

**[2023] PBSA 37**

## **Application for Set Aside by Sheriff**

### **Application**

1. This is an application by Sheriff (the Applicant) to set aside the decision made by a Panel of the Parole Board (the Panel) following an oral hearing resulting in a refusal to direct his release.
2. I have considered the application on the papers. These are the dossier currently comprising 323 pages, the oral hearing decision dated 14 April 2023, a reconsideration decision '**[2023] PBRA 97**' dated 25 May 2023 and the application to set aside dated 30 May 2023.

### **Background**

3. The Applicant received a sentence of imprisonment for public protection on 9 January 2009, following conviction after trial for rape x2, attempted rape, assault by penetration x2 and kidnap. The tariff was set at five years and six months (less time spent on remand) and expired in December 2013.
4. The Applicant was 27 years old when he was sentenced and is now 42 years old. This is his sixth parole review.

### **Application for Set Aside**

5. The application to set aside is handwritten and made by the Applicant himself who suggests that there have been errors of fact and law.

### **Current Parole Review**

6. The Applicant's case was referred to the Parole Board in May 2022 by the Secretary of State (the Respondent) to consider whether to direct his release.
7. The Applicant is a national of Sierra Leone and was not eligible to be considered for a transfer to open conditions as a deportation order (made in 2016) had been served which he had not appealed and his appeal rights are considered exhausted.
8. The review was heard on 22 February 2023 by the Panel and the Applicant was legally represented throughout the hearing.



9. The review was adjourned for further clarification of how the Applicant would be dealt with by the immigration authorities if directed for release with the Panel posing a number of questions to which detailed replies were in due course received.
10. The Panel made no direction for release.
11. In an application dated 9 May 2023, drafted by his solicitors, the Applicant sought reconsideration of this decision. On 25 May 2023, the application for reconsideration was refused upon findings that the decision not to direct release was neither procedurally unfair or irrational.

## The Relevant Law

12. 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.
13. 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)).
14. 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.
15. A decision is unlawful under the broad heading of illegality if the panel:
  - a) misinterprets a legal instrument relevant to the function being performed;
  - b) has no legal authority to make the decision;
  - c) fails to fulfil a legal duty;
  - d) exercises discretionary power for an extraneous purpose;
  - e) takes into account irrelevant considerations or fails to take account of relevant considerations; and/or
  - f) improperly delegates decision-making power.
16. The task in evaluating whether a decision is illegal is essentially one of construing the content and scope of the instrument conferring the duty or power upon the panel. The instrument will normally be the Parole Board Rules, or associated



legislation, but it may also be an enunciated policy or some other common law power.

### **The reply on behalf of the Respondent**

17. The Respondent has offered no representations in response to this application.

### **Discussion**

18. The application concerns a Panel's decision not to direct release following an oral hearing under rule 25(1)(b). The application argues that both conditions in rule 28A(5)(a) (error of fact and error of law) are made out. As the Panel's decision is now final the application to set aside would appear to be an eligible decision which falls within the scope of rule 28A.

19. I have carefully considered the application to set aside and the matters relied on by the Applicant. He helpfully sets out some background and is clearly unhappy that he is not being directed for release, particularly as he is several years over tariff. However, it is not easy to identify the errors of fact and law (which I deal with together) upon which he seeks to rely.

20. He refers to "*irrationality*" which, of course, is not a matter for me and has been addressed in the reconsideration decision.

21. The Applicant complains that the Panel did not have "*any understanding or knowledge*" of a prisoner in his position serving an indeterminate sentence and subject to a deportation order nor of "*the reality of the deportation decision.*"

22. I am satisfied that the Panel went to considerable lengths to obtain a full understanding of the manner in which the Applicant would be treated and his circumstances prior to any deportation (which the Panel found was unlikely to be imminent) if he were directed for release. In addition, I find that the Panel gave proper consideration to the risk which he would pose if removed to Sierra Leone (or any other country), its conclusion being that it would not be possible to manage the Applicant's risk if he were deported to a country where there was no known agreement for doing so.

23. The Applicant also complains that he cannot "*abscond from the UK*" if he leaves in accordance with a deportation order. However, the Panel's concerns related to the risk which he would pose of absconding prior to deportation because of his immigration status as well as to other factors which, it found, could lead to the Applicant failing to comply with any risk management plan.

24. I am entirely satisfied that the Panel had a full understanding of the Applicant's position and circumstances were he to be directed for release whilst subject to a deportation order.

25. I find that the Panel applied the correct test for release and was aware of its duty to consider whether the Applicant posed more than a minimal risk of causing serious



harm to the public anywhere in the world, and whether that risk could be safely managed in the community.

26. For the reasons I have given I am satisfied that the Applicant is unable to demonstrate that the Panel fell into error, whether as to fact or law, and the application to set aside is refused.

**Peter H. F. Jones**  
**27 June 2023**