

[2024] PBSA 58**Application for Set Aside by Valens****Application**

1. This is an application by Valens (the Applicant) to set aside a decision not to direct his release. The decision was made by a Panel of the Parole Board at Member Case Assessment (MCA) on 11 June 2024. This is an eligible decision.
2. I have considered the application on the papers. These are (i) the dossier, now containing 404 pages, (ii) the Panel decision dated 11 June 2024 (DL) and (iii) the application for set aside made by the Applicant's solicitors dated 12 August 2024.

Background

3. On 1 December 2006, upon his guilty pleas, the Applicant received a sentence of detention for public protection for two counts of rape and one count of robbery ("the index offences"). The Tariff Expiry Date (TED) was 1 January 2009.
4. The victim of the index offences was approached in the street by the Applicant (who was aged 17 at the time) and two other men. She was grabbed by the arms and forced to walk to some garages where one of the men stood guard while the other two took turns to force their penises into her mouth. She was then forced to walk to a park where the other men walked off but the Applicant stayed with her, stole property from her and then raped the victim. He had earlier consumed alcohol and used cannabis and had previous convictions for driving offences and robbery.
5. The Applicant was aged 18 at the time of sentencing and is now 36 years old.
6. The Applicant was released on licence in January 2020 following a decision of the Parole Board. His licence was revoked on 9 February 2024 and he was returned to prison two days later. This was his first parole review since his recall to prison.

Application for Set Aside

7. The application for set aside is based on what are said to be errors of fact and law which I shall address in detail below.

Current parole review

8. The Applicant's case was referred to the Parole Board by the Secretary of State (the Respondent) in accordance with s.32(4) of the Crime (Sentences) Act 1997 to



consider whether or not the Applicant should be released or, in the alternative, whether he should be recommended for transfer to open prison conditions.

9. Upon consideration of the papers, the Panel did not direct the Applicant's release or recommend that he be transferred to open conditions.
10. An application for an oral hearing was made by the Applicant's solicitors on his behalf and was refused on 24 June 2024.

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 provided written representations dated 20 August 2024 in response to the application submitting that the Panel's decision should not be set aside.

Discussion

15. The application raises a wide variety of issues without, it appears, consideration having been given as to whether or not they amount to an error of fact or law but for which the decision not to release the Applicant would not have been made.
16. The Applicant was recalled following his arrest in relation to allegations of grievous bodily harm (GBH), sexual assault on a female, assault by beating and intentional strangulation committed against his sister in the family home in the course of a

dispute. He is said to have hit his sister to the face with a frying pan, pinned her to the floor, tried to put his hands into the front of her trousers, strangled and pushed her.

17. The gravamen of the Applicant's submissions would appear to be the failure to hold an oral hearing in order to consider the allegations currently under investigation by police. An application for an oral hearing has already been refused and no application for reconsideration of the decision of 11 June 2024 appears to have been made.
18. The reference to the well-known case of Pearce [2023] UKSC 13 appears to be misconceived since the Panel decided that it would not be fair to the Applicant to investigate the allegations of criminal offending at this stage as the police inquiries were not complete and the case had not yet been referred to the Crown Prosecution Service (CPS) for a charging decision.
19. The Panel certainly did not, as submitted, treat "*him as though he is guilty of the offences*" nor did it give "*total weight to the belief that the allegations against him are true*".
20. What the Panel did note was that the Applicant denied the offences and attributed the aggression to his sister. The Panel was also aware of his version of events as provided to the Community Offender Manager and his acknowledgement that he had scratched his sister's face and he regretted becoming involved in the incident but felt that his sister was being vindictive.
21. The Panel noted that the new allegations had some elements in common with the index offences and were supported by pictures of the victim's injuries, victim and witness statements and the police body-worn video of the victim's initial account.
22. This was obviously not a case in which release could be directed upon consideration of the papers alone and the Panel considered the principles set out in the case of Osborn, Booth & Reilly [2013] UKSC 61 concerning the requirement for staging oral hearings.
23. The Panel noted that there was no indication provided as to the timescale for the completion of the police investigations and, if required, a charging decision to be obtained from the CPS. Thereafter, if charges were preferred, the matter would take some time to be resolved and the Panel appears to have been satisfied that it would be neither viable nor fair to consider making findings in relation to the new allegations and to take oral evidence while the police investigations were outstanding.
24. Accordingly, the Panel did not find suitable reasons for directing the review to an oral hearing and declined to do so.
25. The Panel was also aware that in the event of no further action being taken against the Applicant or, if charged, in the event of an acquittal, it was open to the Respondent to make an early re-referral of his case to the Board for further review.

26. In all the circumstances, therefore, the Panel was satisfied that it had sufficient information and that it was appropriate to consider the test for release and conclude the review on the basis of the documentation in the dossier.

27. I find that these decisions were matters for the Panel applying its own judgement in the light of the relevant Guidance and I can discern no evidence of an error of fact or law but for which the decision not to direct release would not have been made.

28. The application raises a number of other matters which I can deal with shortly:

- a) It is stated in the dossier that no legal representations were available for inclusion and therefore the Panel was factually correct in stating that there were no such representations before it.
- b) As to the question of the timescale for the conclusion of the investigation, the further information upon which the Applicant seeks to rely appears to relate to a decision by the CPS once the police file has been sent to it. In any event, the view formed by the Panel that the investigation was unlikely to be concluded within eight weeks of the DL (thus bringing into play the relevant Board Guidance) was not a statement of fact but the Panel's own judgement which appears to have been vindicated since the application which is dated 12 August 2024 does not suggest that the investigations had, even then, been concluded.
- c) The Panel was well aware from the contents of the dossier that the Applicant had been in the community for over 4 years and had demonstrated good compliance with probation and with a partner agency although his engagement was described as variable and there was some concern about domestic disagreements with his sister. The Panel's finding that there were no active protective factors which could be readily identified was its judgement upon consideration of all the evidence and does not, I find, amount to an error of fact.
- d) The Applicant now seeks to put forward further information in relation to the allegations and his sister's behaviour. However, for the reasons it gave, the decision of the Panel was not to seek to investigate the allegations whilst police enquiries were ongoing. I find no relevant error of fact here.
- e) The Panel has set out the scoring obtained when applying a particular risk assessment matrix and notes that, once the new allegations have been dealt with, the Applicant's formal risk assessments may need to be reconsidered. I find no relevant error of fact here.
- f) Finally, the application suggests that the Panel did not comment on, or include any consideration of, the making of a recommendation for a transfer to open conditions. The DL clearly states that the Panel declines to recommend a progressive move to open conditions and, in any event, the setting aside process is concerned with issues of release or no release to the exclusion of a recommendation for open conditions.

29. The Panel has exercised its judgement in this case, and I can find no errors of fact or law made by the Panel but for which the decision not to direct release would not have been made.

Decision

30. I have carefully considered the application and, for the reasons I have given, I find that the Applicant is unable to demonstrate that the Panel fell into error as to fact or law and the application to set aside is refused.

PETER H.F. JONES
02 September 2024