

[2024] PBSA 78**Application for Set Aside by Rafiq****Application**

1. This is an application by Rafiq (the Applicant) to set aside the decision not to direct his release. The decision was made by a panel upon consideration of the papers on 23 September 2024. This has been deemed to be an eligible decision.
2. I have considered the application on the papers. These are:
 - The dossier now paginated to 151 pages;
 - The decision letter (DL) dated 23 September 2024; and
 - The application for set aside dated 12 November 2024.

Background

3. On 23 September 2019 the Applicant was sentenced to a total of 2045 days imprisonment for 3 counts of possession of a controlled drug (Class A and Class B) with intent to supply and one count of handling a stolen motor vehicle ("the index offences").
4. The Applicant has a criminal record of convictions for 38 offences including possession of drugs, supplying drugs, possession of drugs with intent to supply, robbery, ABH, affray, possession of an offensive weapon, sexual assault and driving matters including dangerous driving. He has also breached court orders.
5. The Applicant was aged 26 at the time of sentencing and is now 31 years old.
6. He was automatically released on licence on 9 December 2022. His licence was revoked on 8 July 2024, when, following an alleged violent incident involving his sister, he tested positive for cocaine use and subsequently received, following his recall, a 12 month conditional discharge. He had previously in February 2024 tested positive for cocaine use and for failure to attend the mandatory Drug Interventions Programme (DIP) assessment, he was fined in May 2024. This was his first parole review since recall.

Application for Set Aside

7. The application for set aside is based on the submission that the panel made two errors of law in declining to direct the Applicant's re-release.



Current parole review

8. The Applicant's case was referred to the Parole Board by the Secretary of State (the Respondent) to consider whether the Applicant should be released.
9. The panel did not direct the Applicant's release following consideration of the case on the papers pursuant to s. 19 (1) of the Parole Board Rules as set out below.

The Relevant Law

10. 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.
11. 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)).
12. 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

13. By email dated 13 November 2024, the Public Protection Casework Section (PPCS) on behalf of the Respondent declined to submit representations regarding the application.

Discussion

14. This application can be dealt with shortly. The panel had the power to deal with the review on the papers in accordance with r.19 Parole Board Rules. The decision not to direct release was initially provisional. As is made clear in the DL, the Applicant was entitled to apply for an oral hearing to determine the case pursuant to r.20 Parole Board Rules within 28 days of the date on which the decision was sent to him.
15. The Applicant did not apply for an oral hearing and the decision not to direct release therefore became final.

16. The solicitors for the Applicant were not instructed for some time but it appears that no application has been made pursuant to s.9 Parole Board Rules for an alteration of the relevant time limit in the interests of justice.
17. It is not submitted that the panel made any errors of fact and, although the application suggests that there have been errors of law, in reality, the application is entirely based on the suggestion that a fair procedure was not followed, primarily because the Applicant was not afforded an oral hearing.
18. The panel properly directed itself in accordance with the principles set out in the leading case of *Osborn, Booth & Reilly* [2013] UKSC 61 concerning oral hearings. The panel did not find reasons to convene an oral hearing and in its discretion decided the review on the basis of the papers alone as it was entitled to do.
19. The case is not eligible for Reconsideration under r.28 Parole Board Rules and to be successful a setting aside application must satisfy a different set of criteria. Throughout the submissions made on behalf of the Applicant reliance is placed on a lack of procedural fairness which is clearly the only basis for the application and is not a matter for me exercising the setting aside jurisdiction.
20. The Panel has exercised its judgement in this case and I can find no errors of law or fact made by the Panel but for which the decision not to direct release would not have been made.

Decision

21. I have carefully considered the application and, for the reasons I have given, I find that the application to set aside is misconceived and without merit and it is refused.

PETER H. F. JONES
03 December 2024