

[2024] PBSA 14

Application for Set Aside by Lewis

Application

1. This is an application by Lewis (the Applicant) to set aside the decision not to direct his release. The decision was made by a panel after an oral hearing on 31 January 2024. This is an eligible decision.
2. I have considered the application on the papers. These are the dossier consisting of 337 pages, the oral hearing decision, the application to set aside the decision and the email from the Public Protection Casework Section (PPCS) on behalf of the Secretary of State (the Respondent) dated 12 March 2024, stating that the Respondent will not be submitting any representations in response to the application to set aside.

Background

3. On 10 July 2017, the Applicant received a sentence of imprisonment for a custodial period of 12 years plus an extended licence period of 1 year for 2 counts of rape of a female who was under the age of 13 years, 4 counts of sexual assault of a female who was under the age of 13 years, and 1 count of assault by penetration of a girl who was under the age of 13 years
4. The Applicant was aged 35 years old at the time of sentencing. He is now 41 years old.

Application for Set Aside

5. The application for set aside has been drafted and submitted by the Applicant's legal representative.
6. In support of the application to set aside, it is submitted that:
 - (a) There has been an error of fact in the decision not directing the Applicant's release because the panel concluded that the Applicant could not be trusted to be open with those working with him when the true position was that he had always been open to all the professionals he worked with;
 - (b) he should not be penalised for maintaining his innocence;
 - (c) his good custodial behaviour over 6 years shows how he will behave in custody



Current parole review

7. The case proceeded to an oral hearing on 14 November 2023, however the hearing was adjourned part heard and the oral hearing was resumed on 22 January 2024 before a 3-member panel. The panel heard evidence from the Applicant, his present and former Prison Offender Manager (**POM**), his Community Offender Manager (**COM**), and a HMPPS psychologist. The Applicant was legally represented throughout the hearing.
8. The panel did not direct the Applicant's release.

The Relevant Law

9. Rule 28A(1)(a) 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(1)(b), the Parole Board may seek to set aside certain final decisions on its own initiative.
10. 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)).
11. 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

In an email dated 14 March 2024, the Respondent stated that it had no comments on the Applicant's setting aside application.

Discussion

12. It is argued on behalf of the Applicant that there has been an error of fact made by the panel when it made its decision not to release the Applicant because it concluded that the Applicant had not been open and honest when the true position was that he had been "*completely open and honest with all professionals*".

13. Further the Applicant submits that he should not be penalised for maintaining his innocence and that *"if direct questions were asked, the panel would have gotten direct answers"*.
14. Having heard the evidence of the Applicant, the Applicant's present and previous POM, and his COM as well as having considered the submissions of the Applicant's legal representative, the panel found that:
- (a) The Applicant *"cannot be relied on to volunteer information that will damage his reputation or have negative outcomes for himself"*;
 - (b) *"[The Applicant's] evidence was peppered with occasions when he diverted or deflected in answering questions about matters that might not reflect well on him"*
 - (c) *the panel gave two examples of the Applicant "being unwilling or unable to discuss things that might cast him in a negative light"*.
 - (d) *"Effective risk management of the Applicant relies on professionals working with [him] having confidence that he will be open with them when he faces challenges or setbacks- even if they do not accept that they represent a risk to others [but] the panel does not have the confidence that [the Applicant] would be sufficiently open"*;
 - (e) after *"taking all that into account the panel concluded that it remains necessary for the protection of the public that [the Applicant] continues to be detained [and] it makes no direction for release"*
15. Having considered all the evidence including the submissions of the Applicant's legal representative, I have found the findings of the Panel set out in the previous paragraph demonstrated that the Applicant could not be trusted to be open and honest with those working with him and so should not have been released as it remained and still remains necessary for the protection of the public that the Applicant should continue to be detained.
16. If I had any doubt about the correctness of that conclusion, I would have reached that conclusion for the additional reason that the Panel had arrived at that conclusion after exercising its judgment based on the evidence before it and after having seen and heard the witnesses. In those circumstances, it would be inappropriate to direct the decision to be set aside unless it was manifestly obvious that there were compelling reasons for interfering with the decision of the panel. No such compelling grounds have been pleaded or established.

Decision

17. The application for set aside is refused.

Sir Stephen Silber
21 March 2024