

[2023] PBSA 22

## Application for Set Aside by Sumner

### Application

1. This is an application by Sumner (the Applicant) to set aside the decision not to direct his release. The decision was made by a panel on the papers. This is an eligible decision.
2. I have considered the application on the papers. These are the dossier, the paper decision (27 February 2023), and the application for set aside (9 March 2023).

### Background

3. On 19 September 2019, the Applicant received a determinate sentence of imprisonment for six years and eight months following conviction for making indecent photographs or pseudo-photographs of children (three counts), taking indecent photographs or pseudo-photographs of children (two counts), possessing an indecent photograph or pseudo-photographs of a child, possessing prohibited images of children, possession of extreme pornographic images of intercourse/oral sex with a dead/alive animal, distributing indecent photographs or pseudo-photographs of children (two counts), breach of sexual harm prevention order, and attempt to engage in sexual communication with a child (five counts). His sentence expires in February 2026.
4. The Applicant was aged 35 at the time of sentencing. He is now 39 years old.
5. The Applicant was automatically released on licence on 25 October 2022. His licence was revoked on 8 November 2022, and he was returned to custody on 10 November 2022. This is his first recall on this sentence and his first parole review since recall.

### Application for Set Aside

6. The application for set aside has been drafted and submitted by the Applicant.
7. It submits that there has been an error of law and/or fact.

### Current Parole Review

8. The Applicant's case was referred to the Parole Board by the Secretary of State (the Respondent) to consider whether to direct his release.



9. The case was considered on the papers on 27 February 2023 by a single-member panel. This panel did not direct the Applicant's release. Its decision became final on 27 March 2023.

## The Relevant Law

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

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 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

13. The Respondent has offered no representations in response to this application.

## Discussion

14. In the main, the application sets out the Applicant's version of events of the circumstances which led to his recall and, in particular, the suspicion-led search of his room which unearthed evidence of concern.

15. While I accept that the Applicant may be aggrieved by his return to custody and the negative decision of the panel, there is nothing in his application which would constitute an error of fact for the purposes of set-aside. Even if the matters he raised were (as far as the law is concerned) errors of fact, I am not satisfied that the panel would have made a different decision: its reasons for refusing release are very clearly set out within its decision.

16. The Applicant also states the panel should have only based its decision on evidence from his time in the community and not refer to his previous offending. While the Applicant may think this is unfair, there is nothing unlawful in the panel's approach which rightly considers the Applicant's past conduct, particularly given his admitted

sexual interest in children and the assessment of him presenting a very high risk of serious harm.

17.I find no error of law or fact which falls within rule 28A.

## **Decision**

18.For the reasons I have given, the application for set-aside is refused.

**Stefan Fafinski**  
**19 April 2023**