

## [2024] PBSA 53

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

#### Application

1. This is an application by the Secretary of State for Justice (the Applicant) to set aside the decision of a Panel of the Parole Board (dated 28 June 2024) to direct the release of Pepper (the Respondent). This is an eligible decision.
2. I have considered the application on the papers. These are:
  - (a) the dossier now paginated to 112 pages;
  - (b) the decision letter dated 28 June 2024; and
  - (c) The application for set aside dated 8 August 2024

#### Background

3. On 4 January 2023 the Respondent was sentenced to a total of 2 years imprisonment for non-dwelling burglary, going equipped for burglary, theft from a motor vehicle, failing to surrender and attempted burglary x4. He accepted responsibility for offending for financial gain after losing his job and he pleaded guilty.
4. He has a criminal record of convictions for 25 offences revealing an established history of violent and aggressive behaviour and poor compliance with court orders.
5. The Respondent was aged 25 at the time of sentencing and is now 26 years old.
6. The Respondent was released on Home Detention Curfew on 24 August 2023 to an Approved Premises (AP). However, in February 2024 he was evicted from his accommodation for having a female residing in his room and on suspicion of drug use. In addition, the police investigated an allegation that, together with the female, he attempted to carry out a robbery at knifepoint. However, no further action has been taken.



7. As he had failed to disclose their relationship, had disengaged from supervision and his whereabouts were unknown, his licence was revoked on 2 February 2024 and he was returned to custody on 6 February 2024.
8. This was the first review since his recall to prison.
9. The Sentence Expiry Date is given as November 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. A single member of the parole board considered the case at member case assessment stage and on the basis of the papers alone directed the Respondent's release.

### The Relevant Law

15. 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.
16. 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)).
17. 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

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

### Discussion

19. The Post Recall Risk Management Report prepared by the Community Offender Manager ("COM") and relied on by the Panel is dated 16 April 2024. In this report the COM assessed that the Respondent's likelihood of compliance with a further period on licence was high and protective factors would include gaining independent accommodation and adherence to supervision requirements.
20. The Panel found that the Respondent's recall had been appropriate and accepted the assessment that he posed a high risk of causing serious harm to the public and a known adult and that his risk of non-violent reoffending was high.
21. The Panel noted that there would be liaison to identify a timescale for the Respondent to access suitable accommodation which it considered to be a key component of the risk management plan which the Panel went on to find sufficiently robust to manage his risk of serious harm in the community and, accordingly, directed the Respondent's release.
22. The application states that PPCS received information on 28 June 2024 from the COM that the Respondent would now have to be released under the remit of Probation Reset and, therefore, the risk management plan which had been submitted in April 2024 was no longer accurate or adequate to manage the Respondent's risks.
23. The Respondent would not be eligible for an AP placement although supported accommodation might be possible subject to availability although it would not provide assistance with move-on plans.
24. Under Probation Reset there will be no monitoring of the Respondent's behaviours in relation to his drug use (another risk factor) and he will not be required to attend weekly supervision appointments. Accordingly, he will not be subject to supervision by a Probation Officer for management of risk or to complete risk reduction work.
25. In these circumstances the COM takes the view that the Respondent's risks cannot be effectively managed in the community under Probation Reset and is not supportive of release.

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

27. 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.

28. 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.

29. 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

30. The application for set aside is granted.

**PETER H.F.JONES**  
**20 August 2024**