

[2022] PBSA 25

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

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 dated 24 November 2022 to direct the release of Chappell (the Respondent).
2. I have considered the application on the papers. These are the oral hearing decision, the dossier, and the application for set aside (9 December 2022).

Background

3. The Respondent received a determinate sentence of three years and ten months in custody on 22 July 2019 following conviction for possession of class A drugs with intent to supply. His sentence expires in April 2023.
4. The Respondent was aged 32 at the time of sentencing. He is now 35 years old.
5. The Respondent was automatically released on licence on 6 May 2021. His licence was revoked on 11 August 2021, and he was returned to custody on 13 August 2021.

Application for Set Aside

6. The application for set aside has been drafted and submitted by the Public Protection Casework Section (PPCS) acting on behalf of the Applicant.
7. The application for set aside submits further information which, it is argued, constitutes a change in circumstances sufficient for the panel's decision to be set aside.

Current Parole Review

8. The Respondent's case was referred to the Parole Board by the Applicant to consider whether to direct his release. This was his first review since recall.
9. The case proceeded to an oral hearing on 16 November 2022 before a two-member panel. The Respondent was legally represented throughout the hearing. Oral



evidence was given by the Respondent's Prisoner Offender Manager (POM) and his Community Offender Manager (COM). The panel directed the Respondent's release.

The Relevant Law

10. Rule 28A(1) of the Parole Board Rules 2019 (as amended by the Parole Board (Amendment) Rules 2022) (the **Parole Board Rules**) 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.
11. The types of decisions eligible for set aside are set out in rules 28A(1) and 28A(2). 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)).
12. A final decision may be set aside if it is in the interests of justice to do so (rule 28A(4)(a)) **and** either (rule 28A(5)):
 - a) a direction for release (or a decision not to direct 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 made if information that had not been available to the Board had been available, or
 - c) a direction for release would not have been made if a change in circumstances relating to the prisoner after the direction was given had occurred before it was given.

The reply on behalf of the Respondent

13. Submissions received from the Respondent's legal representative set out the Respondent's position. These submit that the COM's assessment that the Respondent would be unmanageable would not be a reason to set aside the release decision. It states the Respondent would, in fact, comply with the conditions of his licence and that any recent adverse reaction was as a result of his frustration with the rigid approach taken by the Probation Service.
14. It concludes that the application for set aside is not well founded and arises from ongoing issues between the Respondent and his COM who, it is said, never wanted the Respondent to be released in the first place. It is submitted that the application for set aside is akin to a pre-emptive recall and that there has been no significant change in circumstances as the way in which the Respondent reacts to frustration has been accepted by the panel as part of its risk assessment.

Discussion

Eligibility

15. 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 release and argues that the

condition in rule 28A(5)(b)(ii) is made out. It is therefore an eligible decision which falls within the scope of rule 28A.

Change in circumstances

16. The application notes that PPCS received information from the Respondent's COM on 8 December 2022 which states that the Respondent has stated he was confused as to why the Parole Board directed his release, considering he stated in the hearing that he would not comply with sign-in times at the designated accommodation and did not want to reside there. He further stated that he would not comply with his licence and, if released, would abscond, and would have 'nothing to lose' regarding potential further violent reoffending.

The test for set aside

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

18. The Respondent argues that anything he said has to be viewed in the light of that way in which he responds to frustration, particularly in relation to what he saw as the Probation Service taking an unnecessarily rigid approach to his licence conditions.

19. I was not present at the hearing, so cannot comment on what the Respondent may or may not have expressed to the panel.

20. The decision records that the Respondent has a history of negative custodial behaviour, including reportedly making threats to staff. He admitted that he can respond negatively if confronted with negative behaviour and has said many things out of frustration. His COM noted a history of making threats but stated there was no evidence that he had carried them out. The panel concluded that the Respondent had been open and honest throughout the hearing and the decision records detailed discussion about the Respondent's views toward his licence.

21. The panel's conclusion notes the Respondent's history of offending behaviour and risk factors and carefully balances these against protective factors, the absence of violent offending since 2015 and the self-directed offending behaviour work undertaken in custody. It also notes the Respondent's frank and open acknowledgement of making threats in the context of frustration, poor emotional management and as a response to perceived threats from others.

22. The panel noted that further work on resilience, emotional management and conflict resolution was required, but did not consider that to be work that needed to be undertaken in [custodythe-community](#). It noted the resilience of the risk management plan and was not convinced that any future non-compliance would lead to serious harm being caused.

23.The discussion between the COM and the Respondent that is set out in the application appears to be a further example of the Respondent reacting negatively when frustrated. I do not agree that an outburst in keeping with those already known to the panel, and to his COM, weakens the risk management plan to the extent that it would not be capable of managing risk. The Respondent has a history of making empty threats when agitated and has not offended violently in some seven years. If the Respondent does not comply with his licence, he will be recalled then, and it falls to his COM to manage him under the terms of that licence.

24.I am therefore not satisfied that the Respondent's reported views constitute a change in circumstances for the purposes of rule 28A such that direction for release would not have been given if the events detailed in the application had taken place before that direction was given. Moreover, I am not persuaded by the Applicant's assertions that a full re-examination of the case is required.

Decision

25.For the reasons I have given, the application is refused.

Stefan Fafinski
21 December 2022