

[2024] PBSA 76**Application for Set Aside by Smith****Application**


1. This is an application by Smith (**the Applicant**) to set aside the decision not to direct his release. The decision was made by a panel after an oral hearing on 7 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 22 October 2024), and the application for set aside (dated 6 November 2024).

Background

3. On 7 September 2022, the Applicant received a determinate sentence of imprisonment of 2 years and 8 months following a guilty plea for wounding. On the same occasion he was sentenced to a concurrent term of 8 months imprisonment for possession of a bladed article.
4. The Applicant was aged 54 at the time of sentencing. He is now 57 years old.
5. He was automatically released on licence on 4 January 2024. His licence was revoked on 8 February 2024 and he was subsequently returned to custody.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 legal representatives acting for the Applicant.
7. It submits that there has been an error of fact and, but for that error the decision not to release the applicant would not have been made.
8. The grounds submit that there was an error of fact that GPS monitoring was not available for the Applicant and therefore could not be made a licence condition. It is submitted that following the hearing the Applicant's Community Offender Manager (**COM**), via email, confirmed that due to a trial being run in the Northeast an application could be made for GPS tagging on the day of release. If the Board had directed release and directed that GPS monitoring was necessary the COM would have made an application.

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9. The Applicant's case was referred to the Parole Board by the Secretary of State (**the Respondent**) to consider whether to direct his release.
10. The case proceeded to an oral hearing on 7 October 2024 before a single member panel. The panel heard evidence from the Applicant, his Prison Offender Manager (**POM**) and his COM. The Applicant was legally represented throughout the hearing.
11. The panel did not direct the Applicant's release.

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 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

16. The Applicant submits that after the hearing the COM informed him that had the panel directed release and requested a GPS tagging condition, the COM would have made an application for the GPS monitoring device. The position has not changed in that the panel is still not able to add the licence condition and has to rely on the COM taking the decision that it is necessary and proportionate and making the application. The panel noted that without that condition it could not be satisfied that risk could be managed "*from the point of release*". This latest information does not alter that position.

17. The claimed error of fact, which appeared to be more of a clarification than an error, is not of sufficient substance to make any difference to the panel's conclusion and this application is therefore refused.

Decision

18. The application for set aside is refused.

Barbara Mensah
22 November 2024