

[2023] PBSA 50

Application for Set Aside by Wopling

Application

1. This is an application by Wopling (the Applicant) to set aside the decision made by a Panel of the Parole Board (the Panel) following an oral hearing resulting in a refusal to direct his release.
2. I have considered the application on the papers. These are the dossier currently comprising 476 pages, the oral hearing decision letter (DL) dated 25 May 2023, an application for reconsideration on behalf of the Applicant dated 15 June 2023 (which also appears in the dossier as does the DL) and the application to set aside dated 6 July 2023.

Background

3. On 27 November 2015 the Applicant received an extended determinate sentence of imprisonment comprising a custodial element of seven years and six months and an extended licence period of two years and six months for an offence of robbery (the index offence).
4. The Applicant was released on licence on 28 June 2022, he was recalled on 11 July 2022 and remained unlawfully at large (UAL) until he was returned to prison on 20 July 2022. This was the first review since recall. The Applicant's sentence expires in December 2025.
5. The victim of the index offence, who was in her 80s, was walking along the street with a walking stick and handbag. The Applicant rode past her on his bike and grabbed her handbag. She held on to the bag and was dragged along the ground, causing a fractured pelvis.
6. Two weeks previously the Applicant had been released from prison on licence for the second time in relation to a 66 month sentence for attempted robbery and possession of an imitation firearm, having also failed to comply with the requirements of a community order. He had already failed to report to the approved premises and to make any contact with the probation service, had relapsed into drug use and he committed the index offence when UAL following recall.
7. He had a lengthy and entrenched history of offending that had been increasing in seriousness over time and of non-compliance with community-based requirements including licence conditions.



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. The review was heard on 23 May 2023 and the Applicant was legally represented throughout the hearing. The Panel made no direction for release.

Application for Reconsideration

9. Solicitors for the Applicant initially submitted an application for reconsideration dated 15 June 2023 based on irrationality and/or procedural unfairness. This application was made out of time and judged to be ineligible for reconsideration. The solicitors took issue with this decision and, after some e-mail exchanges, indicated that a letter before action would be sent to the Board in relation to judicial review proceedings.

Application for Set Aside

10. The application for set aside is dated 6 July 2023 and made on behalf of the Applicant by his solicitors who seek to argue that there has been one error of law and one error of fact.

The Relevant Law

11. Rule 28A(1) 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(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 information that had not been available to the Board had been available, or
 - c) a direction for release would not have been made 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. By email dated 17 July 2023 the Respondent, via the public protection casework section (PPCS), indicated he had no comments to add.

Discussion

15. The application concerns a Panel's decision not to direct release following an oral hearing under rule 25(1)(b). The application argues that errors of fact and law are made out for the purposes of rule 28A(5)(a). No specific reference appears to be made to the interests of justice test. As the Panel's decision is now final the application to set aside would appear to be an eligible decision which falls within the scope of rule 28A.

16. I have carefully considered the application to set aside and all the documentation before me and find that this is a matter which can be swiftly concluded.

17. The error of law relied on is that "*the reconsideration representations were submitted to The Parole Board on the deadline and were not considered*".

18. At the risk of repetition, the error of law must be one which relates to a decision (in this case not to direct the Applicant's release) and must be a decision but for which that direction would not have been made. The decision to find that the reconsideration application was made out of time was not one made by the Panel, has nothing to do with the Panel's decision not to direct release and is obviously not an error of law for the purposes of the set aside procedure.

19. The error of fact relied on appears to relate to the suggestion that the Panel heard conflicting evidence about the Applicant's suitability for a thinking skills programme, with the Prison Offender Manager stating that the Applicant was suitable to undertake the course while the Applicant said that he had been told by others that he was not suitable.

20. Having heard and read all the evidence in the case, the Panel reached the conclusion that the Applicant needed to undertake work to address his thinking skills. This was a judgement which the Panel were entitled to make and I can find no error of fact but for which the Panel would not have reached its decision not to direct release.

21. I find it this application is entirely misconceived as evidenced by the concluding submission made on behalf of the Applicant that the hearing was conducted unfairly and that "*therefore*" the Panel's decision should be set aside. That is, of course, not the test which I have to apply and it is of considerable concern that legal representatives should so fundamentally misunderstand the nature and purpose of the set aside procedure.

Decision

22. For the reasons I have given I find that the application is without merit and I am satisfied that the Applicant is unable to demonstrate that the Panel fell into error as to fact or law. Accordingly, the application for set aside is refused.

PETER H. F. JONES
31 July 2023

 3rd Floor, 10 South Colonnade, London E14 4PU

 www.gov.uk/government/organisations/parole-board

 info@paroleboard.gov.uk

 [Parole_Board](https://twitter.com/Parole_Board)

 0203 880 0885

