

[2019] PBRA 7

## Application for Reconsideration in the case of Williams

### Application

1. The Secretary of State seeks a direction for reconsideration of the decision of the Parole Board of 29 July 2019 to direct the release of Williams (the Respondent).

### Background

2. The Respondent was sentenced on 12 April 2012 to an extended sentence of 14 years for an offence of aggravated burglary. The custodial period of the sentence was 9 years. In September 2015 the Respondent was released on licence. He was recalled for failing to engage with supervision.
3. The panel who directed release was an MCA single member panel who considered the matter on paper on 29 July 2019. Included in the dossier was a post recall risk management report from the Offender Manager (OM) detailing the reasons for recall and including a section requiring an outline of any significant behaviour in custody since recall. The OM has completed this section by saying "*there have been no recent concerns since his return*". The OM recommended release by the Board in these words: "*Mr Williams has not committed any known further offences whilst in the community and had been progressing well and finding employment. The recall was completed due to his non-compliance and it is hoped that this time in custody will have reiterated to him the importance of his licence and his engagement with Probation. Mr Williams' risk levels did not increase therefore it is deemed that he is safe for re-release*". That recommendation for release is dated 27 June 2019.
4. In reaching its decision the panel considered the fact that there was no report from the prison in the dossier and specifically no report from the Offender Supervisor (OS). The panel considered it was not necessary to delay a decision to obtain one as the OM had talked to Mr. Williams about the recall and there were no reported concerns about his conduct in prison. The panel directed release. There is no criticism of that decision nor could there be.

### Request for reconsideration

5. The grounds for reconsideration are that the decision was procedurally unfair because the Secretary of State failed to put relevant information before the Board, and allowed the Board to act on the basis of misleading information which was in the dossier.



6. The factual basis for that application is as follows. On 5 July 2019, 14 days before the panel made its decision, prison staff reported an allegation to the OM that on 4 July 2019, the Respondent assaulted a prison officer. Included in this email to the OM was the following: "*please can you ensure that PPCS are informed as the parole board will need to be notified of this change in support*". As a result of this information, the OM no longer supported release.
7. Despite the content of the email, the Board was not notified of the alleged assault or the change of view of the OM before the panel made its decision.
8. The legal representative has submitted a letter dated 29 August 2019. In that letter she sets out the Respondent's instructions as to what the circumstances of the alleged assault were. While I am grateful for the submissions, the letter does not deal with any issue with which I am concerned. The reconsideration process is not concerned with making a risk assessment. That is for a panel considering release to do. The reconsideration process is concerned with whether the decision making process was procedurally unfair or the decision was irrational.

## Discussion

9. In my judgment, this information, had it been before the panel, would have been capable of altering its decision. It may well be that the matter would have been put off for an oral hearing where the new information and its effect on any risk assessment could be examined. It is undoubtedly correct as the Secretary of State argues that the Board considered this matter without relevant information namely the alleged assault and on the basis of misleading information namely that at the time of the hearing the OM supported release when he had now changed his mind. Is that a proper ground for reconsideration at the instance of the Secretary of State who is responsible for the failings in the process? As a matter of policy, it is undesirable for the Secretary of State's inefficiencies to be encouraged by giving him a ready means of rectifying mistakes; on the other hand, it is not the desire of the Parole Board nor the Secretary of State nor the public that prisoners who may be dangerous are released into the community. However, questions of policy must be considered in light of the clear wording of the Rules. I make it clear that I make my decision on an interpretation of the wording and meaning of the rule and not on any policy consideration.
10. The relevant part of Rule 28 of the Parole Board Rules 2019 reads: "*a party may apply to the Board for the case to be reconsidered on the grounds that the decision is (a) irrational or (b) procedurally unfair*". The Secretary of State does not argue that the decision was irrational. He says in his reconsideration application it 'may' be procedurally unfair. Procedural unfairness under the Rules relates to the making of the decision by the Parole Board. Was the procedure followed by the panel in this case unfair? In making his decision, the panel member considered all the evidence that was before him. The panel member considered any document that anyone required him to consider. He made the appropriate enquiries in the light of the evidence before him. He was correct not to adjourn for a report from the OS. There was nothing to indicate that it was needed and there was information to support the view that it wasn't. The procedure by which the decision was made was in my view fair and it is for me to exercise my judgment when making that decision. (see dicta of Gross LJ in



**Mackay -v- Secretary of State for Justice [2011] EWCA Civ 522 at para 28).**

**Decision**

11. Accordingly, this application fails because omitting to put information before a panel is not a ground for procedural unfairness. If there are concerns on the basis of the alleged assault that the Respondent may pose a risk of serious harm if released, he can be recalled and, if there is sufficient evidence, he can be charged, brought before a court and, if the court considers it right, remanded in custody.

John Saunders  
4 September 2019