

[2023] PBSA 59

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

Application

1. This is an application by the Secretary of State for Justice (the Applicant) to set aside the decision to direct the release of Stanley (the Respondent). 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 (dated 4 August 2023), and the application for set aside (dated 16 August 2023).

Background

3. On 15 August 2019, the Respondent received determinate sentences of imprisonment for three years following conviction for conspiracy to fraud by false representation and eight months for assault occasioning actual bodily harm. He pleaded guilty to both offences. His sentence end date is reported to be in November 2023.
4. The Respondent was aged 31 at the time of sentencing. He is now 35 years old.
5. The Respondent was released on licence on 6 July 2020. His licence was revoked on 25 November 2021, and he was returned to custody on 16 January 2023. 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 Public Protection Casework Section (PPCS) acting on behalf of the Applicant.
7. The application for set aside submits there is further information constituting a significant change in circumstances which came to light after the panel made its decision. It is argued that the panel may not have reached the same decision had this new information been known.
8. The content of the application will be considered in the **Discussion** section below.



Current Parole Review

9. The Respondent's case was referred to the Parole Board by the Applicant to consider whether to direct his release.
10. A panel considered his case on the papers on 4 August 2023 and directed the Respondent's release.

The Relevant Law

11. Rule 28A(1)(a) 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(1)(b), the Parole Board may seek to set aside certain final decisions on its own initiative.
12. 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)).
13. 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

14. The Respondent has submitted no representations in response to this application and the deadline for representations has passed.

Discussion

15. The Applicant notes that there are a number of outstanding and ongoing criminal matters of which the Respondent's Community Offender Manager (COM) was unaware at the time of writing her most recent report (22 July 2023). These are attempted theft, driving whilst disqualified, failing to stop after an accident, going equipped for theft, theft and driving a motor vehicle without insurance. The court granted bail in respect of the above in 11 August 2023 on the basis that the court believed he was being detained in consequence of his recall.
16. It is further noted that the Respondent was convicted of driving with the proportion of specified controlled drugs over the legal limit on 16 June 2023 to which he pleaded

guilty. The matter was dealt with by way of fine, plus costs, victim surcharge and a 12 month driving disqualification.

17. The Applicant argues that the new information was not available to his COM and therefore not available to the panel. It is submitted that the Respondent's risk is not manageable under the proposed risk management plan and a full re-examination of his commitment to lead an offence-free life and to comply with the controls on his behaviour in the community is required.

18. I do not accept that the drug-driving conviction constitutes new information. It predates the COM report by over a month. Similarly, the outstanding matters are (as a matter of logic) ones that would have been committed in the community. It would have been impossible to commit motoring offences while in custody.

19. However, notwithstanding my view that the COM should have been aware of the matters raised in the application and referred to them in her report and risk assessment, the test within rule 28A simply refers to information that was not available to the Board when the direction was given. In this instance, regardless of whether or not the COM should have known of and raised the matters, the information was nevertheless not available to the Board when it made its decision.

20. The question then becomes whether the information would have changed the panel's view.

21. I am satisfied that the panel would not have made a direction for release had it known of a recent conviction coupled with a significant number of allegations that, in my view, are material to the panel's assessment of risk. I am also satisfied that it is in the interests of justice for the panel's decision to be set aside.

Decision

22. For the reasons I have given, the application is granted, and the decision of the panel dated 4 August 2023 is set aside.

Stefan Fafinski
13 September 2023