

[2023] PBSA 84

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

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 Panel (dated 26 September 2023) to direct the release of Edwards (the Respondent).
2. I have considered the application on the papers. These are the dossier currently comprising 335 pages, the decision letter (DL) dated 26 September 2023 and the application to set aside which appears to be undated and was received by the Parole Board on 28 November 2023.

Background

3. On 5 May 2010 the Respondent was sentenced to life imprisonment for murder ("the index offence") with the minimum term set at 13 years and 4 months less time spent on remand in custody. The Tariff Expiry Date is given as 30 March 2023.
4. The Respondent is now 45 years of age and was 31 at the time of the index offence which involved the stabbing to death of his 36 year old civil partner in the course of an argument.
5. The DL records as part of its analysis:

"You accept full responsibility for killing [the victim] and pleaded guilty, but appealed your conviction for murder on the grounds that your guilty plea had been on the basis that you did not intend to kill him and were experiencing "an extreme stress reaction, diminishing [your] responsibility". This was rejected by the trial Judge and the Court of Appeal. You remain adamant that you did not intend to kill [the victim] and it was clear in your evidence that you are full of remorse for having done so. You state that you cannot remember the details of what happened due to the amount you had drunk."

6. Previously, in June 2007 the Respondent had been convicted of inflicting GBH for which he was sentenced to 12 months imprisonment suspended for two years. This offence had similarities to the index offence in that the Respondent was convicted of wounding his partner at the time in the context of alcohol use and an argument about financial matters. He has also disclosed unconvicted violence towards his mother, headmaster, a friend and intimate partners.

7. The Respondent's prison behaviour was described as exemplary with no adjudications throughout his sentence. He complied with his sentence plan and completed all relevant offending behaviour programmes.
8. In a pre-tariff review a Panel of the Parole Board in March 2021 recommended progression to the open estate and the Applicant endorsed the recommendation. In June 2021 the Respondent moved to open conditions where his behaviour was described as "impeccable". He secured full time employment outside the prison and undertook a number of overnight releases on temporary licence in the community.

Application for Set Aside

9. The application for set aside has been drafted and submitted by the Public Protection Casework Section (PPCS) acting on behalf of the Applicant.
10. The application relies on 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.

Current parole review

11. 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 20 September 2023 and the Respondent was legally represented throughout the hearing. There was professional support for release which the Panel directed.

The Relevant Law

12. 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.
13. 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)).
14. 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

15. In an email dated 1 December 2023 the Respondent's solicitors confirmed that the Respondent accepts that the set aside criteria have been met and agrees to the application.

Discussion

16. 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

17. The application relies on the following information:

"On the 27 November 2023, PPCS were notified by [the prison] that [the Respondent's] ROTL licence had been revoked following an incident that took place during the weekend of 25 November 2023. He had been arrested and [was] being held in police custody following reports that he had made threats to kill and had threatened the individual with a knife. [The Respondent] was returned to closed conditions and is currently located at [another prison]."

18. The Community Offender Manager provided the further information that the police had been telephoned by S, with whom the Respondent had previously been in a relationship and had subsequently maintained, on his account, a friendship.

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

20. I have carefully considered the application to set aside and all the documentation before me including the concession made by the Respondent through his solicitors.

21. The Panel identified the Respondent's risk factors as including poor emotional management and coping skills, alcohol misuse, problems with intimate relationships, poor anger management, fear of rejection, a desire for control and the use of weapons.

22. The Panel was told that the Respondent had recently disclosed a developing relationship with D, a man he met in a coffee bar on 27 August 2023. However, he only disclosed this some 8 days later having already met with D four times although he was aware that he should not be meeting anyone whilst on temporary release for work purposes and that any person he wished to associate with had to be approved in advance.

23. When questioned by the Panel the Respondent said that he had met S ten years previously and had initially been in a romantic relationship with him. However, this

had come to an end and, on his account, they maintained a friendship with S managing his finances. He said that he intended telling S "face to face" about his new relationship, but he did not envisage this would cause any difficulty although he did acknowledge that S might feel "pushed out".

24. The Respondent is assessed as posing a high risk of serious harm to known adults, specifically those with whom he is in a same sex relationship, and the risk is of physical violence including the use of weapons, specifically knives.
25. He is assessed on the Spousal Assault Risk Assessment (SARA) criteria as posing a high risk of reoffending against intimate partners.
26. It is obvious that intimate relationships are a key risk factor for the Respondent and professionals acknowledged that his disclosure of a developing relationship with someone he recently met in the community increases the imminence of risk.
27. I, of course, acknowledge that at this stage there has been no conviction arising out of the serious allegation which has been made but the Respondent has been returned to closed prison conditions and, without positively accepting that he committed the offences alleged, he has accepted that the set aside criteria are met.
28. Given his offending history and, in particular, the facts of the index offence, the issue of violence and, in particular intimate partner violence, was inevitably at the core of much of the evidence considered by the Panel and of its deliberations.
29. Even if the Respondent is subsequently to deny the allegations, 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 is at the heart of the Respondent's risk 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.
30. 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.
31. The allegation is one of offence-paralleling violence and threats of violence directed towards a former partner, involving the use of a knife which occurred whilst the Respondent was in the community on temporary release on licence after his release from prison had been directed. In my view, it is clearly in the interests of justice for the decision to be set aside.

Decision

32. For the reasons I have given, the application is granted, and the decision of the Panel dated 26 September 2023 is set aside.
33. 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.

34. 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.
35. 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, has accepted that the relevant criteria have been met for the release decision to be set aside. 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