

[2024] PBSA 71

**Application for Set Aside by the Secretary of State for Justice
in the case of Windsor****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 Windsor (the Respondent). The decision was made by a panel after an oral hearing. This is an eligible decision.
2. I have considered the application on the papers. These are the dossier (574 pages), the decision (dated 20 August 2024), and the application for set aside (dated 28 October 2024). I have also seen an undated video (duration 2 minutes and 2 seconds) made by the Respondent.

Background

3. On 2 July 2021, the Respondent was convicted of robbery to which he pleaded guilty. He received a determinate 54 month sentence. He also received a concurrent determinate sentence of 15 months for possession of a knife blade/sharp pointed article in a public place. He was also convicted of using a vehicle while uninsured and driving otherwise than in accordance with a licence but received no separate penalty. His sentence end date is in October 2025.
4. The Respondent was aged 28 at the time of sentencing. He is now 32 years old.
5. He was automatically released on licence on 10 July 2023. His licence was revoked on 12 July 2023, and he was returned to custody on 14 July 2023.

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 new information constituting a 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

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

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

@Parole_Board



0203 880 0885

9. The Respondent's case was referred to the Parole Board by the Applicant to consider whether to direct his release.
10. The case was considered by a single member panel at an oral hearing on 19 August 2024. The panel heard evidence from the Respondent, his Prison Offender Manager (POM), his Community Offender Manager (COM), and a programme facilitator from the Thinking Skills Programme (TSP). The Respondent was legally represented throughout the proceedings. 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 not submitted representations in response to the application and the deadline for representations has now passed.

Discussion

15. The Applicant notes that, since the hearing, there have been concerns about the Respondent's behaviour in custody, specifically:
- a) On 4 October 2024, the Respondent was suspected of acquiring spice paper from another prisoner. Later that day he was said to have had red eyes, suggesting exposure to an illicit substance. A mandatory drug test (MDT) was recommended. The Respondent was also sacked from his employment as a cleaner and moved to another wing.
 - b) On 5 October 2024, the Respondent was reportedly rude to staff.

- c) On 6 October 2024, the Respondent was found unresponsive in his cell, where a bag of white powder was found. The Respondent was said to have been 'Code Blue' for around 15 to 20 minutes (that is, requiring resuscitation or in need of immediate medical attention).
- d) On 7 October 2024, the Respondent escaped from lawful custody after being escorted to hospital by prison staff.
16. The Respondent also sent his COM a video taken shortly before he handed himself into custody. In the video the Respondent stated that he had no choice but to abscond, as he was on a wing in custody full of drugs, he had had two overdoses in two days, he was not getting any help, the prison was negligent, and he panicked.
17. The Respondent appeared at Manchester and Salford Magistrates Court on 9 October 2024 charged with escaping from lawful custody and common assault of two emergency workers. The Respondent did not enter a plea. The case has been committed to Manchester Crown Court for 13 November 2024.
18. In consequence of this, the Respondent's COM is of the view that his risk would no longer be manageable in the community.
19. In directing the Respondent's release, the panel noted the evidence of the TSP facilitator who said that "*the worst place for [the Respondent] now is in custody and temptation to take drugs from which he cannot walk away*". The panel concluded that "*it would be better for risk in the longer term for [the Respondent] to be released with the support and control of the proposed [risk management plan] than to be released [at the end of his sentence] without such*".
20. I do not see that there has been a significant change of circumstances in this case. The Respondent has relapsed into drug use in custody; he has a history of drug misuse and is in the custodial environment which professionals considered to be high-risk for him. It was accepted by the panel that the Respondent needed to be in the community and needed support. The allegations of common assault are, as yet untried, and there is no evidence before me that could be taken into account in determining the application for set aside. I accept that the Respondent did escape from lawful custody, but he turned himself in shortly thereafter, and his desperation not to be in custody so as to avoid drugs was clearly evident from his video. This position was the case prior to the hearing.
21. Since I have found no significant change in circumstances relevant to risk, it follows that the application for set aside must be refused. Even if I had found the new information to constitute a change in circumstances, I am not satisfied that the panel would have altered its decision, given its acceptance that the custodial setting carried with it a high risk of drug-related relapse.
22. Of course, it may be that the outcome of the pending criminal matters will be that the Respondent receives a further custodial sentence, such that his release from the sentence attached to the index offence is impossible. However, at present, the

application is refused and the panel's direction for release on the index offence stands.

Decision

23. For the reasons I have given, the application is refused.

Stefan Fafinski
08 November 2024