

[2019] PBRA 18

Application for Reconsideration by Hill

Application

1. This is an application by Mr Hill (the Applicant) for reconsideration of a decision of a Parole Board Panel dated 2 August 2019 (the decision letter) following an Oral Hearing on 30 July 2019 not to direct his release.

Background

2. The Applicant is serving an Indeterminate Sentence for Public Protection for robbery and wounding. He was sentenced on 20 November 2008 with a tariff of four years which expired in 2012.

Request for Reconsideration

3. The application for reconsideration is dated 29 August 2019. It was supported by written representations from the Applicant's solicitors.
4. The grounds on which the application was made are substantially as follows:
 - (a) The decision was procedurally unfair in that the hearing was conducted via video link between the prison and the Parole Board Hub which prevented the building of any rapport with the Applicant and led to a feeling that the whole process was disjointed causing a lack of understanding of the evidence;
 - (b) The decision was irrational in that undue weight was given to allegations made against the Applicant by his partner and insufficient weight to the evidence given in his favour.

Current parole review

5. On 31 December 2018 the Secretary of State referred the Applicant's case to the Parole Board for his fourth review. Following the Applicant's third review in May 2017, the Applicant was released in August 2017 but recalled in November 2018. It was the Applicant's second recall.

The Relevant Law



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6. Rule 25 (decision by a panel at an oral hearing) and Rule 28 (reconsideration of decisions) of the Parole Board Rules 2019 apply to this case.
7. Rule 28(1) provides that applications for reconsideration may be made in eligible cases on the basis that (a) the decision is irrational and/or (b) that it is procedurally unfair. This is an eligible case.
8. In **R (on the application of DSD and others) -v- the Parole Board [2018] EWHC 694 (Admin)**, the Divisional Court set out 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."

This test was set out by Lord Diplock in **CCSU -v- Minister for the Civil Service [1985] AC 374**. 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 Parole Board in making decisions relating to parole. The Board, when considering whether or not to direct a reconsideration, will adopt the same high standard for establishing 'irrationality'. The fact that Rule 28 contains the same adjective as is used in judicial review shows that the same test is to be applied. This strict test for irrationality is not limited to decisions whether to release; it applies to all Parole Board decisions.

9. As to 'procedural unfairness' this essentially means there must have been some procedural impropriety or unfairness resulting in the proceedings being fundamentally flawed and therefore, producing a manifestly unfair, flawed or unjust result.

Discussion

10. The Oral Hearing on 30 July 2019 was indeed conducted by video link. The decision to hold the panel hearing by video link was made by directions given on the 22 January 2019, well before the panel hearing in July. It does not appear that that decision was objected to or challenged on the Applicant's behalf or asked to be reconsidered. The Applicant was professionally represented throughout.
11. According to the decision letter the panel heard evidence from the Offender Supervisor, Offender Manager, and the Applicant. The panel had an extensive dossier plus a complete copy of a witness statement made by the Applicant's partner for the police. They also saw or had descriptions of photographs of injuries the partner had sustained, allegedly caused by the Applicant. It is fair to point out that although charges in respect of those injuries were apparently contemplated at one time against the Applicant, no further action was taken following withdrawal of the partner's statement.
12. The panel decision recorded that the hearing had taken place by video link. Again, it does not appear that there was any challenge or objection to that course of action at the time.



13. Hearings via video link are very much part of the process by which many proceedings, civil and criminal and, indeed, by the Parole Board, can be conducted. The decision letter carefully set out the panel's analysis of the evidence before them including the Applicant's previous history, the risk factors involved, evidence of change (including a number of positive factors in his favour), assessment of the current risk and evaluation of the Risk Management Plans before their conclusions and decision and the reasons for the same. Given the material before them it does not appear that the panel were in any way inhibited by the video link from affording the Applicant a proper, full, and fair hearing or from understanding the nature and purpose of their task and the evidence before them.
14. In my judgment there was nothing procedurally unfair about having the Oral Hearing in this case conducted in that manner.
15. As to the ground of irrationality, the representations on the Applicant's behalf broadly adopted three strands. First, that the panel had placed too much weight on the evidence of the Applicant's partner given the partner's allegations against the Applicant had not resulted in court proceedings (which consequently had denied him the opportunity of putting his own case and defence), second, that the panel had ignored or place undue emphasis of a number of evidential matters, particularly those in his favour, and third, the panel had not placed sufficient weight on the favourable recommendations of the Applicant's Offender Manager and Offender Supervisor and their views as to the manageability of the risk on release.
16. In relation to the allegations of the Applicant's partner it is fair to say that although, as mentioned, a witness statement provided to the police was before the panel, the partner was not an attending witness and so the partner's evidence could not be tested by cross-examination. The panel noted that the partner's witness statement had been withdrawn which resulted in the potential criminal charges against the Applicant not being proceeded with. Nevertheless, whilst the panel was also careful to point out that the partner's allegations had not been tested in court and that they could make no findings of fact, they pointed to factors which supported the panel's view that the partner's allegations were at least credible including first, the photographs, or the description of the photographs, of the partner's injuries which the panel considered were consistent with the partner's account, second, this account was consistent with previous repeated concerns about aggressive and emotionally-led behaviour, third, the allegations were detailed and evidenced a pattern of behaviour that had developed over time and fourth, whilst no criminal proceedings had been initiated against the Applicant, the partner had obtained a non-molestation order against him for protection.
17. As to the risk plan, the panel were not satisfied that it had the robustness of previous release plans. They noted, for example, a very long history of drug misuse and despite the courses undertaken a lapse as recent as 4 July 2019 when the Applicant had proved positive for heroin.



18. As to the remaining matters, the application was essentially an attempt to reargue the case on the evidence. I remind myself of the role of the Parole Board panel hearing the matter and the test for irrationality set out above. The panel decision was careful, reasoned, balanced and cogent. What weight they placed on various aspects of the evidence was a matter for them. Given the material before them I find nothing irrational about their conclusions and decision.

Decision

19. For the reasons I have given, I do not consider that the decision was neither irrational nor procedurally unfair and accordingly, the application for reconsideration is dismissed.

HH Roger Kaye QC
19 September 2019

