

Neutral Citation No: [2022] NIQB 50

Ref: COL11894

*Judgment: approved by the court for handing down
(subject to editorial corrections)**

ICOS No: 22/037432/1

Delivered: 30/06/2022

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

**QUEEN'S BENCH DIVISION
(JUDICIAL REVIEW)**

**IN THE MATTER OF AN APPLICATION BY STEPHEN WRIGHT
FOR JUDICIAL REVIEW**

**AND IN THE MATTER OF A DECISION OF THE PAROLE COMMISSIONERS
FOR NORTHERN IRELAND**

**Mr Séamas MacGiollaCheara (instructed by Emmet J Kelly & Co, Solicitors) for the
Applicant**

Mr Philip Henry (instructed by Carson McDowell, Solicitors) for the Respondents

COLTON J

[1] The court is obliged to counsel for their able written and oral submissions. The submissions were prepared on an expedited basis and were commendably focused on the issues that arise in this application.

Background

[2] The applicant is a 44 year old man who was sentenced to a life sentence with a minimum tariff of 15 years for murder, together with a concurrent six year sentence for arson endangering life arising out of an incident on 26 December 2004. The applicant was sentenced at Belfast Crown Court on 22 March 2007. His tariff expired on 12 June 2020.

[3] The applicant's case was referred to the Parole Commissioners for Northern Ireland (PCNI) under Article 6 of the Life Sentence (Northern Ireland) Order 2001 ("the Order") on 30 July 2021 to consider whether or not to direct his release under the Order.

[4] The applicant's case came before a panel of the Parole Commissioners on 2 February 2022, and by decision dated 7 February 2022 they declined to release him on life licence.

[5] It is this decision which is the subject matter of the applicant's challenge.

The Grounds of Challenge

[6] Leave was granted on a single focused ground, namely that the PCNI have erred in law by failing to consider appropriate licence conditions prior to applying the statutory test for release.

The Impugned Decision

[7] The decision of the panel runs to some 16 pages and adopts a format common to similar decisions. It commences by accurately setting out the legal test under Article 6 which requires the Commissioners not to direct the release of a prisoner unless they are satisfied that it is no longer necessary for the protection of the public from serious harm that the prisoner should be confined.

[8] Para 2 of the decision notes that "the Commissioners have been asked to make any recommendations regarding conditions to be attached to the licence if they make a decision to release Mr Wright."

[9] At para 5 the panel sets out its decision that it is not satisfied that it is no longer necessary for the protection of the public from serious harm that the applicant be confined.

[10] In para 6 the panel confirms that it took into consideration "all of the documents before it, the oral evidence given and the submissions of (sic) made."

[11] The decision then sets out the review history, the index offending, the applicant's criminal record and his progress in custody. It notes two returns to prison from Burren House where the applicant was on pre-release testing following failed drug tests in October 2019 and August 2021.

[12] At paras 19-23 the decision refers to the Probation Officer's report and oral evidence.

[13] The decision notes that the applicant continued to be assessed as presenting a significant risk of serious harm. It sets out in full the factors that were taken into account in the report. These included, a previous breach of a probation order and previous non-adherence to supervision.

[14] In the following paragraph the decision notes that the probation report concludes that the risk which the applicant presents cannot be managed in the

community. The decision then sets out in full the reasons for this conclusion as set out in the report.

[15] It is then noted that the applicant is currently assessed by Probation as posing a high likelihood of reoffending. It is confirmed that the Probation Service do not support the release of the applicant at this time but is of the opinion that he requires to undertake further work addressing some of the issues raised in the report.

[16] This section concludes at paragraph 23 as follows:

“23. The report outlines interventions which PBNI would recommend Mr Wright to undertake and also records recommended life conditions should Mr Wright be released on licence.”

[17] The report proceeds to consider the contents of an updated violence risk assessment completed by a forensic psychologist.

[18] The assessment identifies the risks posed by the applicant and identifies some interventions from which the applicant would benefit, namely:

- “Continued support from individual psychology assessments with particular emphasis on his ability to identify and openly discuss any stressors or frustrations that may impact on his decision making.
- Continued drug and alcohol testing.
- Ongoing support in the community in relation to his alcohol and substance misuse.
- Engaging in therapeutic intervention to help him address and cope with the effects of his previous traumatic experiences and further explore the impact they have on his current self.
- Further intervention and support in the community regarding healthy attachment and relationships.
- Support with establishing new friendships and integrating with pro-social activities in the community.”

[19] It is noted that at the hearing the applicant was represented by counsel and solicitor.

[20] Having set out this material the decision, again, sets out the statutory test under Article 6(4)(b) of the Order. It confirms the decision that the applicant should not be released. Its reasoning for the decision is as follows:

- “33. Mr Wright has an ACE score of 41 which places him in the category of those who present a high likelihood of reoffending. He has been assessed by PBNI to present a significant risk of serious harm. These assessments were confirmed by the PO in her evidence to the panel. The index offence was a murder which involved the degradation, humiliation and brutalisation of a vulnerable individual. As the sentencing judge noted **‘the manner of the killing makes it a very serious case.’** Having committed the index offence Mr Wright tried to destroy the crime scene by setting the house alight. At the time, the victim with another person were in the house. Mr Wright has a history of violence and although there has been no violence perpetrated by Mr Wright since 2011 the panel notes the view of PBNI that Mr Wright continues to present a significant risk of serious harm. The panel does not accept the submission of Mr Wright’s counsel that the assessment by PBNI is flawed. The panel also took into account the evidence of the FP that a risk of violence was not an imminent risk but that she had concerns that matters could spiral and that Mr Wright had the potential for violence. She confirmed in her evidence that in her view the most significant risk factors were drugs, stress and relationships. In relation to stress she said that the stress did not need to be significant.
34. During his sentence Mr Wright has undertaken a number of interventions as recorded in the dossier. He has also had two opportunities of tests in the community through Burren House but on each occasion has been returned to prison due to failed drug tests. In the most recent move to Burren House Mr Wright was also having specific support from psychology. In her update VRA the FP notes that risks would increase if Mr Wright were to resume misusing drugs or alcohol. She notes that this could impair his ability to manage effectively the emotions, particularly in situations where he

feels rejected, left out or does not achieve the attention or affirmation that he feels he deserves. The panel noted that, having been returned to closed conditions in 2019, Mr Wright, nonetheless on return to Burren House, took drugs in August 2021. He told the panel that his girlfriend had bought the medication for him because he had a headache and that he only later realised it contained codeine. He admitted to the panel that, having been tested the previous day he felt it would not be a problem. The FP, in her evidence, said that Mr Wright needed to discuss matters more as they occur and that it was important that there was more communication between Mr Wright and those working with him.

35. The panel noted that the evidence of the PO at the hearing indicated that she thought that the Webex meeting she had had with Mr Wright on 25 January 2022 had been a very positive one. She had understood that Mr Wright recognised that his case would need to progress through testing and that he was expecting a case conference to set out the pathway towards him moving to a community setting where he could demonstrate his ability to cope with stressors. Mr Wright, in his evidence, said that he did not really know the PO because of not meeting her as a result of Covid restrictions but that he felt she said one thing and reported a different thing and that she did not support his case with the Governor or speak up for him. He said that PBNi had to earn his trust and people had to be more open and honest.
36. The PO explained at the hearing that concern in relation to the relationship between Mr Wright and his girlfriend was due to the historical issues in relation to the index offence where Mr Wright had expressed feelings of rejection. She said that she understood that Mr Wright had been concerned about disclosure in that it might frighten off his girlfriend. In his evidence to the panel Mr Wright said that he disclosed in his diary his meeting with his girlfriend and that, until the disclosure to the staff when driving to see his mother, the relationship had not been a romantic one.

37. When questioned by the panel in relation to the security reports of 2019 and 2020 and the gist of text messages which had been submitted he said that someone had sent the text asking for something that he had text him back saying 'I will see what I can do.' When asked what he understood about the order he said that 'Buds could be Pregabalin, grass or cotton buds and that if someone text him about buds it could be anything.' The panel took into account that Mr Wright has not been adjudicated and there have been no consequences in relation to the matters outlined in the gist. However, the panel noted that Mr Wright did not dispute the reference to 'Buds.' The panel found his explanation in relation to the texting to lack credibility.
38. The panel noted the evidence of the PO when she said that she understood that Mr Wright was eligible for progression and that a case conference would identify how that would look. It was her view that Mr Wright should spend a period in Burren House followed by time in a hostel. In this way Mr Wright would have an opportunity to test out his boundaries and there would be 'cumulative building blocks of testing.' She believed he was in a good place to benefit from further testing.
39. In coming to its decision, the panel took into account the view of the FP that the best way to monitor warning signs of the risks posed by Mr Wright may be increasing would be for there to be regular contact and open communication with those working with him. In her report she noted that Mr Wright may benefit from increasing his insight into the small and general everyday stressors and how they may gradually build to a point where they have an impact on his risk management and decision making. It was her opinion that Mr Wright would benefit from further pre-release testing to provide him with the opportunity to practice skills in the community but that whilst doing so it was vital that Mr Wright engage meaningfully in the interventions recommended, adhere to pre-release conditions

and to the recommendation that he work towards building a rapport and more trusting relationships with all of those involved in his sentence management. She also recommended that this communication being encouraged and aided by staff with regular interactions and conversations.

40. The panel having taken all the evidence into account, is not satisfied that is it is no longer necessary for the protection of the public of the public from serious harm that Mr Wright should be confined.”

[21] The decision then goes on to make recommendations on the areas to be addressed prior to the next review by the Parole Commissioners, which depending on their completion would be not later than nine months post decision.

Legal Principles

[22] Before considering the arguments of the parties it is important to restate some well-recognised principles in considering applications for judicial review of decisions by the Parole Commissioners. The first is the well-established principle that the court should recognise and give due deference to the expertise of decision makers in specialised fields. In the case of *Moon* [2021] NIQB 69 the court put it this way:

“[25] In analysing the panel’s reasoning the court bears in mind the comments of Sir Brian Leveson in the well-known case of *R(D) and another v Parole Board and another* [2018] EWHC 694 at paragraph 117 when he said:

‘117. The evaluation of risk, central to the Parole Board’s judicial function, is in part inquisitorial. It is fully entitled, indeed obliged, to undertake a proactive role in examining all the available evidence and the submissions advanced, and it is not bound to accept the Secretary of State’s approach. The individual members of a panel, through their training and experience, possess or have acquired particular skills and expertise in the complex realm of risk assessment.

118. The courts have emphasised on numerous occasions the importance and complexity of this role, and how slow they

should be to interfere with the exercise of judgment in this specialist domain. In *R (Alvey) v Parole Board* [2008] EWHC 311 (Admin), at [26] Stanley Burnton J, neatly encapsulated the position as follows:

‘The law relating to judicial review of this kind may be shortly stated. It is not for this court to substitute its own decision, however, strong its view, for that of the Parole Board. It is for the Parole Board, not for the court, to weigh the various considerations it must take into account in deciding whether or not early release is appropriate. The weight it gives to relevant considerations is a matter for the Board, as is, in particular, its assessment of risk, that is to say the risk of re-offending and the risk of harm to the public if an offender is released early, and the extent to which that risk outweighs benefits which otherwise may result from early release, such as a long period of support in the community, and in some cases damages and pressures caused by a custodial environment.’

[26] The court therefore is cognisant of the expertise of the panel and considers that its decision should be read fairly in the context of that expertise.”

[23] Bearing this expertise in mind it is important that decisions should be read fairly. Decisions should be read as a whole, an overly zealous textual analysis is to be avoided and the court should look to substance over form.

The Parties’ Arguments

[24] Conscious of these principles encouraging judicial restraint and caution the court now turns to the submissions of the applicant.

[25] The focus of the challenge is a purported failure by the panel to consider whether the undoubted risk identified in relation to the applicant could be managed by appropriate licence conditions. That the panel is obliged to do so is not in dispute. Returning again to the judgment in *Moon* the court said:

“Reasons

57. In applying the aforementioned test the panel has taken into account the principle in the case of *Re Foden Judicial Review* [2013] NIQB 2 **that the correct approach regarding the assessment of risk is to apply the statutory test after having considered appropriate licence conditions.** For reasons given below, having taken into account the oral and written evidence of all the witnesses as well as the submissions made, **the panel is not satisfied (even with the imposition of licence conditions)** that it is no longer necessary for the protection of the public from serious harm that the prisoner should be confined.” [Emphasis added]

[26] Mr MacGilloCheara carefully took the court through the decision of the panel and points out that the only express reference to licence conditions is at paragraph 23, set out above. More importantly, he looks to the reasons for the decision and nowhere is there any reference to licence conditions and whether licence conditions would meet the risk which was properly identified by the panel. Thus, he says that the panel has erred in law by failing to apply the statutory test **after having considered appropriate licence conditions.**

[27] Mr Henry counters that the applicant’s approach champions form over substance. He suggests that the applicant adopts an over formulaic approach. The panel correctly set out the legal test. It was clearly sighted of the licence conditions referred to in the probation report and in its reasoning confirms that it took all the relevant material into account. By referring to the licence conditions within the decision the panel demonstrated that they were considered. Such consideration could only sensibly have been before they reached their decision not to release. He also points to the fact that the panel was clearly alive to recommendations which would address risk. He argues that there is no obligation on the panel to express themselves in exactly the same way as the panel did in *Moon*, along the lines that they had expressly considered whether licence conditions would deal with risk before coming to their conclusion.

Conclusion

[28] As should be clear from the above the court fully accepts that it should be very slow to interfere with a decision such as the one under challenge, made by a specialist panel in respect of an application of a test it regularly applies.

[29] The court also bears in mind that it is not being asked to substitute its decision for that of the Parole Commissioners. It is not being asked to order the release of a life sentence prisoner.

[30] The court does, however, have concerns about the decision as formulated. Whilst one acknowledges the burden placed on the applicant it is also conscious that it is dealing with questions relating to his liberty. The panel is exercising in effect a judicial function. In those circumstances a high level of scrutiny of the decision is appropriate. In relation to the court's concerns the question of the licence conditions suggested by the Probation Service in the event of release is set out in a single sentence in para 23. The proposed conditions were extensive, containing 14 points in total. The treatment of the conditions is to be contrasted with the preceding paragraphs in which the decision sets out in full what the Probation Service had to say about the assessment of significant risk of serious harm and the reasons for the Probation Officer's recommendation that he cannot be managed in the community.

[31] Whilst, it is ultimately a matter for the panel, it will in all probability pay significant weight to the factors relating to risk identified in the probation report.

[32] However, having done so it is also imperative that the panel considers appropriate licence conditions before applying the statutory test.

[33] Such "consideration" is not a matter of form but a matter of substance. Herein lies the difficulty with the decision. Not only are the licence conditions suggested not set out in the decision, but at no stage are they examined or analysed by the panel. Mr MacGiollaCheara points out that many of the matters raised by both the Probation Service and the forensic psychologist could in theory be addressed by the potential licence conditions suggested by the Probation Service. In addition, of course, it would be open to the panel to consider licence conditions not contained in any of the reports. This is to be contrasted with the decision of a panel which previously considered the release of the applicant on 17 August 2020. In that decision the panel expressly addressed the issue of whether licence conditions could sufficiently address the risk posed.

[34] The decision of the panel is one of major significance for the applicant. In providing the detailed written reasons for its decision the applicant is, in the court's view, entitled to one which clearly addresses this matter of substance, namely a consideration of licence conditions before applying the statutory test.

[35] The court considers that this is very much a borderline case but, on balance, has decided that the panel has, indeed, erred in law by failing to properly address the question of appropriate licence conditions before applying the statutory test.

[36] Accordingly, the court makes an order of certiorari quashing the decision of the Parole Commissioners of 7 February 2022.

[37] The court further directs that a new panel of Parole Commissioners for Northern Ireland be convened to consider the issue of the applicant's release on licence under Article 6 of the Life Sentences (Northern Ireland) Order 2001. The newly constituted panel should make any recommendations regarding conditions to

be attached to the licence if they make a decision to release Mr Wright. If release is not directed, the Commissioners should make recommendations on:

- Areas of risk management to address prior to the next review.
- Any other areas to be addressed prior to the next review.
- Timing of the next review.
- Any other matters relevant to the progression of the case.