

[2023] PBSA 46

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

Application

1. This is an application by the Secretary of State for Justice (the Applicant) to set aside the decision not to direct the release of Toplass (the Respondent). 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 6 February 2023), and the application for set aside (dated 27 May 2023).
3. The set aside application was accompanied with an application for the non-disclosure of sensitive information relating to the application. A disclosable gist was also supplied. This information has been provided to the Respondent's legal representative following receipt of the undertaking required by rule 17(7)(b) of the Parole Board Rules 2019 (as amended).
4. My analysis within the **Discussion** section below will refer only to content within the disclosable gist. However, in making this decision I have seen both the disclosable and non-disclosable information.

Background

5. On 13 January 2016, the Respondent received an extended determinate sentence of imprisonment for six years with a three year extended licence period following conviction for aggravated burglary. His sentence end date is reported to be in June 2024.
6. The Respondent was aged 26 at the time of sentencing. He is now 33 years old.
7. The Respondent was released on licence on 1 October 2021. His licence was revoked on 10 November 2021, and he was returned to custody on 12 November 2021. This is his first recall on this sentence and his first parole review since recall.

Application for Set Aside

8. The application for set aside has been drafted and submitted by the Public Protection Casework Section (PPCS) acting on behalf of the Applicant.



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9. The application for set aside submits there is further information constituting a significant change in circumstances which came to light after the panel made its decision. It is argued that the panel may not have reached the same decision had this new information been known.

10. The content of the application will be considered in the **Discussion** section below.

Current Parole Review

11. The Respondent's case was referred to the Parole Board by the Applicant to consider whether to direct his release.

12. An oral hearing took place on 31 January 2023 before a single-member panel. Oral evidence was taken from the Respondent's Prison Offender Manager (**POM**), his Community Offender Manager (**COM**) and the Respondent. The Respondent was legally represented throughout the hearing. The Applicant was not represented by an advocate.

13. The panel directed the Respondent's release.

14. As the Respondent is serving an extended sentence, the direction for release was provisional for 21 days from the date that it was issued to the parties, to permit either party to apply for reconsideration under rule 28. No such application was received, and the decision therefore became final on or around 27 February 2023.

The Relevant Law

15. Rule 28A(1)(a) of the Parole Board Rules 2019 (as amended) 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.

16. 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)).

17. 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

18.The Respondent has submitted no representations in response to this application.

Discussion

19.Within the disclosable gist, the Applicant sets out the new information as follows:

"There have been serious custodial concerns raised that [the Respondent] is evidencing offence paralleling behaviours - he continues to demonstrate serious harm behaviours relating to domestic violence - [the Respondent's] behaviour has escalated and is prolific in nature using prison communication to exercise controlling, threatening and coercive behaviours to a currently unknown female in the community. His behaviour includes threatening and coercive behaviours. As this female is unidentified currently it is not possible to effectively safeguard her or any children in her care. Based on the continued offence-related behaviour and lack of safeguarding measures in place- both POM and COM do not deem [the Respondent] currently manageable in the community."

20.Further detail regarding the new information is provided under non-disclosure.

21.Although the index offence does not appear to have any specific elements of domestic abuse, the Respondent does have a history of domestic abuse and the pre-sentence report assesses him as presenting a high risk of harm to intimate partners and children within these relationships. He has a previous conviction for harassment against a former partner. Relationships have been identified as a risk factor. His COM proposed work in the community to address the risks related to his behaviour within relationships. This would be completed on a 1:1 basis with his COM and would be fed back to other professionals involved in safeguarding children.

22.On the basis of the new information received, I am satisfied that the direction for release would not have been given if the new information had been before the panel. I am also satisfied that it is in the interests of justice to set the decision aside. The interests of justice would not be served if a prisoner was released when there is evidence of threatening behaviour to an individual in the community.

Decision

23.For the reasons I have given, the application is granted, and the decision of the panel dated 6 February 2023 is set aside.

Stefan Fafinski
14 July 2023