

[2024] PBSA 25

Application for Set Aside by Morton

Application

1. This is an application by Morton (the Applicant) to set aside the decision not to direct his release. The decision was made by a Panel after an oral hearing on 27 February 2024. This is an eligible decision.
2. I have considered the application on the papers. These are (i) the dossier, now containing 187 pages, (ii) the oral hearing decision dated 25 March 2024 (DL) and (iii) the application for set aside made on behalf of the Applicant by his solicitors dated 12 April 2024.

Background

3. On 23 July 2020 the Applicant received a determinate sentence totalling 75 months imprisonment for possession of a handgun, possession with intent to supply class B drugs (cannabis) and possession of ammunition without a certificate ("the index offences").
4. The Applicant was aged 31 at the time of sentencing and is now 35 years old.
5. He was automatically released on licence on 14 April 2023. His licence was revoked on 14 June 2023 and he was returned to custody the next day following his arrest for alleged offences of assault and stalking committed against SS, the mother of one of his six children. 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 appears to be made on 2 bases:
 - 1) That the direction for no release would not have been made if the Panel did not unlawfully and unreasonably conclude that the Applicant must engage in the further risk reduction work on relationships within the custodial setting; and
 - 2) that the Panel's assessment of the Applicant's custodial behaviour contains an error of fact.



Current parole review

7. The Applicant's case was referred to the Parole Board by the Secretary of State (the Respondent) to consider whether the Applicant should be released.
8. The case proceeded to an oral hearing on 27 February 2024 before a single member Panel. The Panel heard evidence from the Applicant, his Prison Offender Manager (POM) and his Community Offender Manager (COM). The Applicant was legally represented throughout the hearing.
9. The Panel did not direct the Applicant's release.

The Relevant Law

10. 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.
11. 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)).
12. 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

13. The Respondent has no representations to make in response to this application.

Discussion

14. The Applicant argues that the direction for no release would not have been made if the Panel did not unlawfully and unreasonably conclude that the Applicant must engage in the further risk reduction work on relationships within the custodial setting.

15. This submission displays a fundamental misunderstanding of the test (as set out above) which I must apply to an application for set aside which is compounded by a reference to the “*Wednesbury*” principle which has no application here.
16. The Panel went to considerable lengths to set out in detail the reasons for its finding that the further offending behaviour work, which both professional witnesses agreed that the Applicant needed to complete and which the Panel found was critical to the management of his risk in the community, had to be undertaken in custody since the risk to the public could only be managed once that work has been successfully completed.
17. The ground advanced does not relate to any error of fact or law but for which the decision not to direct release would not have been made.
18. In my view, the Applicant is not well served by the making of a misconceived submission of this sort.
19. As to the second ground, it is difficult to discern the error of fact relied on. The Panel was well aware, and acknowledged, that the Applicant maintained Enhanced IEP status. However, this is a matter for the prison applying internal practices and directives.
20. The Panel clearly took account of all the evidence before it, including the Applicant’s IEP status, and noted that both professional witnesses agreed that, following recall, his custodial behaviour had been poor and reflective of negative attitudes and poor thinking skills while the POM raised significant concerns about his custodial behaviour (which are set out in detail in the DL) which included impulsivity and being argumentative and challenging with staff members together with a propensity towards involving himself in situations or disputes which were unrelated to him.
21. The Panel also agreed with the POM that this evidenced the Applicant’s need to continue working on his consequential thinking skills.
22. Finally, the Panel accepted the professionals’ view that, when taken as a whole, the evidence indicated that the Applicant needs to undertake further work to address his attitudes towards relationships and his ability to manage conflict in relationships and to form healthy relationships in the future.
23. I also note that no reference is made in the Applicant’s submissions to the interests of justice.

Decision

24. I have carefully considered the application and, for the reasons I have given, I find that it is without merit and that the Applicant is unable to demonstrate that the Panel fell into error and the application to set aside is refused.

PETER H.F. JONES
26 April 2024