

[2024] PBSA 75**Application for Set Aside by Lawlor****Application**

1. This is an application by Lawlor (the Applicant) to set aside the decision not to direct his release. The decision was made by a panel after an oral hearing on 4 October 2024. This is an eligible decision.
2. I have considered the application on the papers. These are the dossier, the oral hearing decision dated 7 October 2024, and the application for set aside made by the Applicant's legal representative dated 15 October 2024. Noting the reasoning advanced in the Applicant's application, I also requested, received and listened to the audio recording of the panel's oral hearing that took place on 4 October 2024.

Background

3. On 24 November 2023, the Applicant received a determine sentence following his conviction for attempted s18 GBH to which he pleaded guilty.
4. The Applicant was aged 23 at the time of sentencing. He is now 24 years old.
5. He was automatically released on licence on 22 February 2024 but his licence was revoked on 20 March 2024, and he was returned to custody. This is his first recall on this sentence, and his 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 have been errors of fact made by the panel in its decision dated 7 October:
 - a. It was an error of fact in the decision where it states that the Applicant invited a prisoner into his cell and resorted to violence when in fact the prisoner invited the Applicant into his cell and the prisoner punched the Applicant;
 - b. It was an error of fact in the decision where it states that work being undertaken is not complete. The Applicant states that he completed the conflict resolution programme and continues with 1:1 violence reduction work; and
 - c. It was an error of fact in the decision where it was noted that due to Probation Reset, contact between the Applicant and his Community Offender Manager



(COM) would be limited. The Applicant submits that he and his COM gave evidence that they would remain in contact despite Probation Reset.

Current parole review

8. The Applicant's case was referred to the Parole Board by the Secretary of State (the Respondent) to consider whether his re-release could be directed.
9. The case proceeded to an oral hearing on 4 October 2024 before a single member panel. The panel heard evidence from the Applicant, his Prison Offender Manager (**POM**) and his Community Offender Manager (**COM**). The Applicant was legally represented throughout the hearing.
10. The panel did not direct the Applicant's release.
11. In reaching its decision, the panel concluded that:
 - a. The Applicant had been recalled to custody following an alleged incident on licence. No charges followed and the panel determined that it had insufficient evidence to make any finding of fact on the balance of probabilities. It noted that the Applicant had accepted that there had been a confrontation and that he had placed himself in a risky situation.
 - b. The Applicant's offending history was linked to his misuse of substances, poor decision making and poor emotional regulation. It determined that his risk would be likely to increase if he had difficulties in his relationships or if he misused drugs or alcohol.
 - c. Aside from the incident with another prisoner in August 2024, the Applicant's custodial behaviour had been reasonable.
 - d. The panel identified its concerns about the 'fight' with another prisoner which it considered to evidence '*significant parallels to the index offence*'. It noted that the Applicant had a grievance with the prisoner and that he had '*resorted to physical violence to resolve the perceived conflict, resulting in injury*'.
 - e. The Applicant had justified the use of violence to resolve conflict in prison and he '*had not demonstrated that he is able to use his coping or thinking skills ... to avoid a situation escalating into violent conflict*'.
 - f. The Applicant had engaged with violence reduction work since the incident in August 2024 but this work was only partially completed and the panel was '*unable to see evidence of sustained change in behaviour and attitudes towards violence...*'.
 - g. The panel had noted a good working relationship between the Applicant and the COM but determined that his contact would be limited due to Probation Reset.
 - h. In the circumstances, the panel determined that the Applicant did not meet the test for release.

The Relevant Law

12. Rule 28A(1)(a) of the Parole Board Rules 2019 (as amended by the Parole Board (Amendment) Rules 2024) (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 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)).

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 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

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

Discussion

The August Incident

16. The Applicant submits that he told the panel that another prisoner had become hostile with him and that the prisoner then invited the Applicant into his cell and punched him to the face. He says that the panel's decision states that the Applicant invited the prisoner into his cell and resorted to violence.

17. In its decision, the panel stated:

- a. That the POM had been concerned about a fight between the Applicant and a fellow prisoner.
- b. That the Applicant had explained that there had been a heated argument with the prisoner and he had suggested to the prisoner to come into his cell to resolve the matter. Once in the cell, there had been a fight and the Applicant had been punched. He had said that his response had been driven by the hostile environment of prison and the panel considered him to evidence limited insight into his behaviour.

18. In oral evidence on 4 October 2024, the POM told the panel that the Applicant had initially explained his injuries in August 2024 as being as a result of walking into a wall. He later admitted that there had been a fight and he told the POM and COM there had been a disagreement with a prisoner, they both went into a cell and both came out with bruises. The POM said that the Applicant had eventually been '*open and honest ... that there was a fight*'.

19. In oral evidence on 4 October 2024, the Applicant told the panel that there had been an exchange of words with the prisoner who had then told him to *'come into the cell'* and that once in the cell the prisoner had punched him in the face. He did not believe that this evidenced his likely behaviour in the community if he were to be released. He told the panel that he had not wanted to be *'fighting'* with the prisoner.
20. In the written evidence before the panel, a security report had noted that the Applicant and a prisoner had been *'involved in an altercation/fight'*, that *'both prisoners were seen to enter a cell, shortly after staff were alerted to a commotion, in which both men leave the cell with injuries consistent with a fight'*.
21. I am not persuaded that there has been an error of fact. While there may be some debate as to which cell the Applicant and the prisoner went into and who invited who into the cell, the panel had established that there had been a fight and the evidence supported that. There had been reports of a *'commotion'* and both the Applicant and the prisoner were seen to have injuries. The Applicant had told the POM he had been involved in a fight and he told the panel that he had been fighting. In my view, the fact that there had been a fight was the key issue in terms of considering the Applicant's risk and his ability to manage conflict and avoid future violence.

Completed Work in Custody

22. The Applicant submits that his ongoing violence reduction work is on an ad-hoc basis and can be continued on his release.
23. The panel's decision reflects that the violence reduction work is ongoing and there has been no error of fact. The COM had indicated that the Applicant should continue his work on violence reduction in the community if he were to be released.

Probation Reset

24. The Applicant submits that the panel attached significant weight upon Probation Reset whereas the Applicant and the COM had confirmed that there would be regular contact between them despite Probation Reset.
25. Probation Reset is a mechanism introduced by the Probation Service to limit the monitoring and supervision of certain released prisoners based on them meeting certain criteria. Those subject to Probation Reset will not be involved in supervision appointments with Probation and risk management involves a more reactive approach.
26. In its decision, the panel noted that the COM had explained that the Applicant would remain in contact with the Probation Service despite Probation Reset, however, the panel considered that Probation Reset would limit the contact with and monitoring by Probation. This was a reasonable conclusion for the panel to reach and a determination that it was entitled to make. The Applicant may disagree but this does not, in my view, evidence an error of fact.

Decision

27. For the reasons given, I am not persuaded that there has been an error of fact in this case. The application for set aside is refused.

Robert McKeon
18 November 2024