

[2023] PBSA 36

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

### Application

1. This is an application by the Secretary of State for Justice (the Applicant) to set aside the decision made by an oral hearing panel (the panel) dated 25 February 2023 to direct the release of Vann (the Respondent).
2. I have considered the application on the papers. These are the dossier of 229 pages; the oral hearing decision reasons (the decision) and the application for set aside dated 9 May 2023. I have also reviewed the Parole Board Guidance on Setting Aside dated August 2022.

### Background

3. On 23 August 2018, the Respondent received a determinate sentence of 6 years' imprisonment following conviction for robbery. His sentence will expire in August 2024.
4. The Respondent has a number of previous convictions, including several similar matters. He was aged 23 at the time of sentencing. He is now 28 years old.

### Application to Set Aside

5. The application to set aside is dated 9 May 2023 and has been drafted and submitted by the Public Protection Casework Section (PPCS) acting on behalf of the Applicant.
6. The Applicant relies on the ground that the direction for release would not have been made if information that was not made available to the panel when the direction was made, had been available. The following new information has been provided in the application:
  - The Applicant states that they have received information from the Respondent's Community Offender Manager (COM) that the Respondent has been involved in an incident whereby 4 parcels were intercepted from a 'throwover' completed on the morning of 23 March 2023.
  - The Respondent was in the area where the parcels were intended to be received, and he was not supposed to be in that area.
  - An initial investigation identified the Respondent making a coded telephone call to an associate arranging for the items to be thrown over at an agreed time.
  - A list of contacts were found during a cell search.
  - The Respondent is now subject to a police investigation.



3rd Floor, 10 South Colonnade, London E14 4PU  [www.gov.uk/government/organisations/parole-](http://www.gov.uk/government/organisations/parole-board)



[info@paroleboard.gov](mailto:info@paroleboard.gov)



@Parole\_Board



0203 880 0885



INVESTORS  
IN PEOPLE | Bronze

## Current Parole Review

7. The Respondent's case was referred to the Parole Board by the Secretary of State to consider whether it would be appropriate to direct his re-release following the revocation of his licence. The Respondent had been released automatically on licence by the Secretary of State on 20 August 2021, and recalled to custody on 18 February 2022. He was returned to custody the next day. The reason for his recall was his arrest for dangerous driving as well as other driving matters.
8. A single member panel of the Parole Board considered the Respondent's case on 25 August 2022 and directed an oral hearing. This was the first review of his case following the recall. The Respondent's case was heard by a single member panel of the Parole Board on 25 March 2023. The Respondent was legally represented. Oral evidence was taken from the Respondent's Prison Offender Manager (POM) and COM. The Respondent also gave evidence. Following the hearing, the panel directed the Respondent's release.

## The Relevant Law

9. Rule 28A(1) of the Parole Board Rules 2019 (as amended by the Parole Board (Amendment) Rules 2022) 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.
10. 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)).
11. 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 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
    - 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 after the direction was given, had occurred before it was given.
12. Under Rule 28A(5) an application to set aside a decision must be made within 21 days of the decision. However, if the application relies on 28A(4)(b) i.e it relates to new information or a change in circumstances then it must be made before the prisoner is released.



## The Reply from the Respondent

13. In accordance with the rules, the Respondent was asked if he had any representations to make within seven days. The Respondent did not submit any response within the allocated time however his legal representatives applied for an extension to provide representations and this was granted. The representations were therefore submitted in time. They oppose the application and indicate that the Applicant denies any wrongdoing. They point out a discrepancy in the application and query the nature of the evidence put in the application. The representations also correctly identify that the application wrongly states that the Applicant's grounds are both that information was not available at the time of the decision as well as a change in circumstances. I agree that the only ground available here is whether there has been a change in circumstances.

14. The representations also state that it cannot be fair to make any findings (of fact) on the matters alleged without speaking to the Applicant. I deal with this matter below. I do agree with the representations that a panel (or future panel) would need to consider the evidence in some detail before coming to any conclusions, whether or not they make findings of fact in relation to these new matters.

## Discussion

### *Eligibility*

15. The application concerns a panel's decision to direct release following an oral hearing under rule 25(1)(a). The application was made prior to the Respondent's release and argues that the condition in rule 28A(4)(b)(i) is made out. It is therefore an eligible decision which falls within the scope of rule 28A.

### *New Information and the test for setting aside*

16. The Applicant relies on information received from the COM who reported the new information as provided above. The COM now has concerns that the Respondent's risk cannot be managed in the community.

17. The Applicant submits that this is new information that was unavailable at the time of the decision and, as such, the decision to release ought to be set aside.

18. In the panel's decision there is no reference to the issues raised and of course they could not have been, as they occurred some weeks after the decision had been made. I note that the panel recorded evidence from the professional witnesses about the Respondent's good behaviour and engagement in custody. I further note that the panel did consider some security intelligence in the dossier following a previous cell search, however it placed little or no weight on this intelligence because no further evidence was available to substantiate it, even after investigation.

19. I am satisfied that the new information came about after the decision was made. Taking into account the implications in relation to the new information, I am also



3rd Floor, 10 South Colonnade, London E14 4PU 

[www.gov.uk/government/organisations/parole-](http://www.gov.uk/government/organisations/parole-)



[info@paroleboard.gov](mailto:info@paroleboard.gov)



@Parole\_Board



0203 880 0885



INVESTORS  
IN PEOPLE | Bronze

satisfied that the direction for release would not have been given if this information had been before the panel. Rule 28A(4)(b)(i) is met.

20. I make this decision having carefully considered the representations. I make no finding of fact on the matters alleged, other than assessing that there is sufficient detail that provides risk related concerns about the prisoner's behaviour for the purposes of this application.

21. Having decided that the panel's decision to direct release would have been affected, I must also consider whether it is in the interests of justice for its decision to be set aside. Having considered the information, I am satisfied that it is in the interests of justice for the panel's decision to be set aside. In my opinion, the interests of justice would not be served if the release of a prisoner took place in the knowledge that there is an outstanding police investigation about a possibly serious breach of rules with possible criminal implications. In making this decision, I have taken into account that the new information relates to allegations as yet unproven.

## Decision

22. For the reasons I have given, the application is granted, and the final decision of the panel dated 25 February 2023 should be set aside.

23. I must now consider two matters. First, whether the case should be decided by the previous panel or a new panel and second, whether it should be decided on the papers or at an oral hearing.

24. Noting the previous panel's knowledge of this case, I consider that the previous panel would be best placed to consider the new evidence. The previous panel has the great benefit of having prepared and heard the case and considered all the evidence before it at the time. It is best placed to consider the case again, and I direct that it does so. I consider that this decision should be by way of oral hearing, and I make directions for this hearing below. The panel chair might well make further directions, including that the case should be concluded on the papers. This hearing should be prioritised for listing.

**Chitra Karve**  
**26 June 2023**



3rd Floor, 10 South Colonnade, London E14 4PU 

[www.gov.uk/government/organisations/parole-](http://www.gov.uk/government/organisations/parole-)



[info@paroleboard.gov](mailto:info@paroleboard.gov)



[@Parole\\_Board](https://twitter.com/Parole_Board)



0203 880 0885



INVESTORS  
IN PEOPLE | Bronze