

[2023] PBSA 65

Application for Set Aside by Choudury

Application

1. This is an application by Choudury (the Applicant) to set aside the decision not to direct his release. The decision was made by a panel after an oral hearing on 10 August 2023. An updated list of previous convictions was provided after the hearing together with written submissions on the Applicant's behalf seeking release. This is an eligible decision.
2. I have considered the application on the papers. These are the dossier, the oral hearing decision (erroneously dated 14 July 2023; Parole Board records indicate it was issued on 14 August 2023), and the application for set aside (dated 4 September 2023).

Background

3. On 17 February 2020, the Applicant received an extended sentence for offenders of particular concern (SOPC) consisting of imprisonment for 86 months followed by an extended licence period of one year following conviction for assaulting a female child under 13 (penetration of vagina/anus with part of body/object) to which he pleaded guilty. He also received a 26 month concurrent sentence for sexual assault of a female child under 13 and a two month concurrent sentence for voyeurism (recording a person doing a private act). He pleaded guilty to both additional charges. He was also made subject to an indefinite sex offender notice and a sexual harm prevention order until further order.
4. The Applicant was aged 30 at the time of sentencing. He is now 34 years old.
5. His parole eligibility date passed on 20 February 2023. His conditional release date is in September 2026 and his sentence ends in September 2027. This is his first parole review.

Application for Set Aside

6. The application for set aside has been drafted and submitted by solicitors acting for the Applicant.
7. It submits that there have been three errors of fact.



Current Parole Review

8. The Applicant's case was referred to the Parole Board by the Secretary of State (the Respondent) in May 2022 to consider whether to direct his release.
9. The case proceeded to an oral hearing on 10 August 2023 before a three-member panel, including a judicial member. The panel heard evidence from the Applicant, a stand-in Prison Offender Manager (**POM**), his Community Offender Manager (**COM**), and an HMPPS psychologist. The Applicant was legally represented throughout the hearing.
10. The panel did not direct the Applicant's release.

The Relevant Law

11. 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.
12. The types of decisions eligible for set aside are set out in rule 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)).
13. 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 given if information that had not been available to the Board had been available, or
 - c) a direction for release would not have been given 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. The Respondent has offered no representations in response to this application.

Discussion

15. It is argued on behalf of the Applicant that there have been three errors of fact upon which the panel has relied in making its decision not to release the Applicant.
16. It is said that the first error of fact relates to the Applicant's stance toward his offending. The Applicant admits to the assault by penetration and voyeurism

offences but denies the sexual assault. He says he pleaded guilty on the instructions and advice of his solicitor at trial.

17. The panel's decision is also clear that the Applicant maintained that he was innocent of the sexual assault. There is no error of fact here.
18. The Applicant also states that he was not charged with taking or possessing indecent images of children. The panel did not say that he had been, so it is unsustainable to argue that there has been an error of fact.
19. The second purported error relates to the Applicant's knowledge of the area to which he would have been released. The decision states that this area is "*completely unknown*" to the Applicant, but the Applicant states he knows the area well and was not asked during the hearing if he knew the area.
20. The Applicant's local knowledge is not evident on the written information before me. However, even if I accept that the panel was mistaken on this point, I cannot see that it would have reached a different decision. Its reasoning is clear and the matter of move-on from designated accommodation is a peripheral matter in its overall assessment of risk, which focussed on the Applicant's lack of insight into or motivation to manage his risks of sexual reoffending.
21. Finally, the Applicant notes that the decision states that the panel "*were not clear if his family knew the full extent of his sexual offending*". The Applicant states his family is fully aware of his previous offending and convictions. However, the decision also records that the Applicant's COM has only spoken to the Applicant's brother briefly and had not discussed the offences with him and that there has been no contact with his parents or other family members. The panel's statement of uncertainty is not incorrect on the basis of the COM's evidence, even when compared with the Applicant's self-report.

Decision

22. The application for set-aside is refused.

Stefan Fafinski
20 September 2023