

[2023] PBSA 47

Application for Set Aside by Glendenning

Application

1. This is an application by Glendenning (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 279 pages, the oral hearing decision (DL) dated 9 June 2023 and the application to set aside dated 29 June 2023.

Background

3. On 7 September 2018 upon his guilty pleas the Applicant was sentenced to a total of 6 years 9 months imprisonment for offences of possessing a sawn-off shotgun, burglary on one occasion and offences of affray, common assault and aggravated vehicle-taking on another occasion ("the index offences").
4. The Applicant was released on licence on 20 July 2021, was recalled on 5 August 2021 but remained unlawfully at large (UAL) until he was returned to prison on 18 August 2021. This was the second review since recall. The Applicant's sentence expires in September 2024.
5. The index offences relate to 2 separate events. In February 2018 he committed a burglary with 2 others at a service station. Shortly afterwards the taxi in which they were travelling was stopped by police and a sawn-off shotgun found in the rear of the vehicle and a knife found on the ground near where they had got out of the taxi. These offences were committed whilst on bail since in October 2017 the Applicant had commandeered a lift by putting the driver in fear and subsequently pushed the victim out of his car and kicked and punched him before driving off and crashing the car, writing it off.
6. Having been released on licence to reside at Approved Premises, the Applicant was recalled within three weeks as he had lost his bedspace due to a number of licence breaches. He remained UAL until police sought to detain him and he responded by wielding a machete, threatening the police and headbutting an officer. Accordingly, on 15 September 2021, he was sentenced to 22 months imprisonment for affray, assaulting an emergency worker and possessing a bladed article.

Current Parole Review

7. 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 7 June 2023 and the Applicant was legally represented throughout the hearing. The Panel made no direction for release.

Application for Set Aside

8. The application to set aside is dated 29 June 2023 and made on behalf of the Applicant by his solicitors who seek to argue that there have been two errors of fact. No errors of law are relied on.

The Relevant Law

9. 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.
10. 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)).
11. 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

12. No representations have been received on behalf of the Respondent.

Discussion

13. 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.

14. I have carefully considered the application to set aside and all the documentation before me. The Applicant relies on 2 errors of fact:

(A) The security report at p. 265 of the dossier confirms that the Applicant provided a positive mandatory drug test for a synthetic substance on 16 April 2023. It is accepted by the Applicant that he provided a positive test but he provides an explanation, which he gave both to his Prison Offender Manager ("POM") and then at the hearing, of entering a neighbouring cell with a prison officer to assist another prisoner who had apparently overdosed on the substance, thus becoming contaminated himself.

The Application confirms (as does the Panel at DL 2.6) that this account was given at the hearing and the POM confirmed that the Applicant had provided the same version to him.

The Panel having considered the evidence found that the Applicant's account lacked credibility, a finding the Panel was obviously entitled to make.

The Applicant's complaint appears to be that the Panel "*should/could have directed a report from the Security Department to verify the information provided by the Applicant.*"

It does not appear that the Panel was asked to direct such a report but, in any event, this raises the issue of the procedure adopted and a failure to provide a fair hearing which are not matters for me in a set aside application.

The Panel heard the evidence on the point and came to its own conclusion as to the Applicant's credibility. I can find no error of fact here.

(B) At 4.5 of the DL it is stated that there is a report that the Applicant's commitment and motivation to complete a course can vary at times. The Applicant boldly asserts that "*there is no report in the dossier to this effect.*"

At p.68 of the dossier the Community Offender Manager reports "*I was informed by HMP Holme House that his commitment and motivation to complete any course can differ at times*". I find no error of fact here.

15. No further errors of fact seem to be relied on. The Applicant's solicitors, however, go on to refer to a number of matters, none of which appear to involve an error of fact but for which a decision not to direct release would not have been made. Put shortly, they amount to efforts to make further submissions and argue additional points in support of the Applicant's stance that he should be released, culminating in the suggestion that I should listen to a recording of the hearing because it was an "*extremely positive hearing*".

16.It is important that legal representatives (and, through them, Applicants) should have a clear understanding of the nature of the test which I have to apply and the purpose and proper content of representations.

17.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
26 July 2023