

[2023] PBSA 18

Application for Set Aside by the Secretary of State for Justice in the case of Lammin

Application

1. This is an application made by the Secretary of State (the Applicant) to set aside the decision made by an oral hearing panel (the panel) dated the 23 January 2023 to direct the release of Lammin (the Respondent).
2. I have considered the application on the papers. These are:
 - a) The Decision Letter dated the 23 January 2023;
 - b) The dossier, numbered to page 617, of which the last document is a licence condition variation application dealt with by the Parole Board following the panel's release decision. The panel had a dossier numbered to page 599; and
 - c) The Applicant's application for Set Aside dated the 10 March 2023 which is set out on the relevant form, together with a 'note to the Parole Board' from the Applicant in addition to his application.

Background

3. On the 11 October 2013, the Respondent received an extended sentence of detention comprising of 78 months in custody and 42 months of an extended licence following his conviction for sexual and violent offences (the Index Offences). On the same date, the Respondent was also sentenced for offences of robbery, assault with intent to rob and possession of a bladed article. He was aged 17 at the time of sentencing and was 26 years old when the panel reviewed his case.
4. On the 7 May 2020, the Respondent was automatically released on licence as is required by law, but he was recalled to custody on 26 June 2020 due to concerns about his behaviour. The Respondent was re-released on 31 January 2022, but was again recalled to custody on the 3 April 2022 due to further concerns about his behaviour.
5. The Respondent's case was referred to the Parole Board by the Applicant to consider whether his re-release on licence could be directed. If not released by the panel, the Respondent would otherwise be released at the end of his sentence in August 2023.
6. The panel considered the Respondent's case on 11 November 2022 but had to adjourn because it could not make a full assessment of risk due to gaps identified



3rd Floor, 10 South Colonnade, London E14 4PU



www.gov.uk/government/organisations/parole-board

✉ info@paroleboard.gov.uk



@Parole_Board



0203 880 0885

in security intelligence information. The panel then considered the case at an oral hearing on the 12 January 2023. The panel heard evidence from the Respondent, from the Probation Officer in the community (COM), the official supervising the Respondent in custody (POM), a prison chaplain and another officer in the prison. The panel's decision was that the Respondent should be released.

7. The panel had noted past concerns about extremism which were reviewed by the Parole Board in December 2021. The panel had considered security intelligence from the prison suggesting that the Respondent was possibly associating with extremists in custody or evidencing concerning views regarding his Islamic Faith. However, the panel was told that the likelihood of the Respondent being in contact with individuals harbouring extremist ideologies was minimal. He had engaged with desistance work and was considered to be on the correct pathway with regards to his faith. The panel noted that the prison had nothing to indicate extremist ideologies and that the Respondent had demonstrated a real commitment to his faith. At the time of the panel's review, the Respondent was not managed by the National Security Division element of Probation, although this has since changed since the application to set aside was made.
8. In its review of the case, the panel explored intelligence concerns and the risk of extremism in some detail. In its Decision Letter, the panel had this to say:

" ...

4.3. Professionals believe [the Respondent] has demonstrated positive change since his recall. The security witness clarified that the level of security intelligence has reduced to a level which demonstrates positive change. The Imam and Prevent Officer believe he has demonstrated a positive religious attitude which is a developing protective factor. The POM and COM believe he has demonstrated insight into his risk factors and internal strategies to manage them, this includes being open and transparent.

4.4. The panel explored in detail whether the recent incident in January 2023 indicated an escalation of risk. The panel agreed with professionals that it did not indicate a risk of violence.

4.5. All professionals clarified that there is no evidence that he has extremist views, has been radicalised and/or radicalises others. He has also not been violent for a substantial period of time.

4.6. ...

4.7. The panel is satisfied that [the Respondent] has demonstrated positive change regarding his risk factors ... The panel understand that professionals have clarified that [the Respondent] is not a risk of extremism or radicalisation."

Application to Set Aside

9. In his application, the Applicant submits that:
 - a) A number of concerning intelligence reports have been produced regarding the Respondent. These are said to be pieces of new intelligence since the panel made its decision to direct release.

- b) The Applicant submits that the intelligence is of low grading but has come via multiple sources.
- c) The Applicant submits that the Respondent's risk of harm is not manageable in the community.

The Relevant Law

10. 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. Rule 28A(1) also provides that the Parole Board may seek to set aside certain final decisions on the initiation of the Board Chair.
11. The types of decisions eligible for set aside are also set out in rule 28A(1). Final 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 made the decision on the papers (rule 21(7)).
12. 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 made if information that had not been available to the Board at the time of the direction had been so 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 Prisoner (the Respondent)

13. In an email of the 14 March 2023, the Respondent's legal representative stated:

"We would submit that the intelligence is strenuously denied and is entirely without merit or evidence. Significantly, and of concern, is that the intelligence is graded E4. This is widely assessed as having low reliability, or in other terms, unreliable. Given the application is to deprive [the Respondent] of his liberty, we would submit that it is against the interests of a fair process to do so, on the word of another inmate, most likely."

Discussion

14. The Applicant submits that the new information constitutes a significant change in circumstances and impacts on the risk management assessment in this case. The prison intelligence is listed as follows:

" ...

- Intelligence indicates that [the Respondent] has expressed that after completing Ramadan he plans on travelling to Turkey for training, that he has referred to someone there as a teacher and that he would be out of the country in 12 months.
- Intelligence indicates that [the Respondent] referred to [a female in the news] as a sister and that he has said that he is going to marry her.
- Intelligence refers to [the Respondent] that "his views are next level" and that they "can't be doing with him, he is intense".
- Intelligence indicates that [the Respondent] continues to influence others to change faith to Islam, that he plans to attend a Mosque that teaches Sharia Law, that he has extremist views, that he has told others to "fuck this country", that the British Army commits rape and other atrocities in other countries and that he is considered as an extremist and dangerous by other prisoners.
- Intelligence indicates that when [the Respondent] goes into people's cells he unplugs the cell phones because he believes people are listening through them."

15. In his 'note to the Parole Board' the Applicant stated:

"... Given the further information which has come to light, it has been agreed that the National Security Division (NSD) ... within the Probation Service, will take on management of [the Respondent's] case. A new Risk Management plan (RMP) therefore needs to be prepared by the NSD and it is anticipated that this will be completed by the end of next week (24 March). The RMP can be provided to the Board, should they wish to review it alongside their consideration of the Power to Set Aside application."

16. Given that the panel explored intelligence concerns and the risk of extremism in some detail in its review of the Respondent's case, this new intelligence is clearly relevant to the assessment of risk. Whether the intelligence is reliable is a matter for assessment, however, it cannot be simply discounted. In my view, the new information demonstrates a change in circumstances and I cannot be satisfied that the panel would have been minded to direct release had this intelligence been available before the release decision was given.

Decision

17. For the reasons I have given, the final decision of the panel dated the 23 January 2023 should be set aside.

Robert McKeon
31 March 2023