

[2023] PBSA 87

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

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 Cullum (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 (496 pages), the oral hearing decision (dated 13 October 2023), and the application for set aside (dated 1 December 2023).

Background

3. On 28 August 2020, the Respondent received a determinate sentence of imprisonment for four years following conviction for burglary and theft (dwelling), escaping from lawful custody, theft (shoplifting), engaging in controlling/coercive behaviour in an intimate/family relationship, battery (three counts), assault occasioning actual bodily harm and burglary with intent to steal (non-dwelling). His sentence end date is reported to be March 2024.
4. The Respondent was aged 18 at the time of sentencing. He is now 21 years old.
5. The Respondent was automatically released on licence on 16 March 2022. His licence was revoked on 26 March 2023, and he was returned to custody on 28 March 2023. This is his first 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 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 to direct his release.
10. The case proceeded to an oral hearing before a two-member panel. Oral evidence was taken from the Applicant, his Prison Offender Manager, his Community Offender Manager, and an HMPPS psychologist. 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 to which I will refer in the **Discussion** section below.

Discussion

15. The Applicant submits that the Respondent has been subject to four proven adjudications since the decision to release him was issued as follows:
- a) Assaulting an inmate;
 - b) Intentionally or recklessly endangering the health or personal safety of others;
 - c) Using threatening, abusive, or insulting words or behaviour towards a member of staff; and
 - d) Being present in an unauthorised place.

16. The Respondent submits that the episode of poor behaviour (between 13 October 2023 and 8 November 2023) was relatively short-lived and did not raise any additional areas of risk. The Respondent is said to be '*dismissive*' of the adjudications and pleaded guilty to all except the assault. It is submitted that none of the adjudications are indicative of serious harm and would not have made a substantial difference to the panel's decision.
17. I disagree. The panel's decision to direct release clearly states that although the Respondent had previously shown little regard for authority or the requirements of the criminal justice system upon him, there was a significant amount of evidence of positive change in that regard. Even if I accepted the Respondent's account that he was innocent of the alleged assault, the allegations to which he pleaded guilty calls his regard for authority and compliance into question and represents a clear change in circumstances from the positive change which influenced the panel's decision.
18. 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 prisoner who was continually evidencing proven non-compliant and violent behaviour, particularly after having completed an accredited risk reduction intervention.

Decision

19. For the reasons I have given, the application is granted, and the decision of the panel dated 13 October 2023 is set aside.

Stefan Fafinski
19 December 2023