

[2023] PBSA 78

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

1. This is an application by the Secretary of State for Justice (the Applicant) to set aside the decision to direct the release of Lander (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 18 October 2023), the application for set aside (dated 6 November 2023), an undated referral from a drug advisory service and details of an adjudication from Digital Prison Services.

Background

3. On 27 August 2021, the Respondent received a determinate sentence of imprisonment for three years following conviction for robbery, assault by beating of an emergency worker and burglary with intent to steal. His sentence end date is reported to be in April 2024.
4. The Respondent was aged 29 at the time of sentencing. He is now 31 years old.
5. The Respondent was automatically released on licence on 10 June 2022. His licence was revoked on 29 January 2023, and he was returned to custody the following day. This is his first 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

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 17 October 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.

Discussion

16. The Applicant sets out the new information as follows:

- a) On 27 October 2023, the COM advised the Applicant that, after receiving the panel's decision on 18 October 2023, the Respondent had been found under the influence of a substance on 19, 26 and 27 October 2023.
- b) On 25 October 2023, the Respondent underwent a mandatory drug test (**MDT**). On 6 November 2023, the results proved positive for detected synthetic cannabinoids. He was subject to adjudication and received 10 days cellular confinement. At the time of the application for set-aside, he was located in the segregation unit.
17. The Applicant argues that the new information is evidence of the Respondent's ongoing drug misuse and, as such, is concerned that the proposed risk management plan would no longer be able to manage his risks on release. The Applicant notes that the panel's decision referenced a period of drug-free improved behaviour.
18. In directing release, the panel noted that, at the time of the hearing, the Respondent's risks were linked (amongst other things) to substance misuse which "*appeared to be currently under control*". It concluded that he was likely to comply with the conditions of his licence "*because he has demonstrated a period of drug-free improved behaviour, although short*".
19. The panel's decision to direct release appears to have been primarily founded on abstinence from substance misuse. The new information calls all those matters into question and represents a clear change in circumstances.
20. 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. I am also satisfied that it is in the interests of justice for the decision to be set aside, since those interests would not be served by releasing a prisoner for whom substance misuse is a known risk factor who returned to drug-taking in custody almost immediately after his release had been directed.

Decision

21. For the reasons I have given, the application is granted, and the decision of the panel dated 18 October 2023 is set aside.

Stefan Fafinski
21 November 2023