

[2024] PBSA 47

**Application for Set Aside by the Secretary of State for Justice
in the case of Ali****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 Ali (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 (327 pages), the decision (dated 24 May 2024), and the application for set aside (dated 12 July 2024).

Background

3. On 19 December 2022, the Respondent received a total determinate sentence of imprisonment for 25 months following conviction for possession of Class A drugs with intent to supply (heroin and crack cocaine) and possession of a Class B drug with intent to supply (cannabis).
4. He was automatically released on licence on 23 October 2023. His licence was revoked on 2 November 2023, and he was returned to custody on 3 November 2023. His sentence end date will be in November 2024.
5. The Respondent was aged 20 at the time of sentencing. He is now 21 years old.

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 would 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 or not it would be appropriate to direct his release.
10. The case was reviewed by a single member panel on the papers after having previously been directed to an oral hearing. The panel directed the Respondent's release.

The Relevant Law

11. Rule 28A(1)(a) of the Parole Board Rules 2019 (as amended) 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 the application which will be considered in the **Discussion** section below. These representations were received late and I could have dismissed them on that basis (having considered that the excuse given for lateness was inadequate) but, in fairness to the Respondent, they were only late by a few hours, and I am therefore exercising my discretion under rule 9 to admit them and consider them accordingly.

Discussion

15. The Applicant notes that the Respondent's Community Offender Manager (COM) advised on 10 July 2023 that the Respondent has been sent to the segregation unit for inappropriate behaviour on a visit and suspicion that he had received an item from his partner (the item was unknown at the time).
16. The Respondent was reported to have placed his hands down his girlfriend's trousers and kissed her after being warned not to do so on multiple occasions. He was taken to the body scanner which revealed that he had an item secreted. He remained in

the segregation unit. The following day, it was reported that a second scan still showed the presence of an item, and the Respondent was to remain in the segregation unit until such time as he handed the item over or flushed it away.

17. Moreover, it is reported that the Respondent is now subject to the 'Probation Reset' which means he will no longer be eligible for a placement in designated accommodation, nor subject to supervision by a Probation Officer for management of risk or to complete risk reduction work. (The Probation Reset is an organisational policy that has been implemented to alleviate workload pressures on the Probation Service).
18. There have, therefore, been two changes of circumstances in the Respondent's case. First, the allegations of concealing contraband (and indecent behaviour); second, the changes to the availability of elements of the proposed risk management plan.
19. In respect of the first matter, representations on the Respondent's behalf submit that the Respondent accepts his behaviour was an abuse of the visit (but nothing more than affectionate) and that he had not concealed a package. He says the matter shown on the scan was simply a stool and that no further action would be taken by the prison. However, it is acknowledged that his legal representative has not been able to confirm the Respondent's version of events.
20. Second, it is submitted that the application to set aside has been made on the basis that the Probation Service no longer has the resources to support him, and this is not the Respondent's fault. Moreover, it is argued that if he were to be released now to no fixed abode, this is exactly the same position in which he would find himself at the end of his sentence.
21. In order to grant the application for set aside, I must be satisfied that the direction for release would not have been made but for the change of circumstances and that it is in the interests of justice for the decision to be set aside.
22. I am satisfied that either of the changes of circumstances would have been sufficient for the panel to have reached a different decision.
23. First, because a prisoner with a history of drug dealing was alleged to have received and concealed a suspicious item on a visit. Although it is submitted that nothing was found and no further action would be taken, this view is unsubstantiated and the panel would, at the very least, have needed to test the allegation in deciding how much risk-related weight (if any) to give it.
24. Second, because of the Probation Reset, particularly given the panel's reliance on designated accommodation away from the areas of the Respondent's past offending and gang associations, and COM supervision being available to detect early warning signs of escalating risk. I accept that the situation is not of the Respondent's making, but the panel's task is to assess risk at the point of release. The fact that the Respondent may be released to no fixed abode in the future, does not mean that he must be now, if doing so would increase risk to the public to an unacceptable level.

25.I am also satisfied that it is in the interests of justice for the decision to be set aside, since those interests would not be served by releasing a prisoner convicted of drug related offences under suspicion of concealing contraband. Neither would they be served by releasing a prisoner who had been independently assessed by the Parole Board as requiring significant external controls to no fixed abode. The panel will then be able to assess both changes of circumstance and revisit or uphold its decision accordingly.

Decision

26.For the reasons I have given, the application is granted, and the decision of the panel dated 24 May 2024 is set aside.

Stefan Fafinski
25 July 2024