

[2023] PBSA 13

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

Application

1. This is an application by the Secretary of State for Justice (the Applicant) to set aside the decision made by an oral hearing panel dated 21 October 2022 to direct the release of Rattigan (the Respondent).
2. I have considered the application on the papers. These are the oral hearing decision, the dossier, and the application for set aside (23 February 2023).

Background

3. The Respondent received a sentence of life imprisonment on 8 December 1999 following conviction for murder. His tariff expired in December 2016.
4. He was released on licence in August 2021 (following an oral hearing) but recalled in September 2021.
5. The Respondent was aged 22 at the time of sentencing. He is now 46 years old.

Application for Set Aside

6. The application for set aside has been drafted and submitted by the Public Protection Casework Section (PPCS) acting on behalf of the Applicant.
7. The application for set aside submits further information which, it is argued, affects the risk management assessment, and which came to light after the panel made its decision. It is argued that the panel may not have reached the same decision had this new information been known.
8. The content of the application will be considered in the **Discussion** section below.

Current Parole Review

9. The Respondent's case was referred to the Parole Board by the Applicant in September 2021 to consider whether to direct his release. If release was not directed, the panel was asked to consider whether he was ready to be moved to open conditions. This is his fourth parole review.



10. The case proceeded to an oral hearing on 17 October 2022 before a two-member panel. The Respondent was legally represented throughout the hearing. Oral evidence was given by the Respondent's Prisoner Offender Manager (POM), his Community Offender Manager (COM) and a HMPPS psychologist.
11. The panel directed the Respondent's release in a provisional decision dated 21 October 2022.
12. As the Respondent is serving a life sentence, the panel's provisional decision was eligible for reconsideration for 21 days thereafter. With no application for reconsideration having been received, the panel's decision became final on 11 November 2022.

The Relevant Law

13. 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.
14. The types of decisions eligible for set aside are set out in rules 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)).
15. 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 made if information that had not been available to the Board had been available, or
 - c) a direction for release would not have been made 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

16. No submissions were received on behalf of the Respondent within the seven day timeframe set out in rule 28A(6)(c). A reminder email was sent on day six.

Discussion

Eligibility

17.The application concerns a panel’s decision to direct release following an oral hearing under rule 25(1)(a). The application was made prior to the Respondent being released and argues that the condition in rule 28A(4)(b)(ii) is made out. It is therefore an eligible decision which falls within the scope of rule 28A.

New information/change in circumstances

18.The application sets out a number of points which can be summarised as follows:

- a) The Respondent has refused to be released to psychologically supported designated accommodation;
- b) The COM has referred the Respondent to alternative psychologically supported designated accommodation, but the Respondent has refused to engage with the assessment which is a pre-requisite for him to be offered a place;
- c) The COM has applied to other psychologically supported designated accommodation providers to see if they would accept the Respondent without an assessment, but he has made it clear that he will not engage and is therefore unlikely to be accepted;
- d) The Respondent will not discuss the matters with his COM remotely and is said to be demanding an in-person visit;
- e) There is no accommodation available that will meet the licence requirements;
- f) A referral to an intensive risk management service has been withdrawn as the Respondent is unwilling to engage; and
- g) The Respondent says he does not want to be released.

19.In consequence of the above, it is submitted that the Respondent’s refusal to engage elevates his risk of harm to a level that cannot be managed in the community and therefore the decision should be set aside.

20.In directing the Respondent’s release, the panel noted concerns about his attitude towards his COM and the probation service. However, it further noted that he had an opportunity to build a positive relationship with his COM with the support of the intensive risk management service and that he had the additional support afforded by psychologically supported designated accommodation.

21.Although the panel noted the view of the prison psychologist that psychologically supported designated accommodation was beneficial but not necessary, it nonetheless specifically directed his release to psychologically supported designated accommodation.

22.The panel also notes that the Respondent did not wish to go to psychologically supported designated accommodation in [redacted]. His refusal to do so after the hearing cannot therefore be said to be a change in circumstances.

23.However, it now appears that the Respondent is not willing to go to *any* psychologically supported designated accommodation. This was a matter that was specifically and clearly stated in the panel’s directions for release and the associated licence conditions set out within its decision. Although the panel did not specifically

explore the Respondent's attitude towards alternative accommodation, it is very clear from its decision that it considered psychologically supported designated accommodation to be an essential part of the release and risk management plan.

24. In light of this, I conclude that the Respondent's refusal to entertain any such accommodation as a change in circumstances for the purposes of rule 28A.

25. I must now consider whether this would have affected the panel's decision. It is difficult for me to see a situation in which any panel that considered specialist accommodation to be an essential component of the release plan would have directed release in the knowledge that a prisoner flatly refused to be released to such accommodation (regardless of its geographical location).

26. As a result of the Respondent's stance, the Applicant cannot discharge the duty to give effect to the panel's release direction as soon as is reasonably practicable. While it is open to the Applicant to seek a licence variation to remove the requirement for the release accommodation to be psychologically supported, doing so would fail to acknowledge the Respondent's desire seemingly to effect release on his own terms rather than those considered necessary by the panel for public protection.

27. Having decided that the panel's decision to direct release would have been affected, I must finally consider whether it is in the interests of justice for its decision to be set aside.

28. I am satisfied that it is in the interests of justice for the panel's decision to be set aside. The interests of justice would not be served if the release of a prisoner for whom specialist accommodation was considered necessary for public protection took place to mainstream designated accommodation simply because he refused to engage with the arrangements necessary for his release.

Decision

29. For the reasons I have given, the application is granted, and the decision of the panel dated 21 October 2022 should be set aside.

Stefan Fafinski
9 March 2023