

[2022] PBRA 11

## Application for Set Aside by the Secretary of State for Justice in the case of Forge

### Application

1. This is an application by the Secretary of State for Justice ("the Applicant") under rule 28A(1) of the Parole Board Rules 2019 to set aside a decision of the Parole Board dated 13 October 2022 directing the release of Forge ("the Respondent"). The decision followed an oral hearing which took place on 7 October. The application is made on the grounds that there is *"further information, constituting a significant change in circumstances, which impacts the risk management assessment and has come to light after the Panel took their decision on 7 October"*.
2. I have considered the application on the papers. These are: (1) the dossier, now running to some 266 pages including the decision letter; (2) the application to set the decision aside dated 4 November 2022; (3) an email from the Prison Offender Manager ("the POM") dated 10 November 2022 outlining the result of adjudications brought against the Respondent; (4) representations from the Respondent's legal representative, summarised below; and (5) additional information from the police, also summarised below.

### Background

3. On 22 July 2021 the Respondent was sentenced to a determinate sentence of imprisonment of 2 years, 1 month. On 26 January 2022 he was automatically released on licence at the half way point of his sentence. His licence was revoked on the same day and he was returned to custody on 31 January. As noted above, a release direction was made on 13 October; but the effect of this application is that he remains in custody pending its determination. If he is not released earlier his sentence is due to expire in February 2023.
4. The Respondent's index offences were committed against an ex-partner ("A"). In the course of a lengthy relationship he had committed earlier offences against her in 2012 (battery and breach of non-molestation order) and 2014 (breach of non-molestation order). The relationship had ended about 12 months before the index offences. The principal offence, assault occasioning actual bodily harm, was described in the oral hearing decision as a *"serious and prolonged assault while his own daughter was in the home"*. Concurrent sentences were imposed for breach of non-molestation order and criminal damage. The Respondent was under the influence of cocaine and alcohol at the time of commission of the offences.



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## Request for Reconsideration

5. The application dated 4 November 2022 relies on two main kinds of information.
6. Firstly, it is said that an intelligence-led search of the Respondent's cell took place on 1 November 2022. The search unearthed a Zanco mobile phone and 9 wraps of white powder which tested positive for cocaine.
7. This information has been supplemented by adjudication documents now contained in the dossier and by the POM's email dated 10 November. The Respondent has pleaded guilty to two adjudications: one relates to the Zanco mobile phone and the other to the nine wraps which tested positive for cocaine. He has also admitted to the POM that the phone was his.
8. Secondly, it is said that the Community Offender Manager ("the COM") has received a phone call from a member of the homeless team at a local council working with A, saying that A has informed the worker that she has had a telephone call from the Respondent confirming his release date and saying he wants contact with his son. The POM has said that while the Respondent admits that the Zanco phone belonged to him he denies making a call to A.
9. I took the view that information of this kind, for which there was no detail or named source, required further confirmation if it was to be relied on in support of the application. I wished to know by email from a named person who had spoken to A when A was saying the call to her took place and what was said. I made it clear that the named person could be the member of the homeless team; or the COM could get in contact with A and ask for this information.
10. I allowed until Friday 18 November for this information to be provided. I granted an extension at the Applicant's request until Tuesday 22 November. That time limit expired without any further contact from the Applicant. Eventually on Wednesday 23 November the Applicant confirmed that 'A' had now been contacted by the police; A did not say that the Respondent had contacted her directly, but rather that a third party had contacted her on an unauthorised phone from prison sometime in October.

## Current parole review

11. The Respondent's case was referred to the Parole Board following his recall and directed to an oral hearing which took place before 3 members on 7 October 2022. At the hearing the Respondent accepted that there had been a history of intimate partner violence in his relationship with A. He admitted that he had taken some £200-£400 worth of cocaine prior to the index offence, which he said was a usual amount for him on days when he took cocaine. He said that he did not intend to take drugs again as they had ruined his life. As to his recall, he accepted that he had returned to the approved premises having consumed alcohol and had then absconded from it – having, he said, been told of a family bereavement. The POM told the panel that there had been no issues or concerns concerning drug misuse, alcohol misuse or other behaviour in custody. The COM assessed him as posing a high risk of serious harm to A and offered a risk management plan including a period

in approved premises, testing for drug and alcohol consumption and support in addressing substance abuse, and enhanced licence conditions.

12. In reaching its decision to release him in accordance with that risk management plan the panel placed weight, amongst other things, on what it found to be his "desire to live a good life, to regain employment, to remain abstinent from drugs and alcohol". It also placed weight on his positive custodial conduct and the absence of any concerns in custody about alcohol or drug abuse.

### **The relevant law**

13. The decision to release the Respondent was taken under rule 25(1)(a) of the Parole Board Rules 2019. Such a decision is a final decision and is eligible for the set aside procedure: see rule 28A(1) and (4) of the Rules. I have been appointed as decision maker for the purposes of this application. I may decide the application for myself or I may delegate the role of decision maker to the chair of the panel which made the decision: see rule 28A(12).

14. An application under rule 28A(1) must be brought prior to the prisoner's release: see rule 28A(6)(b).

15. Rule 28A(4) provides that the decision maker may set such a decision aside if satisfied that (1) one of the conditions in rule 28A(5) is applicable and (2) it is in the interests of justice to do so.

16. The conditions on which the Applicant relies are set out in rule 28A(5)(b) which provides

*"(b) the decision maker is satisfied that a direction given by the Board for the release of a prisoner would not have been given if:*

*(i) information that was not available to the Board when the direction was given had been so available or*

*(ii) a change in circumstances relating to the prisoner that occurred after the direction was given, had occurred before it was given".*

### **The reply on behalf of the Respondent**

17. On behalf of the Respondent his representative accepted that admitted adjudications as charged would be a serious matter for the Parole Board to consider; he invited the Parole Board, if minded to set the decision aside, to direct further consideration of the case on the papers in the light of the forthcoming sentence expiry date. He had not been able to obtain instructions on the question of the alleged telephone call; he said that if the Parole Board allowed additional time he would endeavour to do so.

### **Discussion**

18. I will first address the information the Applicant has provided about the search and the proven adjudications.

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19. I am satisfied that the proven adjudications for possession of the Zanco phone and the wraps which tested positive for cocaine constitute a change of circumstances relating to the Respondent which occurred after the direction was given.
20. I am further satisfied that the direction for release would not have been given if that change in circumstances had occurred before the direction for release was given. The Respondent poses a high risk of serious harm to his former partner A. The index offences had been committed under the influence of cocaine. The panel, in reaching its assessment that the Respondent's risk could be managed by the risk management plan, placed weight on his positive custodial conduct, the lack of any concerns in custody about drugs and alcohol, and his asserted desire to lead a positive and drug free life. It is in my opinion plain that the panel would not have regarded the high risk of serious harm to A as manageable in the light of the conduct for which he has now been adjudicated. Given his willingness to resort in custody to possession of forbidden items, and given his immediate disregard for the requirement to reside at approved premises at the time of his last recall, the panel could have had no confidence that even a robust management plan involving approved premises would have managed his risk.
21. I am further satisfied that it is in the interests of justice to set the decision of the panel aside. Until the Respondent's sentence expiry date responsibility rests with the Parole Board to direct release only if it is satisfied that his risk, in particular to A, can safely be managed. It is plain that the panel's assessment of risk requires to be reconsidered in the light of the changed circumstances.
22. Those conclusions are sufficient to determine the set aside application, which I will grant. I do not think any useful purpose would be served by remitting the application to the panel chair.
23. I wish, however, also to address the second aspect of the Applicant's application.
24. This aspect of the application was made in reliance on a report from an unnamed housing worker which had not been reduced to writing and confirmed. While this may constitute "information" it is not a satisfactory basis for an application. This case shows why. When confirmation was sought from the housing worker, it was not forthcoming. When, eventually, a police officer spoke to A she gave an account significantly different to that set out in the application.
25. The Applicant acts through the agency of the Public Protection Casework Section ("PPCS"). If PPCS has, in an emergency, to make an application where there is an unnamed and unconfirmed source, it must expect to obtain written confirmation without delay and without waiting to be asked by the Parole Board; and if it is asked by the Parole Board it should regard it as a matter of urgency to meet the Parole Board's direction. When the Applicant makes a set aside application the prisoner's liberty is on hold until the application is determined; it is not satisfactory that it should take PPCS, as in this case, some 19 days to check its source.
26. In the result, some 19 days after the application was made, the Respondent still did not know the case against him on this part of the application, and neither he nor his solicitor had an opportunity to respond to it. Since I would in any event have



set aside the decision by reason of the proven adjudications I decided that further delay was not in the interests of justice; and the better course was to leave the second part of the application entirely out of account in reaching my decision. I make it clear, therefore, that I have made no findings on the second part of the application and my decision does not rest on it.

## Decision

27. For the reasons I have given I am satisfied that the application should be granted.

28. I am required by rule 28A to decide whether this case should be reconsidered by the original panel or whether it should be considered afresh by another panel, and in either case whether the decision should be taken following a further hearing or on the papers.

29. I have decided, in agreement with the legal representative, that the best course is to direct that the case should be decided on the papers by a new panel, which should consist of a single member. Practical considerations call for this decision. Since the sentence expiry date is less than 3 months away, it is unlikely that even an expedited oral hearing could be arranged in time; and there is no obvious reason why the Respondent's case should in any event be prioritised for an expedited oral hearing. A paper decision by a single member is appropriate and proportionate.

30. The following further directions are given.

- (a) This decision should be added to the dossier.
- (b) The documents listed in paragraph 2 above at items (2)-(5) should be added to the dossier.
- (c) The COM should provide within 14 days of the issuing of this decision a brief updated report as to custodial conduct and the current attitude and views of the Respondent.
- (d) The Respondent's representative may provide additional representations within 14 days of the issuing of this decision.

**David Richardson**  
**5 December 2022**