

[2024] PBSA 21**Application for Set Aside by the Secretary of State for Justice
in the case of Barnes-Fagan****Application**

1. This is an application by the Secretary of State for Justice (the Applicant) to set aside the decision to direct the release of Barnes-Fagan (the Respondent). The decision was made by a panel after an oral hearing. This is an eligible decision.
2. I have considered the application on the papers. These are the dossier (631 pages), the oral hearing decision (dated 15 February 2024), and the application for set aside (dated 18 March 2024). I have also seen an update from the Applicant dated 27 March 2024, submitted by email (and copied to the Respondent's legal representative).

Background

3. On 11 May 2012, the Respondent received a sentence of imprisonment for public protection (**IPP**) following conviction for robbery, wounding with intent to cause grievous bodily harm and possession of an offensive weapon. His tariff expired in July 2018.
4. The Respondent was aged 18 at the time of sentencing. He is now 30 years old.

Application for Set Aside

5. The application for set aside has been drafted and submitted by the Public Protection Casework Section (**PPCS**) acting on behalf of the Applicant.
6. The application for set aside submits there is further information constituting a significant change in circumstances which came to light after the panel made its decision. It is argued that the panel may not have reached the same decision had this new information been known.
7. The content of the application will be considered in the **Discussion** section below.

Current Parole Review

8. The Respondent's case was referred to the Parole Board by the Applicant to consider whether or not it would be appropriate to direct his release.



9. The case proceeded to an oral hearing before a three-member panel, including a psychologist specialist member and a judicial member. Oral evidence was taken from the Respondent, his Prison Offender Manager (**POM**), his Community Offender Manager (**COM**), a HMPPS psychologist, a psychologist commissioned by the Respondent and a therapist. The Respondent was legally represented throughout the hearing. The panel directed the Respondent's release.
10. As the Respondent is serving an IPP sentence, the release decision was provisional for 21 days to permit an application for reconsideration. With no application being made, the decision became final 21 days after it was provided to the parties.

The Relevant Law

11. Rule 28A(1)(a) of the Parole Board Rules 2019 (as amended) 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 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)).
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. The Respondent sought two extensions to the deadline for submitting representations in response to this application. His legal representative has confirmed that he does not wish to submit representations.

Discussion

15. The Applicant states that, on 11 March 2024, the Respondent refused a direct order to go behind his door and then assaulted prison officers while being placed under restraint, including biting two officers on the leg, striking an officer in the face and holding a female officer in a head lock. He is also said to have been found in possession of an improvised phone charger and an improvised weapon. The incident has been referred out to police.

16. The Respondent's Community Offender Manager is no longer supporting release on the basis that the Respondent has demonstrated violence in custody and been in possession of a weapon.
17. The decision notes incidents from 2021 in which the Respondent bit a staff member and was found with a weapon. He also assaulted an officer in late 2022. Psychologists noted concerns about his instability and how he might adapt to release. The Respondent told the panel he was good at managing his emotions and would walk away if challenged.
18. An email from the Applicant following the application states that on 26 March 2024 the Respondent made up his bed to appear as though he was on it, but instead waited behind the door for staff. He then hit one member of staff in head with a flask, punched and bit another member of staff multiple times and punched a third member off staff. He was relocated under restraint.
19. The new evidence suggests that the Respondent still has significant issues with his emotional management, use of violence, and propensity for carrying weapons.
20. I am satisfied that the panel would not have made a direction for release had it been aware of this new information relating to the prisoner. I am also satisfied that it is in the interests of justice for the decision to be set aside, since those interests would not be served by releasing a prisoner who is still using violence and weapons in custody to a less secure environment.

Decision

21. For the reasons I have given, the application is granted, and the decision of the panel dated 15 February 2024 is set aside.

Stefan Fafinski
12 April 2024