

[2024] PBSA 5**Application for Set Aside by Taylor
(Prison Number 54217A)****Application**

1. This is an application by Taylor (the Applicant) to set aside the decision not to direct his release. The decision was made by a panel after an oral hearing on 22 November 2023. This is an eligible decision.
2. I have considered the application on the papers. These are (i) the dossier, now containing 288 pages, (ii) the oral hearing decision dated 11 December 2023 (DL) and (iii) the application for set aside which comprises a handwritten letter from the Applicant dated 22 December 2023 and an email exchange between the Board and the Applicant's solicitor.

Background

3. On 14 September 2017 the Applicant received a determinate sentence totalling 11 years and nine months for two counts of robbery, one count of false imprisonment and an offence of violent disorder for which he had originally received a suspended sentence of imprisonment ("the index offences").
4. The Applicant was aged 28 at the time of sentencing and is now 35 years old.
5. He was automatically released on licence on 26 August 2022. His licence was revoked on 24 January 2023 and he was returned to custody on 9 February 2023 following his convictions on 23 January 2023 for criminal damage and assaulting 2 police officers. 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 comprises the documents set out at para. 2(iii) above.
7. It appears to be submitted that there has been an error of fact in that the Community Offender Manager ("COM") now says that it was not her evidence that it was essential that the Applicant complete KAIZEN ("the programme").

Current parole review

8. 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.



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

www.gov.uk/government/organisations/parole-boardinfo@paroleboard.gov.uk

@Parole_Board



0203 880 0885

9. The case proceeded to an oral hearing on 22 November 2023 before a single member panel. The panel heard evidence from the Applicant, his previous Prison Offender Manager, his current Prison Offender Manager (POM) and his COM. The Applicant was legally represented throughout the hearing.
10. The panel did not direct the Applicant's release.

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 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)).
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 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

14. The Respondent had no comments to add in response to this application.

Discussion

15. The Applicant argues that there has been an error of fact but for which the decision not to direct release would not have been made. No reference is made to the interests of justice.
16. The Panel records the oral evidence of the COM at paras. 2.8 to 2.14 of the DL.
17. At para 2.8 the COM is recorded as saying, "*In custody [the Applicant] should have completed Kaizen.*"

18. At para. 2.9 it is recorded, *"The COM considered [the Applicant] needs to complete Kaizen (General Violence) to address his violent behaviour. There is also a risk of intimate partner violence."*
19. *"The COM advised work can be completed during the Kaizen programme to address behaviour in intimate partner relationships. [The Applicant] still has time on this sentence to complete a programme. He could transfer prisons. The COM did not consider that programme essential because [the Applicant] has already been in the community, he had done well in the AP and moved on to independent accommodation."*
20. At para. 2.13. that, *"The COM recommends release to access programmes and offence focused work immediately. It will take more than six months for [the Applicant] to access programmes in custody. She considers the test for release has been met..."*
21. Finally at 4.3, *"The COM confirmed it is essential for [the Applicant] to complete Kaizen (General Violence) to address the factors which lead to offending. She did not consider it had to be completed before [the Applicant] was released. Kaizen cannot be completed in the community."*
22. Accordingly, it is abundantly clear from the DL that the Panel had been told by the COM (paras. 2.9 and 4.3) that she did not consider that completion of the programme was essential prior to release and, importantly, (para. 2.13) that the Applicant met the test for release and that she recommended his immediate release, carrying with it the obvious implication that she did not consider that any further offending behaviour work, including completion of the programme, was necessary prior to release.
23. While it appears that it could be argued that the DL contains recordings of the COM's evidence in relation to the programme which are contradictory and that a finding that the Applicant had outstanding core risk reduction work (para. 4.4) appears to be at odds with a recommendation for immediate release, these are not arguments for me when considering whether or not there has been an error of fact but for which the decision not to direct release would not have been made.

Decision

24. I have carefully considered the application and the evidence relied on. The panel recorded on more than one occasion the COM's opinion that it was not essential for the programme to be carried out prior to release and that the Applicant's immediate release was supported. Thus, for the reasons I have given, I find that the Applicant is unable to demonstrate that the Panel fell into error as to fact and the application to set aside is refused.

PETER H.F. JONES
17 January 2024