the Parole Board
working with others to protect the public

[2024] PBRA 193

Application for Reconsideration by Williams

Application

1. This is an application by Williams (the Applicant) for reconsideration of a decision of an oral hearing panel dated the 28 August 2024. The decision was 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. This is an eligible case, and the application was made in time.

3. I have considered the application on the papers. These are the dossier consisting of 439 pages, the application for reconsideration by the Applicant's solicitors dated 11 September 2024 and the representations of the Secretary of State (the Respondent).

Request for Reconsideration

4. The application for reconsideration is dated 11 September 2024.

5. The grounds for seeking a reconsideration are set out below.

Background

6. The Applicant is serving a sentence of life imprisonment for the offence of murder. The victim was the Applicant's wife. The Applicant was aged 45 at the time of sentence. The minimum term specified by the judge at sentence was 14 years and 125 days. The oral hearing was the second review of the Applicants sentence by the parole board.

Current parole review

7. As indicated above, this was a second review by the Parole Board of the Applicant's sentence following the expiration of his tariff. The Applicant is currently in an open prison.

8. The panel hearing was conducted on 6 August 2024. The panel consisted of an independent chair, a psychology member and a further independent member.

Evidence was received from the prison offender manager (POM), the community offender manager (COM), a prison instructed psychologist and a second COM. The Applicant was legally represented and gave evidence.

The Relevant Law

9. The panel correctly sets out in its decision letter dated 28 August 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)

10. 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)).

11. 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)).

12. A decision to recommend or not to recommend a move to open conditions is not eligible for reconsideration under rule 28. This has been confirmed by the decision on the previous reconsideration application in **Barclay [2019] PBRA 6**.

Irrationality

13. 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.

14. 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."*

15. 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).

16. 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.

17. 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.

18. 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

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;
    (e) the panel did not properly record the reasons for any findings or conclusion; and/or
    (f) the panel was not impartial.

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

Error of law

22. An administrative decision is unlawful under the broad heading of illegality if the panel:
    a) misinterprets a legal instrument relevant to the function being performed;
    b) has no legal authority to make the decision;
    c) fails to fulfil a legal duty;
    d) exercises discretionary power for an extraneous purpose;
    e) takes into account irrelevant considerations or fails to take account of relevant considerations; and/or
    f) improperly delegates decision-making power.

23. The task in evaluating whether a decision is illegal is essentially one of construing the content and scope of the instrument conferring the duty or power upon the panel. The instrument will normally be the Parole Board Rules, but it may also be an enunciated policy, or some other common law power.

24. The test to be applied when considering the question of transfer to open conditions is the subject of a well-established line of authorities going back to **R (Hill) v Parole Board [2011] EWHC 809 (Admin)** and including **R (Rowe) v Parole Board [2013] EWHC 3838 (Admin), R (Hutt) v Parole Board [2018] EWHC 1041 (Admin)**. The test for transfer to open conditions is different from the test for release on licence and the two decisions must be approached separately and the correct test applied in each case. The panel must identify the factors which have led it to make its decision. The four factors the panel must take into account when applying the test are:

(a) the progress of the prisoner in addressing and reducing their risk;
(b) the likeliness of the prisoner to comply with conditions of temporary release
(c) the likeliness of the prisoner absconding; and
(d) the benefit the prisoner is likely to derive from open conditions.

25. 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

26. The Respondent make no representations.

Ground and Discussion

Ground

27. It is submitted that the decision of the Parole Board not to direct the release of the Applicant was irrational given all of the evidence and views of the professionals involved. At paragraph 7.7, of the decision letter, the panel highlight three areas that they say are of concern and relate to the risk management plan. It is submitted that the areas had been addressed by the Applicant and, whilst the Applicant may not have recited word for word from programs he had undertaken, it is submitted that he demonstrated sufficient insight into his past behaviour, into any risk he poses, into how those risks would be triggered and into how he would manage them.

Discussion

28. As noted above, the Applicant is serving a sentence of life imprisonment for the offence of murder. The facts of the offence were that the victim (the Applicant's

wife) suffered a fatal stab wound. The injury occurred in circumstances where there had been a history of domestic violence between the Applicant and his wife. The Applicant's evidence was that he had held the knife during an altercation, however his wife had lunged towards it, thus causing the fatal injury. During his initial trial, the jury heard evidence from former partners who also described acts of violence. The jury did not accept the Applicant's defence relating to an accidental act and the Applicant was convicted of murder. The sentencing judge indicated that the Applicant, at that time, presented *"a substantial risk of serious physical and psychological harm to any woman entering into a relationship (with the Applicant)"*. The judge cited the evidence given by two former wives, a former fiancé as well as relatives and friends of partners in support of his view.

29. During the course of his sentence. The Applicant had completed a number of behavioural programmes in connection with anger management and healthy relationships. The Applicant's behaviour, in prison, was compliant and positive. He had undertaken voluntary work and had been in an open prison and had been released on licence from the prison to undertake visits and work in the community. He was a trusted prisoner. There were no prison adjudications or evidence to suggest substance misuse or other negative behaviour.

30. The panel accepted that the Applicant's positive prison behaviour was evidence in his favour, and that he should be commended for it.

31. The Applicant's POM was recommending a direction for release. The POM was of the opinion that the Applicant demonstrated insight into his offending. The panel, however, determined that the Applicant's POM had addressed discussions of the Applicant's risk in superficial and general terms and therefore, on the basis that the discussions with the Applicant lacked depth, the panel did not find the POM's evidence convincing.

32. The Applicant's COM was recommending release, on the basis that he had completed a large number of visits to the community on licence from the open prison, and that he had been demonstrating stability and had demonstrated an ability to manage in the community.

33. A prison instructed psychologist also took the view that the Applicant had insight and would be able to manage skills to address risk in the future. The psychologist suggested further consolidation work, but was unsure who would complete that consolidation work.

34. The panel considered the assessment by the prison instructed psychologist. Although the psychologist had approached a number of issues, the panel noted that the psychologist had not explored in detail, possible future scenarios (regarding violence towards partners), but had approached such risks in more general terms on the basis that the Applicant had completed work relating to building healthy relationships.

35. The panel also investigated with the Applicant his understanding of the triggers and background to the index offence. The Applicant indicated that he had reflected upon his past behaviours, and that he had improved his approach to problems in terms of being calmer and more understanding and sympathetic. He had also improved

his communication skills which he felt were a factor in relation to his past behaviour. The panel's assessment was that although progress had been made, the Applicant had been unable to articulate or demonstrate insight into his risks or strategies to manage risk in conflict situations in the future.

36. The panel also considered submissions from the Applicant's, legal adviser.

37. The panel had applied the appropriate guidance from the case of **Pearce** and from the published parole board guidance on allegations in reaching conclusions about allegations which were not proven in a criminal court.

38. The panel fully acknowledged that the Applicant had demonstrated positive behaviour in terms of his prison conduct and had behaved entirely appropriately when released into the community on temporary leave. However, the panel indicated that good behaviour and compliance in custody was not a conclusive indicator of risk reduction, particularly in cases where the risk relates to intimate partner violence.

39. The panel acknowledged that the weight of professional opinion in this case was that the Applicant's risk of serious harm could be safely managed in the community. The panel took careful account of those opinions. It was noted in the panel's decision letter that the panel took the recommendations of professionals, "*very seriously and [did] not lightly set them aside*". As indicated above, the panel however, were not bound by those recommendations. They were obliged to consider the evidence as a whole and to apply it to the statutory test for release.

40. This was clearly a carefully considered and complex decision. It is well established that the parole board are not obliged to adopt the opinions or recommendations of professionals, it is their responsibility to make their own risk assessments and to evaluate the likely effectiveness of any risk management plan proposed. They must make up their own minds on the totality of the evidence that they hear, including any evidence from the prisoner. They would be failing in their duty to protect the public from serious harm (while also protecting the prisoner from unnecessary incarceration) if they failed to do just that. As was observed by the divisional Court in **DSD** (above). They have the expertise to do it.

41. However, if the panel makes a decision, contrary to the opinions and recommendations of professional witnesses, it is important that they explain clearly its reasons for doing so and that it stated reasons should be sufficient to justify its conclusions per **R Wells** (above).

42. As indicated above, I am satisfied that the panel explained clearly its reasons for the decision not to follow the recommendations of the professional witnesses. Those reasons are summarised above and, in my determination, sufficiently justify its conclusions and are set out in detail in the decision letter.

43. The reconsideration mechanism is not a process whereby the judgement of the panel when assessing risk can be lightly interfered with. Where a panel arrives at a conclusion, exercising its judgement based on the evidence before it, and having regard to the fact that they saw and heard the witnesses, it would be inappropriate to direct that the decision be reconsidered unless it is manifestly obvious that there

are compelling reasons for interfering with the decision of the panel. I am not persuaded that there are such compelling reasons or that the decision by the panel was irrational and I therefore dismiss the application.

Decision

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

HHS Dawson
1 October 2024