

[2024] PBSA 4

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

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 Stockbridge (the Respondent). The decision was made by a panel after an oral hearing on 5 December 2023. This is an eligible decision.
2. I have considered the application on the papers. These are the dossier consisting of 264 pages, the oral hearing decision (dated 9 December 2023), and the application for set aside (dated 21 December 2023).

Background

3. On 24 March 2020, the Respondent received a sentence of imprisonment of seven years following conviction for robbery to which he pleaded not guilty. He was found guilty after trial and was sentenced on 24 March 2020.
4. The Respondent was aged 45 at the time of sentencing. He is now 48 years old.
5. He was automatically released on licence on 4 October 2022. His licence was revoked on 17 May 2023, and he was returned to custody on 26 May 2023.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 Public Protection Casework Section (PPCS) acting on behalf of the Applicant.
7. The application submits that there is new information constituting a significant change in circumstances which impacts the risk management assessment which has come to light after the Panel took their decision on 9 December 2023. The content of the application is 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 to direct his release.



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9. The case proceeded to an oral hearing on 5 December 2023 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.

10. The panel directed the Respondent'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 representations from the Respondent were received on 04 January 2024 in response to this application. The content of the response is considered in the Discussion section below

Discussion

15. It is argued (on behalf of the Applicant) that new information has come to light relating to an incident on 18 December 2023 when a large quantity of substances (suspected wrap of cannabis and blocks of a brown substance) were found in the Respondent's cell resulting in the matter being referred to the police. The Respondent was placed on report and denied any knowledge of the substances. In addition to the findings on 18 December, the COM was also informed about other intelligence which potentially links the Respondent to "throw overs" and dealings with illicit substances on occasions before and after the oral hearing which were not communicated until after the hearing. The COM now has concerns about the Respondent's willingness to comply in the community when released as he did not

appear to be complying with prison regulations and was potentially involved with further offences. The COM was further concerned that the risk management plan would not be robust enough to prevent the risk of further offending.

16. The Respondent's representation is that he has no knowledge of the substances found in his cell on 18 December 2023. The search of his cell had been conducted in his absence. He was unaware of any illicit items being in his cell and had not given permission to anyone to leave items in his cell. His cell door is left unlocked when he leaves for work at other locations in the prison and he would not at those times have any knowledge of anyone entering his cell. The Respondent notes that some of the allegations pre-date his hearing and are uncorroborated and of low reliability. In the circumstances it is submitted the risk management plan is sufficiently robust and that the Application should not be granted, or if granted, should be referred for an oral hearing as expeditiously as possible
17. The panel's decision recognised that drugs posed a risk factor for the Respondent and noted in particular his progress in custody, particularly that there had been no indication of a return to drug or alcohol use in custody. The panel also noted that the Respondent was motivated to engage with professionals and his general behaviour on the wing showed a prosocial outlook.
18. The new information does not conclude that the Respondent has returned to drug misuse himself but it does, if established, indicate a return to criminality and disregard for rules and regulations and calls into question the ability of the current risk management plan to manage the Respondent, to prevent further offending and to protect the public. It is not for me to resolve the allegations at this stage. I am satisfied that had the allegations set out in the Application and Further Information been before the Panel, then the fullest investigation would have been called for or made of the witnesses with further consideration of the robustness of the risk management plan. I am satisfied that a direction for release would not, in the absence of such full questioning or investigation, have been granted. A further risk assessment will be needed in the light of these serious allegations.

Decision

19. The application for set-aside is accepted.

HHJ Barbara Mensah
23 January 2024