

[2023] PBSA 4

Application for Set Aside by Knowles

Application

1. This is an application by Knowles (the Applicant) to set aside the decision not to direct his release. The decision was made by a panel on the papers.
2. I have considered the application on the papers. These are the dossier, the oral hearing decision (9 January 2023), and the application for set aside (12 January 2023). I have also seen various items of email correspondence to which I will refer in the **Current Parole Review** section below.

Background

3. On 12 December 2013, the Applicant received a sentence of imprisonment for 14 years following conviction after trial for manslaughter. His sentence expires in June 2027.
4. The Applicant was aged 52 at the time of sentencing. He is now 61 years old.
5. The Applicant was automatically released on licence on 4 June 2020. His licence was revoked on 22 October 2021, and he was returned to custody on 26 October 2021. 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 solicitors acting for the Applicant.
7. It submits that there has been an error of fact and an error of law.

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. In January 2022, a Member Case Assessment (MCA) panel directed the case to an oral hearing. In doing so, the MCA panel noted that "*given the lack of further offending and the length of time until [the sentence end date], the MCA member agreed with the representations [submitted by the Applicant's legal representative]*



*that fairness, and the principles of **Osborn, Booth and Reilly [2013] UKSC 61** meant that an oral hearing should be directed”.*

10. On 3 November 2022, the case was reviewed as part of the Parole Board determinate recall review (DRR) process. This is a two-stage process in which determinate recall cases which are waiting in the “ready to list” queue (but which have not yet been listed) are considered on the papers to see whether they can be concluded on the papers or whether an oral hearing still needs to be held to conclude the review.
11. Directions were issued following the DRR review. These concluded that the DRR member needed further information to consider whether the review could be concluded on the papers under rule 21 of the Parole Board Rules 2019 (as amended by the Parole Board (Amendment) Rules 2022) (the Parole Board Rules) or if an oral hearing was still needed.
12. Directions were set for an updated report from the Applicant’s Community Offender Manager (COM, by 5 December 2022). Legal representations were invited on the Applicant’s behalf (by 19 December 2022). The next stage of the DRR review was set for 5 January 2023. The directions were issued to the parties on 31 October 2022.
13. In response to this, a COM update report and accompanying Offender Assessment System report dated 29 November 2022 were uploaded to the dossier on 30 November 2022.
14. On 7 December 2022, the Parole Board case manager emailed the Applicant’s legal representative with a reminder that representations were due by 19 December 2022.
15. On 20 December 2022, with no representations on the Applicant’s behalf having been received, the Parole Board case manager again emailed the Applicant’s legal representative with a reminder that the deadline for representations had passed, and the case would be sent back to the DRR member for review. It concluded by stating “[if] legal reps are to be submitted, please can these be returned as soon as possible”.
16. On 9 January 2023, the DRR member noted that no legal representations had been received and, taking account of the newly directed information, concluded that the review could be fairly concluded on the papers. The review was concluded on the papers with no direction for release.

The Relevant Law

17. 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.
18. The types of decisions eligible for set aside are set out in rules 28A(1) and 28A(2). 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)).

19. A final decision may be set aside if it is in the interests of justice to do so (rule 28A(4)(a)) **and** either (rule 28A(5)):

- 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

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

Discussion

21. The application concerns a panel's decision not to direct release following an oral hearing under rule 21(7). The application argues that both conditions in rule 28A(5)(a) (error of fact and error of law) are made out. It is therefore an eligible decision which falls within the scope of rule 28A.

22. The application does not set out any error of fact, so cannot succeed on that basis.

23. Neither does the application explicitly refer to what law it claims is in error.

24. I can see no erroneous application of rule 21.

25. With regard to **Osborn**, it was open to the DRR member to conclude that the matter should not proceed to an oral hearing. The decision states that the DRR member had considered the principles set out in **Osborn**, and concluded, on the basis of the evidence at the time (which was different to the evidence before the MCA member when an oral hearing was originally directed) that there were no reasons to hold an oral hearing.

26. Moreover, the Applicant's legal representative was made aware on 31 October 2022 that the case was being considered for conclusion on the papers. He was chased for representations on 7 December 2022 and was further reminded that the deadline had passed on 20 December 2022 (but nevertheless, was given the option of returning late submissions). None were received.

27. The Applicant was on notice that a conclusion on the papers was possible. He was given every opportunity to object to that possibility. There was a risk that the DRR member would conclude on the papers (given that it was not precluded from doing so) after having seen the updated COM report. No submissions were received by the DRR member. It is incongruous to submit that an oral hearing should take place

after the decision not to grant one has been made, but not beforehand (and in the light of new evidence).

28.I therefore see no error of law in the application of **Osborn** at the time the DRR decision was made (notwithstanding the MCA member having thought otherwise previously).

29.The application also makes various submissions about delay, none of which are pertinent to error or law or fact.

Decision

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

Stefan Fafinski
19 January 2023