

[2023] PBSA 64

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

Application

1. This is an application by the Secretary of State for Justice (the Applicant) to set aside the decision made by a Panel of the Parole Board dated 9 August 2023 to direct the release of Hand (the Respondent).
2. The case was listed for an oral hearing on 9 August 2023 before a single person Panel. Evidence was taken from the Respondent, as well as from the prison offender manager (POM) and the community offender manager (COM).
3. I have considered the application on the papers. These are the dossier of 161 pages (including the decision letter), the application for set aside which was completed on the relevant form dated 31 August 2023. There are also representations submitted on the Respondent's behalf dated 11 September 2023.

Background

4. On 17 January 2022, the Respondent received a determinate sentence of 876 days imprisonment for burglary. Having discovered that the victim was not at her address, he broke into it by damaging a cellar door, intending to steal.
5. His sentence expires in December 2023.

Application to Set Aside

6. The application to set aside is dated 31 August 2023 and has been drafted and submitted by the Public Protection Casework Section acting on behalf of the Applicant.
7. The application to set aside is on the basis that there is further information. This is said to be that the Respondent had been contacting 'a vulnerable young girl aged 16'.
8. It is said that this came to light after the girl's room was searched and three letters from the Respondent were found. One was undated, but the others are dated 28 July and 4 August 2023.

9. It is further said that although the COM had supported the Respondent's release at the hearing, this new information had led to her rescinding her support for release.

10. It is argued that this incident constitutes a significant change in circumstances relating to the prisoner which would have meant that the Panel would not have directed release if those events had happened before that direction was given.

Current Parole Review

11. The Respondent had been released automatically on 30 September 2022. He complied with supervision but, after an incident where he was aggressive to others at his Probation Hostel, he was recalled on 24 November 2022 and returned to custody on 29 November 2022.

12. 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.

13. A member of the Parole Board considered his case on 24 March 2023 and directed his case to an oral hearing.

The Relevant Law

14. 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.

15. 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)).

16. 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 (i) information that had not been available to Board had been available, and/or (ii) if a change in circumstances relating to the prisoner after the direction was given had occurred before it was given.

17. Under Rule 28A(6) an application to set aside a decision must be made within 21 days of the decision. However, if the application relies on 28A(5)(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

18. In accordance with the rules, the Respondent was asked if he had any representations to make within 7 days.

19. The respondent has provided representations setting out his account in relation to the new information.

Discussion

Eligibility

20. 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(5)(b)(ii) is made out. It is therefore an eligible decision which falls within the scope of rule 28A.

Change in circumstances and the test for setting aside

21. The application, as it is presented, is inadequate. Reference is made to a vulnerable female but she is not named. The Respondent identifies her as A, which appears to be a reasonable inference, but this should be confirmed.

22. In addition, there are no details of when the room search happened, nor are copies of the letters provided.

23. Further, it is said that the COM has now changed her recommendation, but there is no statement or report from her confirming this, or setting out any detail.

24. I gave consideration to adjourning for this information, but the Respondent's SED is fast approaching, and this would be an undesirable delay. In addition, the Panel that made the release decision is best placed to determine the potential impact on risk of the new information.

25. Whilst the application is not properly supported by evidence, I accept that the set-aside procedure is supposed to be a quick one. Significantly, the fundamentals of the matters set out in the application is not challenged in the representations, although there is an explanation given.

26. Further, whilst there is reference in the dossier to matters similar to this, it did not relate to the index offence or the recall, and it appears to open up a new area in risk.

27. Given the dates, I am satisfied that the above appears to constitute a change in circumstances which has occurred since the decision to release was made.

28. In determining the application for set aside, I will first consider whether the events described above would have affected the Panel's decision to direct the Respondent's release.

29. As stated, it seems to me that the fresh evidence (if accepted) may well have had led to a different conclusion being reached. In light of that, I am satisfied that the direction for release may not have been given if the events detailed in the application had taken place before that direction was given.
30. 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.
31. Having considered the information, I am satisfied that it is in the interests of justice for the Panel's decision to be set aside as otherwise he would be released in the knowledge that the decision was made without the significant information that has come to light.
32. Finally, the decision to set aside is a discretionary one. Therefore, even where the criteria in r28A(4) are met, that does not mean I must set aside the decision.
33. However, nothing has been put forward as to why, given my conclusion on r28(4)(a) and (b), the discretion should not be exercised in that way. Further, I do not consider that there is anything on the papers that I have seen to suggest that I should not exercise that power.

Decision

34. For the reasons I have given, the application is granted, and the final decision of the Panel dated 9 August 2023 should be set aside.

Daniel Bunting
22 September 2023