

**[2024] PBSA 50****Application for Set Aside by Melton****Application**

1. This is an application by Melton (the Applicant) to set aside the decision of an oral hearing panel (the panel) dated 25 June 2024 not to direct his release. This is an eligible decision.
2. I have considered the application on the papers. These are the dossier, the oral hearing decision, and the application for set aside from the Applicant's legal representative dated 15 July 2024.

**Background**

3. On 29 September 2017, the Applicant received a determinate sentence of nine years in custody following his conviction for robbery. He received concurrent determinate terms for two offences of attempted burglary and an offence of burglary. The victims of his offending were vulnerable and elderly. The Applicant pleaded guilty at court. The sentencing Judge noted that the Applicant and his co-defendant had been using drugs at the time of their offending and had both been on licence.
4. The Applicant was aged 34 at the time of sentencing. He is now 41 years old. I note that he has an extensive history of offending.
5. The Applicant was automatically released on licence on 30 March 2022. His licence was revoked on 7 March 2023 and he was returned to custody on the same day. This is his first recall on this sentence, and the panel's decision was the first review of his case since his recall.
6. In the lead up to his recall, information had been provided to Probation indicating that the Applicant was a suspect in an offence of murder. The Applicant had been present at an address overnight where ambulance staff later attended and a male was found dead. Subsequently, the death was treated as sudden and unexpected rather than suspicious, and the murder allegation was discontinued. For the avoidance of doubt, it is clear that there is no suggestion that the Applicant had been responsible for an offence of murder and he was quickly ruled out of the police investigation that followed. The panel made a finding of fact on this point.
7. However, the Applicant was arrested for being concerned in the supply of drugs because the death was believed to possibly be linked to a drug overdose. It was later confirmed to be caused by other reasons. The Applicant had been found in



possession of valium, crack cocaine and heroin. That matter was discontinued following his return to custody.

8. In the recall report for the panel, Probation had noted a deterioration in the Applicant's engagement, compliance and behaviour. He had been using Class A drugs on licence and there were allegations of low level crime. It had also been alleged that the Applicant had been involved in a robbery which was not pursued by the police. At the time of the panel's consideration of the case, there were no active police investigations.
9. It was reported that support had been offered to the Applicant to address his drug misuse in the community but he had failed to attend appointments. Probation later noted that although there were concerns about the Applicant's arrest, it was his behaviour and his compliance declining, linked to his high level of heroin use and his association with peers who used drugs that led to his recall. It is clear from the Probation reports before the panel that Class A drug misuse had been a critical concern in this case and that the Applicant lacked the ability to sustain abstinence in the longer term.
10. Following his return to prison, the Applicant completed an offending behaviour programme called New Me Strengths. He received positive feedback for this and his Community Offender Manager (COM) subsequently recommended re-release in a report of 21 February 2024. The COM noted that the Prison Offender Manager (POM) was also supporting the Applicant's re-release.
11. The COM had noted that the Applicant had a good working relationship with Probation, had a suitable release address (with his mother) and had agreed to wear a Buddi Tag. I note that the Buddi Tag is a voluntary GPS tag managed by the police. The Applicant did not engage properly with this tag on his previous release.
12. The panel's consideration of the Applicant's case was at an oral hearing on 12 June 2024. In its decision dated 25 June 2024, the panel did not direct re-release. It noted that the Applicant had engaged well on licence until his lapse back into Class A drug misuse. The panel accepted that the decision to recall the Applicant to custody had been appropriate and that the Applicant had since accepted the circumstances of his recall. The panel considered the Applicant's return to drug misuse to be offence paralleling behaviour.
13. The panel reviewed custodial behaviour following recall. It noted involvement in a fight in November 2023 and the Applicant's later completion of New Me Strengths. The Applicant had been reported to have used drugs in custody, and the panel referenced issues in March 2023, April 2023 and November 2023. The Applicant told the panel that he had last used drugs in November 2023. The panel noted that the COM and POM had been unaware of the November 2023 lapse and that the Applicant had not disclosed this to them.
14. As it was entitled to do, the panel explored the other allegations in respect of the Applicant's time on licence. He had been linked to a burglary in February 2023 and, as previously noted, a robbery. A police witness had noted that two of the Applicant's associates were linked to regular criminal activity. On the evidence available to it,

the panel made no findings in relation to these allegations. However, it was satisfied that the Applicant had been associating with drug users and offenders.

15. The COM had told the panel that the assessed risk of further general offending in this case was listed as very high. This is a computer generated risk score taking account of static and dynamic risk factors. The COM believed that the risk was more likely to be high and not very high. The panel disagreed and accepted the very high risk score.
16. The panel had assessed the release plan put forward by Probation to be '*thin*'. It noted that a place in a Probation Approved Premises would not be available and that the Applicant would not be eligible for GPS tagging which would be mandatory as a licence condition rather than the voluntary Buddi Tag. In the panel's view, risk management on licence would largely be down to the external controls of the release plan rather than the Applicant being able to manage himself safely, utilising his own internal controls. In the panel's view, if the Applicant disengaged on licence, his risk to the public could escalate quickly.

### Application for Set Aside

17. The application for set aside has been drafted and submitted by the Applicant's legal representative.
18. It submits that there has been an error of fact and that the decision not to release the Applicant would not have been made but for the error of fact. I have dealt with the detail of the Applicant's submissions in the Discussion (below).

### The Relevant Law

19. 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.
20. 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)).
21. 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 Secretary of State (the Respondent)

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

### Discussion

23.It is argued that there has been an error of fact. The Applicant submits that:

- a. The panel were wrong to consider the risk of general offending to be very high because the Applicant had been in the community for 12 months prior to being recalled.
- b. The panel noted that the COM had not recommended release to the Applicant's mother's address and this was incorrect because the COM had recommended the address.
- c. The panel's view that the release plan was overly reliant on external controls was wrong. The COM had indicated that she had been impressed by the controls developed after completion of New Me Strengths in custody and the Applicant submits that there is no statutory provision stating that completing accredited offending behaviour programmes is a pre-requisite to risk reduction.
- d. The panel was wrong in its assessment of the Applicant's rapid relapse into drug misuse because he had been in the community for some 12 months prior to relapse.

24.In respect of Ground a, the panel was entitled to conclude that the risk of further general offending would be very high. The Applicant may disagree but this does not mean that the panel was incorrect in its assessment. There is no error of fact.

25.In respect of Ground b, I accept that the COM was supporting release to the Applicant's mother's address. The panel had stated in its Decision that '*the COM does not recommend release back to [the Applicant's] mother's address...*'. I accept that this is likely to be a typographical error. However, when reading the Decision in its entirety, the panel's reasoning for not directing release was not centred on whether or not the COM felt that he could or could not live with his mother.

26.In respect of Ground c, as with Ground a, the Applicant is simply disagreeing with the panel's view. The panel concluded that the risk management plan would be overly reliant on external controls. Based on the evidence, it was entitled to reach that view. Equally, the panel was entitled to weigh up the progress made in New Me Strengths, but completion of the course was not a guarantee of release. The panel made an assessment of risk, the Applicant can disagree with that assessment but there has been no error of fact.

27.In respect of Ground d, there is no error of fact. The '*rapid*' relapse into drug misuse was an accurate statement because when the Applicant did return to drugs, his drug use escalated very quickly. The COM report (21/02/2024) had noted discussions with the Applicant and his '*high levels of substance misuse*' on licence.

## Decision

28. The only error of fact is the typographical error in respect of the Applicant's mother's address as the release address in this case. As I have found, this was not central to the decision not to direct release. The remaining grounds do not evidence any error of fact. The application for set aside is refused.

**Robert McKeon**  
**02 August 2024**