

**[2024] PBSA 55****Application for Set Aside by Carnegie****Application**

1. This is an application by Carnegie (the Applicant) to set aside the decision not to direct his release. The decision was made by a panel after a paper review on 10 May 2024. This is an eligible decision.
2. I have considered the application on the papers. These are the dossier, the panel's decision letter of 10 May 2024, and the application for set aside dated 15 August 2024.

**Background**

3. On 23 November 2016, the Applicant received a determinate sentence of 12 years imprisonment following conviction for conspiracy to supply heroin and crack cocaine. He received a one year concurrent term for dangerous driving. The Applicant was on licence at the time of his offending. The sentencing Judge noted that the Applicant spent over £7,600 on hire cars over a number of months for the purpose of committing the offences. The sentencing Judge extended the Applicant's disqualification from driving so that he would be disqualified for three years from the date of his automatic release on licence in 2022.
4. The Applicant was aged 37 at the time of sentencing. He is now 45 years old.
5. He was automatically released on licence on 1 December 2022. His licence was revoked on 5 September 2023, and he was returned to custody on 12 September 2023. This is his first recall on this sentence, and his first parole review since recall.
6. The Applicant was recalled following a police report that they had pursued him when the vehicle he was driving failed to stop. It was reported that the vehicle crashed and the Applicant was the only occupant. The vehicle caught fire, the Applicant was pulled from the vehicle and spent time in hospital in an induced coma. The Applicant was arrested for failing to stop and dangerous driving. He was found with cannabis at the time of his arrest and when doctors completed scans, it was reported that he had five packages of heroin in his anus. The vehicle the Applicant had been driving was a hire vehicle and had been hired by his partner. He was not allowed to drive it and was not insured.

7. The panel produced its decision in the Applicant's case on 10 May 2024 and did not direct his release. The panel noted the details of the case and that there was an ongoing police investigation. However, it evaluated the recall events in the absence of any charges being dealt with. The panel was entitled to do so, as set out in the Supreme court decision in **Pearce [2023] UKSC 13**.
8. The Applicant then applied to the Parole Board for his case to be considered at an oral hearing, which he was entitled to do. That application was rejected on 9 August 2024.

### Application for Set Aside

9. The application for set aside has been drafted and submitted by the Applicant, and is dated 15 August 2024.
10. It submits that there has been a change in circumstances, new information and an error of fact.
11. The Applicant submits that there has been a change in circumstances and/or new information because he has since received a 12 week custodial sentence for possession of heroin. He says that the other allegations have had no further action taken.
12. The Applicant submits that the following errors of fact are detailed in the panel's decision letter:
  - a) Probation stated that he does not have suitable accommodation when he does;
  - b) The Applicant submits that he is not a disqualified driver;
  - c) The Applicant submits that the statement that five packages of heroin were found is untrue and that the police report states it was "*no evidential*"; and
  - d) The Applicant submits that the statement that the allegations parallel the index offence is untrue.

### The Relevant Law

13. 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.
14. 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)).
15. 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 Secretary of State (the Respondent)

16. The Respondent has offered no representations in response to this application.

### Discussion

17. As set out (above), the Applicant is only able to argue to set aside a decision not to direct his release if the decision would not have been given or made but for an error of law or fact. His submissions on new information or a change in circumstances are only applicable to cases where a panel has directed release and it is the release decision that an application seeks to set aside.
18. Dealing with the submitted errors of fact, I am afraid that the Applicant misunderstands some of the detail of his case or his arguments are, at best, misguided.
19. Although he has identified places where he might like to live, these have not been approved by Probation. The panel must consider the risk management plan based on accommodation plans approved by Probation.
20. Although the Applicant submits that he is not a disqualified driver, it was clear that this was the intention of the sentencing Judge at the time of sentencing for the index offence. Even if the Applicant is correct, it does not change very much in terms of assessing his risk because he still drove a car when he had no licence to do so and was not insured or permitted to drive it.
21. In terms of the finding of packages of heroin in his anus, this was detailed in the dossier in both the Probation recall report and a report from Thames Valley Police. The latter document noting that the Applicant "... *had scans where 5 packages were identified to be located in their anus. After waking from sedation, [the Applicant] remained on bed watch as he had not passed the further packages which were in his system ...*". The Probation report noted that "*One package was recovered whilst the suspect was unconscious and seized by a police officer. This has been tested as Heroin and initially weighed as 8.47grams ...*". The reference to "no evidential" by the Applicant appears to relate to a later line in the Probation report which stated "... *The other 4 packages are believed to be a similar size to the one recovered (this is non evidential information from hospital staff)*".

22.The panel was entitled to rely on this information in its assessment of the Applicant's case and it would seem more likely than not that the Applicant was found with heroin. In earlier representations to the Parole Board, the Applicant questions why he was not arrested if he was found with five packages of heroin. That is a question he should put to the police.

23.The Applicant disputes that the allegations leading to recall paralleled his index offence. It is a matter of opinion and he is entitled to disagree with the views of others. However, critically his actions leading to recall evidenced a clear risk of serious harm. He drove a vehicle he was not entitled to drive, crashed it, the vehicle caught fire and the Applicant had to be placed in an induced coma.

## Decision

24.I am not persuaded by the application in this case. There has been no real error of fact and it would not be in the interests of justice to set aside this decision. The application for set aside is refused.

**Robert McKeon**  
**28 August 2024**