

[2024] PBSA 38

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

Application

1. This is an application by the Secretary of State for Justice (the Applicant) to set aside the decision made by a Parole Board Panel to direct the release of Majdi (the Respondent).
2. The decision was made by a single member panel on the papers and given in a decision letter dated 14 December 2023. This is an eligible case for setting aside under s.28A of the Parole Board Rules 2019 (as amended).
3. I have considered the application on the papers. These are the dossier of 411 pages including the decision letter and the application for set aside dated 3 June 2024.

Background

4. On 31 May 2018, the Respondent received a sentence of 7 years imprisonment following conviction for rape of a child under 16 years to which offence he had pleaded not guilty.
5. The Respondent was aged 19 at the time of sentencing. He is now 25 years old.
6. He was automatically released on licence on 6 June 2021. His licence was revoked on 17 December 2021 and he was returned to custody on 20 December 2021. This is his first recall on this sentence, and his second parole review since recall.

Application for Set Aside

7. The application for set aside has been drafted and submitted by the Public Protection Casework Section (PPCS) following information received from the prison. None of this information was before the Panel at the date of the decision.
8. The application submits that there has been new information, constituting a change in circumstances which impacts on the risk management assessment. The Respondent is alleged to have seriously assaulted another prisoner with a weapon and the matter has been referred to the police. His behaviour is said to have escalated negatively with reports of wandering around prison grounds without



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authorisation, being abusive to others, making threats of disorder and trying to incite other prisoners to act in a disorderly way.

Current parole review

9. The Respondent's case was referred to the Parole Board by the Applicant to consider whether to direct the Respondent's release.
10. The case proceeded to a paper hearing before a single-member panel. Evidence consisted of the dossier (then 400 pages plus index) and representations from the Respondent's representatives.
11. The panel directed the Respondent'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

16. Having considered the application I have no hesitation in concluding that had the allegations set out detailing the further information been before the Panel, a full investigation would have been called for and a direction for release would not, in the absence of such investigation have been granted. The Respondent has not responded to the allegations and it is not for me to resolve the allegations at this

stage. There has clearly been a change of circumstances from that previously presented and a further risk assessment will be needed in the light of the new allegations. The Respondent's status has been recategorized from Category C to Category B and the COM has expressed concerns about the risk he may pose to members of the public. What steps the police have so far taken is not yet known.

Decision

17.The application for set aside is accordingly accepted.

Barbara Mensah
17 July 2024