

[2024] PBSA 67**Application for Set Aside by McDonald****Application**

1. This is an application by McDonald (the Applicant) to set aside the decision not to direct his release. The decision was made by a panel after an oral hearing on 17 September 2024. This is an eligible decision.
2. I have considered the application on the papers. These are:
 - The dossier now paginated to 335 pages;
 - The oral hearing decision (DL) issued to the parties on 1 October 2024; and
 - The application for set aside dated 3 October 2024 together with three handwritten pages of annexes.

Background

3. On 19 February 2019 the Applicant was sentenced to a determinate sentence totalling 6 years and 11 months imprisonment for robbery, two counts of burglary and aggravated vehicle-taking ("the index offences").
4. On 15 August 2018, with his co-defendants, the Applicant carried out a night-time robbery in an occupied dwellinghouse. Whilst the Applicant remained close by, the other men gained entry through an open back door as the female victim slept on a sofa with her two teenage children asleep upstairs. The victim was threatened with a knife and, when she could not hand over any money, the assailants stole a quantity of alcohol and a mobile phone together with the keys to her car which were then given to the Applicant to drive away, the victim being left tied up in her own home and threatened with violence if she contacted the police immediately.
5. In February 2018 the Applicant committed two offences of dwellinghouse burglary with a co-defendant during which a number of valuable items were taken and, on a separate occasion, he broke into the victim's home and stole the keys to a VW Polo vehicle which he then drove dangerously at high speeds before causing an accident in which the vehicle and two police cars were damaged.
6. The Applicant has a criminal record of convictions for 25 offences representing, predominantly, a pattern of acquisitive offending linked to his drug and alcohol misuse. He also has a history of poor compliance.
7. The Applicant was aged 25 at the time of sentencing and is now 30 years old.

8. He was automatically released on licence on 5 October 2021. His licence was, however, revoked on 17 November 2023 following a violent incident involving his partner at her home to which the police were called. This is his first parole review since recall.

Application for Set Aside

9. The application for set aside has been drafted and submitted by the Applicant himself and would appear to be based on a number of suggested errors of fact which I shall address in detail below. It is difficult to discern any suggested errors of law or changes of circumstances.

Current parole review

10. The Applicant's case was referred to the Parole Board by the Secretary of State (the Respondent) to consider whether the Applicant should be released.

11. The case proceeded to an oral hearing on 17 September 2024 before a two member panel. The panel heard evidence from the Applicant, his Prison Offender Manager (POM) and his new Community Offender Manager (COM). The Applicant was legally represented throughout the hearing.

12. The panel did not direct the Applicant's release.

The Relevant Law

13. 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.

14. 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)).

15. 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

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

Discussion

17. As to what appear to be the suggested errors of fact, firstly, the Applicant seeks to explain his future intentions with regard to alcohol use which was an acknowledged factor in the incident leading to recall. The Panel noted that he agreed that alcohol is a key risk factor for him and, in arguing against the imposition of an alcohol tag as a condition of his licence, he conceded (as he does now) that he cannot guarantee that he will not drink. The panel explored this issue at some length and derived a clear picture from the Applicant of his approach. I can find no error of fact here but for which the decision not to direct release would not have been made.
18. The Applicant then seeks to put forward further evidence in relation to the incident involving his partner (KL) which was obviously considered at some length by the panel who found that the Applicant had provided conflicting accounts which the panel did not find to be credible. In particular, KL had given indications to the police, who attended at her home, of the sites of the injuries which she had suffered at the hands of the Applicant who is recorded as stating that he punched her to the lip. Additionally, the police evidence does not appear to contain any reference to this injury being caused by lip fillers and the panel notes that the Applicant had made no reference to this prior to the hearing (as the COM confirmed). Again, I can find no error of fact but for which the decision not to direct release would not have been made.
19. As to the COM, it is entirely understandable that the Applicant should have felt unable to comment on their professional working relationship as she had only assumed responsibility for his case the previous month. In addition, the panel were aware that the previous COM had confirmed in writing that, while on licence, he had been generally compliant and had kept in contact.
20. The panel was also well aware that an approved premises place was available to the Applicant as from 22nd October 2024 and that both the COM and the POM supported release.
21. The balance of the points raised by the Applicant (including the suggestion that anything he said had been misinterpreted) comprise, in essence, further arguments in support of his version of events and reasons why he believes the panel should have directed his release. None of these in my judgement amount to errors of fact but for which the decision not to direct release would not have been made but they do go to confirm the Applicant's commitment to KL and his firm intention to resume their relationship following release from prison.
22. I have attempted to deal fully with the specific points raised by the Applicant in the representations which he makes on his own behalf and, in deference to his overall unhappiness at the outcome of the oral hearing, I confirm that, having considered all the papers before me, I am satisfied that the Panel's decision is the result of a thorough consideration of the evidence and that the Panel has recorded

in considerable detail the evidence which it heard and read and has carefully set out its reasons for departing from the professional recommendations (DL paras. 2.52-2.54) and its findings in coming to the conclusion that, in its judgement, the public protection test for release was not met and that the risk of harm which the Applicant continues to present is currently unmanageable in the community.

23. The Panel has exercised its judgement in this case and I can find no errors of fact made by the Panel but for which the decision not to direct release would not have been made.

Decision

24. I have carefully considered the application and, for the reasons I have given, I find that that it is without merit and that the Applicant is unable to demonstrate that the Panel fell into error as to fact and the application to set aside is refused.

PETER H. F. JONES
24 October 2024