

[2024] PBSA 3

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

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 Deighton (the Respondent). The decision was made by a panel on the papers. This is an eligible decision.
2. I have considered the application on the papers. These are the dossier (162 pages), the paper decision (dated 30 October 2023), and the application for set aside (dated 21 November 2023). I have also seen an application for non-disclosure from the Applicant (dated 9 November 2023), the disclosable gist which accompanied the non-disclosure application, and the decision of the Duty Member (dated 22 November 2023) which accepted the non-disclosure application with the disclosable gist.

Background

3. On 9 September 2019, the Respondent received a determinate sentence of imprisonment for four years and six months following conviction after trial for conspiracy to supply Class A drugs (heroin and cocaine). His sentence end date is reported to be in February 2024.
4. The Respondent was aged 26 at the time of sentencing. He is now 30 years old.
5. The Respondent was automatically released on licence on 16 November 2021. His licence was revoked on 24 May 2023, and he was returned to custody the following day. This is his first recall on this sentence and his first parole review since recall.

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 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.
8. The content of the application will be considered in the **Discussion** section below.



Current Parole Review

9. The Respondent's case was referred to the Parole Board by the Applicant to consider whether to direct his release.
10. The case was decided by a single-member panel on the papers under rule 19. The panel directed the Respondent's release to his mother's address.

The Relevant Law

11. Rule 28A(1)(a) of 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 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 has submitted representations in response to this application to which I will refer in the **Discussion** section below.

Discussion

15. The Respondent was recalled to custody after being arrested on allegations of being concerned in the supply of cannabis which was reportedly found at a friend's address. The Respondent maintains his innocence of any further offending.
16. The panel directed his release to his mother's address, noting that there was nothing that would indicate that the address was considered unsuitable. The panel further considered that the allegations under investigation did not indicate an increase in the risk of serious harm. It concluded that the proposed risk management plan was capable of managing his risks in the community.

17. The Applicant submits that after the direction for release was given, his Community Offender Manager (COM) had been informed by the police that a further charge was likely, although had not approached the Crown Prosecution Service (CPS) at the time the non-disclosure was made.
18. The gist notes that "*the perspective of the police is that [the Respondent] committed offences*". This cannot be correct. The Respondent has not been charged, tried, or convicted. It would be for the CPS to decide whether there was sufficient evidence for a realistic prospect of conviction.
19. The Respondent argues that the disclosure of further police information was a malicious attempt to undermine the parole decision. It is not for me to comment on that submission.
20. However, in reaching its decision, the panel explicitly said that the allegations were not indicative of increased risk. The non-disclosure material does nothing to advance the status of those allegations, there being no charge or conviction. The only new information is a feeling from the police that there is a likelihood of a future charge.
21. I am not satisfied that the panel would not have made a direction for release had it been aware of the new information relating to the prisoner. He has not been charged or convicted, and to elevate the status of the continued allegations against him into something more grave would be akin to pre-emptively re-recalling him for a matter he denies. He has already been recalled once in relation to these allegations and nothing material has changed in relation to risk on the evidence before me.
22. The COM and police are well aware of the Respondent's risks, and it is for them to manage these risks in the community. I cannot interfere with the decision of a panel without good reason, and there is insufficient reason on the evidence before me to do so.

Decision

23. For the reasons I have given, the application is refused and the direction for release dated 30 October 2023 stands.

Stefan Fafinski
10 January 2024