

[2024] PBSA 52**Application for Set Aside by Brown****Application**

1. This is an application by Brown (the Applicant) to set aside the decision not to direct his release. The decision was made by a panel after an oral hearing on 30 May 2024. This is an eligible decision.
2. I have considered the application on the papers. These are the dossier of 431 pages, the oral hearing decision (dated 5 July 2024), and the application for set aside (dated 25 July 2024).

Background

3. On 20 September 2016, the Applicant received a determinate sentence of imprisonment for seven years following guilty pleas to robbery, burglary, assault and various motoring offences.
4. The Applicant was aged 27 years old at the time of sentencing. He is now 34 years old.
5. He was automatically released on licence on 4 May 2021. His licence was revoked on 2 July 2021, and he was returned to custody on 3 July 2021. This is his first recall on this sentence, and his second parole review since recall.

Application for Set Aside

6. The application for set aside has been drafted and submitted on behalf of the Applicant by his representatives.
7. It submits that there has been an error of fact in the panel relying on factually incorrect information. The content of the application will be considered in the Discussion section below.

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 30 May 2024 before a 2-member panel, which included a psychologist specialist member. The panel heard evidence from the Applicant, his Prison Offender Manager (**POM**), his Community Offender Manager



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(COM) and an HMPPS psychologist. The Applicant was legally represented throughout the hearing. The panel adjourned for the COM to make further enquiries concerning accommodation. Thereafter the panel considered a further report from the COM and written legal submissions and concluded the review on the papers.

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 argued on behalf of the Applicant that there has been an error of fact. The Applicant sets out six claimed errors of fact in the decision, however I am satisfied having considered them that none amount to errors of fact.

16. It is first said that the Applicant did not set fire to his cell to be manipulative but because he was in fear of his own personal safety. It is a fact that the Applicant set fire to his cell. The reason he gave for doing so is not a fact, it is an explanation that he puts forward. The panel records his response to the question as to why he had set the fire, at paragraphs 2.11 and 4.8 of the decision. The reason he gives as to why he set the fire was "*because he was not allowed out of his cell otherwise he would have responded with violence*". That answer can be described as amounting

to an attempt to manipulate his situation. It is not a question of fact but a conclusion open to the panel.

17. It is said that the panel placed insufficient weight on the Applicant's current custodial behaviour. The question of weight to be placed on evidence is a matter for the panel's consideration. In section 2 of the decision letter the panel noted the Applicant's negative custodial behaviour, however the positive aspects of his behaviour were also noted at paragraph 4.2 when discussing conclusions. There is no evidence that the panel placed insufficient weight on this aspect of the evidence and in any event the reasoned conclusion reached by the panel cannot be said to be an error of fact.
18. It is stated that the Applicant's (improved) custodial behaviour was not simply due to a change of environment but a change in attitude. Whilst the panel does not use that terminology it has clearly noted that there has been a change in attitude, as in paragraph 4.4 the decision notes that the Applicant enjoys his job role, has a sense of self-worth, speaks with eloquence and pride of his situation, has a feeling of belonging and enjoys positive family and staff relationships, these are all factors reflecting his attitude. There is no error of fact in their analysis or conclusions.
19. It is said that given the job he does, the Applicant encounters challenging situations daily which have not affected his behaviour as evidenced by his status. This statement is not rejected by the panel and does not amount to an error of fact.
20. It is said that the professionals agreed that there was no core risk reduction work outstanding. This is a comment on the evidence and does not amount to an error of fact.
21. Finally, it is said that a robust risk management plan is proposed making it unnecessary for the Applicant to remain confined for the protection of the public. This does not amount to an error of fact but a disagreement with the panel's conclusions. In sections 3 and 4 of the decision letter, the panel sets out clearly why it does not consider the risk management plan with other protective factors would be sufficient to offer the public the protection needed to direct release. The panel has clearly set out its reasons for its conclusion, none of those reasons are based on errors of fact.
22. None of the matters raised amount to errors of fact. They are comments, disagreements with the panel's conclusions and attempts to re-argue matters raised in the legal submissions already presented to the panel in writing which have been carefully considered and rejected by the panel for the reasons given.

Decision

23. The application for set aside is refused.

Barbara Mensah
07 August 2024