

[2024] PBSA 6

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

1. This is an application by the Public Protection Casework Section (PPCS) on behalf of the Secretary of State (the Applicant) to set aside the decision made by an oral hearing panel dated 11 September 2023 to direct release of Worth (the Respondent).
2. I have considered the application on the papers. These are the oral hearing decision, the dossier, the application for set aside (dated 18 September 2023) and representations from the Applicant, the non-disclosure application form (18 September 2023), the non-disclosure appeal legal submissions (26 September 2023), investigation letter from Bedfordshire Police (15 September 2023), pin-phone logs (undated), the non-disclosure application – granted in full decision 20 September 2023, the non-disclosure appeal decision response (PPCS) (17 October 2023), supporting documentation (various letters – undated between the Respondent and AS) and the non-disclosure appeal final decision (10 October 2023). I have also considered the Judgment of HH Judge Gargan (2 November 2023) and updated legal submissions provided over email on 3 January 2024.

Background

3. The Respondent was sentenced on the 13 April 2018 to a determinate sentence of 7 years and 6 months custody. Her sentence expires in October 2025. The Respondent was originally convicted of offences of s18 grievous bodily harm, actual bodily harm, and coercive behaviour which took place over a period of some 8 months between November 2016 and June 2017. The offences occurred in the context of an intimate relationship.
4. The Respondent was released automatically on licence on 11 January 2022 but recalled back into custody on 30 September 2022. The respondent's recall was triggered due to concerns that she was exhibiting offence paralleling, coercive behaviour towards her then partner AS, leading to a police investigation. Although the Respondent had disclosed her relationship, she had failed to disclose any issues within the relationship to professionals, raising concerns around her openness and honesty. Due to these concerns a decision was made to recall the Respondent back into custody. It should be noted that AS denied being coerced or mistreated by the Respondent and police investigations were discontinued without charge. At the time of the parole hearing in July the Respondent reported that her relationship with AS had ended.

Application for Set Aside

3rd Floor, 10 South Colonnade, London E14 4PU

www.gov.uk/government/organisations/parole-boardinfo@paroleboard.gov.uk

Parole Board



0203 880 0885

INVESTORS
IN PEOPLE | Bronze

5. The application for set aside has been drafted and submitted by the Public Protection Casework Section (PPCS) and was initially served on the Parole Board by email on the 18 September 2023. Following submission of the initial set aside application, further correspondence was provided from PPCS in early November 2023, stating that the High Court Judge, dealing with linked Family Court Matters, had requested that her judgment be added to the original application. The Set Aside Member acquiesced to this request. Despite significant chasing this judgment was not provided to the Set Aside Member, until 4 January 2024. The Respondent's application has therefore been somewhat delayed. The judgment was reviewed by the panel, but the judgment did not contain any new evidence which was pertinent to the panel's findings.
6. The application for set aside submits that when deciding the Respondent's case the panel made its decision in ignorance of new risk related information which was not known at the time.
7. Comprehensive submissions have been provided by the Applicant. They submit that following completion of the Respondent's oral hearing the Prison Offender Manager (POM) became aware of new pin-phone call logs and recordings, the content of which is said to be offence paralleling in nature. It is further stated that the number of calls to AS dramatically increased following the oral hearing. The Applicant further states that at the time of the oral hearing the Respondent told the panel that her relationship with AS had ended, which no longer appears to be the case, based on the continued contact between the parties. Finally, it is stated that the police have opened a new investigation into the alleged harassment of AS in consequence of ongoing communication between the parties since recall. Again the panel was not aware of this at the time of the oral hearing.

Current Parole Review

8. The Respondent's case was referred to the Parole Board by the Applicant to consider whether to direct her release.
9. The case proceeded to an oral hearing on the 4 July 2023 before a two member panel of the Parole Board. The case was previously before the same panel in March 2023 when it was adjourned for a psychological risk assessment to be prepared. The panel consisted of two independent members.
10. The panel directed the Respondent's release. A decision was issued on the 11 September 2023.
11. The panel held the Respondent's recall to have been appropriate.

The Relevant Law

12. 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.

13. The types of decisions eligible for set aside are set out in rules 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)).
14. 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 made if information that had not been available to the Board had been available, or
 - c) A direction for release would not have been made 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

15. The Respondent's Legal Representatives provided initial written submissions dated 27 October 2023.
16. They argue that despite the new allegations, all reasonable efforts were made to ensure the Parole Board had the most accurate information at the time of the hearing and that oral evidence from an investigating officer confirmed that the Respondent had been eliminated from their investigations in relation to a previous investigation. Those instructed also highlight the positive progress made by the Respondent during the review period, and that it would be unfair to allow the Respondent's case to be set aside based on '*accusations that are not yet adjudicated through the Courts*'.
17. Updated submissions dated 3 January 2024 also challenged the appropriateness of the delayed submission of the High Court Judge's Judgment in relation to linked Family Court proceedings. They also referred to further psychological assessments, which have not been provided to the Set-Aside Panel in any event, although are referred to in the High Court Judgement provided. The set aside panel carefully considered these submissions but concluded that the information provided by the High Court Judgment was admissible, in all the circumstances.

Discussion

Eligibility

18. The application concerns a panel's decision to direct release following an oral hearing under rule 25(1). The Applicant argues that the condition in rules 28A(1) and 28A(4)(b) are made out. I agree with this submission. It is therefore an eligible decision which falls within the scope of rule 28A.



New Information

19. As mentioned, the application states that the direction for release would not have been made if information that had not been available to the Board had been available. It is submitted that at the time of the oral hearing the panel were not aware that the Respondent remained in regular, on-going contact with AS, nor was it aware of the updated call logs and monitoring sheets, which postdate the hearing and are said to evidence offence paralleling behaviour. Furthermore, the panel was not aware that the Respondent was under active investigation by the police for the alleged on-going harassment of AS.

The test for set aside

20. In determining the application for set aside, I must consider the impact of this new information on the panel's decision to release the Applicant. This is a two stage process - (i) Firstly, do I find there to be new information, and (ii) if so would a direction for release not have been made if that information had been known.

21. In relation to the information provided being novel, I have little difficulty finding this to be the case. Although the panel had sight of previous pin-phone logs and call monitoring sheets ahead of making its decision, the updated logs and disclosable information set out in paragraph 7 above postdates the hearing and was not available to the panel when it made its decision.

22. As such I am satisfied that the information provided within the Applicant's application is novel and that the panel was not aware of the new information at the time it made its decision.

23. Turning now to the substantive matter, that a direction for release would not have been made if information that had not been available to the Board had been available, I must now consider the significance and relevance of the new information provided to the panel's assessment of risk and decision.

24. As noted, at the time of the oral hearing the panel had already seen vast quantities of pin-phone logs and records - some 300 pages of call lists, (covering 5 months) and call monitoring details from June 2023 to July 2023. It is clear from the decision of the 11 September 2023 that the panel considered these logs and monitoring sheets carefully when undertaking its risk assessment but concluded at paragraph 2.25 that "*whilst the panel had concerns about the phone contact, on balance, the panel did not consider that this was sufficient to prevent release*". It should be noted, however, that at that time the panel believed that the relationship between the Respondent and AS had ended.

25. Following the hearing, the panel directed the Respondent's release primarily due to the robustness of the proposed Risk Management Plan (RMP), the progress made by the Respondent in prison during the review period, and the fact that risk could be more easily managed given the ending of the Respondent's relationship with AS. It was also considered that if risk were escalating, including if the Respondent were to rekindle her relationship with AS, there would be warning signs.



26. With this in mind I must carefully consider whether the direction for release would not have been made if information that had not been available to the Board had been available. In the instant case this is far from straightforward because the panel did, as a matter of fact, very carefully consider voluminous call-logs and monitoring sheets at the time of its original review, which in my assessment, are not dissimilar in nature to the ones provided subsequently. Significantly, at that time the panel found that the concerns raised were not sufficient to prevent release as set out at paragraph 2.25 of the decision, *"Overall, while the panel had concerns about the phone contact, on balance, the panel did not consider that this was sufficient to prevent release"*. The decision includes a robust and detailed analysis of its thinking, in this regard.
27. In order to satisfy myself that it is appropriate to set aside the panel's original decision I must therefore ask myself if the new information provided in the Applicant's application is sufficiently different to the information already reviewed by the panel to go behind the panel's original findings.
28. I find this case to be finely balanced, however, on balance, I am minded that the new information can be distinguished from the information already considered by the panel. Firstly, at the time of completing its risk assessment in September 2023 the panel was not aware that the Respondent was under a new police investigation for the ongoing alleged harassment of AS, or the facts of that investigation. Secondly, the amount of calls to AS do appear to have increased following the Respondent's hearing which could be indicative of escalating risk. Thirdly, at the time of the oral hearing the panel was under the impression that the Respondent's relationship with AS had ended when assessing the significance of the call logs and monitoring sheets on risk. The new information provided in the Applicant's application casts significant doubt about this contention, and in particular it remains uncertain if the Respondent has subsequently rekindled her relationship following the hearing, or whether she was less than open and honest about her relationship status with professionals and the panel at the hearing. This is a matter which goes both to risk and risk management, in my view, and would have been relevant to the panel's decision-making.
29. Based on the findings in paragraph 28 above I find, on balance, that the direction for release would not have been made if information that had not been available to the Board had been available.
30. Having decided that a direction for release would not have been made if information that had not been available to the Board had been available. I must finally consider whether it is in the interests of justice for its decision to be set aside.
31. I am so satisfied. The interest of justice would not be served directing the release of a prisoner who appears to be exhibiting offense paralleling behaviour.

Decision



32. For the reasons I have given, the application is upheld, and the decision of the panel dated the 11 September 2023 should be set aside.

Heidi Leavesley
29 January 2024

