

[2023] PBSA 28

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

Application

1. This is an application by the Secretary of State for Justice (the Applicant) to set aside the decision made by a panel after an oral hearing (dated 28 November 2022) to direct the release of Chambers (the Respondent). This is an eligible decision.
2. I have considered the application on the papers. These are the oral hearing decision, the dossier, and the application for set aside (dated 10 May 2023). The application also contains a log of actions undertaken by the Respondent's Community Offender Manager. This is undated, but the last action recorded in the document was taken on 24 February 2023. I have also seen a copy of a letter from the Respondent's legal representative to HM Prison and Probation Service dated 3 May 2023.

Background

3. The Respondent received a determinate sentence of imprisonment for five years on 30 July 2018 following conviction for robbery, to which he pleaded guilty.
4. He was automatically released on licence in December 2020. His licence was revoked in May 2021, and he was returned to custody. He was then granted executive release in October 2021, before being recalled for a second time in November 2021.
5. His sentence expires in June 2023.
6. The Respondent was aged 37 at the time of sentencing. He is now 42 years old.

Application for Set Aside

7. The application for set aside has been drafted and submitted by the Public Protection Casework Section (PPCS) acting on behalf of the Applicant.
8. The application for set aside submits further information 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.
9. The content of the application will be considered in the **Discussion** section below.

Current Parole Review



3rd Floor, 10 South Colonnade, London E14 4PU



www.gov.uk/government/organisations/parole-board



info@paroleboard.gov.uk



[@Parole_Board](https://twitter.com/Parole_Board)



0203 880 0885

10. The Respondent's case was referred to the Parole Board by the Applicant to consider whether to direct his release. This is the Respondent's first parole review since his second recall.
11. The case proceeded to an oral hearing on 12 September 2022 before a single-member panel. Evidence was taken from the Respondent, his Community Offender Manager (**COM**), and his Prison Offender Manager (**POM**). The Respondent was legally represented throughout the hearing.
12. The case was considered on the papers on 2 November 2022 by a single-member panel. It adjourned for further information regarding the proposed release and risk management plan. Following receipt of this information and written closing submissions on behalf of the Respondent, the panel directed the Respondent's release. It specifically directed release to a particular named rehabilitation facility (the **designated rehab**).

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 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)).
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. Representations on behalf of the Respondent argue that there has not been a change in circumstances. It is submitted that the precise accommodation was not so central to the decision that the panel would not have directed release to a suitable alternative rehabilitation facility if one had been available.

Discussion

17. The application notes that the Applicant appears to have been unable to give effect to the direction for release to the designated rehab. The COM was notified (after the decision had been made) that the designated rehab would not offer the Respondent a placement due to a previous arson conviction. The Respondent's list of previous convictions shows that he pleaded guilty to, and was convicted of, arson in 2006. He received a suspended sentence (28 weeks suspended for two years) and an unpaid work order.
18. It is said that the COM has since contacted six other rehabilitation facilities, none of which could offer the Respondent a placement.
19. As such, the Applicant argues that there is no suitable release accommodation available, and this constitutes a change in circumstances from the position at the hearing. The COM report directed after the hearing is clear that, although the desired release accommodation was the designated rehab, a referral had been submitted but a placement date was not yet available. The report does not say that the referral to the designated rehab had been accepted, although it did not indicate any barriers to acceptance (and did not mention the arson conviction as a potential stumbling block).
20. It could therefore fairly be said that the panel was premature in directing release to the designated rehab without firm confirmation that the Respondent had been accepted (even if no fixed date were available).
21. Having considered the evidence before it at the time, the panel made a direction for release which is binding on the Applicant. In doing so, the panel concluded that it was not necessary for the Respondent to remain in prison. The wording of the release direction made it clear that release was directed to the designated rehab on the assumption that the designated rehab would be available. It is not, and it appears that no suitable alternative has been found.
22. It is not for me to say whether or not I think the COM has made sufficient effort in seeking alternative accommodation.
23. The Respondent's position is that the availability of the designated rehab is immaterial to the panel's risk assessment and the panel would have directed release to a suitable alternative.
24. If the position that the designated rehab might fail had been put to the panel, then the obvious next step would have been for the panel to ask whether any other options might be suitable and for referrals to be made.
25. The fact that there is still no suitable release accommodation does not change the risk assessment. There is no change in circumstances.
26. Moreover, I would not have found that set aside would have been in the interests of justice. To have done so would have released the Applicant from a binding obligation to release the Respondent simply because it was difficult to fulfil. The Applicant must

give effect to the direction of the Parole Board as soon as is reasonably practicable in all the circumstances. While the circumstances of this case mean this may take more time than usual, this is not a reason to set aside the release decision.

27.If alternative release accommodation is found between now and the Respondent's sentence end date, a licence variation can be sought in the usual way.

Decision

28.For the reasons I have given, the application is refused, and the direction for release stands.

Stefan Fafinski
22 May 2023