

[2022] PBSA 10

Application for Set Aside by Pearson

Application

1. This is an application by Pearson (the Applicant) to set aside the decision made by an oral hearing panel dated 12 October 2022 not to direct his release.
2. I have considered the application on the papers. These are the oral hearing decision, the dossier, and the application for set aside.

Background

3. The Applicant was sentenced to imprisonment for 32 months on 9 December 2020 following conviction for wounding/inflicting grievous bodily harm to which he pleaded guilty. His sentence expiry date is in March 2023.
4. The Applicant was aged 37 at the time of sentencing. He is now 39 years old.
5. He was automatically released on licence on 4 November 2021. His licence was revoked on the same day and he was returned to custody two days later.

Application for Set Aside

6. The application for set aside is dated 31 October 2022 and has been drafted and submitted by solicitors acting for the Applicant.
7. It claims that there has been an error of fact.

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. This was the Applicant's first parole review since his recall.
9. The case proceeded to an oral hearing on 28 September 2022 before a two-member panel comprising a judicial member and an independent member. The Applicant was legally represented throughout the oral hearing. Oral evidence was given by the Applicant, his Prisoner Offender Manager (POM) and his Community Offender Manager (COM).
10. The panel did not direct the Applicant's release.



The Relevant Law

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11. Rule 28A(1) 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(2), 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 rules 28A(1) and 28A(2). 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(4)(a)) **and** either (rule 28A(5)):
 - 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 made if information that had not been available to Board had been available, or
 - c) a direction for release would not have been made 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 offered representations dated 11 November 2022 in response to this application. These largely reiterate the facts of the case and offer little legal argument other than to say the Respondent considers the decision to be rational and that it should be upheld.

Discussion

15. The application concerns a panel's decision not to direct release following an oral hearing under rule 25(1)(b). The decision was not subject to the reconsideration mechanism afforded by rule 28. The application relies upon the ground in rule 28A(5)(a). It is therefore an eligible decision which falls within the scope of rule 28A.
16. It is difficult to discern the line of argument advanced on behalf of the Applicant. It reiterates various points that, it is said, were given in oral evidence at the hearing and while it uses the term 'error of fact' it does not explain in any meaningful way what the error was. Even if the application did manage to establish an error of fact, it does not provide any reasons why any such error was so fundamental that it would have altered the panel's decision or why it would be in the interests of justice for the decision to be set-aside. It is not for me to construct the Applicant's argument nor guess what it might be: I can only assess the application on the written words before me. The application concludes by submitting that the decision is irrational due to an error of fact. Irrationality is irrelevant to the legal test that is very clearly set out in rule 28A. In short, the application is incomplete and legally inaccurate. Set aside is not a mechanism for challenging a decision just because an Applicant disagrees with it. The application must fail.

17. In the same way that irrationality is irrelevant to the Applicant's case, it is also irrelevant to the Respondent's response. The Respondent does nothing to address the test for set-aside.

Decision

18. For the reasons I have given, the application for set-aside is dismissed.

Stefan Fafinski
29 November 2022