

[2024] PBRA 26**Application for Reconsideration by Large****Application**

1. This is an application by Large ('the Applicant') for reconsideration of the decision of a single Member Case Assessment member of the Parole Board ('the MCA member') who on 29 November 2023 made a decision not to release the Applicant and not to send his case for an oral hearing.
2. I am one of the members of the Parole Board ('the Board') who are authorised to make decisions on reconsideration applications, and this case has been allocated to me.

Background

3. The Applicant is aged 26 is serving an extended determinate sentence ('EDS') which was imposed on 28 January 2021 for an offence of causing grievous bodily harm with intent ('the index offence'). The sentence comprises a custodial term of 5 years and an extended licence period of two and a half years.
4. The Applicant will soon become eligible for early release on licence. If not released early by direction of the Board, he will be automatically released on licence in September 2025. His sentence will not expire until March 2028.
5. In May 2023 the Secretary of State ('the Respondent') referred the Applicant's case to the Board to decide whether to direct his early release on licence. It was considered by the MCA member on 29 November 2023. The MCA had three options: (a) to direct the Applicant's early release on the papers (b) to decide on the papers not to direct his early release or (c) to send the case for an oral hearing.
6. The MCA member considered the dossier provided by the Secretary of State, which contained 134 numbered pages. It included reports by the probation officer responsible for the management of the Applicant's case in prison ('the POM') and by the probation officer who will be responsible for the management of his case in the community ('the COM').
7. The MCA member decided on the papers not to direct the Applicant's early release and not to refer the case for an oral hearing.



8. The Applicant submitted this application, dated 18 December 2023, for the reconsideration of the MCA member's decision. It was not received by the Board until 17 January 2024.

The Relevant Law

9. The test for release on licence is whether the Applicant's continued confinement in prison is necessary for the protection of the public.

The Parole Board Rules 2019 (as amended)

10. Under Rule 28(1) a decision is eligible for reconsideration if (but only if) it is a decision that the prisoner is or is not suitable for release on licence.
11. Reconsideration will only be directed if one of more of the following three grounds is established:
- (a) It contains an error of law; or
 - (b) It is irrational; or
 - (c) It is procedurally unfair.
12. A decision that a prisoner is or is not suitable for release on licence is eligible for reconsideration whether it is made by:
- (a) A paper panel, as in this case (Rule 19(1)(a) or (b)) or
 - (b) An oral hearing panel after an oral hearing (Rule 25(1)) or
 - (c) An oral hearing panel which makes the decision on the papers (Rule 21(7)).
13. The MCA member's decision in this case not to direct release on licence is thus eligible for reconsideration. The application for reconsideration is made on the grounds of irrationality. No error of law or procedural unfairness is alleged.

Irrationality

14. In **R (DSD and others) v the Parole Board [2018] EWHC 694 (Admin)**, the Divisional Court set out as follows the test for irrationality to be applied in judicial reviews of Parole Board decisions. It said 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. This was the test which had been set out by Lord Diplock in **CCSU v Minister for the Civil Service [1985] AC 374** and applies to all applications for judicial review. The Divisional Court in **DSD** went on to indicate that, in deciding whether a decision of the Parole Board was irrational, due deference had to be given to the expertise of the Board in making decisions relating to parole.
16. The Parole Board, when deciding whether or not to direct a reconsideration, adopts the same high standard as the Divisional Court for establishing 'irrationality'. The fact that Rule 28 uses the same adjective as is used in judicial review cases in the courts shows that the same test is to be applied. The application of this test to reconsideration

applications has been confirmed in previous decisions under Rule 28: see, for example, **Preston [2019] PBRA 1**.

The application for reconsideration in this case

17. The Applicant presented his application in his own words, which were admirably clear and concise. The application was based on the following points:
- (a) He had had enhanced status for the previous 6 months;
 - (b) He has had regular employment in the prison;
 - (c) He felt he had behaved well in prison;
 - (d) He was housed on a special wing which catered for his mental health needs;
 - (e) Two programmes which would have been suitable for his needs but for his mental health difficulties had initially not been suitable for him, and had only recently been adapted for individuals like himself;
 - (f) He felt that it was unfair to be denied early release on the basis that he was now expected to complete those courses when they had previously not been available to him (*'it felt like persecution'*);
 - (g) He had utilised his time in prison and improved his educational skills; and
 - (h) The special wing on which he was housed had been really supportive of his needs and had improved his well-being.

The Respondent's position

18. The Respondent (the Secretary of State) is a party to all parole proceedings (the other party in each case being the prisoner), and he is therefore entitled to make representations to the Board in response to an application for reconsideration made by or on behalf of the prisoner.
19. By e-mail dated 23 January 2023 the Public Protection Casework Section ('PPCS') of the Ministry of Justice ('MOJ') stated that the Respondent offers no representations in response to this application.

Documents considered

20. I have considered the following documents for the purpose of this application:
- (a) The dossier provided by the Secretary of State for the Applicant's hearing, which now runs to 141 pages and includes a copy of the MCA member's decision;
 - (b) The representations submitted by the Applicant in support of his application for reconsideration; and
 - (c) PPCS' e-mail of 23 January 2023.

Discussion

21. I have a good deal of sympathy with the Applicant: it was unfortunate that he was unable to undertake a risk reduction programme much earlier in his sentence and I can understand his feeling that it was unfair to expect him to remain in prison now in order to undertake one.

22. However, the Board's task is to assess his current risk to the public and to decide whether his risk would be safely manageable on licence in the community. Only if that is the case can the Board direct his early release on licence.
23. There can be no doubt that at the start of his sentence the Applicant posed a high risk of serious harm to other people, and unless he can demonstrate a reduction in that risk to a level manageable in the community the Board is bound to decide at this stage that his risk remains too high to be safely manageable on licence.
24. I am afraid that the Applicant cannot demonstrate a sufficient reduction in his risk. It is encouraging that his recent behaviour has been generally good (though not without its blemishes) and that he has maintained a good work record and improved his educational skills. He is to be commended for that progress and it should stand him in good stead when he is released on licence in due course, but it does not amount to evidence that he has reduced to a sufficient level his risk of serious harm to other people when he is at liberty in the community.
25. Apart from the fact that he has not completed any risk reduction programme, there are two other factors which militate against his release on licence at this stage.
26. The first is that he has shown no real insight into his offending and his risk factors. The MCA member was bound to have serious concerns about his attitudes as described as follows by his COM:

"Whilst it is acknowledged that [the Applicant] pleaded guilty to this offence at the earliest opportunity, he does not accept any responsibility for this offence and has continually sought to minimise the extent of his sister's injuries and justify his actions and has made the following comment 'she deserved what happened to her for what she did to my snakes, and for stealing £2,500 out of my bank account last year'".

"He is of the opinion that his sister wanted him to stab her as he reports that, when he was waving the knife at her, she kept moving the pillow she had on her lap and enticing him to stab her".

"Upon challenging [the Applicant] upon these comments he has previously stated 'it's her own fault, I only pleaded guilty on the advice of my lawyer so I would get a lesser sentence'".

"During the meeting with [the Applicant] on 04/05/23 he was asked about the index offence. He stated he was arguing with his sister, the victim, over money. He was unable to pinpoint how things escalated to violence but admits he was trying to scare her as he wanted his money back. He maintains the stabbing was accidental and, when challenged over this, he maintained he could not remember anything further."

27. The second matter of concern is the Applicant's reluctance to acknowledge that he has a problem with substance misuse. There was a significant amount of evidence that he has been misusing illegal substances in prison. He was offered support about that from the substance misuse service but has consistently declined to accept it.

28. In all these circumstances I am bound to conclude that the MCA member's decision was not only rational but inevitable. I would not be doing the Applicant a service if I were to grant this application. Any other MCA member would be bound to reach the same conclusion as this one, as would any panel which conducted an oral hearing of the Applicant's case. To grant this application would merely delay the Applicant's progress.
29. The best thing which the Applicant can do now is to engage in a Programme Needs Assessment and then to engage in whatever programme is considered most suitable for him. He would also be well advised to avoid illegal substances, to accept whatever help is available to him by the substance abuse service, and to avoid any misdemeanours in prison. His case will be reviewed by the Board in a year's time, and I hope he will then be able to demonstrate the necessary reduction in his risk.

Decision

30. For the reasons which I have explained above I am satisfied that the test for reconsideration of the MCA member's decision is not met, and I must refuse this application.

Jeremy Roberts
25 January 2024