

[2024] PBSA 35

## Application for Set Aside by Costerlano

### Application

1. This is an application by Costerlano (the Applicant) to set aside the decision not to direct his release. The decision was made by a single member panel on paper and given in a decision letter dated 13 February 2024. This is an eligible decision.
2. I have considered the application on the papers. These are the dossier of 120 pages, the decision letter of 13 February 2024, and the application for set aside dated 17 May 2024.

### Background

3. On 25 April 2017, the Applicant received an extended sentence comprising 8 years custody and 3 years extension following conviction for an offence of burglary (inflicting GBH in dwelling) to which he pleaded guilty.
4. The Applicant was aged 30 at the time of sentencing. He is now 37 years old.
5. He was released on 3 May 2023 after a hearing before the Parole Board. His licence was revoked on 20 July 2023, and he was returned to custody on 21 July 2023. 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 Applicant.
7. The application submits that there has been an error of fact in that the Applicant had been allowed to have contact with AA and that she had been approved as a social visitor to the prison. It is submitted that that information was known to the Community Offender Manager (COM) but was not taken into account in the decision. The decision had therefore been made on an incorrect assessment of the facts.

### Current parole review

8. The Applicant's case was referred to the Parole Board by the Secretary of State (the Respondent) to consider whether to direct his release.
9. The case proceeded to a paper consideration before a single-member panel



10. The single member panel did not direct the Applicant's release.

### 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 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 offered no representations in response to this application.

### Discussion

15. It is argued on behalf of the Applicant that there has been an error of fact by the panel in not taking into consideration the fact of resumed permission for the Applicant to have contact with his partner (AA). The submission that he had been allowed in recent months to contact AA and that she had been approved as a social visitor and that the COM was aware of that situation was not supported by any independent evidence. Nor did the submission provide the date for the claimed permission.

16. I have carefully gone through the dossier and note that in their legal representations dated 29 September 2023, the Applicant's representatives state that permission for contact was granted at [Prison A] but had not been permitted at [Prison B] where the Applicant remained at the time of the panel decision. The most recent report from the COM before the Panel contained a risk management plan, one of the conditions of which was non-contact with AA. There is no reference drawn to my attention to support the submission by the Applicant that resumed permission had been granted.

17. In the light of the above I am not satisfied that there has been any error of fact and even if there were I am not satisfied that the decision would not have been made but for that supposed error. The Applicant does not challenge his recall and accepts that he met with AA in the community without the consent of his COM. In his report the COM notes that the Applicant has been dishonest with him and *"cannot be safely managed in the community at this time."*

18. The decision letter notes that whilst accepting the circumstance of recall there has been no further intervention or consolidation work and no significant developments since recall. The panel concludes that it has *"no confidence that [the Applicant] could be trusted to engage with a further period on licence and therefore is not satisfied that risk of serious harm, especially to AA, is manageable"*. That decision does not depend on any fact on which the Applicant relies, and I am not satisfied that it is in the interests of justice to set aside this decision.

## Decision

19. I am not persuaded that there is any arguable basis on which this decision could be set aside and therefore the application for set aside is refused.

**Barbara Mensah**  
**11 June 2024**