

[2023] PBSA 42

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

1. This is an application by the Secretary of State (the Applicant) to set aside the decision made by a paper panel (the panel) dated the 17 April 2023 to direct the release of Vaughan (the Respondent).
2. I have considered the application on the papers. These are:
 - a) The Decision Letter dated the 17 April 2023;
 - b) The dossier, numbered to page 213, of which the last document is the panel's Decision Letter;
 - c) An undated application from the Applicant to set aside the panel's decision. From the Respondent's submissions it appears that the Applicant made his application on or around the 15 June 2023;
 - d) The Respondent's legal representative's response to the application, dated the 19 June 2023;
 - e) The Respondent's personal submissions dated the 30 May 2023; and
 - f) A copy of an email referenced in the Respondent's legal representations.

Background

3. On the 1 June 2009, the Respondent received a sentence of imprisonment for public protection following his conviction for s18 Wounding. The court set the minimum term to be served in custody and the Respondent first became eligible to be considered for release in June 2012.
4. The Respondent was first released on the direction of the Parole Board in 2014 but was recalled eight months later. He was re-released in November 2016 and was recalled in September 2020. The last release took place in June 2021 and the Respondent was recalled in November 2022. His recall followed allegations of abusive and violent behaviour towards his ex-partner.
5. On the 24 November 2022, the Applicant referred the Respondent's case to the Parole Board to consider whether his re-release could be directed or, in the



alternative, whether a recommendation could be made to progress the Respondent to an open prison.

6. On the 15 February 2023, a member of the Parole Board considered the Respondent's case on the papers and deferred the review for further evidence to be produced. A report from the police was directed and was subsequently filed on the 12 March 2023. The police report confirmed that all allegations against the Respondent had been discontinued and it went on to outline the Respondent's ex-partner making threats to call the police and get him arrested, knowing that it would likely lead to his recall to custody. The report also noted that the Respondent's ex-partner had continued to contact him in the community despite him asking her not to do so. It was stated that the evidence supported the Respondent's account in his police interview and detrimentally undermined the prosecution case.
7. The panel considered the Respondent's case on the papers on the 17 April 2023 and directed his re-release.

Application to Set Aside

8. In his application, the Applicant submits that further information has come to light that affects the risk assessment in this case. Further allegations have been made against the Respondent in respect of the relationship he had with his ex-partner. It is suggested that his level of risk would necessitate placement in designated accommodation rather than the Respondent being allowed to return to his home address. It is submitted that the risk towards the Respondent's ex-partner is now very high and that there is an outstanding police investigation into the latest allegations.

The Relevant Law

9. Rule 28A(1) of the Parole Board Rules 2019 (as amended) (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.
10. 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)).
11. 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 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 Respondent

12. The Respondent disputes the allegations and submits that they are further false claims being made by his ex-partner. Although the Respondent would wish the Parole Board to reject the application to set aside, he accepts that the Parole Board may wish to *'defer a final decision in this case pending a police report confirming the up-to-date position in relation to the allegations referenced within the ... application'*.

Discussion

13. I fully understand the Respondent's frustration, particularly given that he was recalled to custody following allegations that were later not pursued. However, the allegations detailed within the Applicant's application are very serious and the Parole Board's priority is to ensure public protection. Put simply, the allegations cannot be simply ignored.

14. In my view, the allegations are new information and are a relevant consideration. I cannot be satisfied that the panel would have been minded to direct the Respondent's release had this new information been available before the release decision was given.

Decision

15. For the reasons I have given, I am satisfied that it is in the interests of justice for the decision of the panel dated the 17 April 2023 to be set aside.

16. 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.

17. 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 considered the case, carefully assessing the evidence before it at the time, reaching and documenting its decision.

18. 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.

Robert McKeon
12 July 2023