

[2023] PBSA 24

**Application for Set Aside by the Secretary of State for Justice
in the case of Griffiths****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 7 March 2023 to direct Griffiths' (the Respondent's) release.
2. I have considered the application on the papers. These are:
 - a) The Decision Letter dated the 7 March 2023;
 - b) The dossier, numbered to page 451, of which the last document is the Decision Letter. The panel had a dossier numbered to page 436; and
 - c) The Applicant's application dated the 4 April 2023 which is set out on the relevant form.

Background

3. On the 9 December 2010, the Respondent received a sentence of imprisonment for public protection (IPP) following his conviction for arson and threatening to cause criminal damage. He was aged 41 at the time of sentencing and was 53 years old when the panel reviewed his case.
4. The Respondent first became eligible to be considered for release by the Parole Board on the 9 December 2011 and the panel's review was the fifth referral of his case by the Respondent. The referral asked the Parole Board to decide whether the Respondent's release could be directed.
5. The panel considered the Respondent's case at an oral hearing on the 3 March 2023. It heard evidence from the Applicant, together with evidence from other professionals involved in his case. The Applicant was legally represented at the hearing. The panel then issued its Decision Letter dated the 7 March 2023 and directed the Respondent's release.
6. The panel had determined that the Respondent's risk was not imminent and it noted the positive progress he had made on his sentence, which had included extensive testing in the community through overnight temporary leave to his proposed release address.

Application to Set Aside

7. In his application, the Applicant submits that:
- a) There has been a significant change in the Respondent's presentation and behaviour resulting in a change in circumstances;
 - b) There have been reported concerns about the Respondent's 'paranoid behaviour'; and
 - c) The Respondent has stated that he will not return to the identified release placement and no alternative is available.

The Relevant Law

8. Rule 28A(1) of the Parole Board Rules 2019 (as amended by the Parole Board (Amendment) Rules 2023) (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.
9. 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)).
10. 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)

11. In representations of the 12 April 2023, the Respondent opposes the application to Set Aside. It is submitted that the Respondent is no longer held under s47/49 of the Mental Health Act and is currently detained under s3, meaning that he must have already been released. If that is the case, it is submitted that an application to set aside cannot be made.
12. The Respondent has provided ward notes in support of his position and has provided an explanation for events that have taken place. He believes that it does not demonstrate a change in circumstances. The Respondent also details developments

since the application was made which, he believes, addresses the concerns that have been raised.

Discussion

13. The Applicant details his concerns within his application and, noting the assessment of the panel as outlined in its Decision Letter, it is clear that these are matters it would have wanted to consider had they been known about prior to it making its decision to direct the Applicant's release.
14. I do not agree with the Respondent's position. His discharge under s47/49 was a separate process to the Parole Board's review. Having been discharged under s47/49, he could not be released on licence on his IPP sentence without a direction from the Parole Board.
15. As he remains in hospital, his release has not yet been finalised by the Secretary of State. His detention under s3, in my view, is an ability to detain the Respondent in hospital beyond any directed release by the Parole Board taking place. In the absence of the Respondent drawing up the IPP licence, the Parole Board's direction for release is yet to take effect.
16. 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 information been available before the release decision was given. I note what the Respondent has to say, however, this is something that the panel should consider. There is the potential that the panel will need to re-evaluate its assessment of risk and that the risk management plan it had agreed may now be ineffective.

Decision

17. For the reasons I have given, the final decision of the panel dated the 7 March 2023 should be set aside.
18. I must now consider two matters. 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.
19. Noting the previous panel's knowledge of this case, I consider that the previous panel would be best placed to consider the new evidence and I direct that it does so. 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.
20. On the evidence before me, I direct that the case should be decided on the papers, unless the previous panel considers that an oral hearing would be preferable, in which case it may set its own directions after the case has been remitted back to it for further consideration.

21.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.

22.Parties are at liberty to submit representations to the panel.

Robert McKeon
28 April 2023