

[2024] PBSA 43

## Application for Set Aside by Owen

### Application

1. This is an application by Owen (the Applicant) to set aside the decision not to direct his release. The decision was made after a paper review by a panel of the Parole Board (the panel). In its written decision dated 13 February 2024, the panel did not direct the Applicant's release. This is an eligible decision.
2. I have considered the application on the papers. These are the dossier, the panel's decision letter, and the application for set aside submitted by the Applicant's legal representative dated 4 July 2024.

### Background

3. On 15 August 2019, the Applicant received a nine year determinate sentence following his conviction for nine offences of sexual activity with a child. The victim was the daughter of his partner. He groomed the victim, met with her regularly, and engaged in sexual activity. The Applicant maintains his innocence, although he pleaded guilty at court to two less serious offences of sexual activity with the same victim. He has denied any penetrative sexual activity but admits to kissing the victim. He claims that when he did so he was unaware of her age. It is noted in the dossier that despite action by others, including the police, to prevent his behaviour, the Applicant had continued to offend against the victim.
4. On 11 August 2023, the Applicant was released automatically, as required by law, and he remained in the community until his recall on 26 September 2023.
5. It was reported in the panel's decision that the Applicant was recalled because he had failed to disclose his relationship. It is reported that he had a relationship with a vulnerable 19 year old woman that his partner had given birth to a child (prior to the relationship commencing) and that the Applicant was living with her and the child.
6. Following his recall, the Applicant was convicted of breaching his Sexual Offences Prevention Order, receiving a six month custodial sentence following a guilty plea at court.
7. The Secretary of State (the Respondent) referred the Applicant's case to the Parole Board for it to decide on whether re-release could be directed.



8. The panel considered the case on the papers and did not direct release. The panel noted risk factors, which could lead to further offending, and that these would include the Applicant's relationships, his use of violence to resolve conflict, his sexual preoccupation, and if he was left unsupervised with children.
9. The panel had been concerned that the Applicant had quickly moved into two consecutive relationships on licence. He was also noted to have breached his licence and his sex offender registration. The panel identified concerns about likely compliance if the Applicant were to be released and that it would be *"vital that he develops the necessary internal controls and coping strategies ..."*.

10. In not directing release, the panel stated:

*"The panel formed the view that his risk has not reduced, that he lacks insight and understanding of the triggers for offending, and he continues to show an inability to consistently utilise internal strengths and skills. He also lacks sufficient internal controls, and that the management of his risk will rely upon external factors such as licence conditions and supervision.*

*His Offender Managers are also not supporting release for the same reason. There is clearly outstanding work to be completed which the panel assesses that he needs to complete ahead of any release on licence.*

*Taking all the evidence in to account, there was no evidence in the dossier, that suggested that [the Applicant] had sufficiently addressed his risk factors to the extent that risk could be managed in the community."*

11. Following its refusal to direct release, the Applicant submitted representations seeking an oral hearing, as he was entitled to do under the Parole Board Rules 2019 (as amended). That application was refused by a Duty Member of the Parole Board on 11 June 2024.

12. The Applicant then made his application to set aside the panel's decision of 13 February 2024.

### **Application for Set Aside**

13. The application for set aside submits that there has been an error of fact and that the decision not to direct release would not have been made but for the error of fact.
14. The Applicant submits that it was alleged that he had failed to disclose his relationship at the earliest opportunity. He disputes that there was ever an allegation that he had failed to disclose the relationship in its entirety.
15. The Applicant also denies staying overnight in the same household as any child or having unsupervised contact with a child.

## The Relevant Law

16. 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.
17. 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)).
18. 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

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

## Discussion

20. The Applicant argues that his recall was not because of any failure to disclose his relationship and that, in any event, he did disclose the relationship.
21. I accept that the recall report in the dossier identifies that the Applicant did disclose the two relationships he had commenced on licence. However, he did not disclose the second relationship in a timely manner. He revealed the relationship on 18 September 2023. The Applicant had told Probation that he believed that the relationship commenced on 16 September 2023, however, the evidence before the panel indicated that it began on 13 September 2023. The Applicant failed to notify Probation at the earliest opportunity.
22. The police spoke with the Applicant's partner and established that he had resided at her property with the young child present without permission from Probation, and that he had done so from 14 September 2023. The panel was entitled to rely on this and it was a relevant consideration in its decision not to direct release.
23. The facts of this case are that the Applicant breached his licence and his Sexual Offences Prevention Order. He received a further conviction as a result of his actions and this led Probation to have concerns about his likely compliance if re-released.

The concerns about risk were not simply focussed on when or if the Applicant disclosed any relationship. I am not persuaded that this was central to the decision of the panel not to direct his release or that if the panel had noted that he had disclosed the relationship that it would have been minded to direct release. The panel's concerns were clearly wider than any relationship disclosure issues. I am not persuaded that any error of fact made a material difference to the panel's decision or that it is in the interest of justice to set aside the decision.

## Decision

24.The application for set aside is refused.

**Robert McKeon**  
**16 July 2024**