the Parole Board
working with others to protect the public

[2024] PBSA 12

Application for Set Aside by Hassan

Application

1. This is an application by Hassan (the Applicant) to set aside the decision not to direct his release. The decision was made by a panel after an oral hearing on 11 January 2024. This is an eligible decision.

2. I have considered the application on the papers. These are the dossier (consisting of 360 pages), the oral hearing decision (dated 18 January 2024), and the application for set aside (dated 7 February 2024).

Background

3. On 11 May 2012, the Applicant received a determinate sentence of imprisonment for 66 months following conviction on two counts of possession of a controlled drug (class A) with intent to supply to which he pleaded guilty. On 4 April 2014, he received a further consecutive ten year sentence (varied to eight years on appeal) following a further conviction for possession of a controlled drug (class A) with intent to supply.

4. The Applicant was aged 14 at the time of sentencing. He is now 25 years old.

5. The Applicant was automatically released on licence on 1 March 2019. His licence was revoked on 23 August 2019, and he was returned to custody on 10 March 2020. His sentence ends in November 2025. This is his fourth parole review since recall.

Application for Set Aside

6. The application for set aside has been drafted and submitted by solicitors acting for the Applicant.

7. It submits that there has been a number of errors of law and fact.

Current Parole Review

8. The Applicant's case was referred to the Parole Board by the Secretary of State (the Respondent) to consider whether to direct his release.

9. The case proceeded to an oral hearing on 11 January 2024 before a single-member panel. The panel heard evidence from the Applicant, his Prison Offender Manager (**POM**), and his Community Offender Manager (**COM**). The Applicant was legally

represented throughout the hearing. The Respondent was not represented by an advocate.

10. The panel did not direct the Applicant's release.

The Relevant Law

11. 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.

12. 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)).

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 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

14. The Respondent has offered no representations in response to this application.

Discussion

15. It is first argued on behalf of the Applicant that there has been an error of law in "*beginning with the risk management plan and working backwards".* Reference is drawn to *R (Pearce) v Parole Board* [2023] UKSC 13 which, it is said, establishes that the statutory test must always be the Board's focus. Although *Pearce* was entirely concerned with the Board's approach to dealing with allegations, it is self-evident that, if there is a statutory test, then it is this which must be applied.

16. The statutory test is correctly set out in the cover sheet of the decision and again in the final part of its conclusion. It cannot therefore be sustainably argued that the wrong legal test was applied by the panel, which would have amounted to an error of law. The application is suggesting that the approach to answering the question of law was, in some way, flawed, by considering whether the proposed risk management plan would be effective. It is argued that the approach should be holistic and not sequential.

17. However, it is not only the risk management plan that was considered in the panel's conclusion. Aside from the panel's legitimate view that the plan had limited external controls, it also found that the Applicant did not have sufficient internal controls to manage his risk (and thence protect the public). The panel took the view that the Applicant also needed to demonstrate consistent abstinence from drugs and a period of stable and compliant custodial behaviour. It also considered whether there would be adequate warning signs of increasing risk and the likely compliance of the Applicant with any proposed licence conditions. I find no error of law in the test applied by the panel. Moreover, I find no error in the way in which the panel applied that test based on the evidence before it. Even if I had, this would have amounted to procedural unfairness which is explicitly outside the scope of the set aside rule.

18. It is next noted that, after the oral hearing, the panel directed further detail within the risk management plan which was submitted after the hearing. It is said that the Applicant had no opportunity to make further representations upon the content of the revised plan. It is also argued that if the panel still had concerns about the adequacy of the revised plan, it should have adjourned further. No submissions are made about why either point would amount to an error of law. If either of these assertions were true (and I make no finding either way) this would again amount to procedural unfairness rather than an error of law.

19. Finally, it is argued that the decision did not directly discuss or identify the correct approach to the relevant risk period (as set out in *R(SSJ) v Parole Board* [2022] EWHC 1292 (Admin) and *R(Dich) v Parole Board* [2023] EWHC 945 (Admin). That is correct. The cover sheet to Parole Board decisions usually sets out the risk period under consideration. In the Applicant's case, this would be indefinite. However, this omission would only amount to a ground for setting aside the decision if I am satisfied that it made a material difference to the outcome. I am not satisfied that it would have done, and the application is silent on the matter. If the panel concluded, as it did, that risk was not manageable in the short term, it is difficult to see how it would have thought otherwise when considering an indefinite risk period.

20. The application goes on to set out a number of purported errors of fact. However, these can all be characterised as disagreement with the conclusions from the panel's analysis of different parts of the evidence. The panel is entitled to form its opinions on the evidence before it and dismissing those opinions as speculative, missing the point, weak, or inaccurate, does not establish errors of actual fact.

21. Consequently, I am not persuaded by the Applicant's assertions concerning error of law or error of fact.

Decision

22. For the reasons set out above, the application for set-aside is refused.

Stefan Fafinski
15 February 2024