

[2024] PBSA 2

**Application for Set Aside by Larsen
(Prison number J57301)****Application**

1. This is an application by Larsen (the Applicant) to set aside the decision made by a Member Case Assessment (MCA) member of the Parole Board (the Panel) upon consideration of the papers resulting in a refusal to direct his release.
2. I have considered the application on the papers. These are the dossier currently comprising 109 pages, the decision letter (DL) dated 12 October 2023 and the application to set aside dated 19 December 2023.

Background

3. On 24 October 2013 the Applicant was sentenced, following a trial, to a total of 18 years imprisonment for causing an explosion likely to endanger life or property, possessing an explosive substance with intent to endanger life or property and three counts of arson ("the index offences"). The Applicant had no prior convictions. The Sentence Expiry Date is given as April 2031.
4. The index offences relate to a series of explosions which occurred within a community for which the Applicant was an elected representative, initially causing damage to parked cars and later causing alarm and concern as a car was targeted and homes were damaged. In one instance ball bearings were discharged by an explosion some of which broke through a window into a bedroom. The explosions continued even after a significant police investigation was pursued.
5. The Applicant was released on licence automatically in April 2022. He was recalled in June 2023 after coming under police investigation for further offences which appeared to parallel the index offences. He was arrested following a report that he was taking photographs of a petrol station and CCTV footage confirmed his doing so on his mobile phone.
6. Police officers attended at his home and a search revealed numerous items of concern as did the nature of items he had ordered and/or viewed online.
7. The Panel noted that the Applicant did not appear to dispute that he was taking photographs at the petrol station and that the items of concern had been ordered/viewed on his laptop.
8. This was the first review following recall.



Current Parole Review

9. The Applicant's case was referred to the Parole Board by the Secretary of State (the Respondent) to consider whether to direct his release. The review was considered on 12 October 2023 by the Panel which had the benefit of the dossier which at that stage ran to 96 pages. There were no personal or legal representations and the Panel made no direction for release.

Application for Set Aside

10. The application for Set Aside, which I consider in detail below, is dated 19 December 2023 and made on behalf of the Applicant by his solicitors.

The Relevant Law

11. 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.
12. The types of decisions eligible for set aside are set out in rules 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. By e-mail on 27 December 2023 the Respondent confirmed that he had no comments to add at this stage.
15. The application concerns a decision not to direct release by a paper panel (rule 19(1)(a) or (b)). As the Panel's decision is now final (a request for an oral hearing having been refused by a Duty Member of the Board on 27 November 2023) the application to set aside would appear to be an eligible decision which falls within the scope of rule 28A (4) (a).

Discussion

16. I have carefully considered the application to set aside and all the documentation before me.
17. The application for set aside is an unimpressive document (with numerous dates incorrectly recorded as is the name of the Applicant at para. 15) and the ground for the application is unclear.
18. The application states that it is made in accordance with 28A(4)(b)(i) but this only provides a ground for set aside if the decision of the Panel is to direct release not a refusal to direct release.
19. The application refers to procedural unfairness which is not a matter for me when dealing with the set aside provisions.
20. No specific reference appears to be made to the interests of justice test.
21. The application, however, does refer to an error of fact and it would appear that this represents the substance of the application.
22. The Panel found that the police investigation was still ongoing and there would appear to be nothing in the dossier (as then constituted) to gainsay that finding. Indeed, it is reported that the Applicant *"is under no illusion that he will not be looking at a potential release at this stage"*.
23. The Panel found no reasons (nor had any been put forward) for an oral hearing and declared itself:

"satisfied that it has sufficient information at this stage to fairly and appropriately conclude this review. The panel anticipates that the police investigation, and the likely need for the CPS to be involved with any charging decision (which may involve seeking consent for explosives charges) is likely to take a considerable while, longer than would be appropriate for any adjournment of this parole review."
24. The application states that on 17 November 2023, the Applicant was sent an email by his probation officer referring to an update received from the police confirming that *"ongoing matters had been concluded with No Further Action."*
25. I have not been provided with a copy of that e-mail.
26. In any event, however, it would appear that this decision by the relevant prosecuting authority is of recent date and comes some weeks after the Panel's decision to refuse to direct the Applicant's release.
27. A Panel cannot make an error of fact as to information of which it is unaware and I find that the Panel, in coming to its decision on 12 October 2023 on the basis of the evidence before it at the time it made its decision, made no error of fact.

Decision

28.I have carefully considered the application to set aside and the matters relied on. For the reasons I have given I find that this is a misconceived application which is without merit and I am satisfied that the Applicant is unable to demonstrate that the Panel fell into error as to fact and the application to set aside is refused.

Peter H. F. Jones
04 January 2024