

[2024] PBSA 20

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

Application

1. This is an application made on 28 March 2024 (the Application) on behalf of the Secretary of State (the Applicant) to set aside the decision dated 26 February 2024 (the Decision) of a single-member Parole Board panel (the Panel) to direct the release of Williams (the Respondent). The Decision was made by the Panel following an oral (video) hearing on 20 February 2024. This is an eligible decision.
2. I have considered the application on the papers. These are the dossier, now consisting of 306 pages, the Decision, the Application and accompanying pro forma, and representations from the Respondent's legal representatives dated 8 April 2024.

Background

3. On 18 August 2017, the Respondent (having pleaded not guilty) was convicted and received a sentence of 7 years and 4 years respectively for the index offences of wounding with intent to do grievous bodily harm, and robbery, the sentences to run concurrently. His Sentence Expiry Date (SED) is in August 2024.
4. The Respondent was born in March 1994 and is now aged 30 and was aged 23 at the time of sentencing.
5. This was the Respondent's second review. He was first released on licence under the automatic release provisions on 26 March 2021 but recalled on 2 November 2021 following breaches of his licence conditions, including allegations of assault on a fellow resident at his placement. Following a previous Parole Board panel hearing he was released again on 14 December 2022 but recalled on the 19 April 2023 again following breaches of his licence conditions and again including allegations of assault.

Application for Set Aside

6. The Application was made by the Public Protection Casework Section on behalf of the Applicant.
7. The grounds upon which the Application are made is, in substance, that new information has come to light about events and a change of circumstances occurring since the Decision such that had such information or change been available to the



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Panel or occurred before the Decision, that Decision (to release the Respondent) would not have been made.

8. The factual basis of the Application, in brief, is that the Respondent's behaviour since the Decision has drastically declined as evidenced by a catalogue of allegations of unacceptable and inappropriate conduct involving over a 15-day period no less than 13 adjudications and 8 negative entries on his prison record.
9. According to the Application the adjudications involved 5 proven incidents of damage to property, endangering the health and safety of others, and absenting himself from places he was required to be. Four incidents of damage to property were referred to the police, and the remainder (of an alleged like nature) were adjourned, not proceeded with, or not yet heard at the time of the Application.
10. The negative entries involved similar allegations but also included allegations of aggression, spitting, threatening to pour boiling water on staff, squirting unknown liquid in the face of a member of staff and other aggressive and uncooperative conduct.
11. Whilst the Application records that the Respondent has attributed some of his actions and aggression to frustrations with trivial matters, such as his property, it is also said that his recent conduct reiterates concerns that the Respondent has impaired ability to think through the consequences of his actions. In particular this recent conduct, it is said, "*evidences extensive, poor behaviour within a very short space of time and raises serious concerns with [the Respondent's] ability to comply with the proposed risk management plan [(RMP)] in the community*". Such is the concern that the Respondent's Community Offender Manager (COM) no longer supports release.

Current parole review

12. The Respondent's case was referred to the Parole Board by the Applicant following his second recall mentioned above.
13. As indicated, the case proceeded to an oral hearing conducted by video link before a single-member panel. The Panel heard evidence from the Respondent, his former Prison Offender Manager (POM), and his COM. The Respondent was legally represented throughout the hearing.
14. It is unnecessary to set out any detailed overview or analysis of the Decision beyond noting the following by way of summary:
 - a) Prior to the index offence, the Respondent had a history of serious acquisitive offending involving robbery and burglary and assault and battery.
 - b) The victim of the index offences (which were participated in by the Respondent and his then partner) was a 14-year-old girl who was assaulted, kicked and stamped on and had her mobile phone taken.

- c) The trial judge noted that the offence was one step away from attempted murder.
- d) The Respondent also had a history of non-cooperation involving breaches of court orders, licence conditions, and police bail.
- e) Prior to his first release he had accumulated numerous negative entries and proven adjudications, including setting fire to his cell. Since his recall (i.e. prior to his second release) he accumulated 6 adjudications of which only 2 were proven (one involving assault on another prisoner).
- f) The Panel accepted the Respondent posed a high risk of serious harm towards other prisoners, to known adults and to the public but in view of his conduct apparently stabilising, his receipt of medication to address his ADHD, and other circumstances including the structured support proposed by the RMP, the risk was not considered to be imminent if he were in the community.

15. Accordingly, despite the relative shortness of time prior to his SED, the Panel directed release provided an Approved Premises (AP) could be found and once available. There was, the Panel considered, likely to be a greater risk of serious harm to the public if he was released at the SED without such support.

The Relevant Law

16. 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.

17. 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)).

18. 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

19. I have, as mentioned, considered the representations made in response to this application. These are, in substance, as follows:

- a) Whilst the decline in the Respondent's behaviour since the Decision is accepted, this has been due to a number of factors, all relating to his custody conditions and environment, in particular not receiving his ADHD medication in time leading to deterioration in his mental state to the point of distress, anxiety and desperation and his feeling increasingly unwell, fearful and out of control and that his position was increasingly untenable and unsafe such that he felt his concerns (particularly as to his lack of medication) were not being heeded and hence the need to take more dramatic action for his issues to be noticed.
- b) He disputes certain aspects of the incidents including an alleged assault on a fellow prisoner and threatening to pour boiling water on staff (it was cold water) and he says that his conduct did not cause harm to anyone but accepts there was disruption.
- c) He regrets and is sorry for his misbehaviour which he recognises as stupid and have caused him considerable distress.
- d) Given the fact that an AP has been found and having regard to the imminence of his SED, it would make more sense to allow the Decision to stand to enable his release in the community to be properly supported and monitored.

Discussion

20. Despite the strength and cogency of these representations (particularly the last) I have no doubt or hesitation in the judgment that had the information regarding the above mentioned incidents referred to on behalf of the Applicant occurred before the Decision, and been before the Panel, the decision for release would not have been made. At the very least the Panel would have wanted further and more detailed evidence as to these matters and to have heard and considered in more detail what the Respondent had to say about them and about his mental state. The RMP would also need to be reconsidered in light of the allegations and his explanations and not least, perhaps, his medical needs and possibly fragile mental state. In short, a further and fuller investigation of the recent alleged incidents and their effect on the Respondent would be needed. I appreciate that the Respondent's SED is only some 4 months away and the effect of any decision to set aside the present Decision is more than likely to lead to the Respondent serving out the remaining term of his sentence and to his then release without the support offered by the RMP in place. This, as I have indicated is a powerful factor. The allegations are, however, in light of the Respondent's history and risk as referred to in the Decision such that they cannot be ignored.

Decision

21. In my judgment it follows that from the foregoing that the interests of justice require the Decision to be set aside and the application for set-aside accordingly is accepted.

HH Roger Kaye KC
18 April 2024