

[2022] PBSA 23

Application for Set Aside by Coghlan

Application

1. This is an application by Coghlan (the Applicant) to set aside the decision made by a panel following an oral hearing to direct her release.
2. I have considered the application on the papers. These are the dossier, the oral hearing decision (24 November 2022), and the application for set aside (undated).

Background

3. On 18 May 2021, the Applicant received a determinate sentence of imprisonment for one year and nine months following conviction for wounding/inflicting grievous bodily harm. She was also sentenced to imprisonment for nine months (concurrent) for possession of a knife in a public place and received no separate penalty for theft (shoplifting).
4. Her sentence expiry date is in January 2023.
5. She was automatically released on licence on 4 March 2022. Her licence was revoked on 1 April 2022, and she was returned to custody the following day. This was her first recall on this sentence.
6. The Applicant was aged 40 at the time of sentencing. She is now 42 years old.

Application for Set Aside

7. The application for set aside has been drafted and submitted by solicitors acting for the Applicant.
8. The application for set aside submits further information which, it is argued, constitutes a change in circumstances sufficient for the panel's decision to be set aside.

Current Parole Review

9. The Applicant's case was referred to the Parole Board by the Secretary of State (the Respondent) to consider whether to direct her release. This was the Applicant's first parole review since recall.



10. The case proceeded to an oral hearing on 24 November 2022 before a single-member panel. The Applicant was legally represented throughout the hearing. Oral evidence was given by the Applicant, her Prisoner Offender Manager (POM) and her Community Offender Manager (COM). The Respondent was not represented by an advocate.

11. The panel directed her release to designated accommodation which was available from 3 January 2023.

The Relevant Law

12. Rule 28A(1) 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(2), 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 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)).

14. A final decision may be set aside if it is in the interests of justice to do so (rule 28A(4)(a)) **and** either (rule 28A(5)):

- 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 information that had not been available to the Board had been available, or
- c) a direction for release would not have been made 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 offered no representations in response to this application.

Discussion

Eligibility

16. The application concerns a panel's decision to direct release following an oral hearing under rule 25(1)(a). The application was made prior to release and argues that the condition in rule 28A(5)(b)(ii) is made out. It is therefore an eligible decision which falls within the scope of rule 28A.

Change in circumstances

17.This is an unusual application in which the Applicant is seeking to set-aside a decision which directed her release.

18.The application submits that the Applicant gave evidence at the hearing in which she stated she did not want to be released to the particular designated accommodation to which her release was subsequently directed. No alternative designated accommodation is available before her sentence ends. The Applicant now says she does not want to be released and that, if her hearing took place now, she would not seek a direction for release.

The test for set aside

19.In determining the application for set aside, I must consider whether the events described above would have affected the panel's decision to direct the Applicant's release.

20.I am satisfied that the Applicant's view that she would no longer seek release constitutes a change in circumstances.

21.I must go on and consider whether the direction for release would not have been given if the events detailed in the application had taken place before that direction was given.

22.I am satisfied that is the case. It is virtually unthinkable that a panel would direct the release of a prisoner who did not want to seek release.

23.Having decided that panel's decision to direct release would have been affected, I must finally consider whether it is in the interests of justice for its decision to be set aside.

24.I am satisfied that it is in the interests of justice for the panel's decision to be set aside. The interests of justice would not be served if a prisoner was released to accommodation to which they did not want to go, particularly if doing so carried a risk of relapse into substance misuse and consequential risk of further reoffending. Doing so would also not be in the interests of public protection.

Decision

25.For the reasons I have given, the application is granted, and the final decision of the panel dated 24 November 2022 should be set aside.

26.I must now consider two matters under rule 28A(9). First, whether the case should be decided by the previous panel or a new panel and second, whether it should be decided on the papers or at an oral hearing.

27.The previous panel has the great benefit of having prepared and heard the case, carefully considering the evidence before it at the time, reaching and documenting its decision. However, the issue in this case is very straightforward and, bearing in mind the proximity of the sentence end date and the fact that the case was initially

heard by a single member panel. I direct (in the interests of expediency) that the case may be remitted to a Duty Member for determination.

28. I have also considered whether an oral hearing is necessary considering the principles in **Osborn v Parole Board [2013] UKSC 61**. The Applicant's position is very clearly set out in the application for set aside and she is no longer seeking release. In all the circumstances, I consider the Duty Member will have sufficient information to decide the case on the papers and make directions accordingly.

Directions

29. The following directions are now made:

- (a) The paper review should take place at the earliest possible opportunity.
- (b) It may be undertaken by a Duty Member.
- (c) In the unusual circumstances of this case, this decision, and the application for set aside should be paginated into the dossier, so that the Duty Member is fully informed.

Stefan Fafinski
19 December 2022