

[2023] PBSA 60

Application for Set Aside by Wilson

Application

1. This is an application by Wilson (the Applicant) to set aside the decision not to direct his release. The decision was made by a panel after an oral hearing on 1 June 2023. The hearing adjourned for further information and was concluded on the papers on 13 July 2023. This is an eligible decision.
2. I have considered the application on the papers. These are the dossier, the oral hearing decision (dated 18 July 2023), and the application for set aside (dated 9 August 2023).

Background

3. On 1 August 2008, the Applicant received a determinate sentence of imprisonment for 138 months following conviction for conspiracy to possession of a firearm with intent to endanger life. He was also further imprisoned for 73 days unserved for breach of licence from a 10 year sentence imposed on 14 January 1999 for conspiracy to supply a class A drug. On 20 May 2009 he was further convicted of conspiracy to supply a class A drug receiving a consecutive sentence of imprisonment for 76 months, and conspiracy to supply a class B drug receiving a further sentence of imprisonment for 60 months.
4. The Applicant was aged 37 at the time of sentencing. He is now 52 years old.
5. He was most recently released on licence on 14 February 2018. His licence was revoked on 30 August 2022, and he was returned to custody the following day. This is his second recall on this sentence, and his first parole review since recall.

Application for Set Aside

6. The application for set aside has been drafted and submitted by solicitors acting for the Applicant.
7. It submits that there have been several 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. The case proceeded to an oral hearing on 1 June 2023 before a two-member panel. The panel heard evidence from the Applicant, his Prison Offender Manager (**POM**), his Community Offender Manager (**COM**), an HMPPS psychologist, and a psychologist commissioned on behalf of the Applicant. The Applicant was legally represented throughout the hearing.
10. The review was adjourned for further information regarding the availability in the community of an accredited programme for intimate partner violence. This information was provided together with further legal representations on the Applicant's behalf.
11. The panel did not direct the Applicant's release.

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 in response to this application.

Discussion

16. It is argued on behalf of the Applicant that there have been a number of errors of fact upon which the panel has relied in making its decision not to release the Applicant.
17. The main thrust of the first part of the application disputes the panel's conclusions concerning the specifics of various domestic abuse allegations based upon the

evidence before it. Disagreement with the panel's interpretation of the evidence before it, or the way in which the panel considered or weighted that evidence cannot be used to constitute or substantiate a claimed error of fact.

18. It is also argued that the panel has made an error of fact in determining a risk assessment which it did not agree with the risk assessments of psychologists (which, it is said are 'direct facts'). The risk assessment of any professional witness is an opinion, not a fact. It is open to the panel to disagree. If it were not, it would undermine the panel's status as an independent assessor of risk. A panel's conclusion which differs from the opinion of a professional witness cannot, in law, constitute an error of fact.

19. It is finally argued that the panel did not consider the Applicant's compliance when last on licence. Even if it did not, that would not constitute an error of fact.

20. Finally, the Applicant states that he felt the panel made its own judgement about him, that the hearing was one-sided, and he would like to have his case reconsidered.

21. Allegations of bias or procedural unfairness are not within the scope of rule 28A. Although they are grounds for reconsideration under rule 28, that mechanism is not open to determinate sentenced prisoners.

Decision

22. The application for set-aside is refused.

Stefan Fafinski
11 September 2023