

[2024] PBSA 56**Application for Set Aside by Gotham****Application**

1. This is an application by Gotham (the Applicant) to set aside the decision of a panel dated 26 June 2024. The decision was made by a single member panel and made no direction for release. This is an eligible case for set aside.
2. I have considered the application on the papers. These are the dossier of 147 pages and the application for set aside dated 12 August 2024.

Background

3. On 26 October 2017, the Applicant received a determinate sentence of 9 years imprisonment following conviction after trial for 6 counts of sexual assault on a child under 13 years old.
4. The Applicant was aged 34 years old at the time of sentencing. She is now 41 years old.
5. She was automatically released on licence on 25 April 2022. Her licence was revoked on 28 March 2024, and she was returned to custody on 30 March 2024. This is her first recall on this sentence, and her first parole review since recall.

Application for Set Aside

6. The application for set aside has been drafted and submitted by the Applicant's legal representative.
7. It submits that there has been an error of law. The error it is said arises from the panel's findings relying on hearsay evidence, failing to request additional evidence and failing to take into account the Applicant's dispute of the behaviour alleged.

Current parole review

8. The Applicant's case was referred to the Parole Board by the Secretary of State (the Respondent) to consider whether it would be appropriate to direct her re-release following the revocation of her licence.



9. The case was considered on the papers by a single member who did not hear any oral evidence but considered all the reports in the dossier and legal representations submitted on behalf of the Applicant.
10. The 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. The panel member considered the principles set out in Osborn Booth and Reilly (2013) UKSC61 and the legal representations on behalf of the Applicant requesting an oral hearing but did not find any reason to hold an oral hearing. There is no error in that conclusion, nor does the application identify any error in that conclusion.
16. The application repeats the findings of the panel but does not identify any established mistake, rather seeking to argue a preference for a different conclusion. The panel considered all the reports in the dossier and also considered the responses the Applicant had given when interviewed by probation as well as the written legal representations made on her behalf.
17. The application makes submissions about the weight given to certain facts and consideration of hearsay evidence by the panel. It is a matter for the panel the

weight it attaches to particular pieces of evidence, in this case the panel clearly and correctly sets out the evidence including the Applicant's account when interviewed by probation and the submissions made on her behalf in the legal representations. There is no error in the facts recorded or the principles applied. The submissions in the application do not identify any errors of law or proven factual mistakes but appear to be based on the Applicant wanting the panel to have concluded differently. That does not provide a basis for set aside.

18. The application sets out at length the principles to be applied when a panel is considering allegations and accepts within those principles that a panel can consider hearsay evidence. It is noted by the panel that the Applicant has not been charged with any criminal offence and there is therefore no determination as to guilt. In dealing with the question of allegations the panel member had regard to the case of *Pearce [2023] UKSC 13* and the principles in that case were clearly applied in the consideration of the allegations in this case.

19. The application submits that the panel failed to request further additional evidence. There is no duty on a panel to seek more evidence. The panel clearly had all the evidence it needed in order to make a reasoned decision; no additional evidence was necessary.

20. I am not satisfied that there were any mistakes of fact or law and, even if there were, I am not satisfied that the decision would not have been made but for that supposed error. That is because the panel concluded that the recall was appropriate and noted that the Community Offender Manager (COM) did not consider that the Applicant's risk could be managed on licence "*as she had demonstrated deceitful behaviour*". The panel was further concerned that in the absence of the Applicant having done significant work on "*honesty, attitude to compliance, access to children, substance misuse and negative associations*" it could not be satisfied that she had the commitment to comply with licence conditions.

21. I am not satisfied that this application was anything more than the Applicant wishing to have an oral hearing and wishing that the panel had made a different decision. I am therefore not satisfied that it is in the interests of justice to set aside this decision.

22. The panel has considered all necessary evidence, including the submissions made on behalf of the Applicant, and given reasons why the Applicant does not meet the test for release.

Decision

23. For the reasons I have given the application for set aside is refused.

Barbara Mensah
28 August 2024