

[2024] PBSA 17

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

Application

1. This is an application by the Secretary of State for Justice (the Applicant) to set aside the decision to direct release of Giles (the Respondent). The decision was made by a panel after an oral hearing on 6 December 2023. This is an eligible decision.
2. I have considered the application on the papers. These are the dossier of 376 pages including the Decision letter, the application for set aside dated 12 March 2024 and representations made on behalf of the Respondent by his legal representatives in their email of 13 March 2024.

Background

3. On 17 July 1997, the Respondent received a mandatory life sentence with a tariff of 19 years following conviction for kidnapping and murder to which he had pleaded not guilty.
4. The Applicant was aged 40 at the time of sentencing. He is now 67 years old.
5. On 24 September 2012 he progressed to open conditions from where he absconded on 28 October 2013. He was arrested on 6 November 2013.

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 Applicant submits that there has been a change in circumstances, the application relying on information received from the Prison Offender Manager (**POM**).
8. The new information and change of circumstances are essentially the same. It relates to a conversation with a police officer in which the Respondent stated that he had visited a particular public house on Christmas Day, initially indicating that he had not gone on his own and then stating that he had been there alone and mistakenly spoken in the plural. Checks with the public house revealed that there had been no single diners on the day in question. The Respondent subsequently said that he had not been at the public house but could not recall where he had been.


Current parole review

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9. The Respondent's case was referred to the Parole Board by the Applicant to consider whether to direct his release.
10. The case proceeded to an oral hearing on 6 December 2023 before a 2-member panel. The panel heard evidence from the Respondent, his former POM and his Community Offender Manager (**COM**). The Respondent was legally represented throughout the hearing.
11. The panel directed the Respondent's release.

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. The Respondent has submitted representations through his legal representatives in response to this application.
16. The Respondent notes that the source of the concern came from his using the singular and plural interchangeably. He explains that he tried to book a single table for Christmas Day but was unsuccessful and cannot now remember with certainty where he went to eat on Christmas Day.
17. The Respondent also notes that this information was self-reported and submits that there is no public protection need to set aside the decision or delay his release.

Discussion

18. It is argued on behalf of the Applicant that there has been a change in circumstances and that this is new information which affects the relationship between the Respondent and those responsible for his management in the community. It also calls into question whether the current risk management plan is robust enough. The POM at the hearing had informed the panel that she found the Respondent to be open and honest with her and noted that some incidents had only come to light as a result of his disclosure. Although this new information only came to light as a result of the Respondent's disclosure, his differing accounts and retractions only serve to undermine his presentation as open and honest and undermine the trust that the POM can place in the Respondent. Whilst there does not appear to have been any contact with the family of the victim or any prohibited associations, nevertheless his apparent lack of honesty or genuine forgetfulness about his whereabouts on Christmas Day is a matter of great concern. It is not for me to resolve the discrepancy in the account. In the context of a past history of great violence, questions of relationships, behaviour, thinking skills and the robustness of the risk management plan arise in the light of this new circumstance. The COM has also indicated in the application that if this had occurred before the direction for release, that release would not have been supported because of fears that the risk management plan may not have been sufficient to manage the Respondent.

Decision

19. In the circumstances I am satisfied that the requirements of Rule 28A are met. The application for set-aside is accepted.

HHJ Barbara Mensah
05 April 2024