

[2024] PBSA 84**Application for Set Aside by Marsh****Application**

1. This is an application by Marsh (the Applicant) to set aside the decision made by a Member Case Assessment (MCA) paper panel of the Parole Board dated 17 October 2024 not to direct the Applicant's release.
2. I have considered the application on the papers. These are the decision letter, the dossier, the application for set aside (dated 24 November 2024), and a response from the Public Protection Casework Section (PPCS) on behalf of the Secretary of State (the Respondent) dated 3 December 2024, all provided via email.

Background

3. The Applicant was sentenced to 97 months imprisonment which was varied on appeal to 75 months for the offence of conspiracy to commit robbery. This offence was committed on bail. The Applicant was associated with a gang of armed robbers involved in the theft of thousands of pounds from shops, travel agents and a hotel in the Greater Manchester area. On 29 January 2018, the gang smashed their way into a travel agent, stealing over £2,000 in mixed currency before escaping. The Applicant was responsible for providing a car for the gang, according to Court reports. He was not found to be one of the main perpetrators and received a lesser sentence than most of his co defendants. At the time, the Applicant was still subject to a one year sentence for stealing over £6,700 cash from the pub where he worked. The Applicant does have other relevant matters recorded against him, including other convictions for violence (battery). The index offence represented a significant escalation in the seriousness of the Applicant's offending, however.
4. The Applicant was released automatically for the third time on this sentence, on the 8 February 2024 but recalled back into prison on the 7 August 2024 for failing to attend appointments as directed and concerns that he was not residing as directed. There were also concerns that the Applicant was not attending appointment with Substance Misuse Services and that he had lapsed back into drug misuse following a positive drug test for cocaine on 19 April 2024.

Application for Set Aside

5. The application for set aside has been provided by those instructed on the Applicant's behalf and was served on the Parole Board by email on the 28 November 2024.



6. Legal submissions state that the decision not to release would not have been made but for an error of fact, namely that the panel relied on incorrect/inaccurate information when coming to its determination. Those instructed also argue that the panel made an error in law by failing to adjourn the Applicant's case so that proper instruction could be taken before concluding the case on the papers.

Current Parole Review

7. The Applicant's case was referred to the Parole Board by the Respondent to consider whether to direct re-release.
8. The case was considered by a Single Member of the Parole Board at the Member Case Assessment stage (MCA) on the 17 October 2024 and concluded by way of a written decision on the papers. The panel did not direct the Applicant's release, although it intimated that had there been more time before the Applicant's sentence end date (SED) it would have considered sending the Applicant's case to an oral hearing. The Applicant's SED is shown to be March 2025. (Current Parole Board guidance states that cases with less than 26 weeks left until SED ought not to be sent to an oral hearing unless there are exceptional circumstances to do so).
9. The paper decision was issued on the 21 October 2024.
10. The panel held the Applicant's recall to have been appropriate.

The Relevant Law

11. Rule 28A(1)(a) of the Parole Board Rules 2019 (as amended by the Parole Board (Amendment) Rules 2024) (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.
12. The types of decisions eligible for set aside are set out in rules 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)).
13. 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

14. The Respondent confirmed on the 3 December 2024 that they will not be submitting representations.

Discussion

Eligibility

15. The application concerns a panel's decision not to direct release following a paper review under rule 25(1). The Applicant argues that the condition in rules 28A(1) and 28A(4)(b) are made out. I agree with this submission. It is therefore an eligible decision which falls within the scope of rule 28A.

The test for set aside

16. In determining the application for set aside, I must consider the impact of the submissions made by those representing the Applicant on the panel's decision not to release the Applicant. This is a two stage process, (i) firstly, do I consider there to be an error of fact or law (ii) if so, would a direction not to release have been made if that information had been known.

17. In relation to the Applicant's submission that the decision contains an error of fact I note that at the time of the Applicant's review the panel had only received brief legal submissions. These submissions did raise concerns about the sufficiency of information available and sought a four week adjournment to take further instructions and to seek clarification on certain matters. The panel did not acquiesce to this request but went ahead and concluded the Applicant's case on the papers. At that time the panel relied on the information it had available to it, in good faith, I have no doubt. It is right to say that those instructed did not raise any obvious areas of dispute in their original submissions.

18. However, following the parole review those instructed did take more detailed instructions and have subsequently confirmed, in their set aside application that the Applicant disputes certain information contained within the decision, including the appropriateness of his recall. The Applicant also disputes ever admitting to offences for which he has not been convicted. (It is reported that the Applicant has previously disputed this information and sought to have it removed from his papers).

19. This matter is therefore nuanced, the panel was plainly cognisant that there was inadequate time to convene an oral hearing before the Applicant's SED in March 2025, and rightly relied on the information available to them at the time of their review (the dossier and legal submissions). The panel was also aware that certain information was missing from the papers and spoke of the need to '*hear evidence from [the Applicant] in person about his behaviour in prison*'. However, I cannot find the panel decision itself was based on an error of fact because the panel was not aware of the discrepancies when it completed its review. The facts were accurate at that time.

20. The question then turns to whether the panel did err by failing to adjourn for the additional information requested by those instructed before concluding its review. In this regard I have to find that the panel did so err. The panel was aware that those instructed had not had time to take proper instructions. It was also aware that there would be inadequate time to convene an oral hearing before the SED and that the Applicant's review would have to be considered on the papers. In such circumstances, given that the Applicant was not going to be afforded an oral hearing, on balance, I find that, in fairness, the panel ought to have adjourned for the information requested in the legal submissions before concluding the case on the papers.

21. Having made such a finding, I must finally consider whether it is the interests of justice for the decision to be set aside.

22. I am so satisfied on all the evidence before me.

Decision

23. The decision of the panel of the 17 October 2024 should be set aside.

Heidi Leavesley
18 December 2024