

[2024] PBRA 134**Application for Reconsideration by Sokoli****Application**

1. This is an application by Sokoli (the Applicant) for reconsideration of a decision by a Parole Board panel (the panel) at an oral hearing on 27 March 2024 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. This is an eligible case, and the application was made in time.
3. I have considered the application on the papers. These are:
 - a. The panel's decision letter dated 10 June 2024
 - b. The request for reconsideration dated 01 July 2024, and
 - c. The dossier in this case, comprising of 386 pages. The last page is the decision letter. The panel had a dossier of 369 pages.

Background

4. The Applicant is now 27 years old. On 6 April 2018, he was convicted of s18 wounding with intent to cause grievous bodily harm (the index offence) and received an extended determinate sentence, varied on appeal (09/11/2018), to comprise of nine years in custody and three years of an extended licence.
5. The Applicant was 21 years old when he was sentenced. He became eligible to be considered for release by the Parole Board on 23 October 2023 and the panel's review was the first review of his case. If not released by the panel, the Applicant would otherwise be released automatically in October 2024.
6. The background to the index offence was that the Applicant and his brother pursued and attacked the victim in the street in broad daylight. The victim was stabbed and the sentencing Judge said that the Applicant and his brother went looking for the victim prior to committing the offence.
7. On 27 March 2024, the panel convened to hear oral evidence in the case. The Applicant gave evidence, along with his prison offender manager (POM), community



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offender manager (COM) and a prison forensic psychologist. The Applicant was legally represented at the hearing, the Secretary of State (the Respondent) was not.

8. The Applicant was convicted at trial and he denied the offence when interviewed by Probation prior to sentencing. His later appeal against conviction was unsuccessful, albeit that the sentence imposed was varied. In his evidence to the panel, the Applicant said that he did not know that his brother had a knife. He said that his brother had told him that the victim had previously assaulted him.
9. Prior to reaching its decision, the panel considered written submissions from the Applicant's legal representative, which were received on 24 May 2024. In its decision, dated 10 June 2024, the panel refused to direct the Applicant's release.
10. The panel noted behavioural concerns in the early part of the Applicant's time in custody. In the 12 months leading up to the panel's oral hearing, the Applicant had evidenced greater stability. He had engaged with an accredited course designed to address his decision making and had also worked with professionals on his anger, impulsivity and drug misuse.
11. The panel heard that the Applicant was subject to an indefinite restraining order in place to protect his sister because of a previous assault against her. The Applicant had planned to work in the family business, but he would not be allowed to do so if his brother was working there because of a licence condition prohibiting contact between them.
12. The panel heard that the Applicant's family was supportive, but it considered that there would be a need to monitor the family situation given past concerns that had been identified in the evidence before the panel.
13. In reaching its decision, the panel noted that it was a difficult case. The panel determined that the Applicant had provided limited explanations for his offending, his lifestyle and his choice of associates.
14. The panel had a concern about the lack of understanding regarding the family dynamics, involvement in criminality and future living and employment arrangements. An attempt to get further information from the police had offered little. The panel was clear that the Applicant was not responsible for his family's behaviour, however, it determined that *"his risk is inextricably linked to his family having offended with and against family members"*.

Request for Reconsideration

15. The application for reconsideration is dated 01 July 2024 and is based on irrationality and procedural unfairness. The Applicant argues that it was unreasonable and unfair for the panel to consider the behaviour of his family in its assessment of his case.
16. The Applicant also outlines that he understands the seriousness of his offending and he believes that Probation should have done more to help with his plans for release. The Applicant is unhappy that his COM had limited contact with him in the lead up



to the oral hearing. The Applicant asks for compassion, says that he has learnt from his mistakes and that "everyone deserves a second chance".

The Relevant Law

17. The panel correctly sets out in its decision letter dated 10 June 2024 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.

Parole Board Rules 2019 (as amended)

18. 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)).

19. 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)).

Irrationality

20. The power of the courts to interfere with a decision of a competent tribunal on the ground of irrationality was defined in **Associated Provincial Houses Ltd -v- Wednesbury Corporation 1948 1 KB 223** by Lord Greene in these words "if a decision on a competent matter is so unreasonable that no reasonable authority could ever have come to it, then the courts can interfere". The same test applies to a reconsideration panel when determining an application on the basis of irrationality.

21. In **R(DSD and others) -v- the Parole Board 2018 EWHC 694 (Admin)** a Divisional Court applied this test to parole board hearings in these words 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."

22. In **R(on the application of Wells) -v- Parole Board 2019 EWHC 2710 (Admin)** set out what he described as a more nuanced approach in modern public law which was "to test the decision maker's ultimate conclusion against the evidence before it and to ask whether the conclusion can (with due deference and with regard to the panel's expertise) be safely justified on the basis of that evidence, particularly in a context where anxious scrutiny needs to be applied)". This test was adopted by a Divisional Court in the case of **R(on the application of the Secretary of State for Justice) -v- the Parole Board 2022 EWHC 1282(Admin)**.



23. As was made clear by Saini J this is not a different test to the Wednesbury test. The interpretation of and application of the Wednesbury test in Parole hearings as explained in DSD was binding on Saini J.
24. It follows from those principles that in considering an application for reconsideration the reconsideration panel will not substitute its view of the evidence for that of the panel who heard the witnesses.
25. Further while the views of the professional witnesses must be properly considered by a panel deciding on release, the panel is not bound to accept their assessment. The panel must however make clear in its reasons why it is disagreeing with the assessment of the witnesses.

Procedural unfairness

26. 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.
27. 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;
 - (e) the panel did not properly record the reasons for any findings or conclusion; and/or
 - (f) the panel was not impartial.
28. The overriding objective is to ensure that the Applicant's case was dealt with justly.

Other

29. 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

30. The Respondent has not provided any submissions.

Discussion



- 31.The Applicant's application is without merit. He may disagree with the panel's decision to consider the family dynamics in his case, however, it was a relevant consideration and the panel explained its reasoning and its concerns in its decision letter.
- 32.The Applicant may not like that the panel considered his family as a part of its assessment of his risk, but there was nothing irrational or procedurally unfair. The remaining observations by the Applicant in his application are not grounds for reconsideration.
- 33.In my judgment, the panel with commendable thoroughness provided a balanced and fair-minded analysis of all of the evidence, information and material before it. Clearly the panel had concerns and it set these out in its decision letter, explaining why the test for release was not met in this case.
- 34.In my judgment, it cannot be sensibly argued that this was a decision that no reasonable panel could have come to and accordingly I find the decision is not irrational. I am not persuaded that there was any procedural unfairness in this case.

Decision

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

Robert McKeon
18 July 2024