

**[2024] PBSA 36****Application for Set Aside by Maxwell****Application**

1. This is an application by Maxwell (the Applicant) to set aside the decision not to direct his release. The decision was made by a Panel after an oral hearing on 29 April 2024. This is an eligible decision.
2. I have considered the application on the papers. These are (i) the dossier, now containing 275 pages, (ii) the oral hearing decision dated 10 May 2024 (DL) and (iii) the application for set aside made by the Applicant dated 16 May 2024.

**Background**

3. On 16 March 2022 the Applicant was sentenced to a total of 5 years imprisonment for two sets of offences comprising (i) a dwellinghouse burglary and theft of a vehicle committed in January 2020 in breach of a suspended sentence of imprisonment imposed for an offence of dwellinghouse burglary which was activated in part and (ii) unlawful wounding, assault by beating of an emergency worker, and document offences committed on 22 May 2020 ("the index offences").
4. The Applicant broke into a flat whilst the occupants were away and stole cash and the keys to their car which was driven away and never recovered. Some months later he was stopped by police whilst driving a vehicle containing two women and a baby. He appeared agitated and punched one officer to the face causing a fracture and bit the hand of another officer. He was driving without insurance and otherwise than in accordance with a driving licence.
5. The Applicant has an extensive criminal record of convictions for over 100 offences consisting, for the most part, of acquisitive crime, including many matters of burglary, together with driving offences, although he has also been convicted of assaults upon authority figures such as police and prison officers. He has a poor history of compliance with court orders and licence conditions.
6. The Applicant was aged 48 at the time of sentencing and is now 50 years old.
7. The Applicant was automatically released to an Approved Premises (AP) on 7 July 2023 on a licence which was revoked the same day. This is his first parole review since his recall to prison.

**Application for Set Aside**

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8. The application for set aside is based on what are said to be 10 errors of fact (the numbering derives from the application) which I shall address in detail below.

### **Current parole review**

9. The Applicant's case was referred to the Parole Board by the Secretary of State (the Respondent) to consider whether the Applicant should be released.

10. The case proceeded to an oral hearing on 29 April 2024 before a single member Panel. The Panel heard evidence from the Applicant, his Prison Offender Manager ("POM") and his Community Offender Manager ("COM"). The Applicant was legally represented throughout the hearing.

11. The Panel did not direct the Applicant's release.

### **The Relevant Law**

12. 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.

13. 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)).

14. 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**

15. The Respondent has, to date, submitted no representations in response to this application.

### **Discussion**

16. The application relies on 10 suggested errors of fact which I will address individually.

17. The Applicant suggests that neither the probation service nor the Panel is qualified to form a judgement about the nature and the level of the risk which he poses to children. He asserts that he poses no such risk.
18. The probation service is competent and, indeed, is bound to give consideration, and form a view, as to this issue and the Panel considered all the evidence available to it, noting the involvement of the social services department with the family in relation to issues of child neglect and safeguarding concerns and that the risk was felt to relate to the Applicant's lifestyle choices and his developing pattern of violence.
19. The Panel was aware of the COM's view that this risk had diminished but found itself in disagreement for the reasons it set out, in particular, the presence of a very young child in the car when the Applicant was stopped and the subsequent violent assaults upon police officers.
20. This was the judgement of the Panel after consideration of the relevant evidence and does not, in my view, constitute an error of fact but for which the decision not to direct release would not have been made.
21. The Panel noted "*concerns*" that the Applicant was a domestic abuse perpetrator and that, as with children, the risk to an intimate partner related to the Applicant's lifestyle choices and his developing pattern of violence.
22. The Panel made no finding on this point and, as with the concerns relating to children, this issue does not appear to have formed part of the Panel's reasoning and conclusion which led it to decline to direct the Applicant's release. Again, I find no relevant error of fact.
23. The Panel accepted the Applicant's evidence given at the hearing that he had a drink on the occasion of the police assaults but was not over the legal driving limit. However, the Panel was aware of the Applicant's history of alcohol misuse and violent offending and took the view that such alcohol as was taken contributed to his response on that occasion. I can find no reference to the Panel finding that he had "*excessive*" alcohol in his system.
24. The Panel acknowledged the Applicant's excellent custodial behaviour since recall but it is a matter of fact that he did not complete any offending behaviour work following his recall. It is also recorded that, during his sentence, in November 2022, having been found suitable, he declined to engage with the Thinking Skills Programme stating that he had undertaken this programme previously.
25. The Panel expressed some sympathy for the Applicant in that his release did not go ahead as anticipated and that he was required at short notice to reside at an AP. However, the Panel found that the Applicant was unable to put aside his frustrations and his objections to being at an AP and was unable to manage his emotions, raising considerable concerns for the staff. He also repeatedly left the AP in breach of staff instructions and curfew hours.

26. The evidence which was before the Panel, both oral and written, discloses that the Applicant struggles to accept responsibility for his recall (although he told the Panel that he does understand and agree with it, although not agreeing with the manner of it) but, rather, as the Panel found, externalises a significant amount of blame to probation.
27. The Applicant acknowledges that he was well aware of his licence conditions but, nevertheless, continues to seek to justify his actions by reason of the manner of his release which, as I have already noted, the Panel acknowledged and for which it expressed sympathy for the Applicant.
28. It is abundantly clear that the Panel was aware of the Applicant's ADHD, about which there was a considerable amount of evidence, and of its effects and the impact upon his day-to-day life and behaviours. It is equally clear that many of the issues which caused the COM and the Panel concern and weighed most heavily in the Panel's decision-making and conclusions cannot be said to be attributable to this condition.
29. Unfortunately, the Applicant is mistaken in believing that the sentencing Judge deducted 3 months from his sentence because of "*excessive force by the police*". The court's attention was drawn to the manner of the Applicant's restraint by the police, but the Judge reduced the sentence by three months to reflect appropriate credit for guilty plea.
30. The Panel understandably will have focused on the index offences, particularly the serious assaults upon police, but was bound to take account of the Applicant's offending history and the matters of which he had been convicted including the offences which he has previously accepted committing and asked the Court to take into account in sentencing.
31. I can discern nothing in the DL to indicate that the Panel sought to belittle the Applicant or, indeed, disbelieved his account of childhood physical and emotional abuse. Indeed, the professionals and the Panel accepted this as a fact which, as with his diagnosed ADHD, they were bound to take into account in their assessments of risk, the issues underlying, and the triggers for, his offending behaviour and the ways in which the Applicant could most appropriately be assisted to address the consequences of his acknowledged childhood trauma and to best ensure that he can be safely returned to, and managed in, the community.
32. The Applicant in his representations, concludes by suggesting that the decision not to direct his release was unfair but I am afraid that this is not a matter for me in relation to an application of this sort.
33. In addition, the Applicant makes further submissions in support of his application for release unrelated to suggested errors of fact and concludes by making florid allegations against the probation service which it is unnecessary for me to address.
34. I have attempted to deal fully with the specific points raised by the Applicant in the representations which he makes on his own behalf and, in deference to his overall unhappiness and frustration as to the outcome of the oral hearing, I confirm that,

having considered all the papers before me, I am satisfied that the Panel's decision is not based on guesswork or the opinions of others but is the result of a thorough consideration of the evidence and that the Panel has recorded in considerable detail the evidence which it heard and read and has carefully and thoroughly set out its findings in coming to the conclusion that, in its judgement, the public protection test for release was not met and that the risk of harm which the Applicant continues to present is currently unmanageable in the community unless further specified work is undertaken.

35. The Panel has exercised its judgement in this case, and I can find no errors of fact made by the Panel but for which the decision not to direct release would not have been made.

## Decision

36. I have carefully considered the application and, for the reasons I have given, I find that it is without merit and that the Applicant is unable to demonstrate that the Panel fell into error as to fact and the application to set aside is refused.

**PETER H.F. JONES**  
**11 June 2024**