

[2023] PBSA 81

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

1. This is an application by the Secretary of State for Justice (the Applicant) to set aside the decision to direct the release of Jones (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 (636 pages), the oral hearing decision (dated 14 September 2023), and the application for set aside (dated 21 November 2023).

Background

3. On 3 May 2012, the Respondent received a sentence of imprisonment for public protection following conviction for sexual activity with a female child under 13 (four counts) and sexual activity with a female child under 16 (three counts). He also received concurrent sentences for indecent assault on a female under 14 (two counts, six years on each), gross indecency with a child (girl) under 16 (six years) and sexual activity with a male child under 13 (two counts, 16 months on each). He pleaded guilty to all charges. These were specimen counts.
4. The Respondent was aged 32 at the time of sentencing. He is now 44 years old.
5. This is his fifth parole review.

Application for Set Aside

6. The application for set aside has been drafted and submitted by the Public Protection Casework Section (PPCS) acting on behalf of the Applicant.
7. 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.
8. The content of the application will be considered in the **Discussion** section below.

Current Parole Review

9. The Respondent's case was referred to the Parole Board by the Applicant to consider whether or not it would be appropriate to direct his release.
10. The case proceeded to an oral hearing before a three member panel including a psychologist specialist member. The panel directed the Respondent's release.

The Relevant Law

11. Rule 28A(1)(a) of 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.
12. 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)).
13. 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

14. The Respondent has submitted representations in response to this application. In these, it is accepted that the case should be sent for another parole review and submits that this should be via an oral hearing.

Discussion

15. At the time of the oral hearing, the Respondent was in open prison conditions. The Applicant notes that he had since been returned to closed conditions. His cell had been searched and a USB stick was found which contained pornographic material. The police have since confirmed that the USB stick contained 1,291 pornographic videos. There was no illegal material found.
16. The Applicant argues that, if this incident had occurred prior to the oral hearing, the professional opinion of his Community Offender Manager (COM) would have been for further risk reduction work to have been completed in custody. The COM has

suggested that the Respondent should be assessed by psychology to determine whether there are any outstanding treatment needs and, if so, where and how any such needs might be addressed.

17.The Respondent submits that it would be entirely appropriate for a psychological addendum report to be produced for a future oral hearing.

18.It appears that the Respondent has accepted that the decision to release will be set aside. This is an entirely pragmatic view since I am satisfied that the panel would not have made a direction for release had it been aware of the change in circumstances relating to the prisoner. I am also satisfied that it is in the interests of justice for the decision to be set aside, since those interests would not be served by releasing a prolific child sex offender who appears to have been, at the very least, sexually preoccupied with covert material immediately prior to his release.

Decision

19.For the reasons I have given, the application is granted, and the decision of the panel dated 14 September 2023 is set aside.

Stefan Fafinski
30 November 2023