

[2023] PBSA 73

Application for Set Aside by West

Application

1. This is an application by West (the Applicant) to set aside the decision made by a Panel of the Parole Board (the Panel) following an oral hearing resulting in a refusal to direct his release.
2. I have considered the application on the papers. These are the dossier, currently comprising 257 pages, the oral hearing decision letter (DL) dated 19 September 2023 and the application to set aside dated 10 October 2023.

Background

3. The Police National Computer (PNC) record reveals that on 7 June 2021 the Applicant was sentenced, upon his guilty pleas, to a total of 35 months imprisonment for burglary with intent to cause criminal damage, making a threatening communication, driving whilst disqualified and criminal damage x3, all offences being committed on 25 April 2021.
4. It would also appear from the PNC that, subsequently, on 26 August 2021 he received concurrent sentences of imprisonment totalling 16 months for offences of dangerous driving and driving whilst disqualified committed on 21 March 2021.
5. The Applicant has a criminal record of convictions for 47 offences including 7 counts of driving whilst disqualified, 3 counts of dangerous driving, aggravated vehicle taking and has either breached or failed to comply with court orders on 10 occasions. In addition, he has a number of convictions for violence and criminal damage.
6. The Applicant was released on licence on 5 July 2022 and recalled on 21 July 2022 after he was seen and photographed the previous day in an area from which he was excluded by licence condition. He was returned to prison on 27 July 2022. The Applicant's sentence expires in March 2024
7. This was the first review since recall.
8. The Panel analysed the Applicant's offending in this way:



"There is an established pattern of domestic violence in this case involving at least two previous partners before the index offences. Some of his violence has involved men, but there is clear evidence of poor emotional management, particularly, but not exclusively when a relationship is breaking down, a desire to gain control through the use of violence, threats, intimidation which includes property damage. Alcohol appears to [be] a contributory, albeit not a causal, factor in this case. There is some evidence of jealousy, grievance thinking and there is a high level of recklessness shown by [the Applicant] tendency towards driving when under the influence, and driving dangerously, placing members of the public and police at risk of serious harm.

The index offences are part of the established pattern of offending set out above. The victim was [the Applicant] estranged partner of some six months. The index offences occurred over a period of approximately two weeks. [the Applicant] sent a threatening message to the victim, Ms T-C suggesting he was waiting for her and her partner. When she arrived at home with her young son, she saw [the Applicant] throwing bricks causing her car window and kitchen window to smash, and he threw bricks at her and the glass door. She hid in the toilet, and he also put a hole in the toilet door. He caused damage to various items of property inside her home before driving off. It was later noted by neighbours that he had caused damage to their vehicles. It would seem that [the Applicant] was intoxicated with alcohol at the relevant time."

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 release. The review was heard on 16 August 2023 and the Applicant was legally represented throughout the hearing. The Panel made no direction for release.

Application for Set Aside

10. The Application for set aside is dated 10 October 2023 and made on behalf of the Applicant, by his solicitors, who seek to argue that there have been a number of errors of fact. No errors of law are relied on. In addition the application refers to "procedural unfairness" which, of course, is not a matter for me when dealing with an application to set aside.

The Relevant Law

11. Rule 28A(1) 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(2), 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 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 (rule 28A(4)(a)) **and** either (rule 28A(5)):

- 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

14. Despite being requested, no comments have been received from the Respondent.

15. The application concerns a Panel's decision not to direct release following an oral hearing under rule 25(1)(b). The application argues that errors of fact are made out for the purposes of rule 28A(5)(a). No specific reference appears to be made to the interests of justice test. As the Panel's decision is now final the application to set aside would appear to be an eligible decision which falls within the scope of rule 28A.

Discussion

16. I have carefully considered the application to set aside and all the documentation before me.

17. The Applicant submits that the Panel's finding that he has not completed specific work to address his relationship problems, reckless behaviour and decision-making, lacks insight into his offending and underestimates the challenge he will face in abstaining from alcohol in the community are all unfounded and that the Panel has misinterpreted the evidence.

18. The Panel acknowledged the Applicant's very positive custodial behaviour and the work and programmes which he has undertaken but the evidence of the Community Offender Manager (COM) was that, during this sentence, he has not completed any accredited offending behaviour interventions or any risk reduction work in relation to his previous relationships/domestic violence, his risky and reckless behaviour whilst driving illegally and with respect to decision-making.

19. It was the assessment of the COM (dossier p.164) that core risk reduction work had not been completed and he was unable to offer assurances that risk could be managed within the community.

20. The Panel noted that the various reasons why it had not been possible for the Applicant to undertake the required work in respect of his relationship problems had been "*explored extensively during the hearing*" (DL 2.12) and the Panel found that it

preferred the evidence of the Prison Offender Manager (POM) on this issue which came from a review of official, contemporaneous records.

21. The reality, therefore, is that the Applicant has not completed appropriate and relevant core risk reduction work and this is a fact about which the Panel, in my view, did not fall into error and was entitled to rely on in finding that there are unaddressed risk factors in the light of the Applicant's long history of violence against women, non-compliance and illegal driving in a manner likely to place members of the public at the risk of serious harm.
22. The Applicant accepted that he has had a problem with alcohol as a "*binge drinker*" and the Panel considered the utility of an alcohol monitoring tag; however it decided, giving clear reasons, that this would not be effective in this case and found that the Applicant lacked insight into his offending and underestimated the challenge he would face in abstaining from alcohol in the future.
23. The application contains further submissions in relation to these findings but fails, in my view, to disclose an error of fact but for which the decision not to direct release would not have been made since these conclusions involve an exercise of judgement by the Panel upon consideration of all the evidence in the case.
24. I have come to the same view in relation to the Panel's findings that, given his history of very poor compliance, the Applicant could not be relied on to disclose future relationships or to comply with external controls to manage his risk. This, again, involves an exercise of judgement upon consideration of the evidence and does not, in my view, involve an error of fact but for which the decision to refuse to direct release would not have been made.

Decision

25. I have carefully considered the application to set aside and the matters relied on. For the reasons I have given I find that this is an application which is without merit and I am satisfied that the Applicant is unable to demonstrate that the Panel fell into error as to fact and the application to set aside is refused.

PETER H. F. JONES
25 October 2023