

[2024] PBSA 61**Application for Set Aside by McGreal****Application**

1. This is an application by McGreal (the Applicant) to set aside the decision to direct his release. 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 14 August 2024), the application for set aside (dated 6 September 2024).

Background

3. On 28 March 2023, the Applicant received a total determinate sentence of imprisonment for 27 months following conviction for stalking involving fear or violence. He also received convictions for violent disorder (six months consecutive), two counts of breaching a restraining order (13 months concurrent on each), sending a threatening communication (14 months concurrent) and criminal damage (8 weeks concurrent). He pleaded guilty to all charges.
4. His sentence expires in January 2025.
5. The Applicant was aged 30 at the time of sentencing. He is now 31 years old.
6. The Applicant was automatically released on licence on 24 August 2023. His licence was revoked on 13 October 2023, and he was returned to custody on 16 October 2023. This is his first recall on this sentence and his first parole review since recall.

Application for Set Aside

7. The application for set aside has been drafted and submitted by solicitors on behalf of the Applicant.
8. The Applicant states that he wishes to remain in custody until the end of his sentence. He does not want to reside in designated accommodation and does not want to engage with several of the proposed licence conditions imposed upon him. His legal representative notes that "[w]e have discussed this at length and [the Applicant] is adamant that he does not wish to engage".

Current Parole Review

9. The Applicant's case was referred to the Parole Board by the Secretary of State (the Respondent) to consider whether to direct his release.
10. An oral hearing took place on 31 July 2024 before a two-member panel. Oral evidence was taken from the Applicant's Prison Offender Manager (POM), his previous and current Community Offender Managers (COMs) and the Applicant. The Applicant was legally represented throughout the hearing.
11. The panel directed the Applicant's release subject to an extensive number of additional licence conditions, including non-contact conditions, exclusion zones, engagement in ongoing offending behaviour work, notification of developing relationships and relationship breakdown, residing at designated accommodation with curfew and daily sign-in, drug testing, alcohol monitoring via a tag and polygraph testing.

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 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 offered no representations in response to this application.

Discussion

16. I have considered the requirements of rule 28A and make the following findings:

- a) The Applicant's stated position regarding his refusal to comply with his licence is new information that was not available to the panel at the time the direction for release was made.
- b) The panel would not have given a direction for release if it had known of the Applicant's emphatic position regarding non-compliance.
- c) It is in the interests of justice for the decision to be set aside, since those interests would not be served by knowingly releasing a prisoner who had stated that they had no intention of complying with conditions imposed for the purposes of public protection.

17. The requirements for setting aside the decision are therefore made out.

Decision

18. The application for set aside is granted.

19. I must now consider two matters under rule 28A(8). First, whether the case should be decided by the previous panel or a new panel and second, whether it should be decided on the papers or at an oral hearing.

20. The previous panel has the great benefit of having prepared the case, carefully considering the evidence before it at the time, reaching and documenting its decision. It is best placed to consider the case again, and I direct that it does so.

21. I have also considered whether an oral hearing is necessary considering the principles in *Osborn v Parole Board* [2013] UKSC 61. I do not consider that it is, since there is sufficient evidence before the panel for it to reach a conclusion on the papers.

Stefan Fafinski
30 September 2024