

[2024] PBRA 253

Application for Reconsideration by Williams

Application

1. This is an application by Williams (the Applicant) for reconsideration of a decision dated 21 November 2024 not to direct his release. The decision was made by a panel after an oral hearing.
2. Rule 28(1) of the Parole Board Rules 2019 (as amended by the Parole Board (Amendment) Rules 2022, 2023 and 2024) (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 decision, the dossier (consisting of 357 numbered pages), and the application for reconsideration.

Background

4. The Applicant received a sentence of imprisonment for public protection on 4 May 2007 following conviction for rape, robbery and breach of an antisocial behaviour order. His tariff expired in July 2010.
5. The Applicant was 18 years old at the time of sentencing and is now 36 years old.

Request for Reconsideration

6. The application for reconsideration has been submitted by solicitors on behalf of the Applicant and submits that the decision was irrational.
7. These grounds are supplemented by written arguments to which reference will be made in the **Discussion** section below.

Current Parole Review

8. The Applicant's case was referred to the Parole Board by the Secretary of State (the Respondent) on 28 September 2023 to consider whether or not it would be appropriate to direct his release. If the Parole Board did not direct release, it was invited to advise the Respondent whether the Applicant should be transferred to open conditions. This is the Applicant's seventh parole review.



9. The case proceeded to an oral hearing on 11 November 2024, before a three-member panel which included a psychiatrist specialist witness. The panel heard evidence from the Applicant, his Prison Offender Manager (POM), his Community Offender Manager (COM) and a forensic psychologist commissioned by HMPPS. The Applicant was legally represented throughout proceedings; the Respondent was not legally represented.
10. The Applicant is a Category B prisoner located in the high security estate. None of the professional witnesses considered that the Applicant was suitable for release or a transfer for open conditions. The panel did not direct the Applicant's release or recommend a transfer to open conditions. It is only the decision not to direct the Applicant's release which is subject to potential reconsideration.

The Relevant Law

11. The Parole Board will direct release if it is no longer necessary for the protection of the public that the prisoner should be confined. The test is automatically set out within the Parole Board's template for oral hearing decisions.

Parole Board Rules 2019 (as amended)

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)).
14. 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

15. 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 (CA) 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.
16. In *R(DSD and others) v Parole Board* [2018] EWHC 694 (Admin) the Divisional Court applied this test to Parole Board hearings in these words (at [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."

17. In *R(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 the Divisional Court in *R(Secretary of State for Justice) v Parole Board* [2022] EWHC 1282(Admin).
18. As was made clear by Saini J in *Wells*, 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.
19. 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.
20. 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.

The reply on behalf of the Respondent

21. The Respondent has advised that no representations will be submitted in response to this application.

Discussion

22. Submissions on behalf of the Applicant take issue with the panel's interpretation of certain matters of the evidence and also reiterate and re-emphasise several points in support of the Applicant's release. In sum, it is argued that the panel's conclusion was irrational.
23. I must consider whether the panel's decision was justifiable on the basis of the evidence before it, being particularly conscious of the fact that the Applicant is considerably post-tariff.
24. I accept that the Applicant is frustrated by his continued incarceration and is of the view that his custodial behaviour should not be seen as indicative of heightened risk to the public if released. However, the panel was also faced with the evidence of all professional witnesses that the risk factors of sexual preoccupation, substance misuse, impulsivity, poor consequential thinking and the Applicant's lack of understanding of impact of his behaviour remained live. Moreover, as a result of his behaviour, the Applicant has been located on a unit which is said to be somewhere between segregation and main location. He has also been at risk of potential deselection from that unit. On the basis of that evidence alone, there would need to be extremely compelling positive evidence for any panel to direct release.

25.It is clear that a finding of irrationality requires a manifestly fatal error of logic on behalf of the panel and that I should only interfere with the decision if it is so wrong that it absolutely necessary for me to do so. I must also consider whether the panel has discharged its common law duty to give reasons for its decision.

26.The panel's view aligns with that put forward by all professional witnesses. The panel gives rational and sustainable reasons for its decision. It is not illogical. I am far from being persuaded that the panel's decision meets the high bar necessary for a finding of irrationality.

Decision

27.For the reasons set out above, the application for reconsideration is refused.

Stefan Fafinski
20 December 2024