

[2024] PBSA 80

Application for Set Aside by O'Brien

Application

1. This is an application by O'Brien (the Applicant) to set aside the decision not to direct his release. The decision was made by a panel after an oral hearing. This is an eligible decision.
2. I have considered the application on the papers. These are the dossier, the oral hearing decision (dated 5 November 2024, sent to the parties on 6 November 2024), and the application for set aside (dated 27 November 2024).

Background

3. On 18 January 2021, the Applicant received a total determinate sentence of imprisonment for five years following convictions for robbery (53 months), possession of a knife/sharp bladed article in public (four months concurrent) and affray (seven months consecutive). He pleaded guilty to all charges.
4. His sentence expires in July 2025.
5. The Applicant was aged 29 at the time of sentencing. He is now 32 years old.
6. The Applicant was automatically released on licence on 13 January 2023. His licence was revoked on 25 January 2023, and he was returned to custody the following day. He was re-released on 24 January 2024 following an oral hearing before a panel of the Parole Board. His licence was revoked on 28 February 2024, and he was returned to custody on 4 March 2024. This is his second recall on this sentence and his first parole review since his second recall.

Application for Set Aside

7. The application for set aside has been drafted and submitted by solicitors on behalf of the Applicant and submits that the panel's decision contained numerous errors of fact.

Current Parole Review

8. The Applicant's case was referred to the Parole Board by the Secretary of State (the Respondent) to consider whether to direct his release.



9. An oral hearing took place on 17 October 2024 before a single-member panel. Oral evidence was taken from the Applicant's previous and current Prison Offender Managers (POMs), his Community Offender Managers (COM) and the Applicant. The Applicant was legally represented throughout the hearing. The Respondent was not legally represented.
10. Neither the previous POM, nor the COM supported release. The current POM did not offer a professional opinion (having only been responsible for the Applicant's supervision for a short time). The panel did not direct the Applicant's release.

The Relevant Law

11. Rule 28A(1)(a) of 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 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 indicated that no representations will be made in response to this application.

Discussion

15. I have carefully read the submissions advanced on behalf of the Applicant and cannot find anything within them that would amount to an error of fact. The matters raised primarily deal with the panel's interpretation of the evidence before it and not the facts within the evidence upon which any interpretation was based.
16. Moreover, the application concludes that the purported errors of fact (of which I find none) have led the Applicant to believe that his hearing was conducted unfairly. That argument is irrelevant here. Unfairness is not a ground for set aside under rule 28A (and, although it is a basis for reconsideration under rule 28, that rule does not apply

to the Applicant as he is serving a determinate sentence). There is also no substantive or persuasive argument put forward as to why the panel would have directed release but for the purported errors of fact. The application is far from being made out.

17. Even if I had found there to have been errors of fact in the panel's decision (which again, to be clear, I do not), I do not find that the matters raised by the Applicant would have made a difference to the panel's decision not to have directed the Applicant's release.

Decision

18. For the reasons set out above, the application for set aside is refused.

Stefan Fafinski
05 December 2024