

[2022] PBSA 1

Application for Set Aside in the case of Walker

Application

1. This is an application initiated on behalf of the Chair of the Parole Board to set aside the decision made by an oral hearing panel dated 15 July 2022 to direct the release of Walker (the prisoner).
2. I have considered the initiation on the papers. These are: the oral hearing decision dated 15 July 2022; the dossier; the initiation email sent by the Chief Executive Officer (CEO) of the Parole Board (on behalf of the Chair of the Parole Board); the response on behalf of the Secretary of State; an email from the Prison Offender Manager (POM) to the Community Offender Manager (COM) about an adjudication; email from the COM to the Parole Board; application to set aside on behalf of the Secretary of State; an email from the POM on behalf of the prisoner; and an updated security report.

Background

3. On 10 April 2019 the prisoner received a determinate sentence of 61 months in total following conviction for assault with intent to rob and possession of a prohibited weapon. He was aged 23 at the time of sentencing. He is now 26 years old.
4. Following this sentence, he received a further concurrent sentence of five months for assault of an emergency worker which involved him assaulting a prison officer in July 2019.
5. The prisoner was released automatically on 8 October 2021 and then his licence was revoked on 19 November 2021 and he was returned to custody on 2 December 2021. His case was then referred to the Parole Board by the Secretary of State to consider whether it would be appropriate to direct his release.
6. The case proceeded to an oral hearing on 7 July 2022 before a Parole Board panel comprised of two independent members. The prisoner was not legally represented. Oral evidence was given by the prisoner, his POM and his COM. The panel directed the prisoner's release to designated accommodation which was available from 18 August 2022.

Initiation to Set Aside

7. On 9 August 2022, the POM emailed the COM to report a development, namely "*just to make you aware, [the prisoner] was involved in a 3 on 1 prisoner assault yesterday which was serious enough for PAVA to be used to stopped the assault. I*



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have only just been informed. [the prisoner] has received an adjudication and placed on basic regime. I'm assuming this information will need to be passed to the parole board?". The COM sent this email to the case manager at the Parole Board and said "I believe the below information needs to be made available for the parole board as this could effect [sic] the decision that has been made".

8. There was then communication between the legal team at the Parole Board and the Public Protection Casework Section (PPCS) to seek to clarify whether an application for setting aside was being made.
9. On 16 August 2022 PPCS, on behalf of the Secretary of State, sent an application to set aside the decision. However, later that same day PPCS emailed to indicate that they wished to withdraw the application.
10. In light of this, on 17 August 2022 the CEO, on behalf of the Chair of the Parole Board initiated the set aside process stating:

"The prisoner has a history of violence. Following the panel's release decision on 15th July the Board has been notified by HMPPS that the prisoner was involved in an assault which lead to an adjudication, which could potentially go to risk. The Secretary of State has declined to make a set aside application. But the Parole Board has the power which it can use of its own motion. Whilst we do not know the full details of the incident that has taken place it is important that this is reviewed in full before [the prisoner] is released.

On this basis under Parole Board Rule 28(a) subsection 2 I direct that a set aside application is initiated and we will urgently [be] sending the case to a Parole Board member to consider.

Both parties are asked to provide any relevant information to the Board and each other within 7 days."

The Relevant Law

11. Rule 28A(2) of the Parole Board Rules 2019 (as amended by the Parole Board (Amendment) Rules 2022) provides that the Parole Board may, on initiation by the Board Chair, set aside a final decision.
12. The types of decisions eligible for set aside are set out in rules 28A(1) and 28A(2). 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 and one or more of the conditions under rule 28A(5) are met (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 made if
 - (i) information that was not available to the Board when the direction was given had been so available, or

(ii) a change in circumstances relating to the prisoner that occurred after the direction was given, had occurred before it was given.

14. Under Rule 28A(6) an initiation to set aside a decision must be made within 21 days of the decision. However, if the initiation (or application) relies on 28A(5)(b) i.e it relates to new information or a change in circumstances then it must be made before the prisoner is released. Representations were sought under 28(8).

The reply on behalf of the parties

15. In an email on 25 August 2022 the POM confirmed that the prisoner did not wish to make any representations.

16. A representative on behalf of the Secretary of State made written submissions dated 24 August 2022. They contained further details about the assault and confirmed that there would not be a police investigation. The representations also included the following: the COM remained supportive of release; a new date for the designated accommodation would now need to be sought; and there was further security intelligence which was now added to the dossier. The Secretary of State's representative closed the representations by stating that *"in light of the evidence available to him, the Secretary of State considers that a full re-examination of this case by the Parole Board is required to make a further determination of [the prisoner] ability to manage his risk, even in challenging and emotional circumstances and if he can adhere to controls on his behaviour in a community setting"*.

Discussion

Eligibility

17. The initiation concerns a panel's decision to direct release following an oral hearing under rule 25(1)(a). The initiation was made prior to the prisoner's release and argues that the condition in rule 28A(5)(b)(ii) is made out. It is therefore an eligible decision which falls within the scope of rule 28A.

Change in circumstances

18. As noted above, the information received is that the prisoner was involved in, and adjudicated for, an assault following the decision by the oral hearing panel. Through the submissions from the Secretary of State, I am told that the POM has spoken with the prisoner and the Safer Custody Team at the prison and this revealed that a fight broke out between parties due to an 'unpaid drug debt of £400', but this did not initially involve the prisoner. It appears that the prisoner became involved as he wanted to protect his cell mate (the debtor) and so hit the other prisoner. The prisoner maintains that he knew nothing about the debt but was 'protecting a friend'. It is not clear to me how much of this information has come from the prisoner or from others. It was noted in the panel's written reasons that his associates are relevant to risk. It is also noted that the prisoner told the panel he committed the index offence due to owing money on a drug debt.

19. In addition, there have been further security entries since the oral hearing. The oral hearing panel had a dossier containing security reports up to 14 March 2022. It is not clear from the decision reasons what the panel was told about entries since then. The updated report contains 12 further entries, 5 of those since the date of the oral hearing. Those entries detail allegations of other violence, although some suggest the prisoner as the potential victim, and allegations of drug use and supply.
20. In determining the application for set aside, I will first consider whether the events described above would have affected the panel's decision to direct the prisoner's release. I take into account the continued support for release from the COM. I do not know whether the POM remains supportive.
21. The new information provides evidence to suggest that the prisoner still has a willingness to use violence and this was a risk factor identified by the panel in its decision. It also provides evidence to suggest there remain issues regarding who he associates with. From the panel's written reasons, it is clear that it placed weight on his improved behaviour since April 2022 and his improved ability to manage himself. This further adjudication and the security concerns provide evidence to the contrary and are therefore very relevant to his risk and risk management.
22. In light of these developments, I am satisfied that the direction for release would not have been given if the events detailed, in particular the adjudication for violence, had taken place before that direction was given.
23. Having decided that panel's decision to direct release would have been affected, I must also consider whether it is in the interests of justice for its decision to be set aside. I am satisfied that it is in the interests of justice for the panel's decision to be set aside. In my opinion, the interests of justice would not be served if the release of a prisoner with multiple convictions for violence took place in the knowledge that he has committed a further act of violence without exploration of the same.

Decision

24. For the reasons I have given, the final decision of the panel dated 15 July 2022 should be set aside.
25. I must now consider two matters under rule 28A(9). First, whether the case should be decided by the previous panel or a new panel and second, whether it should be decided on the papers or at an oral hearing.
26. The previous panel has the great benefit of having prepared and heard the case, carefully considering the evidence before it at the time, reaching and documenting its decision. It is best placed to consider the case again, and I direct that it does so.
27. On the evidence before me, I direct that the case should be decided on the papers, unless the panel considers that an oral hearing would be preferable, in which case it may set its own directions after the case has been remitted back to it for further consideration.

Cassie Williams
8 September 2022

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