

[2024] PBSA 31**Application for Set Aside by Condron****Application**

1. This is an application by Condron (the Applicant) to set aside the decision not to direct his release. The decision was made by a Panel after an oral hearing on 1 May 2024. This is an eligible decision.
2. I have considered the application on the papers. These are (i) the dossier, now containing 359 pages, (ii) the oral hearing decision dated 7 May 2024 (DL) and (iii) the application for set aside made on behalf of the Applicant by his solicitors dated 15 May 2024.

Background

3. On 9 November 2015 the Applicant received a determinate sentence totalling 9 years imprisonment for aggravated burglary and possession of an offensive weapon ("the index offences"). In the middle of the day on 11 February 2015 the Applicant was one of three men who blocked the road with a vehicle and proceeded to force entry into a jeweller's shop, smashing windows with a sledgehammer and with the Applicant in possession of a machete which he used to deter any intervention. The men made off with jewellery of considerable value.
4. The Applicant was aged 24 at the time of sentencing and is now 32 years old.
5. He was automatically released on licence on 16 April 2020. His licence was revoked on 13 May 2021 but he was not returned to custody until 4 June 2021. He was released again on licence by direction of a Panel of the Parole Board on 14 March 2022. He was recalled on 1 July 2022 but on this occasion remained unlawfully at large (UAL) until 14 December 2022. This was his first parole review since his second recall to prison.

Application for Set Aside

6. The application for set aside is based on what are said to be 7 errors of fact which I address below.

Current parole review

7. The Applicant's case was referred to the Parole Board by the Secretary of State (the Respondent) to consider whether the Applicant should be released.



8. The case proceeded to an oral hearing on 1 May 2024 before a single member Panel. The Panel heard evidence from the Applicant, his Prison Offender Manager ("POM") and his Community Offender Manager ("COM"). The Applicant was legally represented throughout the hearing.
9. The Panel did not direct the Applicant's release.

The Relevant Law

10. 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.
11. 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)).
12. 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

13. The Respondent has, to date, submitted no representations in response to this application.

Discussion

14. The application relies on 7 suggested errors of fact.
15. At DL 2.3 the Panel notes that the Applicant was UAL on the first occasion for a period of "*approximate 4 weeks*". He was in fact UAL from 13 May 2021 until 4 June 2021 but, as his solicitors concede, this does not amount to an error of fact but for which the decision not to direct release would not have been made.
16. The Applicant appears to take issue with the Panel's statement at DL 2.5 that it was made clear to the Applicant that he needed to engage with CGL [a substance misuse service] and that, if he continued to disengage, he would be recalled.

17. The Applicant acknowledged in his evidence to the Panel that, having been released again on licence in March 2022, he began using cocaine and cannabis in April 2022 but was not being drug tested at that time. He was initially drug tested (as confirmed by his COM) in June 2022, failed three tests in a row and admitted a 4th occasion of drug use.
18. The Applicant was not recalled but was given two compliance letters, the second of these on 23 June 2023 when it was made clear to him that, since (as he subsequently admitted) he had been failing to keep appointments in order to avoid providing further positive drug tests, failure to keep any further appointments or to engage with CGL in the future would result in a possible recall.
19. Therefore, the reference to continued disengagement at DL 2.5 is obviously not confined to CGL since, according to his solicitors, the Applicant's assessment appointment with that organisation was not to take place until 30 June 2022. Accordingly, I do not find that the Panel made any error of fact in relation to this issue.
20. The evidence of the Applicant being deceptive towards the COMs who were then jointly working his case appears to relate to concerns about his behaviour in taking his seven-year old son to Wales on 24 June 2022, the day after he had received a second compliance letter and a warning about his future engagement. The evidence at p.41 of the dossier reveals that, although a day trip would not have required permission, the Applicant nevertheless said he had received this; this was untrue.
21. In addition, the reason he provided for his remaining absent from his approved address for five days differs from that which he provided to the Panel in his oral evidence. He also acknowledged that he made the decision not to inform either of his COMs of his whereabouts or difficulties *"because I thought I was going to be recalled and also social services might have to get involved"* and so continued not to reside as required for several days.
22. There were also concerns that Probation had no confirmation of the Applicant's whereabouts or movements over a number of days and, finally, having been urged to return immediately to Manchester, he failed to do so and deliberately remained UAL for a matter of months during which he committed further offences.
23. In the light of this evidence I can find no error of fact here but for which the decision not to direct release would not have been made.
24. As to the Applicant's next point, the finding in full was, *"The Panel considered some of [the Applicant's] answers to be vague and conflicting in comparison to the accounts that probation previously had with regards to this incident."* In particular, the Panel was concerned (DL 4.3) with regards to the vagueness and honesty in his account of how he got to Wales and his reasons for staying there. This represents a judgement of the Panel based on all the relevant evidence before it and does not, in my view, constitute an error of fact.

25. As to the incident in the holding room referred to at DL 2.17 the Panel noted that this related to an assault on another prisoner in October 2023 which the POM said the prison had not investigated further and no action had been taken against the Applicant. I note that the Panel made no finding in relation to this and it appears to have played no part in its decision. Accordingly, I find no error of fact but for which the decision not to direct release would not have been made.
26. The Panel found that the COM was supporting release, was confident that the Applicant's risks were well understood and that there would be clear warning signs before any risks were likely to escalate. It also noted her opinion that he would comply with the release plan.
27. The Panel acknowledged that the decision in this case was a "*very finely balanced*" one and carefully set out its findings and the competing factors in coming to its conclusion. Having considered all the evidence, written and oral, the Panel found that the public protection test for release was not met and that the risk of serious harm which the Applicant currently presented would remain high unless he undertook further work and was able to demonstrate an ability to manage the relevant areas of risk.
28. Again, this was an exercise of judgement which was peculiarly a matter for the Panel and I can find no error of fact but for which the decision not to direct release would not have been made.
29. Finally, I find that it is unhelpful for the Applicant to seek to rely on a mistake as to the correct name at DL 4.4 (actually point 4.5).
30. The Applicant concludes by suggesting that the hearing was conducted unfairly which, of course, is not a matter for me in relation to an application of this sort.
31. I also note that no reference is made in the Applicant's submissions to the interests of justice.

Decision

32. I have carefully considered the application and, for the reasons I have given, I find that it is without merit and that the Applicant is unable to demonstrate that the Panel fell into error and the application to set aside is refused.

PETER H.F. JONES
29 May 2024