

[2024] PBSA 8

## Application for Set Aside in the case of Boreham

### Application

1. This is an application initiated by the Chair of the Parole Board (the Applicant) to set aside the decision to direct Boreham's (the Respondent) release. The decision was made by a panel after an oral hearing on 8 December 2023. This is an eligible decision.
2. I have considered the application on the papers. These are the oral hearing decision and information provided to the Parole Board following that oral hearing.

### Background

3. On 20 November 2006, the Respondent received a sentence of imprisonment for public protection following his conviction for robbery. A minimum tariff of two years, nine months and twenty days was imposed by the sentencing court and the Respondent reached that minimum term in 2009. He was aged 31 at the time he was sentenced and is now 48 years old.
4. The robbery offence involved the Respondent stealing a handbag from a woman who was driving a car. He opened the car door and snatched the bag, dragging the victim from the vehicle. The Respondent had committed other robberies and had asked the court to take sixteen other offences into consideration at his sentencing. He had offended to fund his long-term drug abuse.
5. The Respondent has a history of violent offending, including within his personal relationships.
6. The Respondent has been released on the direction of the Parole Board on three previous occasions, in 2015, 2021 and in 2022. On each occasion, the Respondent has been recalled, most recently on 25 November 2022. On his first release he returned to substance misuse as a way of coping with difficulties in his life. There had also been concerns reported about his behaviour towards his partner.
7. On the second release he again relapsed into substance misuse and he failed to comply with the terms of his release. His third recall was only two months after his re-release. The Respondent again relapsed into substance misuse and he failed to comply with his release licence.
8. At the Parole Board oral hearing on 8 December 2023, the oral hearing panel (the 2023 panel) was advised by the Respondent that he was not in a relationship. The



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2023 panel determined that *'the risk of serious harm is likely to be in relation to intimate partners or members of the public caught up in future violent acquisitive offending...'*.

9. Witnesses at the oral hearing supported release and the 2023 panel determined that the test for release was met. Release was directed, with the Respondent to be accommodated in designated accommodation.

### Application for Set Aside

10. The application for set aside was initiated by the Chair of the Parole Board on 8 January 2024. The Secretary of State had been invited to submit an application to set aside but elected not to do so, advising the Parole Board of this on 5 January 2024.
11. Following the 2023 panel's decision, new information was received from the Probation officer with responsibility for the Respondent's case. It was reported that the Respondent had been contacting his ex-partner, in breach of a restraining order. It has been reported by a social worker that the Respondent has contacted his ex-partner to tell her that he still loves her but has also been threatening towards her.

### 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.

## Discussion

16.I have little difficulty in determining that the new information is a relevant consideration and I cannot be satisfied that the panel would have been minded to direct release in this case had this new information been before it prior to it making its decision.

## Decision

17.I am satisfied that it is in the interests of justice for the decision of the panel dated 8 December 2023 to be set aside.

**Robert McKeon**  
**23 January 2024**