

[2024] PBSA 26

Application for Set Aside by Khalil

Application

1. This is an application by Khalil (the Applicant) to set aside the decision made by an oral hearing panel dated 13 March 2024 not to direct release the Applicant's release.
2. I have considered the application on the papers. These are the oral hearing decision, the dossier, the application for set aside (dated 19 March 2024), grounds for application (dated 19 March 2024), a response from the Public Protection Casework Section (PPCS) on behalf of the Secretary of State (the Respondent) dated 11 April 2024, and an email from those instructed on the Applicant's behalf confirming that they will not be submitting any additional legal representations (dated 3 April 2024).

Background

3. The Applicant was sentenced on the 5 February 2013 to 20 years imprisonment for the offences of rape of a female under 16 years x5, indecent assault of a female x6 and sexual assault of a female by penetration x3. The circumstances of the index offending are that between 1992 and 2007 the Applicant raped and sexually assaulted 3 of his female family members, 2 of whom were children. The applicant has always denied the index offences.
4. The Applicant was released on 23 August 2022 and was recalled to prison on 10 February 2023. The Applicant was recalled to prison due to ongoing concerns around his manageability on licence, and specifically at the Approved Premises (AP) accommodation. Concerns were raised that he was acting inappropriately towards female staff and that he made threats to harm anyone he had to room-share with, resulting in him being relocated to a different AP. Thereafter the Applicant is said to have sabotaged referrals to accommodation providers, stating that he needed independent accommodation and could not reside in shared accommodation. Due to this behaviour all referrals were unsuccessful and it was deemed that the Applicant had made himself intentionally homeless.

Application for Set Aside

5. The application for set aside has been drafted and submitted by the Applicant himself and was initially served on the Parole Board by email on the 28 March 2024.
6. Comprehensive submissions have been provided by the Applicant, consisting of over 20 pages of handwritten submissions. These submissions provide a mix of general comments about the decision, which are considered to be opinion



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and non-contentious, and also certain other allegations, suggesting that the decision not to direct release would not have been made but for an error of law or fact. These include;

- i. An allegation that the psychological risk assessment was inaccurate.
- ii. That the Community Offender Manager (COM) instigated recall because the Applicant had made a formal complaint against him.
- iii. The COM misinformed the panel about the number of housing providers available to the Applicant.
- iv. The Applicant was not provided with a recall dossier or easy to read leaflet.
- v. The panel found that the Applicant had issues with his relationships, substance misuse, major mental disorder, supervision, and treatment response. The Applicant claims this is an error because he never had any such issues.
- vi. The Applicant claims that a doctor misdiagnosed him as he '*reached his claims via claims from others*' and not a personal examination.
- vii. The Applicant states that although future relationships were high risk, this was not included on the licence conditions.

Current Parole Review

7. The Applicant's case was referred to the Parole Board by the Respondent to consider whether to direct his release.
8. The case proceeded to an oral hearing on the 1 February 2024 before a single member panel of the Parole Board. The hearing was listed for some five hours and evidence was heard from four witnesses and the Applicant himself.
9. The panel did not direct the Applicant's release. A decision was issued on the 13 March 2024.
10. The panel held the Applicant's recall to have been appropriate.

The Relevant Law

11. 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.
12. 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)).
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 made if information that had not been available to the Board had been available, or
- c) A direction for release would not have been made 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 confirmed on the 11 April 2024 that he did not wish to make any representations.

Discussion

Eligibility

15. The application concerns a panel's decision to direct release following an oral hearing under rule 25(1). The Applicant argues that the condition in rules 28A(1) and 28A(4)(b) are made out. I agree with this submission. It is therefore an eligible decision which falls within the scope of rule 28A.

The test for set aside

16. In determining the application for set aside, I must consider the impact of the updated submissions by the Applicant on the panel's decision not to release the Applicant. This is a two stage process, (i) firstly, do I find there to be new information, and (ii) if so, would a direction for release not have been made if that information had been known.

17. In relation to the information being novel I note that much of the information provided in the Applicant's handwritten submissions has been alluded to either in the Applicant's parole dossier, or the parole decision. I also note that at the time of the oral hearing the Applicant was legally represented and that written closing submissions were provided on the 7 February 2024 setting out the client's position. At no point do those instructed raise any concerns about the accuracy of the decision, concerns as to errors in law or fact arising out of the oral hearing, or decision, nor are any concerns raised that information has not been elicited which ought to have been, to better support the Applicant's application for release.

18. Furthermore in relation to the matters set out in paragraph 6 (points i-vii above), whilst the Applicant makes allegations that erroneous information has been relied upon, he does not, in fact provide any additional independent evidence to support those facts or purported errors. I note that the Applicant's hearing was listed for 5 hours and ahead of the hearing a psychological risk assessment was directed. I am also mindful that the Applicant's dossier runs to some 298 pages and there are updated reports from all key witnesses and other third party agencies.

19. Specifically:



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- i. There is no evidence that the psychological risk assessment was inaccurate. The author is appropriately qualified and the Applicant's legal adviser raised no concerns about their competency prior to, during or after the hearing. The legal representative was also afforded the opportunity to question the report writer at the hearing, and had concerns existed directed their own independent psychological risk assessment. None of this transpired. I do not uphold this concern.
- ii. I do not accept that there is evidence to substantiate that the COM recalled the Applicant due to '*being made the subject of a complaint*' as alleged by the Applicant. There is significant information in the papers and the decision setting out an alternative justification, which is corroborated elsewhere in the papers, namely the Applicant's poor engagement with supervision and accommodation providers. Again those instructed had an opportunity to deal with this by way of oral evidence and in their closing submissions had they wished to.
- iii. It is unclear if the COM misled the panel about the number of housing providers available to the Applicant, however, this matter was discussed at length in the hearing and is referred to in the decision. However, in any event, I do not find this matter alone would have made a material difference to the panel's decision. It is clear that the Applicant's behaviour prior to recall was generally non-compliant and his engagement with accommodation providers (or lack thereof) was only one of many reasons why the probation service decided to recall him.
- iv. The Applicant alleges he was not provided with his recall dossier or time to read it. From the papers it is unclear if this is the case, but what is clear is that the Applicant was legally represented throughout the hearing and at no time during the hearing, or thereafter, was this matter raised as an area of concern. There is no evidence of this issue being raised at the hearing, or any adjournments requested.
- v. In relation to point v, that the panel '*found that the Applicant had issues with his relationships, substance misuse, major mental disorder, supervision, and treatment response*'. Whilst the Applicant may disagree with this assessment, the panel is at liberty, and indeed, is expected to make it's own risk assessment. Based on the information provided I find this assessment to be appropriate and evidencable from collateral reports and oral evidence.
- vi. In relation to the submissions that '*a doctor misdiagnosed [the Applicant]*' as he '*reached his claims via claims from others*' and not a personal examination. I note that the Applicant was interviewed by the psychologist ahead of completion of the psychological risk assessment, but that he refused to discuss his early experiences. He was also offered a follow-up '*disclosure meeting*.' During that meeting at no time did he raise concerns that the psychologist had misdiagnosed him, although he did query other aspects of the report. Again, nor did those instructed on his behalf either at the hearing or in closing submissions. In general, I find the psychological report to be thorough and to include the usual amount of detail; based both on personal interview and file information.



- viii. In relation to point vii that *'although future relationship were high risk, this was not included on the licence conditions'* This submission is uncertain, however I note that the Applicant's licence did include a requirement *'to disclose any developing intimate relationships with women or men'* and also a condition *'to disclose any developing relationships, whether intimate or not, with any person known to believe to be resident in a household with children...'*. These are the two most common conditions imposed on individuals with a history of interpersonal violence, or sexual offending within families. As such I do not find this submission to be factually actuate.
20. In consequence I am not persuaded that the information provided by the Applicant can properly be considered to be *'new'* information, nor do I find the information provided in the Applicant's application to evidence any errors in law or fact. The Applicant has not provided any new independent evidence to substantiate any of the concerns or allegations raised, other than his own opinion, which he would have been at liberty to discuss during the oral hearing.
21. Furthermore, following the hearing the Applicant's legal representatives were afforded time to provide written closing submissions. This allowed the legal representatives time to discuss the hearing with the Applicant and raise any concerns arising. No such concerns were raised.
22. Based on the findings in paragraph 20 and above I do not accept that the Applicant's application raises any new information which would have been material to the panel's decision making, or any errors in law or fact. Nor do I believe that the information provided by the Applicant would have led to a different outcome, in other words, that the decision not to release would not have been made if the information had been available.
23. Whilst the Applicant may have raised many arguments, in my assessment, these are matters of opinion not fact or law. Furthermore, as already stated, the Applicant has provided no new independent evidence to substantiate or corroborate his application. Nor have those representing him, despite being afforded ample opportunity at a lengthy hearing, in closing written submissions or in support of this set aside application. As such I am not satisfied that the Applicant has evidenced that the information he has provided undermines the appropriateness of the panel's original decision or meets the test for the decision to be set aside.
24. Having decided that a direction not to release would still have been made if the information provided by the Applicant had been available to the panel and having found no evidence of any errors in law or fact, I must finally consider whether it is in the interests of justice for its decision to be set aside.
25. I am not so satisfied based on all the evidence before me.

Decision

26. For the reasons I have given, the application is dismissed, and the decision of the panel dated 13 March 2024 should not be set aside.



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Heidi Leavesley
02 May 2024