

[2023] PBSA 53

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

1. This is an application by the Secretary of State (the Applicant) to set aside the decision made by an oral hearing panel (the panel) dated the 9 May 2023 to direct Akinyemi's (the Respondent's) release.
2. I have considered the application on the papers. These are:
 - a) The Decision Letter dated the 9 May 2023;
 - b) An application from the Applicant to set aside the panel's decision, dated the 8 August 2023;
 - c) A response from the Respondent's legal representative dated the 14 August 2023; and
 - d) Further information from the Applicant about the Respondent's behaviour in custody.

Background

3. On the 3 August 2012, the Respondent received an indeterminate sentence of imprisonment for public protection following his conviction for robbery (the index offence). The court set the minimum term to be served in custody as 28 months and the Respondent first became eligible to be considered for release in May 2014.
4. The Respondent committed the index offence when he was 27 years old. He and another person went to a shop, he was wearing a balaclava and took property from the shop and the cash register. The panel had noted the Respondent's "*unbroken string of convictions*" leading up to the index offence.
5. The panel considered the Respondent's case at an oral hearing on the 3 May 2023 and determined that he met the test for release. In reaching that decision, the panel considered a written dossier of evidence, and it heard evidence from the Respondent, his Probation Officer, the official supervising his case in custody and a prison psychologist. The Respondent was legally represented at the hearing.
6. In deciding to direct release, the panel had noted the work completed by the Respondent in custody to address identified treatment needs. There had been behavioural concerns reported during the Respondent's sentence, including his use of aggression, violence and drugs. However, the panel considered that there had



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been evidence more recently of “*encouraging progress*” and that the Respondent had “*evidenced the motivation to achieve a pro-social life outside of prison*”.

Application to Set Aside

7. In his application, the Applicant submits that further information has come to light that affects the risk assessment in this case.
8. It has been alleged that on the 25 July 2023, the Respondent grabbed a member of prison staff around the neck while the member of staff was attempting to restrain another prisoner.
9. The Applicant also notes that the Respondent has two further adjudications recorded against him in custody, for damaging the contents of his cell and for smashing the observation panel in the door of his cell.

The Relevant Law

10. Rule 28A(1) of the Parole Board Rules 2019 (as amended) (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. Rule 28A(1) also provides that the Parole Board may seek to set aside certain final decisions on the initiation of the Board Chair.
11. The types of decisions eligible for set aside are also set out in rule 28A(1). Final 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 made 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(3)(a)) and either (rule 28A(4)):
 - 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 at the time of the direction had been so 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. The Respondent’s legal representative has stated that she accepts the panel’s decision is likely to be set aside and that the case should be referred back to a panel of the Parole Board for “*further independent assessment*”. The Respondent has offered explanations for his behaviour, although he accepts that the Parole Board is likely to want to evaluate what has happened.

Discussion

14.I have little difficulty in determining that the new information is a relevant consideration and I cannot be satisfied that the panel would have been minded to direct release in this case had this new information been before the panel prior to it making its decision.

Decision

15.For the reasons I have given, I am satisfied that it is in the interests of justice for the decision of the panel dated the 9 May 2023 to be set aside.

Robert McKeon
22 August 2023