

[2023] PBSA 85

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

1. This is an application (the application) made on 22 November 2023 by the Secretary of State (the Applicant), pursuant to Rule 28A of the Parole Board Rules 2019 (as amended) (the Parole Board Rules), to set aside a decision (the Decision) made by a Parole Board Panel (the Panel) to direct the release of Townsend (the Respondent).
2. The decision was made by a single member panel following a remote oral hearing by video link on 25 September 2023. The decision was given in a letter dated 28 September 2023 and issued to the parties on 29 September 2023.
3. The substantial grounds on which the application is made is on the basis of new information and that it is in the interests of justice to set aside the decision (see Rule 28A (3) and (4)). (The application was actually phrased as "*Further information, constituting a significant change in circumstances*".)
4. In any event, the new information and the alleged change of circumstances essentially cover the same ground: namely, first, that a complaint was received on 9 October 2023 from another offender alleging a sexual assault on him by the Respondent; second, a significant decline in the Respondent's behaviour since the decision as evidenced by the receipt of 15 negative entries, multiple adjudications (4 proven, 2 dismissed, 1 pending). Whether regarded as new information or a change of circumstances, in either case (or in both cases) it is said that had the information been available to the panel before the decision or had the change of circumstances occurred before the decision, the panel would not have directed the Respondent's release.
5. I have considered the application on the papers. These are (1) the dossier now running to some 220 pages including the decision, (2) the application for set aside dated 22 November 2023 (containing the factual basis for the application mentioned above), and (3) representations made on behalf of the Respondent by his legal representatives in a document dated 28 November 2023 and received on 29 November 2023 (the representations).



Background

6. The Respondent was born on the 15 March 1992 and is accordingly now aged 31 years. On 17 June 2021 (when aged 29 years) he was sentenced to 3 years and 1 month imprisonment for a number of sexual offences involving two 15-year-old boys. He was also sentenced to an indefinite sexual harm prevention order (SHPO). The Respondent himself was aged 26 at the time of these index offences. He originally entered a not guilty plea to the charges but then failed to attend the trial. Following his later arrest, he entered guilty pleas. His sentence expiry date (SED) is June 2024.
7. The Respondent was released automatically on licence on 18 November 2022 at the halfway stage of his sentence but was recalled on 16 December 2022 on the basis that he had breached a licence condition not to contact or associate with a known sex offender and that his risks were no longer manageable in the community. He was returned to custody on 17 December 2022. The Respondent disputed the appropriateness of the recall. The panel carefully considered the matter and, after an extensive analysis, concluded that while there was some factual basis for finding that the Respondent had breached his licence conditions, it might have been dealt with in an alternative manner to recall such as written warnings or discussion of concerns.
8. This was his first recall on this sentence. Following the recall, the Applicant referred the matter to the Parole Board in the usual way.
9. The Respondent has a record of convictions and court appearances going back to the age of 15. The underlying theme of these convictions and appearances relate to inappropriate sexual involvement with teenage boys, breaches of previously imposed Sexual Offences Prevention Orders (SOPO), disorderly behaviour, criminal damage, assaults on police, and fraud. As noted by the Panel, the sentencing Judge referred to the Respondent as a "*manipulative and scheming liar*".

The Application for Set Aside

10. I have set out above the basic facts leading to the application. The complaint of sexual assault alleged that the Respondent had inappropriately touched the complainant below the waist on both the front and rear of the complainant's body and had also touched the complainant's neck and ears on numerous occasions. The Respondent was placed on report and the matter referred to the police who have taken the matter no further, nor, it appears from the representations, did the Prison Authorities.
11. The alleged decline in behaviour has also been summarised above. The 4 proven adjudications relate to disobeying lawful orders, using threatening, abusive or insulting words or behaviour and denying access to part of the prison to a prison officer.
12. The Applicant submits that even though the alleged sexual assault was not taken further, the multiple negative entries and proven adjudications raise concerns regarding the Respondent's risk of reoffending and his decline in compliance

particularly in light of the panel's comment that the Respondent "*should be managed as a high risk offender and that if he were to reoffend, it is likely to be sexual offending against a young male victim with the potential to cause serious harm*".

Current parole review

13. I have set out above how the matter was referred to the Parole Board following the Respondent's recall. The panel sat remotely via video link. The Applicant was not represented but the Respondent was professionally represented and was able to consult with his legal representative during the hearing.
14. Evidence consisted of the dossier (then some 200 pages) and oral evidence from the Prisoner Offender Manager (POM), the Community Offender Manager (COM), and the Respondent himself.
15. The panel conducted a detailed investigation and analysis of the index offences, of the Respondent's conduct and behaviour in custody, the appropriateness of his recall (above), and assessment of past, present and future risk, including questioning him in some detail during the oral hearing. The panel noted an abusive history, struggles with mental health and sexual identification. It was also noted that the Respondent did not complete any accredited risk reduction programmes focussed on his sexual offending prior to release. The panel concluded that the Respondent had some insight into his offending behaviour but was not confident that that insight was fully developed. As noted, the panel also concluded that the Respondent should be managed as a high risk offender (see above). The panel further noted the Respondent's positive engagement with his current COM and that the risk management plan was capable of managing his risk until SED and he did not need further time in custody to control or reduce future risk beyond SED and accordingly directed his release (although also noting that whilst an Approved Premises (AP) had been secured for him on release, this would not be available until a specific date in January "2023" (sic) which clearly meant 2024).

The Relevant Law

16. Rule 28A(1)(a) of 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(1)(b), the Parole Board may seek to set aside certain final decisions on its own initiative.
17. The types of decisions eligible for set aside are set out in rule 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)).
18. 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 given if information that had not been available to the Board had been available, or
- c) a direction for release would not have been given 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

19. The Respondent's legal representatives submitted a document dated 28 November 2023 in response to the application.
20. On behalf of the Respondent, the representations may be summarised as follows.
21. First, the allegations of sexual assault were false and an attempt by the complainant to avoid payment of a debt. In the event neither the Police nor the Prison Authorities have taken the matter any further.
22. Second, as regards the decline in behaviour this all, it is submitted, stems from the initial (groundless) complaint of sexual assault. It led to an admitted deterioration in the Respondent's mental health and to his self-harming. He admits and concedes that he barricaded himself in his cell, refusing a move to another wing, as a means of preventing further accusations. He requested medication and support for his mental health problems, but this has repeatedly been refused (although it elicited an apology on one occasion). He has had a number of altercations with prison officers who he considers have been unsupportive and bullying leading to his refusing a search (and which have in turn resulted in 4 consequential adjudications, cautions and loss of 7 days). He continues to feel unsupported, all of which no doubt exacerbates his sense of isolation, mental deterioration, and frustration.
23. Accordingly, it is submitted that the application should not be granted.

Discussion

24. It is obviously important to bear in mind, in my judgment, all the relevant facts, circumstances and submissions made on behalf of the parties as summarised above. But in particular I highlight the following as of some importance in balancing the factors for or against granting or refusing the application: (1) the fact that the Respondent's SED is in 6 months, in June 2024, (2) the panel carried out a considerably detailed risk assessment and analysis of the Respondent's conduct, attitudes, insight and history noting many positive aspects as well as the negative ones (including the remarks of the sentencing Judge noted above), (3) the conclusion by the panel that the risk was manageable until the SED, (4) the inappropriateness of the recall, (5) the fact that the alleged sexual assault did not result in either Police or prison measures being taken against the Respondent, (6), the impact this complaint had on the Respondent's mental behaviour (including his alleged self-harming) and conduct (leading to the 4 adjudications referred to), (7) the allegations of lack of support within the prison, (8) the delay in housing the Respondent within an AP (see above; whether that placing has now been lost I know not) and (8) post SED the Respondent will remain subject to the indefinite SHPO.

25. Having regard to the foregoing, I am, on balance, not satisfied that the decision to release would not have been given had the information as the alleged sexual assault and consequential behaviour been before the Panel. Nor am I satisfied that the interests of justice require the panel decision to be set aside. Of particular importance in this context is the approaching SED and the fact that the Respondent will be subject to licence conditions pending that date and thereafter to the indefinite SHPO, breaches of which would more than likely lead to a further recall and also the possibility of further sentencing, in the latter case thus prolonging his custody beyond the present SED.

Decision

26. In these circumstances the application for set aside is accordingly refused.

HH Roger Kaye KC
14 December 2023