

[2023] PBSA 35

## Application for Set Aside in the case of Plowman

### Application

1. This is an application by Plowman (the Applicant) to set aside a decision not to direct his release. The decision was made by a panel of the Parole Board following an oral hearing on 11 April 2023. It is a decision which is eligible for the setting aside procedure.
2. I have considered the application on the papers.

### Background

3. On 30 April 2020, having pleaded guilty to attempted robbery and possession of a knife, the Applicant was sentenced to a determinate sentence of imprisonment for 50 months.
4. The Applicant was 29 years old when the index offences were committed and he had previous convictions dating from the age 21. They included convictions for driving over the prescribed alcohol limit, theft, burglary and robbery. The robbery in 2018 was associated with a second conviction for driving over the prescribed alcohol limit when he tried to escape from the police.
5. The index offences were committed when the Applicant grabbed a lone member of staff in a newsagent shop by the neck, threatened to kill him if he did not open the till and stabbed him three times in the side. At the time of the index offence, the Applicant was in the community on licence under the sentence imposed for the 2018 robbery.
6. The Applicant is now 32. This was his first parole review following recall.

### Application to Set Aside

7. The application, in written form and dated 31 May 2023, has been submitted by the Applicant's solicitors.
8. It submits that the panel's decision is wholly irrational and has been based on facts which do not accurately correlate with each other. The grounds for the application are considered in the **Discussion** section below.

### Current Parole Review



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9. The Applicant was released automatically on licence at the half way point of his current sentence, namely 30 May 2022. His licence was revoked on 14 July 2022 for breaching two of its conditions. These were: 5(i), to be of good behaviour and not to behave in any way which undermines the purpose of the licence period; and 5 (v), to reside permanently at an address approved by his supervising officer and obtain their prior permission for any stay of one or more nights at a different address. The Applicant was accordingly recalled to prison.
10. Under the approved arrangements, the Applicant should have been residing at the address of his former partner but trail monitoring showed him to have been elsewhere. Voicemail messages left by the Applicant for his partner and her brother were derogatory and threatening.
11. Following recall, the Applicant's case was referred to the Parole Board by the Secretary of State to consider whether or not to direct his release and an oral hearing took place on 11 April 2023. In his evidence, the Applicant did not challenge the decision to revoke his licence. He expressed remorse for the messages and explained that his emotions had got the better of him. The panel concluded that the recall had been appropriate.
12. Since returning to custody, the Applicant has not been afforded the opportunity to undertake any offence focused work. There have been no issues about his conduct and compliance.
13. Both the Community Offender Manager (COM) and the Prison Offender Manager (COM) expressed the view that the Applicant's risk was manageable in the community. The panel's decision records the fact that the COM specifically recommended his release. It concluded that the escalation of serious harm in respect of the index offences, his admitted lack of emotional regulation and his relationship problems all indicated a growing problem. The panel further concluded that the Applicant had few internal controls when upset and that he can behave in a problematic way even when sober. It decided that the COM's assessment of the Applicant's risk of both violent and non-violent re-offending as low was an underestimate and was more likely to be medium.
14. The panel did not accept the COM's view that the Applicant's risk was not imminent. It gave him credit for self-reflection, increased insight and motivation but noted that emotionally driven offending had not been a pattern in his behaviour to date.
15. The panel concluded that, although the risk management plan was robust, it was not capable of managing the Applicant's risk.

## The Relevant Law

16. 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.

17. The types of decision eligible for setting aside are listed in rule 28A(1). Decisions concerning whether the prisoner is or is not suitable for release on licence are eligible for setting aside whether made by a paper panel (rule 19(1)(a) or (b)) or by an oral hearing panel after a hearing under rule 25(1) or by an oral hearing panel making a decision on the papers under rule 21(7).

18. Under Rule 28A (4), a final decision may be set aside (a) if it is in the interests of justice to do so **and** (b) one or more of the conditions set out in sub paragraph (5) are satisfied. Those conditions are (a) the decision maker is satisfied that a direction to direct or not direct release would not have been made but for an error of law or fact or (b) the decision maker is satisfied that a direction for release 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.

19. Rule 28A (9) provides that, where the decision maker directs that a final decision should be set aside, they must also direct that the case should be –

- (a) decided again on the papers by the previous panel or a new panel appointed under rule 5(1), or
- (b) decided again at an oral hearing by the previous hearing by the previous panel or a new panel appointed under rule 6(2).

## Board Guidelines

20. The current Parole Board Guidelines include the following:

*"6.2 If an application to set aside a decision has been granted, the decision-maker can direct:*

- a) a further oral hearing or that a decision is to be made on the papers; and*
- b) a decision is to be made by a new panel or the original panel.*

*6.3 Where an application to set aside a decision to release has been granted by the decision-maker on the ground that there is new information or a change in circumstances, the setting aside panel can refer the matter back to the original panel. The setting aside panel can direct that the original panel consider the new information and make a new decision in relation to that information".*

## The Reply by the Respondent

21. By letter emailed to the Parole Board on 8 June 2023 by the Public Protection Casework Section (PPCS) of HM Prison and Probation Service it was confirmed on behalf of the Secretary of State that he has no representations to make.

## Discussion

22. It has not been argued on the Applicant's behalf that there was an error of law on the part of the panel, nor that information is now available that was not available to the Board when it made its decision, nor that there has been a relevant change in circumstances since the decision.

23. One of the submissions made is that the decision is irrational. That is not a specified ground for setting a decision aside. Rather, it is a ground for reconsideration which is not the remedy sought and for which different rules apply.

24. It is further submitted that there has been an error of fact. However, the submissions do not identify any such error. They deal with conclusions which the panel reached in respect of the facts and with judgements it made in respect of opinions expressed by the professional witnesses. Where facts are cited, for example in paragraphs 4, 8, and 11, they are not in dispute.

## Decision

25. For the reasons set out above, the application to set aside the decision of the panel dated 11 May 2023 is refused.

**HH Judge Graham White**  
**26 June 2023**