

[2023] PBSA 12

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

Application

1. This is an application by the Secretary of State for Justice (the Applicant) to set aside the paper decision dated 9 December 2022 to direct the release of Leighton (the Respondent).
2. I have considered the application on the papers. These are the oral hearing decision, the dossier, and the application for set aside (20 February 2023).

Background

3. The Respondent received a determinate sentence of 22 months in custody on 7 February 2022 following conviction for wounding/inflicting grievous bodily harm.
4. The Respondent was aged 34 at the time of sentencing. He is now 35 years old.
5. The Respondent was automatically released on licence on 24 June 2022. His licence was revoked on 15 July 2022, and he was returned to custody on the following day.

Application for Set Aside

6. The application for set aside has been drafted and submitted by the Public Protection Casework Section (PPCS) acting on behalf of the Applicant.
7. The application for set aside submits further information which, it is argued, constitutes a significant change in circumstances which impacts the risk management plan, and which came to light after the panel made its decision.

Current Parole Review

8. The Respondent's case was referred to the Parole Board by the Applicant to consider whether to direct his release.
9. The case proceeded to a paper hearing on 9 December 2022 before a single-member panel. The panel directed the Respondent's release.

The Relevant Law



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10. 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.

11. The types of decisions eligible for set aside are set out in rules 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)).

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 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

13. An email from the Respondent's Community Offender Manager dated 21 February 2023 notes that his partner had contacted the Probation Service to say he did not wish to make any legal representations and would remain in custody until his sentence ends.

14. An email from the Respondent's Prisoner Offender Manager dated 22 February 2023 confirms his position that he did not wish to be considered for release and preferred to wait until his release when his sentence ends.

Discussion

Eligibility

15. The application concerns a panel's decision to direct release following a paper hearing under rule 19(1)(a). The application was made prior to the Respondent being released and argues that the condition in rule 28A(4)(b)(ii) is made out. It is therefore an eligible decision which falls within the scope of rule 28A.

New information – change in circumstances

16. The application notes details of two alleged assaults.

17. The first is said to have taken place on 24 January 2023 in which the Respondent sought out another prisoner and then punched him in the face. The Respondent has

admitted doing so, reportedly stating that the other prisoner was 'bad mouthing' him and he 'couldn't avoid the situation any more'.

18.The second is said to have taken place on 31 January 2023 in which another prisoner was seen with visible injuries to his face. It is said that the aggressor could have been the Respondent, although there is no evidence to support this position.

19.In the absence of any evidence connecting the second incident to the Respondent, there is no basis on which I can consider it as being relevant to the application for set-aside.

The test for set aside

20.In determining the application for set aside, I must consider whether the first incident described above would have affected the panel's decision to direct the Respondent's release.

21.The Respondent does not dispute the allegations.

22.I am satisfied that the Respondent's actions evidence attitudes towards the use of violence and poor consequential thinking skills that are relevant to risk and therefore had the capacity to affect the panel's decision.

23.I must go on to consider whether the direction for release would not have been given if the new information had been before the panel.

24.I am satisfied that is the case. It is difficult to see a situation in which a panel would direct the release of a prisoner with a significant history of violent offending who had been involved in an admitted incident that indicates a live risk of violence in custody, despite having received an earlier direction for release.

25.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.

26.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 the release of a prisoner with an established history of violent offending took place in the knowledge that he continued to use violence as a means of resolving conflict.

Decision

27.For the reasons I have given, the application is granted, and the decision of the panel dated 9 December 2022 should be set aside.

28.I must now consider two matters under rule 28A(8). 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.

29. The previous panel has the great benefit of having prepared the case, carefully considering the evidence before it at the time, reaching and documenting its decision. It is best placed to consider the case again, and I direct that it does so.

30. I have also considered whether an oral hearing is necessary considering the principles in **Osborn v Parole Board [2013] UKSC 61**. In all the circumstances, I consider the current panel would have sufficient information to decide the case on the papers and make directions accordingly. It is open to that panel to direct an oral hearing if it wishes to do so.

31. Finally, I note that the Respondent has stated that he wishes to remain in custody until the end of his sentence. I do not have the power to direct that within the scope of the set-aside rule.

Directions

32. I direct that all material presented in the application to set aside be added to the dossier so that the panel can have sight of it. Parties are at liberty to submit representations to the panel.

Stefan Fafinski
10 March 2023