

**[2024] PBSA 82****Application for Set Aside by Barrett****Application**

1. This is an application by Barrett (the Applicant) to set aside the decision not to direct his release. The decision was made by a Panel upon consideration of the papers on 28<sup>th</sup> October 2024. This has been deemed to be an eligible decision.
2. I have considered the application on the papers. These are:
  - The dossier now paginated to 197 pages;
  - The decision letter (DL) dated 28<sup>th</sup> October 2024; and
  - The application for set aside dated 26<sup>th</sup> November 2024.

**Background**

3. On 10<sup>th</sup> February 2023 the Applicant was sentenced to 24 months imprisonment for an offence of assault occasioning actual bodily harm ("the index offence"). The Sentence Expiry Date ("SED") is given as February 2025.
4. On 29<sup>th</sup> July 2021, the Applicant used a baseball bat to assault a former friend, R, who had stayed the night. The Applicant believed the victim had sexually assaulted his young daughter and confronted R about this. When R denied the allegation, the Applicant and an associate assaulted him with the bat for around ten minutes with around 50 blows.
5. The Applicant had a previous criminal record of convictions for possession of drugs, public order, being drunk and disorderly and failure to surrender to bail.
6. The Applicant was aged 44 at the time of sentencing and is now 46 years old.
7. He was automatically released on licence on 15<sup>th</sup> August 2023. His licence was revoked on 19<sup>th</sup> August 2024 following an accumulation of concerns which had built up over a number of months relating to his alcohol use, poor compliance and culminated in two separate sets of allegations made by the same female in July and August 2024 of rape and intentional strangulation. The police took no further action in relation to these matters (as they had in relation to an earlier, similar allegation from February 2024) as the Complainant was not prepared to support prosecutions. This was his first parole review since recall.

**Application for Set Aside**

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8. The application for set aside describes itself as an "Appeal" and, inter alia, refers to a number of errors without specifying whether these are errors of fact or of law and makes no mention of the interests of justice.

### Current parole review

9. 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.
10. The Panel did not direct the Applicant's release following consideration of the case on the papers pursuant to s.19 (1) of the Parole Board Rules as set out below.

### The Relevant Law

11. Rule 28A(1)(a) of the Parole Board Rules 2019 (as amended by the Parole Board (Amendment) Rules 2024) (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. By email dated 26<sup>th</sup> November 2024, PPCS on behalf of the Respondent declined to submit representations regarding the application.

### Discussion

15. This application can be dealt with shortly. The Panel had the power to deal with the review on the papers in accordance with r.19 Parole Board Rules. The decision not to direct release was initially provisional. As is made clear in the DL, the Applicant was entitled to apply for an oral hearing to determine the case pursuant to r.20 Parole Board Rules within 28 days of the date on which the decision was sent to him.

16. The Applicant did not apply for an oral hearing or an extension of time to do so pursuant to s.9 Parole Board Rules since his solicitors accepted (dossier p. 194) that there was insufficient time to hold an oral hearing (OH). The decision not to direct release therefore became final.
17. The Applicant's solicitors now seek to "appeal" the decision, putting forward, indiscriminately, a variety of reasons including unfairness, undue weight being placed upon certain aspects of the evidence and a failure to obtain further information as well as making further submissions in support of the application for release and even asking for reconsideration which is a separate procedure not available to the Applicant.
18. I have carefully considered the DL from which it is clear that the Panel found that this was not a case in which release could be justified on the basis of the dossier alone and, having considered the principles set out in the case of Osborn, Booth and Reilly (2013) UKSC 61 concerning oral hearings, found that there should be an OH with directions for further information which could be explored in oral evidence.
19. However, although the Panel considered that an OH was appropriate in this case, given the Applicant's SED and in accordance with current Board Guidance, it concluded that it was not practicable to convene an OH (as the Applicant's solicitors concede) before the Applicant would be automatically released at SED.
20. The Panel then went on to consider whether it would be appropriate to adjourn the review to obtain further information but, for the same reasons, the Panel found that this would not be realistic given that there would still, in its view, be a need for oral evidence.
21. The Panel therefore went on to consider the test for release on the basis of the papers before it, being, it appears, satisfied that it had sufficient information to do so. I find that this decision was a matter for the Panel in its discretion and was an exercise of judgement which was peculiarly for the Panel to make.
22. The Panel then sets out in some detail clear reasons for its decision not to direct release and, again, I find that this involved an exercise of judgement in which I can discern no errors of fact or law.
23. I find that this "Appeal" has been drawn up without any consideration being given to the relevant provisions of the setting aside procedure and without reference to any specific errors of fact or law but for which the decision not to direct release would not have been made. Suggestions of procedural unfairness are, of course, not a matter for me when exercising the setting aside jurisdiction.
24. The Panel has exercised its judgement in this case, and I can find no errors of law or fact made by the Panel but for which the decision not to direct release would not have been made.

## Decision

25.I have carefully considered the application and, for the reasons I have given, I find that that the application to set aside is misconceived and without merit and it is refused.

**PETER H. F. JONES**  
**13 December 2024**