

[2022] PBSA 3

Application for Set Aside by the Secretary of State for Justice in the case of Mahmood

Application

1. This is an application by the Secretary of State for Justice (the Applicant) to set aside the decision made by an oral hearing panel dated 26 July 2022 to direct the release of Mahmood (the Respondent).
2. I have considered the application on the papers. These are the oral hearing decision, the dossier, and the application for set aside which was completed on a Stakeholder Response Form dated 30 August 2022.

Background

3. On 15 October 2020, the Respondent received a determinate sentence of 27 months' imprisonment following conviction for harassment, battery and common assault. His sentence expires in December 2022.
4. The Respondent was aged 37 at the time of sentencing. He is now 39 years old.

Application to Set Aside

5. The application to set aside is dated 30 August 2022 and has been drafted and submitted by the Public Protection Casework Section acting on behalf of the Applicant.
6. The application to set aside describes an incident which had been reported by the prison. It is argued that this incident constitutes a significant change in circumstances relating to the prisoner which would have meant that the panel would not have directed release if those events had happened before that direction was given.
7. This submission is supplemented by information regarding the Community Offender Manager's ('COM's') view of the incident.

Current Parole Review

8. The Respondent had been released automatically as required by law on 3 November 2021. His licence was revoked 10 days later on 13 November 2021 and he was returned to custody on 15 November 2021. He had been released to designated accommodation where staff had started to notice concerning behaviour after a couple of days. On 12 November 2021 he became agitated and confrontational,




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including making threats. His behaviour caused the police to be called. His licence was revoked.

9. The Respondent's case was referred to the Parole Board by the Secretary of State to consider whether it would be appropriate to direct his re-release following the revocation of his licence.
10. A member of the Parole Board considered his case on 31 January 2022 and directed his case to an oral hearing. The case proceeded to an oral hearing on 25 July 2022 before a single member panel. The Respondent was not legally represented. Oral evidence was given by the Respondent's Prisoner Offender Manager (POM) and his COM. The panel directed the Respondent's release to designated accommodation with provisional availability for 30 August 2022.

The Relevant Law

11. Rule 28A(1) of the Parole Board Rules 2019 (as amended by the Parole Board (Amendment) Rules 2022) 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(2), 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 rules 28A(1) and 28A(2). 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(4)(a)) **and** either (rule 28A(5)):
 - 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 made if (i) information that had not been available to Board had been available, and/or (ii) if a change in circumstances relating to the prisoner after the direction was given had occurred before it was given.
14. Under Rule 28A(6) an application to set aside a decision must be made within 21 days of the decision. However, if the application relies on 28A(5)(b) i.e it relates to new information or a change in circumstances then it must be made before the prisoner is released.

The Reply from the Respondent

15. In accordance with the rules, the Respondent was asked if he had any representations to make within 7 days. The Respondent did not submit any response.

Discussion

Eligibility

16. The application concerns a panel's decision to direct release following an oral hearing under rule 25(1)(a). The application was made prior to the Respondent's release and argues that the condition in rule 28A(5)(b)(ii) is made out. It is therefore an eligible decision which falls within the scope of rule 28A.

Change in circumstances and the test for setting aside

17. The Applicant states that he was informed on 30 August 2022 by the prison that *"over the weekend [the Respondent] has been placed in the segregation unit. It is reported that he was found in possession of items that replicate a suicide vest, a length of makeshift rope, makeshift netting, a military styled hat and a note sewn into the vest"*. The Applicant submits that the incident set out has "elevated" the Respondent's risk of harm to a level that is not considered by the COM to be manageable in the community under the risk management plan which had been provided.

18. I am satisfied that the above constitutes a change in circumstances which has occurred since the decision to release was made.

19. In determining the application for set aside, I will first consider whether the events described above would have affected the panel's decision to direct the Respondent's release.

20. The Respondent is assessed as a high risk of serious harm to known adults and a medium risk of serious harm to the public and to children. The dossier contained a recent report from the COM in which they supported re-release after consideration of developments since recall. In the panel's written reasons, it outlined past concerns regarding the Respondent which related to clothing and other items in his possession. Due to those concerns he had been interviewed by Counter Terrorism Police. However, the panel noted that he had modified his behaviour recently (as reported by the POM) and the COM informed the panel that Counter Terrorism Police had no ongoing concerns.

21. The new information has removed the COM's support for re-release. It provides evidence to suggest the Respondent is continuing to display concerning behaviour. Given the items found, it is evidence which is likely to require further involvement of the Counter Terrorism Police. The COM has submitted that the Probation Service ought to have the opportunity to make a full assessment regarding this behaviour and potential emerging risks.

22. In light of these developments, I am satisfied that the direction for release would not have been given if the events detailed in the application had taken place before that direction was given.

23. Having decided that panel's decision to direct release would have been affected, I must also consider whether it is in the interests of justice for its decision to be set aside. Having considered the information, I am satisfied that it is in the interests of justice for the panel's decision to be set aside. In my opinion, the interests of justice would not be served if the release of a prisoner took place in the knowledge he had

items in his possession which reveal a potentially serious (re-)emerging risk and the professional responsible for managing him in the community has now made it clear that they do not accept that the risk management plan could manage him without further assessment.

Decision

24. For the reasons I have given, the application is granted, and the final decision of the panel dated 26 July 2022 should be set aside.
25. I must now consider two matters under rule 28A(9). First, whether the case should be decided by the previous panel or a new panel and second, whether it should be decided on the papers or at an oral hearing.
26. The previous panel has the great benefit of having prepared and heard the case, carefully considering the evidence before it at the time, reaching and documenting its decision. It is best placed to consider the case again, and I direct that it does so. On the evidence before me, I direct that the case should be decided on the papers, unless the panel considers that an oral hearing would be preferable, in which case it may set its own directions after the case has been remitted back to it for further consideration.

Cassie Williams
23 September 2022