

[2024] PBRA 20

Application for Reconsideration by Stephenson

Application

1. This is an application by Stephenson (the Applicant) for reconsideration of a decision of a panel of the Parole Board dated 16 December 2023 not to direct the release of the Applicant or to recommend a transfer to open conditions following an oral hearing on 29 November 2023.
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 application for reconsideration; the decision of the panel and the dossier.

Background

4. The Applicant was sentenced on 28 October 1987 to life imprisonment for four offences of murder, rape and robbery. The minimum period was subsequently set at 35 years before the Applicant could be considered for release on licence.
5. The hearing of this review commenced on 27 May 2022 and was adjourned part heard for further enquiries to be made. Before the hearing could resume one of the panel members was unable to continue further with the case and it was determined that the case should be re-panelled. The new panel heard the case on 29 November 2023 and contained in the dossier was a transcript of the evidence of the Applicant which was taken on the previous occasion.
6. It was made clear at the outset of each of the hearings that the Applicant was seeking a transfer to open conditions and not release. That was confirmed by the Applicant in his evidence.

Request for Reconsideration

7. The application for reconsideration is dated 9 January 2024.
8. The grounds for seeking a reconsideration are as follows:

That the decision of the panel was irrational and the proceedings were unfair to the Applicant. It is said that it was irrational for the panel to prefer the evidence of the Community Offender Manager (COM) to the evidence of three psychologists and a psychiatrist. Further it is argued that there were factual inaccuracies relied on by the panel and the hearing was procedurally unfair in that a social care assessment or full medical report should have been obtained.

Current parole review

9. This was the first parole review to consider whether to release the Applicant or to make a recommendation for a transfer to open conditions.
10. The panel heard evidence from the Applicant, the Prison Offender Manager (POM), the COM, a prison psychologist; an independent psychologist and an independent psychiatrist.

The Relevant Law

11. The panel correctly sets out in its decision letter dated 16 December 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.

Parole Board Rules 2019 (as amended)

12. Under Rule 28(1) of the Parole Board Rules 2019 the only kind of decision which is eligible for reconsideration is a decision that the prisoner is or is not suitable for release on licence. Such a decision is eligible for reconsideration whether it is 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)).
13. 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**.
14. The legal representative of the Applicant made it clear at the outset of the hearing that what was being sought by the Applicant was a recommendation for a transfer to open conditions and not release. This was a realistic concession to make as none of the professional witnesses recommended release. Further that is what the Applicant himself wanted to happen. He had been in closed prison for 36 years at the time of the hearing and a period in an open prison in his case prior to release was likely to be required.
15. This application for reconsideration is in reality not an application for reconsideration of a decision whether or not to release; it was accepted that that would fail and it was bound to. It would have been irrational to have directed release on the evidence. This is therefore an application not to reconsider a decision not to direct release but an application to reconsider a decision not to recommend a transfer to open conditions to the Secretary of State.

16. This application is accordingly not eligible for reconsideration under rule 28 of the Parole Board Rules. Accordingly, I shall not further consider the merits of the application. If the Applicant wishes to pursue this application, he will have to apply to the High Court for Judicial Review.

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

17. The Respondent made submissions in response to this application dated 17 January 2024. In those submissions while disputing the merits of the application also asserts that this is not a decision that is eligible to be reconsidered.

Decision

18. For the reasons that I have given this application is not eligible for reconsideration and is accordingly refused.

John Saunders
24 January 2024