

[2022] PBSA 15

## Application for Set Aside in the case of Majid

### Application

1. This is an application by Majid (the Applicant) to set aside the decision made by an oral hearing panel (the panel) dated the 27 October 2022 not to direct his release.
2. I have considered the application on the papers, these are:
  - a) The Decision Letter dated the 27 October 2022;
  - b) The application to Set Aside from the Applicant in the form of representations from his legal representative dated the 10 November 2022; and
  - c) The dossier, numbered to page 222, of which the last document is the Decision Letter. The panel had a dossier numbered to page 210.

### Background

3. On the 5 November 2020, the Applicant was sentenced to a term of 3 years and 4 months in custody following his conviction for offences of burglary and assault occasioning actual bodily harm. In June 2021, the Applicant was further convicted of offences of exposure and battery, which were committed in January 2020.
4. The Applicant's sentence expires in June 2023. He was released automatically, as is required by law, in October 2021 and was recalled on the same day when he failed to arrive at the designated accommodation on time.
5. On the 7 January 2022, the Applicant's case was considered by the Parole Board on the papers. His release was not directed and the Applicant was then successful in applying to the Parole Board for his case to be considered at an oral hearing. The oral hearing took place on the 25 July 2022. After hearing evidence, the case was adjourned with the Decision Letter being produced on the 27 October 2022.
6. The Applicant was aged 40 at the time of sentencing. He is now 42 years old.

### Application to Set Aside

7. In his application to set aside, the Applicant submits that he may have insufficient time in custody to complete work identified by the panel. In his view, it would be better for the decision to be set aside so that he can complete the work in the community proposed by his Probation Officer. The Applicant submits that there has been an error of fact in relation to programme completion.



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## The Relevant Law

8. Rule 28A of the Parole Board Rules 2019 (as amended by the Parole Board (Amendment) Rules 2022) provides that a party may apply to the Board for it to set aside a final decision.
9. The types of decisions eligible for set aside are set out in rules 28A(1) and 28A(2). 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)).
10. A final decision may be set aside if it is in the interests of justice to do so and one or more of the conditions under rule 28A(5) are met (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
    - (i) information that was not available to the Board when the direction was given had been so available, or
    - (ii) a change in circumstances relating to the prisoner that occurred after the direction was given, had occurred before it was given.

## The reply on behalf of the Secretary of State

11. On the 23 November 2022, the Secretary of State (the Respondent) confirmed that he would not be making any representations.

## Discussion

12. The panel noted that the Applicant had been referred to another prison to complete a high intensity accredited offending behaviour programme. It was said that he had been found to be suitable for the programme and would have time to complete it before the end of his sentence. The panel noted that following the oral hearing it was confirmed that any decision about transferring the Applicant to another prison to complete the programme would be made after the decision by the Parole Board about his release. The panel noted that transfer to another prison would be a matter for the Prison Service.
13. There had been support for release at the oral hearing and it had been identified that the Applicant could complete work in the community as an alternative to the work identified in custody. However, the panel undertaking its own assessment of risk had not been persuaded that this would be an appropriate alternative. The

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panel considered that the Applicant should address identified areas of risk in custody and therefore it did not direct his release.

14. The Applicant submits that there may now be insufficient time for him to complete the identified accredited programme in custody and that there is no certainty he will be transferred to another prison to be able to take part in the course. He submits that if the Parole Board's decision is set aside then he can comply with the proposals set out by his Probation Officer and complete alternative work in the community.
15. In my assessment, the submissions simply seek to argue against the panel's decision not to direct the Applicant's release. The Applicant may well feel that he should complete offending behaviour programmes in the community, however, that option was rejected by the panel.
16. It seems that the error of fact identified by the Applicant is that it is yet to be confirmed that he will be able to transfer to another prison or that he will be allocated a place on the accredited offending behaviour programme. However, the panel was alive to this. It noted in its Decision Letter that any transfer would be a matter for the Prison Service. The panel was clear that the alternative pathway in the community would not be appropriate and it considered a need for high intensity treatment to be undertaken in custody.
17. The Applicant may disagree with the panel's conclusion but this does not establish an error of law or fact.

## Decision

18. For the reasons I have given, I am not persuaded that the final decision of the panel dated the 27 October 2022 should be set aside. The application is refused.

**Robert McKeon**  
**9 December 2022**