

[2022] PBSA 18

Application for Set Aside by the Secretary of State for Justice in the case of Adamson

Application

1. This is an application by the Secretary of State for Justice (the Applicant) to set aside the decision made by an oral hearing panel (the panel) dated 7 November 2022 to direct the release of Adamson (the Respondent).
2. I have considered the application on the papers. These are the dossier of 294 pages, which included the oral hearing decision dated 7 November 2022, reasons and the application for set aside, which was completed on a Stakeholder Response Form dated 11 November 2022. This is the Respondents first review of his case following the recall.

Background

3. On 10 January 2020, the Respondent received a determinate sentence of 4 years' imprisonment following conviction for two offences of robbery. His sentence expires in January 2023.
4. The index offending involved the Respondent and two other males targeting female victims as they arrived home in their vehicles and went to enter their homes. Weapons were carried by the males and they stole handbags, mobile telephones and at least one of the vehicles.
5. The Respondent has previous convictions. He was aged 19 at the time of sentencing. He is now 22 years old.

Application to Set Aside

6. The application to set aside is dated 11 November 2022 and has been drafted and submitted by the Public Protection Casework Section acting on behalf of the Applicant.
7. The application to set aside describes an incident which had been reported by the Prison Offender Manager (POM) on 10 November 2022. It is argued that this incident constitutes a significant change in circumstances relating to the Respondent which would have meant that the panel would not have directed release if those events had happened before that direction was given.



Current Parole Review

8. The Respondent had been released automatically as required by law on 12 March 2021. His licence was revoked and he was recalled to custody 12 days later on 24 March 2021 as a result of breaching his curfew. The Respondent was then re-released on 8 November 2021 by way of Executive Release by the Applicant. His licence was revoked a month later on 8 December 2021 and he was returned to custody the next day.
9. He had been released to designated accommodation but concerns arose regarding his attitude, being late for his curfew and use of alcohol. There was also an allegation that he had committed a further robbery and an assault, but he was never charged with either of those alleged offences.
10. The Respondent's case was referred to the Parole Board by the Applicant to consider whether it would be appropriate to direct his re-release following the revocation of his licence.
11. A member of the Parole Board considered his case on 25 February 2022 and directed his case to an oral hearing. This was the first review of his case following the recall. The case proceeded to an oral hearing on 21 October 2022 before a single member panel. The Respondent was not legally represented. Oral evidence was given by the Respondent's Prison Offender Manager (POM) and Community Offender Manager (COM).
12. Following the oral hearing, further information was received regarding the Risk Management Plan (RMP). The case was then considered again by the panel on the papers on 7 November 2022. The panel directed the Respondent's release to designated accommodation with availability from 1 December 2022.

The Relevant Law

13. Rule 28A(1) of the Parole Board Rules 2019 (as amended by the Parole Board (Amendment) Rules 2022) provides that a prisoner or the Secretary of State may apply to the Parole Board to set aside certain final decisions. Similarly, under rule 28A(2), the Parole Board may seek to set aside certain final decisions on its own initiative.
14. The types of decisions eligible for set aside are set out in rules 28A(1). Decisions concerning whether the prisoner is or is not suitable for release on licence are eligible for set aside 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)).
15. A final decision may be set aside if it is in the interests of justice to do so (rule 28A(3)(a)) **and** either (rule 28A(4):
 - a) a direction for release would not have been given or made but for an error of law or fact, or
 - b) a direction for release would not have been given if:

- i) information that was not available to the Board when the direction was given had been so available, or
- ii) a change in circumstances relating to the prisoner that occurred after the direction was given, had occurred before it was given.

16. Under Rule 28A(5) an application to set aside a decision must be made within 21 days of the decision. However, if the application relies on 28A(4)(b) i.e it relates to new information or a change in circumstances then it must be made before the prisoner is released.

The Reply from the Respondent

17. In accordance with the rules, the Respondent was asked if he had any representations to make within 7 days. The Respondent did not submit any response.

Discussion

Eligibility

18. The application concerns a panel's decision to direct release following an oral hearing under rule 25(1)(a). The application was made prior to the Respondent's release and argues that the condition in rule 28A(4)(b)(ii) is made out. It is therefore an eligible decision which falls within the scope of rule 28A.

Change in circumstances and the test for setting aside

19. The Applicant reports in the application that the Respondent, having been notified of the panel's decision on 7 November 2022, then went on to assault another prisoner the next day and was moved to the segregation unit as a result. The circumstances provided regarding the assault were that the Respondent used multiple punches to assault another prisoner and then followed him into the cell. Two other prisoners also joined the Respondent and they secured the cell. The complainant prisoner has said that this happened because he had not paid £100 to another prisoner who was believed to belong to an Organised Crime Group. The Respondent was adjudicated for this allegation and the matter has been referred to the police.

20. The Applicant submits that this incident directly links to risk and the Applicant highlighted that the oral hearing panel had identified a willingness to resort to violence as a risk factor. The Applicant also submitted that it called into question the panel's conclusion that the Respondent's custodial conduct had stabilised.

21. I am satisfied that the above constitutes a change in circumstances which has occurred since the decision to release was made.

22. In determining the application for set aside, I will first consider whether the events described above would have affected the panel's decision to direct the Respondent's release.

23. The Respondent is assessed as a high risk of serious harm to the public. The panel concluded that the decision to recall him had been appropriate. The panel considered his behaviour in custody since recall. He had been adjudicated for a fight with another prisoner in July 2022. The Respondent told the panel that he had been involved in four physical altercations since recall but had only instigated one of them. The panel heard evidence that the Respondent's behaviour had improved recently and he was receiving positive comments. The panel specifically noted in its conclusion that the Respondent's behaviour had stabilised more recently and therefore it is clear that this contributed to the decision to release him.
24. The COM told the panel that they now supported his re-release to designated accommodation. It is not known whether that recommendation has changed in light of the new allegation of violence.
25. The new information provides evidence to suggest the Respondent is continuing to display active risk factors identified by the panel, namely a willingness to resort to violence, a willingness to associate with negative peers, poor problem solving skills and a poor attitude to compliance.
26. In light of these developments, I am satisfied that the direction for release would not have been given if the events detailed in the application had taken place before that direction was given.
27. Having decided that the panel's decision to direct release would have been affected, I must also consider whether it is in the interests of justice for its decision to be set aside. Having considered the information, I am satisfied that it is in the interests of justice for the panel's decision to be set aside. In my opinion, the interests of justice would not be served if the release of a prisoner took place in the knowledge he had been alleged to be involved in a targeted group attack on another individual the day after receiving the decision to direct his release and that incident had been considered serious enough to refer it to the police.

Decision

28. For the reasons I have given, the application is granted, and the final decision of the panel dated 7 November 2022 should be set aside.
29. I must now consider two matters under rule 28A(8). First, whether the case should be decided by the previous panel or a new panel and second, whether it should be decided on the papers or at an oral hearing.
30. The previous panel has the great benefit of having prepared and heard the case, carefully considering the evidence before it at the time, reaching and documenting its decision. It is best placed to consider the case again, and I direct that it does so. On the evidence before me, I direct that the case should be decided on the papers. There is likely to be insufficient time for an oral hearing to be arranged before the Respondent's sentence expires.

Cassie Williams
2 December 2022

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