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[2024] PBRA 211

Application for Reconsideration by Stevenson

Application

1. This is an application by Stevenson (the Applicant) for reconsideration of a decision of an oral hearing panel dated 11 September 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 the oral hearing decision, the dossier consisting of 590 pages and the application for reconsideration.

Request for Reconsideration

4. The application for reconsideration is dated 1 October 2024. It has been drafted by representatives on behalf of the Applicant. It submits that the decision was irrational. The application states that the Applicant has displayed no violence since the last oral hearing and that the panel failed to give appropriate weight to the lack of violence. The application quotes from the decision in South Bucks District Council v Porter [2003] EWCA Civ 687, submitting that the decision must be intelligible and must be adequate and submitting the decision is irrational.

Background

5. On the 3 August 2007, the Applicant received a sentence of imprisonment for public protection (IPP) following his conviction for robbery and escape from lawful custody. His tariff expiry was set at 11 March 2009. He was first released on 11 July 2016 and recalled the following month.

6. The Applicant has now been recalled three times. His second release was April 2018 and recall in January 2019. The final release was April 2020 with recall in June 2020.

7. The Applicant was 18 years old at the time of sentencing and is now 35 years old.

Current parole review

8. The Applicant's case was referred to the Parole Board by the Secretary of State (the Respondent) in April 2023 to consider whether or not it would be appropriate to direct his release. If the Board did not consider it appropriate to direct release, it was invited to advise the Secretary of State whether the Applicant should be transferred to open conditions.

9. The case proceeded to an oral hearing via videoconference on 11 September 2024.The panel consisted of two independent members and a psychiatrist member. It heard oral evidence from the Applicant, his Prison Offender Manager (POM), Community Offender Manager (COM), a HMPPS commissioned psychologist and a prisoner instructed psychologist. The Applicant was legally represented throughout the hearing. The Respondent was not represented by an advocate.

The Relevant Law

10. The panel correctly sets out in its decision letter dated 11 September 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)

11. 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)).

12. [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)).]

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**.

Irrationality

14. 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.

15. 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."

16. 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).

17. 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.

18. 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.

19. 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.

20. 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

21. The Respondent has submitted representations in response to this application. The Respondent submits that having liaised with the POM, confirmation can be given that in relation to the refused MDT, the Applicant had refused a blood test after informing staff he had taken an overdose of paracetamol.

Discussion

22. The Applicant submits that the starting point for the panel should have been the 2022 parole decision and that the panel failed to give appropriate weight to his lack of violence. He submits that the use of drugs in custody has not impacted violent risk and disputes that there was a failed or refused MDT on 5 September 2024. He disputes the risk assessment and submits that there is insufficient evidence to conclude that self-harm and drug use impacts the risk of future violence.

23. In a very thorough and detailed decision the panel considers the history of the Applicant's offending. The panel considered the 2022 decision and its conclusions, including the rejection by the Respondent of the recommendation to open conditions. The panel also noted and took into account that the Applicant had completed a significant amount of courses. However, the panel also noted that since his last review the Applicant's behaviour had deteriorated with proven adjudications and negative behaviour entries. As recently as May 2024 he was found to be under the influence of illicit substances. The Applicant's instructed psychologist who had assessed him as a medium risk of violence with low imminence within custody no longer maintained his recommendation for release once informed of the drug taking and self-harming behaviours that had occurred after he had submitted his report.

24. In his application the Applicant disputes a refused or failed MDT on 5 September 2024. The response from the Respondent provides confirmation from the POM that the Applicant refused the test. It is not necessary for me to make any finding on this as the Applicant does not dispute that he has used drugs, his argument being that the use of drugs does not impact the risk of violence. The professional witnesses submit that the use of drugs raises the risk of causing serious harm as it affects his finances, his emotions, his associations with peers and his intimate partner relationships. In addition, it affects his relationship with his professional team who are concerned about his lack of openness, his honesty and his manageability in the community. There was also concern expressed by the POM about the Applicant's lack of insight into his risk factors and the danger of his substance misuse escalating in the community. Having regard to his antecedent history, which includes offences involving the use or threat of violence and recent reports of domestic violence, all these concerns of the professional witnesses support the conclusion that the Applicant's drug use will impact the risk of future violence.

25. The panel noted the Applicant's current instability in custody, his drug misuse and self-harm. The inability to control his risky behaviour, non-compliance and lack of openness with professionals were concerns which led the panel to conclude that the risk management plan could not manage his current risk. There is nothing irrational in that conclusion which is thoroughly considered, clearly reasoned and based on the historical and current evidence before the panel. The Applicant may disagree with the decision reached by the panel, but disagreement is not enough to establish irrationality in law. The legal test sets a high bar which this case does not meet.

Decision

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

Barbara Mensah
30 October 2024