

[2024] PBSA 85**Application for Set Aside by Moncur****Application**

1. This is an application by Moncur (the Applicant) to set aside the decision not to direct his release. The decision was made by a panel after an oral hearing on 28 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 14 November 2024), and the application for set aside (27 November 2024).

Background

3. On 22 December 2016, the Applicant received a determinate sentence of 9 years and 6 months imprisonment. That sentence was in respect of possession of a firearm and ammunition with intent to endanger life for which he received a sentence of 7 years imprisonment. He received a consecutive sentence of 2 years and 6 months for possession with intent to supply class A and class B drugs and possession of a bladed article. He pleaded guilty to all the matters.
4. The Applicant was aged 32 at the time of sentencing. He is now 40 years old.
5. He was automatically released on licence in March 2021 but recalled in August 2022. He then remained unlawfully at large until his return to custody in August 2023. 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 representatives acting for the Applicant.
7. It submits that there has been an error of fact and error of law but for which the decision not to release would not have been made.

Current parole review

8. The Applicant's case was referred to the Parole Board by the Secretary of State (the Respondent) to consider whether to direct his release.



9. The case proceeded to an oral hearing on 28 October 2024 before a 2-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.

The Relevant Law

11. 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.

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 offered no representations in response to this application.

Discussion

15. It is argued on behalf of the Applicant that the decision contains a number of errors, that a significant amount of weight was placed on unfounded allegations and that the decision is contrary to the recommendation of the professionals and misapplies the public protection test. The submissions relating to irrationality of the decision do not belong to grounds for set aside. In considering applications to set aside, reconsideration concerns such as irrationality are not applied.

16. I have considered separately each bullet point set out in the application:

- a) Paragraph 1.9 of the decision letter – the panel is not in error in stating that there are concerns about domestic violence as the Applicant himself is

recorded by his probation officer to admit that there has been domestic violence in past relationships.

- b) Paragraph 2.2 of the decision letter – the panel appears to have been in error in concluding that the Applicant struggled to comply with offence focused work around relationship issues as the Applicant does not appear to have been given that work in the community. However, it is of note that the panel took into account that the Applicant had engaged well with his probation officer and had attended appointments and taken part in supervision.
- c) Paragraph 2.5 of the decision letter – the panel has recorded the Applicant’s account regarding the recall incident, when he had been drinking and was “*worse for wear*” that his ex-partner drove to pick him up. The application says that he had said that his ex-partner did not drive to pick him up. Even if the panel made an error as to whether or not his partner picked him up it would make no difference to the final conclusion which does not depend on this point.
- d) Paragraph 2.7 – the panel in considering whether recall was reasonable considered the allegations put forward by the Applicant’s ex-partner. Although the panel accepts her account the panel does not state whether it accepts the entirety or only parts of her account. The Applicant states that he did not hit his ex-partner. Even if the panel considered that the Applicant had hit his ex-partner this was a conclusion open to it on an analysis of the evidence and does not equate to a factual error.
- e) Paragraph 2.8 – with regard to his absence between revocation of licence and return to custody, the Applicant states that he had changed his number to avoid his ex-partner (having been advised to do so by his probation officer) and not to avoid probation. It is not clear from a reading of the paragraph whether the panel is recording a reason given by the Applicant or is stating its own findings. Even if the panel had erroneously recorded the Applicant’s reason, the panel noted and took into account the Applicant’s account that he felt he had lost everything and wanted his problems to go away and had moved to London when he realised he had been recalled. The Applicant also states that the panel erred in recording that his mother had “*considered calling the police*” as she did call the police. Neither of these matters would have made a difference to the panel’s decision.
- f) Paragraph 2.19 – the application states that the Applicant was not receiving money from drugs but that he bought vapes from other prisoners. The panel does not record that the money was from drugs but reports the Applicant’s account that the transactions were for vapes. There is no error identified in this paragraph.
- g) Paragraph 3.3 – the application states that the Applicant disputes risk management issues with relationships. In paragraph 3.3 of the decision letter, after considering the OGRS scores the panel in finding the scores reflect a reasonable assessment concludes that the Applicant’s risk increases within relationships. This was a conclusion open to the panel on the basis of

the Applicant's past behaviour when in relationships and on the basis of the OGRS scores. There is no error of fact or law in that conclusion.

17. Having considered all the matters raised by the Applicant I am not satisfied that there are any errors of fact identified which if they had not been made would have made a difference to the decision not to direct release.
18. The reasons for finding the Applicant did not meet the statutory test were not principally dependent individually or collectively on those matters which the Applicant claimed were in error. The panel's concerns were return to drug use, failure to avoid placing himself in situations of confrontation and conflict and inability to manage the risk posed, lack of honesty and openness with probation thus undermining the ability to manage his risk, lack of understanding or insight into the risks he poses, no evidence to show that he has the resilience to manage or enable probation to manage his risk.
19. With regard to the allegations the panel heard evidence from the Applicant and noted that the allegations had resulted in no further action being taken as the Applicant's partner did not wish to take matters forward. Having heard and considered all the evidence the panel were in the best position to decide the weight to be attached to the evidence and make any necessary findings regarding the allegations. There is no error of law or fact identified in the Applicant's submission and I can see none.
20. With regard to the submission of divergence from professionals, the Applicant notes that all the professionals recommended release and the panel's decision not to do so is against the weight of the evidence, is irrational and is unreasoned.
21. Panels of the Parole Board are not obliged to adopt the opinions and recommendations of professional witnesses. It is their responsibility to make their own risk assessments and to evaluate the likely effectiveness of any risk management plan proposed. They must make up their own minds on the totality of the evidence that they hear, including any evidence from the Applicant. They would be failing in their duty to protect the public from serious harm if they failed to do just that. The panel, as they were entitled to do, disagreed with the professionals and the decision letter sets out in detail its reasons for doing so. The panel applied the correct test. There is no basis for set aside in this case.

Decision

22. For all the reasons given above the application for set aside is refused.

Barbara Mensah
19 December 2024