

**[2024] PBSA 59****Application for Set Aside by Langley****Application**

1. This is an application by Langley (the Applicant) to set aside the decision not to direct his release. The decision was made by a panel after an oral hearing on 24 July 2024. This is an eligible decision.
2. I have considered the application on the papers. These are the dossier of 328 pages, the oral hearing decision of 17 August 2024, and the application for set aside dated 23 August 2024.

**Background**

3. On 5 July 2018, the Applicant received a determinate sentence of 8 years and 6 months for two counts of possession of a handgun and two counts of possessing ammunition without a certificate to which he pleaded guilty.
4. The Applicant was aged 32 at the time of sentencing. He is now 38 years old.
5. He was automatically released on licence on 15 July 2022. His licence was revoked on 12 April 2023, and he was returned to custody on 13 April 2023. This is his first recall on this sentence, and his first parole review since recall.

**Application for Set Aside**

6. The application for set aside has been drafted and submitted by the Applicant's legal representative.
7. It submits that there are errors of fact.
8. The content of the application will be considered in the Discussion section below.

**Current parole review**

9. The Applicant's case was referred to the Parole Board by the Secretary of State (the Respondent) to consider whether to direct his release.
10. The case proceeded to an oral hearing on 24 July 2024 before a three member panel. The panel heard evidence from the Applicant, his Prison Offender Manager (**POM**)



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and his Community Offender Manager (**COM**). The Applicant was legally represented throughout the hearing.

11.The panel did not direct the Applicant'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 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)).

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 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

15.The Respondent has offered no representations in response to this application.

### Discussion

16.Paragraph 2 of the application – the submission states that the panel identified gang affiliation as a risk factor when there was no evidence of gang culture. The submission fails to appreciate that this is a valid inference the panel have drawn from the evidence the Applicant himself gave and his offending behaviour. The panel did not accept his explanation and noting the police intelligence and the fact that this was not his first firearm sentence the conclusion drawn was that he had gang affiliation. That in the light of his history of offending was a clear risk factor.

17.Paragraph 3 of the application - although the submission states that the panel failed to take account of all the evidence, it fails to set out what evidence the panel failed to take into account which would have made a difference to its decision. The panel clearly considered all the evidence that was raised during the hearing and considered all the relevant reports.

- 18.Paragraph 4 of the application – the panel was entitled to agree with the POM that the Applicant’s engagement was superficial (paragraph 2.4) notwithstanding his clear security entry. The Applicant fails to appreciate that constant monitoring and security entries do not indicate the level of engagement. His lack of openness and honesty were factors which spoke to the depth of engagement and led to the finding of superficiality.
- 19.Paragraph 5 of the application – there is no evidence that the panel penalised the Applicant for the actions of others (booking prison visits). The panel did not reject the POM’s evidence that visits are not made by prisoners, however in the light of the Applicant’s admission of assault of the complainant and in the light of her fear of him to such an extent that she jumped out of a window to escape him, the panel were entitled not to draw a conclusion that she had booked the visit. They did not however find that he had made the booking directly or indirectly.
- 20.Paragraph 6 of the application – it is not correct to state that the Applicant’s inability to recall the full context of text messages led the panel to infer his minimising behaviours. It was only one of the facts; the minimising behaviour was found from his claim not to recall the incidents, taking no responsibility for them and blaming them on his former partner. The application does not identify what further messages could have been produced to the panel to undermine its conclusion.
- 21.Paragraph 7 of the application – although the application submits that the intelligence from the Applicant’s previous prison was unsupported and untested, there is no evidence that it formed any or any significant part of the panel’s conclusions. In paragraph 4.3 of the decision letter the panel notes in the Applicant’s favour that since his move to his current prison his behaviour has been positive and has not involved drugs, alcohol or gang culture in prison.
- 22.Paragraph 8 of the application – submits that the decision did not include the evidence of the POM regarding the Applicant struggling in a relationship and that people can struggle to ask for help when in a problematic relationship. It is not necessary for a decision letter to write out everything said in the hearing. The POM made it clear that she could not support the Applicant’s release for the reasons she gave. The panel noted all the factors in the Applicant’s favour and even if these comments of the POM had been included, they would not have altered the conclusion that for the many reasons given, the Applicant’s release could not be directed.
- 23.Paragraph 9 of the application – even if the panel was wrong to summarise the Applicant’s account as a concession to making a contribution towards the rent, it would make no difference to the conclusion. The important point, recorded by the panel, is that the Applicant had a gun which he asked the complainant to hold and for which he gave her money. Whether that money went towards the rent (as recorded by the panel) or the money was given to her to decide what to do with it (as stated by the Applicant) made no difference to the final risk assessment.
- 24.Paragraph 10 of the application – whilst the Applicant may have identified a number of red flags and strategies for dealing with them, the panel notes that he was not open and honest and his failure to fully engage with this COM carries a risk that warning signs will not be detected or addressed by professionals.

- 25.Paragraph 11 of the application – although the Applicant accepts that probation would be a big part of his support system, he fails to appreciate that his lack of openness and honesty with the professionals leaves them to conclude that he cannot be trusted or managed in the community.
- 26.Paragraph 12 of the application – submits that there are inconsistencies in the evidence and reports from professionals which were ignored resulting in a skewed note and summary of the evidence leading to unfairness to the Applicant. Insofar as there were inconsistencies in the evidence of the professionals, the Applicant was legally represented throughout the hearing, and it was for his representative to raise any concerns and to question the professionals on any inconsistencies in their accounts. The Applicant has failed in his application, to identify any inconsistencies or omissions which would have made a difference to the conclusion of the panel, or which resulted in unfairness to him.
- 27.There are no errors of fact made, rather there have been judgements on facts with which the Applicant may not agree but which do not form a basis for granting his application to set aside the decision.

## **Decision**

- 28.The application for set aside is refused.

**HHJ Barbara Mensah**  
**16 September 2024**