

[2024] PBSA 41**Application for Set Aside by the Secretary of State for Justice
in the case of Knight****Application**

1. This is an application by the Secretary of State for Justice (the Applicant) to set aside the decision by a Panel of the Parole Board (dated 23rd May 2024) to direct the release of Knight (the Respondent). This is an eligible decision.
2. I have considered the application on the papers. These are:
 - (a) The dossier now paginated to 360 pages;
 - (b) The oral hearing decision letter dated 23rd May 2024; and
 - (c) The application for set aside dated 1st July 2024

Background

3. On 31st March 2015 the Respondent received, upon his guilty plea, an extended determinate sentence for wounding with intent to do grievous bodily harm comprising a custodial element of 75 months and an extended licence period of 36 months. The Respondent had entered a garden and, when he was challenged by a friend of the owner, a scuffle ensued and he repeatedly stabbed the victim. At the time of the commission of the offence in November 2014 the Respondent was subject to licence recall and was unlawfully at large.
4. The Respondent was aged 24 at the time of sentencing and is now 33 years old.
5. The Respondent had been released on licence in November 2022 following a decision of the Parole Board. His licence had been revoked in February 2023 but he remained unlawfully at large until being returned to custody on 15th August 2023.
6. This was his second recall on this sentence having previously been released in August 2020 and recalled in October 2021. Both recalls related to renewed drug misuse and concerns about poor consequential thinking and impulsive behaviour.



7. The Respondent has a long offending history from the age of 11, including violent behaviour, and there have been numerous breaches of court orders, failures to surrender and offending whilst subject to bail.
8. This was the first review since his second recall to prison.
9. The Sentence Expiry Date is given as September 2024.

Application for Set Aside

10. The application for set aside has been drafted and submitted by the Public Protection Casework Section (PPCS) acting on behalf of the Applicant.
11. The application for set aside submits that, in the light of further developments since the Panel gave its release decision, the Panel would not have reached the same decision had this new information been known and it appears to be argued that:
 - (a) a direction for release would not have been given if information that had not been available to the Board had been available, and
 - (b) a direction for release would not have been given if a change in circumstances relating to the Respondent after the direction was given had occurred before it was given.
12. The content of the application will be considered in the **Discussion** section below.

Current parole review

13. The Respondent's case was referred to the Parole Board by the Applicant to consider whether to direct his release.
14. The case proceeded to an oral hearing on 8th May 2024 before a single member panel which heard evidence from the Respondent, the Prison Offender Manager (POM), the previous POM, and the Community Offender Manager (COM). The Respondent was legally represented throughout the hearing.
15. The Panel directed the Respondent's release.

The Relevant Law

16. 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.
17. 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)).



18.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

19.The Respondent has offered no representations in response to this application.

Discussion

20.The Respondent was transferred to open prison conditions in February 2024. On 24th May 2024 the Respondent is said to have received the news that his re-release had been directed with an Approved Premises (AP) placement secured for July 2024.

21.On 24th May 2024 at 15:21, police contacted the prison to say that a prisoner was seen to have left the prison boundary; a roll check confirmed the Respondent was missing and it is of note that he is reported to have been found, on the morning of that day, with a quantity of cannabis in his possession.

22.The COM was consulted and is said to take the view that his risk assessment has now changed and he is no longer supportive of the Respondent's release given that he would appear to have demonstrated poor compliance and decision-making and possible drug use and will need to undertake in custody further work around drug misuse and thinking skills.

23.It is reported that the Respondent has in the past deliberately sabotaged his progression by absconding from open prison conditions and an AP.

24.In consequence of this new information and a change in circumstances the Applicant submits that the release decision should be set aside.

25.I have carefully considered the documentation placed before me, including the application for set aside, and the new information provided. I am conscious that no representations have been received by or on behalf of the Respondent nor has any extension of time been requested.

26.Put shortly, the Respondent remains unlawfully at large. It will be almost eight weeks since he absconded from open prison conditions and his whereabouts remain unknown. Accordingly, I am in no doubt that on the evidence before me the Panel would not have given a direction for release if this information had been before it at the relevant time.

27. Finally, I confirm that I am satisfied that it is in the interests of justice for the Panel's decision to be set aside.

Decision

28. The application for set aside is granted.

PETER H.F.JONES

17 July 2024