

[2024] PBSA 10

## Application for Set Aside by Baker

### Application

1. This is an application by Baker (the Applicant) to set aside the decision not to direct his release. The decision was made by a panel after an oral hearing on 7 November 2023. This is an eligible decision.
2. I have considered the application on the papers. These are the dossier (consisting of 615 pages), the oral hearing decision (dated 29 December 2023), and the application for set aside (dated 19 January 2024).

### Background

3. On 3 December 2019, the Applicant received two consecutive determinate sentences of 42 months each following conviction after trial on two counts of robbery.
4. The Applicant was aged 30 at the time of sentencing. He is now 34 years old.
5. The Applicant was automatically released on licence on 7 January 2022. His licence was revoked on 24 February 2022, and he was returned to custody on 28 February 2022. His sentence ends in July 2025. This is 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 has been an error of fact and also that there is new information available that would have changed the panel's decision.
8. It is also submitted that the decision was irrational, but that is outside the scope of the set aside rule, and I cannot consider that part of the application.

### Current Parole Review

9. The Applicant's case was referred to the Parole Board by the Secretary of State (the Respondent) to consider whether to direct his release.
10. The case proceeded to an oral hearing on 7 November 2023 before a three-member panel, including a psychiatrist specialist member. The panel heard evidence from the



3rd Floor, 10 South Colonnade, London E14 4PU



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[info@paroleboard.gov.uk](mailto:info@paroleboard.gov.uk)



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0203 880 0885

Applicant, his Prison Offender Manager (**POM**), and his Community Offender Manager (**COM**). The Applicant was legally represented throughout the hearing.

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

#### *Error of fact*

16. It is argued on behalf of the Applicant that there has been an error of fact upon which the panel has relied in making its decision not to release the Applicant.

17. It is said that the Applicant received a no release decision based on the fact that there was "*no development plan and no referrals were made for the support of the community mental health team*".

18. The Applicant first draws reference to page 571 of the dossier where it is said that the development plan in question is included.

19. The panel's decision states (at para. 3.20) that the "*plan to support [the Applicant's] mental health needed to be developed*". It does not say that there is no plan. It says that, in its opinion, the plan that is in place (which is presumably the plan set out on page 571) is not sufficiently well developed. This is the panel's opinion and it is an opinion that the panel is entitled to make. It is not factually incorrect.
20. It is also submitted that referrals have, in fact, been made to community mental health services. The dossier states (page 586) that "*once a release date has been confirmed the Care Coordinator will register [the Applicant] to [his] GP and liaise with [community mental health services]*". The decision notes (at para. 3.15) the COM's evidence that the prison care coordinator had undertaken discussions with community mental health services regarding referring the Applicant back to community service. The panel could not be said to have made a mistake of fact based on the evidence before it.

### *New information*

21. The submissions regarding new information are also concerned with the status of the referrals to community health services. It is submitted the decision was based on the panel not having had sight of the development plan or the referrals that had been made.
22. There is no evidence before me that suggests the panel did not see the plan set out in the dossier. There is also no evidence within the dossier (not supplied as part of the application for set-aside) that the referrals have been made.
23. Even if they had, I am not satisfied that the panel's decision would have been different. The decision sets out a number of concerns beyond mental health referrals, including the Applicant's relationship with Probation Service staff and the status of his accommodation beyond a period at designated accommodation on release.

### **Decision**

24. For the reasons set out above, the application for set-aside is refused.

**Stefan Fafinski**  
**26 January 2024**