

[2024] PBSA 29

## Application for Set Aside by Siraj

### Application

1. This is an application by Siraj (the Applicant) to set aside the decision made by an oral hearing panel dated 15 April 2024 not to direct the Applicant's release.
2. I have considered the application on the papers. These are the oral hearing decision, the dossier, the application for set aside (dated 22 April 2024), and a response from the Public Protection Casework Section (PPCS) on behalf of the Secretary of State (the Respondent) dated 29 April 2024.

### Background

3. The Applicant was originally sentenced on the 26 March 2018 for the offences of possession of a handgun, possession of ammunition, two counts of possession of a firearm with intent to cause fear of violence and perverting the course of justice. These relate to the Applicant threatening his ex-partner and her mother with a handgun. The perverting the course of justice matter concerns the Applicant, supported by his mother and sister, coercing his ex-partner into retracting her statement to the police. On release from this sentence, the Applicant was "gate arrested" for the offences of threats to kill and three counts of threatening to damage or destroy property, for threats made against two police officers and his ex-partner while serving as a prisoner. These included threats to kill. At the hearing, the Applicant took greater responsibility for his index offending, accepting that he did produce a loaded gun, "initially as a joke", but accepted that the victim did not see it that way. He had previously denied this behaviour. The Applicant also admitted the perverting the course of justice matter and making threats to the police officers, although denied that he would have acted on these threats.
4. The Applicant was released automatically on 15 March 2022 to an Approved Premise (AP) and it is reported that he initially engaged well with supervision. He was recalled back into custody on the 21 February 2023 following his arrest on the 17 February 2023 on suspicion of assault occasioning actual bodily harm (AOABH), possession of a bladed article, and possession of drugs with intent to supply. Police were called in relation to an alleged altercation between the Applicant and his partner. At the point of arrest the Applicant was found to be in possession of unprescribed medication and drug paraphernalia (scales) and a knife was found close by. Due to these concerns the Applicant was returned to custody. The Applicant was charged with these matters but the case was discontinued at Court as it was deemed not to be in the public interest to pursue a prosecution.

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5. The application for set aside has been drafted and submitted by the Applicant himself and was initially served on the Parole Board by email on the 22 April 2024. No updated legal submissions have been provided, although written closing submissions were sent via email on the 13 April 2024 and considered by the panel.
6. Comprehensive handwritten submissions have been provided by the Applicant. These submissions state that the decision not to direct release would not have been made but for an error of law or fact. These include;
  - i. The Community Offender Manager (COM) and Prison Offender Manager (POM) unlawfully accused the Applicant of an assault.
  - ii. The COM and the POM misled the Parole Board in their evidence.
  - iii. No assault took place because the Applicant used reasonable force, as held by the Court.
  - iv. No breaches took place because the new allegations were discontinued by the Court.
  - v. The Applicant was wrongly charged due to CCTV being withheld from him.
  - vi. The Applicant's alleged behaviour was not related to an escalation in risk.
  - vii. The Applicant has not met his COM.

### Current Parole Review

7. The Applicant's case was referred to the Parole Board by the Respondent to consider whether to direct his release.
8. The Applicant's case was originally listed before a two member panel of the Parole Board on the 20 February 2024, but on that occasion adjourned due to the disclosure of CCTV footage of the recall incident, which had not previously been provided. In the interests of fairness the panel decided to adjourn the Applicant's case so that all parties could review the CCTV footage. (It is noted that the Applicant, and his legal representatives, stated that they were content to proceed on 20 February 2024 without all parties reviewing the CCTV footage). The case was relisted before a single member of the Parole Board on 11 April 2024 and full evidence was taken. The Applicant was legally represented throughout. There was no formal challenge to the appropriateness of the Applicant's recall at either hearing. It is noted in the written legal closing submissions that at the hearing the Applicant "*conveyed his appreciation of the unacceptable nature of his behaviour, and the understanding of how poor decisions contributed to this event, not least the use of alcohol.*"
9. The panel did not direct the Applicant's release. A decision was issued on the 15 April 2024.
10. The panel held the Applicant's recall to have been appropriate.

### 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



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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 made if information that had not been available to the Board had been available, or
- c) A direction for release would not have been made 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 confirmed on the 29 April 2024 that he did not wish to make any representations.

### **Discussion**

#### **Eligibility**

15. The application concerns a panel's decision not to direct release following an oral hearing under rule 25(1). The Applicant argues that the condition in rules 28A(1) and 28A(4)(b) are made out. I agree with this submission. It is therefore an eligible decision which falls within the scope of rule 28A.

#### **The test for set aside**

16. In determining the application for set aside, I must consider the impact of the updated submissions by the Applicant on the panel's decision not to release the Applicant. This is a two stage process, (i) firstly, do I consider there to be an error of fact or law (ii) if so, would a direction for release not have been made if that information had been known.

17. In relation to the Applicant's submissions that the decision should be set aside due to errors in fact or law as set out in paragraph 6 above I make the following observations:

- i. The Applicant was legally represented throughout the parole review.
- ii. Neither the Applicant, nor his legal representative disputed the circumstances of his recall at the hearing, or in closing submissions. It is recorded in the decision that the Applicant admitted in oral evidence



being “*heavy handed*” and that his behaviour “*was unacceptable*” when discussing the allegation. Those instructed also state in their closing submissions that the Applicant “*conveyed his appreciation of the unacceptable nature of his behaviour, and the understanding of how poor decisions contributed to this event, not least the use of alcohol.*” The panel held the recall to have been appropriate, and I endorse this finding based on all I have reviewed.

- iii. The panel, and all parties, had sight of the CCTV footage and all viewed the footage before the reconvened hearing. This is clear from the decision and was contributory to the hearing being adjourned until April 2024.
- iv. The views expressed by the COM and the POM are personal opinions, provided having reviewed the CCTV footage. They are entitled to provide such opinions, especially in response to Parole Board questions. I note that the POM and COM were not involved in the decision to arrest or charge the Applicant.
- v. I find no evidence that the COM or POM misled the panel in relation to the circumstances of the Applicant’s recall. Both witnesses raised concerns about the circumstances of the Applicant’s behaviour on licence, as they are entitled to do. This information was undoubtedly informed by review of the CCTV footage, which the panel itself had sight of.
- vi. In my opinion, the views of the witnesses (COM & POM) were but one factor taken into account by the Panel when forming it’s judgment, both in respect of the recall allegation and the decision more broadly. Review of the decision confirms that the panel also considered the Applicant’s behaviour in the community prior to recall more broadly, his alcohol and substance misuse, and concerns linked to his compliance in prison since recall, including recent proven offence paralleling concerns linked to holding hooch.
- vii. The panel placed “*significant weight*” on the allegation made against the Applicant as it is entitled to do. In so doing the panel gave appropriate consideration to the guidance in the case of *Pearce v Parole Board* [2023] UKSC13. The panel has recorded it’s finding in the decision and confirmed what weight it placed on the un-convicted allegation. This is a well drafted and detailed decision which provides a clear analysis of the information relied upon and the weight given to risk related matters.
- viii. In relation to the argument that the Applicant had not met his COM, this is a matter between the Applicant and the National Probation Service.
- ix. In relation to the argument that the Applicant was wrongly charged due to CCTV being withheld. This is a matter between the Applicant and the Crown Prosecution Service/Police. I note however, that the CCTV footage was produced ahead of the oral hearing and all parties reviewed it before the parole hearing.



18. Based on the findings above in paragraph 17 I do not accept that the Applicant's application raises any errors in law or fact. Nor do I accept that the information provided by the Applicant would have led to a different outcome, in other words, that the decision not to release would not have been made if the information had been available.

19. In my assessment the decision is comprehensive, well drafted, and thorough. The allegation has been dealt with appropriately following best practice and relevant case law. The panel has made its own findings and risk assessment based on all of the evidence before it, as it is entitled to do, giving consideration not only to the allegation, but other relevant matters. I find no evidence that the witnesses misled the panel. The Applicant was represented throughout the parole review and raised no such concerns at the hearing, or immediately thereafter. Updated written closing submissions accept the appropriateness of the Applicant's recall, including poor behaviour at the time of the allegation.

20. Having decided that a direction not to release would still have been made if the information provided by the Applicant had been available to the panel and having found no evidence of any errors in law or fact, I must finally consider whether it is in the interests of justice for its decision to be set aside.

21. I am not so satisfied based on all the evidence before me.

### **Decision**

22. For the reasons I have given, the application is dismissed, and the decision of the panel dated 15 April 2024 should not be set aside.

**Heidi Leavesley**  
**15 May 2024**