0203 880 0885



INVESTORS
IN PEOPLE | Bronze

23.The panel, in paragraph 2.11 of its reasons, noted that the Applicant had refused to do the TSP course in custody but said that he was prepared to do it in the community. The panel said it was cautious about this. It added –

"A prisoner cannot dictate his own progression. The issue is whether the risk, if it exists, can be managed. If it remains unaddressed, the prisoner does not progress."

24.I think the point the panel is making is clear. If the Applicant poses a risk of serious harm which requires core risk reduction work in prison before he can safely be released, and he declines to do that work, so that the risk is not addressed, he will not meet the test for release and will not progress. In this little section the panel was not stating its conclusions on those questions: those conclusions follow in the balance of its reasons. I see no error of law or irrationality in the way the panel addressed the question of the Applicant's refusal to do TSP in custody.

Decision

25.For these reasons I refuse the application for reconsideration.

David Richardson
25 May 2023

