

[2023] PBSA 83

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

Application

1. This is an application by the Secretary of State for Justice (the Applicant) to set aside the decision made after an oral hearing by a single member Panel (dated 9 October 2023) to direct the release of Holland (the Respondent).
2. I have considered the application on the papers. These are the dossier currently comprising 338 pages, the decision letter (DL) dated 9 October 2023 and the application to set aside dated 7 November 2023.

Background

3. On 4 January 2021 the Respondent was sentenced to a total of 47 months imprisonment for two counts of possession of Class A drugs with intent to supply and racially aggravated harassment. In addition, following his first court appearance in relation to these matters, the Respondent assaulted three custody officers for which, on 21st July 2021, he received a 26 week sentence of imprisonment. The Sentence Expiry Date is given as April 2025.
4. The Panel noted that the Respondent had an extensive offending history, dating back to 2007, when he was around 15 years old. The previous offences that caused the Panel the greatest concern included damage, threatening behaviour, common assault, assaults on police officers, racially aggravated harassment and assaults, dangerous driving, aggravated vehicle-taking and assault occasioning ABH.
5. The Respondent was released on licence on 30 January 2023 and recalled on 5 March 2023 for breaches of licence conditions. The Panel found that the recall was appropriate. Following his return to prison the Respondent received an adjudication for an (admitted) assault upon another prisoner.
6. This was the first review since recall.

Current parole review

7. The Respondent's case was referred to the Parole Board by the Applicant to consider whether to direct his release. The review was heard on 3 October 2023 and the Respondent was legally represented throughout the hearing. The Panel directed his release.



Application for Set Aside

8. The application for set aside is dated 7 November 2023 and has been drafted and submitted by the Public Protection Casework Section (PPCS) acting on behalf of the Applicant.
9. The application relies on what is said to be new risk related information constituting a change in circumstances relating to the Respondent which, had the Panel been aware of it at the time of the hearing, would have led to the decision to release not being made.

The Relevant Law

10. Rule 28A(1)(a) of the Parole Board Rules 2019 (as amended by the Parole Board (Amendment) Rules 2022) (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.
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. I have carefully considered written representations on behalf of the Respondent from Carringtons, solicitors, dated 1 December 2023 submitting that the application should be refused.

Discussion

14. The application concerns a Panel's decision to direct release following an oral hearing under rule 25(1). The application was made prior to the Respondent being released and argues that the conditions in rule 28A(5)(b) are made out. It is therefore an eligible decision which falls within the scope of rule 28A.

New information/change in circumstances

15.The application relies on the following information:

"PPCS received information from the Prison Offender Manager (POM), that [the Respondent]: On the 26 October 2023, [the Respondent] was having a conversation with a prison officer..... The conversation became heated, and [the] Officer walked away. [The Respondent] then called [the] Officer ... a "fucking muppet" and walked towards him aggressively and stood chest to chest with [the] Officer. [The Respondent] was told to return to his cell but refused resulting in [the] Officer attempting guiding holds, at which point [the Respondent] struck [the] Officer with a punch to the side of his face causing a deep laceration to his lip. [The] Officer subsequently needed hospital treatment and required stitches for his injury. [The Respondent] was placed on report and the incident has been referred to the Police. [The] Officer has remained off duty since the incident."

16.In consequence of the above, the Applicant submits that the release decision should be set aside.

17.I have carefully considered the application to set aside and all the documentation before me.

18.It is abundantly clear that the Respondent's propensity for, and record of, violence was central to the Panel's consideration of this case.

19.The Panel noted that his criminal history raised concerns about his capacity to cause serious harm to others through his use of violence, his threats of violence and his dangerous driving.

20.Having reviewed the written and oral evidence, the Panel assessed that a significant risk factor linked to the Respondent's offending history was a willingness to resort to violence and to threaten violence which greatly increased his risk of harm to others.

21.The evidence accepted by the Panel included the recent assessment that he posed a high risk of causing serious harm to the public and known adults and, taking dynamic factors into account, a very high likelihood of further violent reconviction. However, it was a reassurance to the Panel that there was no evidence of violence or offending when the Respondent was last in the community, although his assault upon another prisoner following recall demonstrated, in the Panel's view, an enduring capacity for violence, particularly when in low mood.

22.The Panel found that in the past the Respondent had demonstrated a diverse pattern of harmful, dangerous and violent behaviour that caused serious harm or fear of serious harm to others. However, upon consideration of all the evidence, it concluded that he posed only a minimal risk of causing serious harm and therefore directed his release.

23.I, of course, acknowledge that what is said to have happened on 26 October 2023 in prison is currently an allegation but it comes from a prison officer who states that he was assaulted by the Respondent, suffering an injury to his face which required

hospital treatment. In addition to the Respondent being placed on report, the incident has been regarded as sufficiently serious for it to be referred to the police for further investigation and possible criminal charges.

24. I note that in their representations the Respondent's solicitors avoid indicating whether or not the Respondent denies the allegation.
25. Even if the Respondent is subsequently to deny the allegation, I am entirely satisfied that the Panel would not have given a direction for release if this evidence had been before it at the time, given that it relates to an issue which goes to the core of the Respondent's risk and the Panel's deliberations and has the obvious potential to undermine the basis upon which the Panel found that he could be safely managed in the community and be directed for release.
26. Having decided that the Panel's decision to direct release would have been affected, I must also consider whether it is in the interests of justice for its decision to be set aside.
27. While an ongoing police investigation is not, in itself, a bar to release, the allegation is one of unprovoked, violent risk-related behaviour which has occurred after release was directed. In my view, it is clearly in the interests of justice for the decision to be set aside.

Decision

28. For the reasons I have given, the application is granted, and the decision of the Panel dated 9 October 2023 is set aside.
29. I must now consider whether the case should be decided by the previous panel or a new panel and then whether it should be decided on the papers or at an oral hearing.
30. The previous panel has the great benefit of having prepared and heard the case, carefully considering the evidence before it and reaching a reasoned decision. I find that it is best placed to consider the case again and I so direct.
31. I have also considered whether an oral hearing is necessary considering the principles in **Osborn v Parole Board [2013] UKSC 61**. The Respondent has had the opportunity to state his position in relation to the allegation. He has not indicated whether or not he denies the allegation and, through his solicitors, appears simply to put the matter to proof. In all the circumstances, I consider the current panel would have sufficient information to decide the case on the papers and make directions accordingly.

Peter H. F. Jones
14 December 2023