

[2024] PBRA 247

Application for Reconsideration by Gega

Application

1. This is an application by Gega (the Applicant) for reconsideration of a decision of an oral hearing panel dated 28 October 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 418 pages and the application for reconsideration.

Request for Reconsideration

4. The application for reconsideration is dated 18 November 2024. It has been drafted by legal representatives for the Applicant.
5. The grounds for seeking a reconsideration are "procedural irrationality" in relation to analysis of risk and risk reduction work and in relation to custodial behaviour.

Background

6. The Applicant received an extended sentence for offences of kidnap, false imprisonment, robbery, blackmail, affray, possession of an offensive weapon, and causing grievous bodily harm with intent to do grievous bodily harm. The sentence was made up of a custodial term of nine years imprisonment and an extended licence period of two years.
7. The Applicant was 19 years old at the time of sentencing. He is now 26 years old.

Current parole review

8. The Applicant's case was referred to the Parole Board by the Secretary of State (the Respondent) in January 2023 to consider whether or not it would be appropriate to direct his release.



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

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

@Parole_Board



0203 880 0885

9. The case proceeded to an oral hearing by video conference on 15 October 2024. The panel consisted of an independent member, a judicial member and a psychologist member. It heard evidence from the Applicant, his prison offender manager (POM), his community offender manager (COM) and a forensic psychologist on behalf of HMPPS. The Applicant was legally represented throughout the hearing. The Respondent was not represented by an advocate.
10. The panel did not direct the Applicant's release.

The Relevant Law

11. The panel sets out in its decision letter dated 28 October 2024 the test for release.
12. 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)).
13. 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

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) Saini J 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.

Procedural unfairness

20. 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.
21. 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.
22. The overriding objective is to ensure that the Applicant's case was dealt with justly.

The reply on behalf of the Respondent

23. The Respondent has submitted no representations in response to this application.

Discussion

24. The first ground relates to risk and risk reduction work. The application notes that the professionals agreed that the Applicant could be managed in the community, that the risk management plan was robust enough to manage any risk and any further work could be completed in the community.
25. This ground amounts to a disagreement with the panel's conclusion and does not identify any irrationality or procedural error. The panel noted the views of the professionals and clearly set out why it did not agree with the conclusions reached by the professionals. In particular the panel noted that the Applicant had not



undertaken any offending behaviour work whilst in custody, his risk therefore remained unaddressed. Panels of the Parole Board are not obliged to adopt the opinions and recommendations of professional witnesses. 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 Applicant. This panel undertook that exercise and reached a conclusion on the evidence which was open to it and could not be described as irrational.

26. The second ground relates to custodial behaviour. The application submits that the POM provided evidence that the Applicant had matured, that his behaviour had improved over two years and that this compliant positive behaviour would be sustained on release.
27. This ground notes and repeats the panel's conclusions. The application relies on the evidence of the POM in seeking a review on the grounds of irrationality. Disagreement does not amount to irrationality. The panel did not accept the assertion of improved behaviour set out in the application. In particular the panel noted the entries in the security report and the Applicant's inappropriate comments to staff. The panel recorded that in giving evidence the Applicant played down the seriousness of rule breaking and highlighted instances where adjudications had been dismissed. The panel did not accept his maturity was borne out by his recent behaviour and did not accept that improved behaviour which appeared to coincide with parole eligibility could be maintained in the community.
28. The panel's reasons were clear, fair, borne out by the evidence and open to the panel. The fact that its conclusion was different to that of the professionals is not a reason to interfere with it nor a basis on which to suggest that it is irrational. This ground therefore fails.

Decision

29. 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.

Barbara Mensah
16 December 2024

