

[2023] PBSA 19

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

### Application

1. This is an application by the Secretary of State for Justice (the Applicant) to set aside the decision made on the papers by a panel (dated 2 November 2022) to direct the release of Hyde (the Respondent). This is an eligible decision.
2. I have considered the application on the papers. These are the oral hearing decision, the dossier, and the application for set aside (dated 1 March 2023).

### Background

3. The Respondent received a determinate sentence of imprisonment for a total of two years and three months on 28 May 2021 following conviction for threatening to damage or destroy own property so as to endanger life and breach of a suspended sentence order.
4. He was automatically released on licence in April 2022. His licence was revoked in July 2021, and he was returned to custody.
5. His sentence expires in June 2023.
6. The Respondent was aged 24 at the time of sentencing. He is now 26 years old.

### Application for Set Aside

7. The application for set aside has been drafted and submitted by the Public Protection Casework Section (PPCS) acting on behalf of the Applicant.
8. The application for set aside submits further information which came to light after the panel made its decision. It is argued that the panel may not have reached the same decision had this new information been known.
9. The content of the application will be considered in the **Discussion** section below.

### Current Parole Review

10. The Respondent's case was referred to the Parole Board by the Applicant to consider whether to direct his release. This is the Respondent's first parole review since recall.



11. The case was considered on the papers on 2 November 2022 by a single-member panel. This panel directed the Respondent's release.

## The Relevant Law

12. 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.

13. The types of decisions eligible for set aside are set out in rules 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)).

14. 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 made if information that had not been available to the 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

15. Submissions dated 27 March 2023 drafted by the Respondent's legal representative set out the Respondent's position. These will be considered in the **Discussion** section below.

## Discussion

16. The application notes that the Applicant appears to have been unable to give effect to the direction for release. The Respondent has particular medical and healthcare needs. The application concludes by saying that "*every effort has been made to meet the direction, but it is not possible to do so which we believe constitutes a change in circumstances*".

17. The Respondent argues that it is for the Applicant to arrange suitable living arrangements which cater for his medical needs.

18. Having considered the evidence before it at the time, the panel made a direction for release which is binding on the Applicant. In doing so, the panel concluded that it

was not necessary for the Respondent to remain in prison. The fact that there is no suitable release accommodation does not change the risk assessment.

19. Even if I found that it had, and then found that the panel would have made a different decision, I would not have found that set aside would have been in the interests of justice. To have done so would have released the Applicant from a binding obligation to release the Respondent simply because it was difficult to fulfil. The Applicant must give effect to the direction of the Parole Board as soon as is reasonably practicable in all the circumstances. While the circumstances of this case mean this may take more time than usual, this is not a reason to set aside the release decision.

## **Decision**

20. For the reasons I have given, the application is refused, and the direction for release stands.

**Stefan Fafinski**  
**3 April 2023**