

[2023] PBSA 80**Application for Set Aside in the case of Sellen****Application**

1. This is an application by the Parole Board (the Applicant) to set aside its own decision made by an oral hearing panel (the panel) dated 29 September 2023 to direct the release of the Sellen (the Prisoner).
2. I have considered the application on the papers. These are the dossier of 528 pages; the oral hearing decision letter (the decision) and a chain of emails leading to this application. The key message is in an email dated 18 October 2023 where the panel chair accepts that a set aside is necessary in this case. The issue was placed before the Chair of the Parole Board, who decided to initiate the application to set aside the decision.

Background

3. On 31 August 2018 the prisoner received an extended sentence for the offence of kidnap and sexual assault of a female child. The sentence comprised of six years in custody extended by four years on licence. The prisoner was 41 when convicted. He is now 46 years old. His parole eligibility date (the date from which the Parole Board may receive a referral from the Secretary of State to consider release) was 6 November 2021. His conditional release date (the date by which he must be released if the Parole Board has not released him) is December 2023, and his sentence will expire in November 2027. The key date for this set aside application is the conditional release date of December 2023. If the Parole Board had not released the prisoner by this date, the sentence indicates an automatic release on the conditional release date.

Application to Set Aside

4. The Chair of the Parole Board agreed to initiate this set aside process following a discussion between the panel chair and the Parole Board legal and practice team. I have referred to the email chain with some of these discussions above. From the email chain I have deduced that the Chair of the Parole Board initiated the process on 14 November 2023.



5. This is a relatively unusual application. The panel chair acknowledges, as indicated in an email to the legal team dated 18 October 2023, that an error of law or fact was made when the decision stated that the prisoner's conditional release date was December 2023. The panel chair stated that he regretted making this error, and the correct date should have been December 2023. The panel chair further confirmed that the panel would not have made its decision had it used the correct date, and therefore the set aside process should be initiated. Clearly, the Chair of the Parole Board agreed.
6. The Parole Board relies on the ground that there is an error of law or of fact in relation to the decision, and that the decision to direct release would not have been made had the panel not made their error.

The Relevant Law

7. 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.
8. The types of decisions eligible for set aside are set out in rules 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)).
9. 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 from the Secretary of State and the Prisoner

10. In accordance with the rules, the parties were asked if they had any representations to make within seven days. On 22 November 2023 the Secretary of State's representatives made the following response to the Parole Board on this matter: in summary, they confirmed that the prisoner's conditional release date was December 2023, and that a bed space at an Approved Premises (AP) was available to the prisoner on that day. He will therefore be released in December 2023. The prisoner's legal representatives made no representations by the deadline.



Discussion

11. The panel fell into error when it wrongly assumed that the conditional release date was December 2023. In making this error, the panel assumed there were a few days between the availability of a bed at an AP (December 2023) and the conditional release date. Even a few days release on licence before an automatic release is important to any prisoner, even if just over a week. The panel's decision as indicated in the decision letter, is that release should be to an AP, and they noted that a bed was available in December 2023. Had the conditional release date indeed been December 2023, their decision would have been a lawful decision to release the prisoner a few days before his automatic release.
12. Since the release plan in the decision letter specified release to an AP, and the AP bed is not available until the day of the conditional release date when the prisoner would be released anyway, the release plan is rendered otiose. As admitted by the panel chair, they would not have made this release decision had they taken into account the correct conditional release date. It is a little strange that this issue does not appear to have been addressed at the hearing by the Community Offender Manager, however that is the position we find ourselves in for this review

Decision

13. For the reasons I have given, the application is granted. As the Prisoner will be released in December 2023, it will not be possible to list another hearing before the release, and therefore no directions are made with respect to this review.

Chitra Karve
01 December 2023



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