

**[2024] PBSA 66****Application for Set Aside by Scanlon****Application**

1. This is an application by Scanlon (the Applicant) to set aside the decision not to direct his release. The decision was made by a panel on the papers on 14 August 2024. This is an eligible decision.
2. I have considered the application on the papers. These are the dossier consisting of 165 pages, the paper hearing decision of 14 August 2024, and the application for set aside received on the 20 September 2024.

**Background**

3. On 20 November 2018, the Applicant received a determinate sentence of 6 years 8 months following conviction for burglary. His sentence expires in December 2024.
4. The index offence involved the burglary of a farm where shotguns, cartridges and cash were stolen. The Applicant has previous convictions.
5. The Applicant was aged 32 at the time of sentencing. He is now 38 years old.
6. He was automatically released on licence on 25 August 2021. His licence was revoked on 13 July 2022, and he was returned to custody on 14 July 2022. 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 Applicant's legal representative.
8. It submits that there has been an error of fact in the panel stating that the Applicant had been charged with an offence when that was not the case and that the decision not to direct release would not have been made but for the error of fact.

**Current parole review**

9. The Applicant's case was referred to the Parole Board by the Secretary of State (the Respondent) to consider whether to direct his re-release following the revocation of his licence.

10.The case proceeded to a paper consideration before an MCA panel member.

11.The panel did not direct the Applicant'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.The Applicant argues that there are two factual errors:

- (a) It is said that there was miscommunication between his representatives and his criminal defence solicitors;
- (b) It is said that he has been charged with a possession with intent to supply drugs offence.

17.The panel notes the explanation and clarification from the Applicant's representatives and accepts, as it is invited to do by the representatives, that the error in the information was due to miscommunication. The panel notes that the miscommunication was by the criminal defence solicitors but does not attribute that to an issue between the two sets of representatives. In any case the panel accepts the explanation submitted by the Applicant's representatives. There was clearly erroneous information provided by the criminal defence representatives. The panel

was aware of that fact and the source of that miscommunication was not relevant to the panel's decision. No error of fact arises from this ground.

18. The Applicant says that there was an error of fact by the panel stating that the Applicant had been charged with the possession with intent to supply drugs offence. The most recent communication from the police in the dossier appears to be a report of a conversation between the third party team case manager and a police officer on 08 August 2024. The officer is reported as confirming that the investigation into the possession with intent to supply drugs matter is still ongoing. The decision letter does not indicate the source from which this statement originated and does not appear to be supported by any police report. I am satisfied therefore that the panel's statement that the Applicant had been charged with this offence is an error of fact.
19. It does not automatically follow that an error of fact means that the decision must be set aside. The next question becomes whether the decision to refuse release would not have been made but for that error.
20. I am not satisfied that the panel would have made a different decision but for that error. This is for two reasons. The first reason is because that statement of charge is not repeated in the panel's reasoning and is not relied upon as a reason for its conclusion. The panel records, later in its decision, that the Applicant is awaiting investigation and correctly reminds itself of and applies the guidance on allegations.
21. The second reason is that even if the panel erroneously concluded that the Applicant had been charged with the offence, nevertheless the panel treats the drugs matter as an allegation. The panel makes no findings of fact on the allegations but finds, as set out in the decision, that there are other reasons why the Applicant's release cannot be directed. I cannot therefore find that the panel would have made a different decision but for its error, and consequently the application for set aside fails.

## Decision

22. For the reasons I have given the application for set aside is refused.

**14 October 2024**  
**Barbara Mensah**