

[2023] PBSA 68

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

### Application

1. This is an application by the Secretary of State for Justice (the Applicant) to set aside the decision to direct the release of Stead (the Respondent). The decision was made by a panel after an oral hearing. This is an eligible decision.
2. I have considered the application on the papers. These are the dossier, the paper decision (dated 25 August 2023), and the application for set aside (dated 21 September 2023).

### Background

3. On 14 June 2018, the Respondent received an extended sentence of imprisonment for four years with an extended licence period of four years following conviction for wounding with intent to cause grievous bodily harm to which he pleaded guilty. His sentence end date is reported to be in March 2026.
4. The Respondent was aged 31 at the time of sentencing. He is now 36 years old.
5. The Respondent was released on licence on 23 August 2021 following an oral hearing. His licence was revoked on 25 November 2021, and he was returned to custody on 27 November 2021. This is his first recall on this sentence and his first parole review since recall.
6. The Respondent resided in psychologically informed designate accommodation on his release. He received several warnings for drug and alcohol misuse. He provided a positive test for cocaine. His emotional management was poor, and he was recalled following a marked deterioration in his mental health, culminating in his taking an overdose requiring treatment in intensive care.

### Application for Set Aside

7. The application for set aside has been drafted and submitted by the Public Protection Casework Section (PPCS) acting on behalf of the Applicant.
8. The application for set aside submits there is further information constituting a significant change in circumstances which came to light after the panel made its decision. It is argued that the panel may not have reached the same decision had this new information been known.



9. The content of the application will be considered in the **Discussion** section below.

### **Current Parole Review**

10. The Respondent's case was referred to the Parole Board by the Applicant to consider whether to direct his release.

11. An oral hearing took place on 17 August 2023 before a single-member panel. Oral evidence was taken from the Respondent's Prison Offender Manager (**POM**), his Community Offender Manager (**COM**) and the Respondent. The Respondent was legally represented throughout the hearing. The Applicant was not represented by an advocate.

12. The panel directed the Respondent's release.

### **The Relevant Law**

13. Rule 28A(1)(a) of 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.

14. 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)).

15. 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**

16. The Respondent has submitted no representations in response to this application and the deadline for representations has now passed.

### **Discussion**

17. The Applicant notes that the Respondent was the subject of a proven adjudication for being in possession of buprenorphine which was not prescribed to him. Prison

sanctions were imposed. The COM now has concerns about the Respondent's honesty with professionals and that this would present difficulties in the community.

18. The panel's decision clearly recognises that drugs are a key risk factor for the Respondent and sets out the progress that he has made in custody in addressing his risk factors. The release licence contains ongoing drug dependency work and drug testing conditions. The panel agreed with the views of professional witnesses that the emergence of live risk factors (including, by implication, drug use) would be noticed and addressed under the risk management plan.
19. As the panel also notes, failure is not a bar to release. Although the Respondent was in possession of non-prescribed drugs in custody, there is no evidence that he took them. There is no suggestion that the Respondent used any violence.
20. The risk factors that were at the forefront of the panel's mind would be the same now as they were before the adjudication.
21. The panel also noted that the Respondent did not reoffend while last in the community, despite having returned to drug use.
22. The Respondent's risks are known to the probation service. The conditions on his release licence were sufficient to protect the public as the Respondent was recalled under it without causing harm. The new licence has been strengthened with the addition of drug-focussed conditions.
23. Granting the application would be akin to pre-emptively recalling the Respondent for being in possession of drugs.
24. Therefore, for the reasons set out above, although there is new information that was not available to the panel when the decision was made, I do not find that it would have changed the panel's decision to release the Respondent.

## Decision

25. The application for set aside is refused.

**Stefan Fafinski**  
**06 October 2023**