

[2023] PBSA 40

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

Application

1. This is an application by the Secretary of State for Justice (the Applicant) to set aside the decision not to direct the release of Daley (the Respondent). The decision was made by a panel after an oral hearing. This is an eligible decision.
2. I have considered the application on the papers. These are the dossier, the oral hearing decision (dated 17 March 2023), and the application for set aside (dated 2 June 2023).

Background

3. On 25 January 2019, the Respondent received a determinate sentence of imprisonment for six years following conviction for attempted robbery. His sentence end date is in June 2024.
4. The Respondent was aged 46 at the time of sentencing. He is now 51 years old.
5. The Respondent was most recently released on licence on 28 March 2022 after a fixed-term recall. His licence was revoked on 15 June 2022, and he was returned to custody on 21 June 2022. This is his second recall on this sentence and his first parole review since recall.

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 there is further information constituting a significant change in circumstances 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



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9. The Respondent's case was referred to the Parole Board by the Applicant to consider whether to direct his release.
10. An oral hearing took place on 9 March 2023 before a single-member panel. Oral evidence was taken from the Respondent's Prison Offender Manager (**POM**), his Community Offender Manager (**COM**) and the Respondent. The Respondent was legally represented throughout the hearing. The Applicant was not represented by an advocate.
11. The panel directed the Respondent's release.

The Relevant Law

12. Rule 28A(1)(a) of 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.
13. 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)).
14. 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 given if information that had not been available to the Board had been available, or
 - c) a direction for release would not have been given 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

15. The Respondent has submitted no representations in response to this application and the deadline for representations has passed.

Discussion

16. The Applicant sets out the new information as follows:
 - a) On 27 March 2023, the Respondent was found unconscious in his cell, apparently under the influence of illicit substances. This required hospitalisation.
 - b) On 26 April 2023, the Respondent was reported to have been aggressive and verbally abusive on a call to the probation office.

- c) On 25 May 2023, the Respondent had been involved in two incidents in which he threatened another prisoner with violence and endangered the health and safety of staff. He was regressed to the basic regime.
- d) On 27 May 2023, the Respondent had an adjudication hearing in respect of each incident. Both were held proven.

17. The Applicant argues that the new information is evidence of the Respondent's ongoing aggressive behaviour towards prisoners and staff and, as such, is concerned that the proposed risk management plan would no longer be able to manage his risks on release. The Respondent's motivation to comply is also questioned.

18. As previously noted, the Respondent has not offered any submissions in response to these allegations.

19. In directing release, the panel noted that, at the time of the hearing, the focus in supervision would be on thinking and behaviour, rather than violence which did not present as the Respondent's most significant issue. It was argued at the time that he had been abstinent and well behaved. The panel considered him to have used his time in prison well and had not presented a control difficulty.

20. The panel's decision to direct release appears to have been primarily founded on a lack of violence, abstinence from substance misuse, and compliance. The new information calls all those matters into question and represents a clear change in circumstances.

21. I am satisfied that the panel would not have made a direction for release had it been aware of the change in circumstances relating to the prisoner.

Decision

22. For the reasons I have given, the application is granted, and the decision of the panel dated 17 March 2023 is set aside.

Stefan Fafinski
4 July 2023