

**[2023] PBSA 58****Application for Set Aside by Collins****Application**

1. This is an application by Collins (the Applicant) to set aside the decision made by a Panel of the Parole Board (the Panel) resulting in a refusal to direct his release.
2. I have considered the application on the papers. These are the dossier currently comprising 129 pages, the decision letter (DL) undated and the application to set aside dated 8 August 2023.

**Background**

3. On 8 December 2017, when the Applicant was 20 years old, he was sentenced to a determinate sentence of 96 months imprisonment for rape, assault occasioning actual bodily harm (ABH), dangerous driving and failing to provide a specimen for analysis ("the index offences").
4. The Applicant was released automatically on licence on 25 June 2021, was recalled on 19 January 2023 and returned to custody the next day. This was the first review since recall. The Applicant's sentence expires in June 2025.
5. On the night of 23 June 2017, the Applicant approached a female sex worker, drove her in his vehicle to a car park and requested a sexual service from the victim. No money was exchanged and so the victim left the vehicle. The Applicant then attacked the victim, punched her to the ground and raped her. When a member of the public approached he got into his car and reversed over the victim's legs.
6. This was his first conviction although he was subsequently convicted of an affray committed in December 2016.
7. Following his release, the Applicant kept his supervision appointments although there were some concerns about compliance.
8. He was recalled to prison when his Approved Premises (AP) bed was withdrawn due to his increasingly disinhibited and erratic behaviour and the concerning nature of his sexualized disclosures and presentation, some of which he subsequently acknowledged in a letter to the AP manager.

**Current Parole Review**

9. The Applicant is now 25 years old. His case was referred to the Parole Board by the Secretary of State for Justice (the Respondent) to consider whether to direct his release. The review was concluded on 2 June 2023 on consideration of the papers



alone (which did not include any legal or personal representations) and the Panel (comprising of a single member) made no direction for release.

### Application for Set Aside

10. The application to set aside is dated 8 August 2023 and made on behalf of the Applicant by his solicitors who seek to argue that there have been errors of fact and law.

### The Relevant Law

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 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

14. In an e-mail, a copy of which I have seen, dated 11 August 2023, the Respondent states that he has no comments to add at this stage.

### Discussion

15. The application concerns the Panel's decision not to direct release on paper. The application argues that errors of fact and law are made out for the purposes of rule 19. No specific reference appears to be made to the interests of justice test. As the Panel's decision is now final the application to set aside would appear to be an eligible decision which falls within the scope of rule 28A.
16. I have carefully considered the application to set aside and all the documentation before me. It has not been easy to identify what are said to be the errors of fact or law or to separate them out from further submissions that the review should have



been directed to an oral hearing (which is not a matter for me and was reviewed in accordance with the Rules on 19 July 2023) and further argument in relation to the evidence.

17. The first substantive ground relied on by the Applicant appears to be the suggestion that *"there was a significant piece of additional evidence in relation to his mental health that was not available to the MCA member that had it been would have enabled the member to potentially form a different view of this matter and the independent assessment of risk of serious harm."*
18. This is presumably the 'Medical Letter' dated 26 May 2023 referred to at page 4 of the application. It is difficult to see how the Panel could have made an error of fact but for which the decision not to release would not have been made in relation to a document which was not in the dossier, the Panel was not aware of and, even now, has not been included in the application.
19. Secondly, the Applicant appears to criticise the Panel for concluding that there was outstanding risk reduction work to be undertaken when he had already completed the KAIZEN programme (a training course addressing the use of violence and sex offending) earlier in his sentence.
20. The Panel were aware that the Applicant himself had written a letter to the AP Manager conceding that his behaviour had been *"scary and erratic"* and that he believed that he was *"in the best place under the circumstances."*
21. There was ample evidence enabling the Panel to conclude that, despite having completed an earlier offending behaviour programme, the circumstances of the recall and the Applicant's behaviour and disclosures indicated that there was outstanding risk reduction work which needed to be undertaken in prison in relation to his apparent sexual preoccupation and sexual attraction to children.
22. This was an exercise of judgement and I do not find that the Panel made an error of fact.
23. Finally, the Applicant complains that the Panel reviewed the case without the benefit of legal representations. The dossier did not contain legal representations nor anything to indicate that the Applicant was legally represented.
24. No details are provided of what those legal representations would have included. In any event, the Panel, while of course giving careful consideration to any representations made, would have made its decision on the basis of the evidence. I do not find that there is any error of fact here.
25. The balance of the Applicant's submissions involves his seeking to introduce new evidence to illustrate his view that his life was running out of control at the time of recall together with further argument in support of an oral hearing being directed.

## Decision



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26. I have carefully considered the application to set aside and the matters relied on. For the reasons I have given I find that this is an application which is without merit and I am satisfied that the Applicant is unable to demonstrate that the Panel fell into error as to fact or law and the application to set aside is refused.

**Peter H. F. Jones**  
**1 September 2023**

