

[2024] PBSA 64

Application for Set Aside by the Secretary of State for Justice in the case of Lowe

Application

1. This is an application by the Secretary of State for Justice (the Applicant) to set aside the decision to direct the release of Lowe (the Respondent). The decision was made by a panel on the papers. This is an eligible decision.
2. I have considered the application on the papers. These are the dossier (135 pages), the decision (dated 15 August 2024), and the application for set aside (dated 5 September 2024). I have also seen email correspondence sent to the Respondent (including photographs) and the Respondent's telephone (PIN phone) records.

Background

3. On 5 January 2023, the Respondent was convicted of engaging in controlling/coercive behaviour in an intimate/family relationship to which he pleaded guilty. He received a 30 month determinate sentence. On the same occasion he received concurrent sentences for battery (six weeks) and driving whilst disqualified (eight weeks), to which he also pleaded guilty.
4. His sentence end date is in May 2025.
5. The Respondent was aged 45 at the time of sentencing. He is now 46 years old.
6. He was automatically released on licence on 20 December 2023. His licence was revoked on 10 May 2024 after failing to attend two probation appointments. He has previously breached his exclusion zone twice and had not properly charged his GPS tag. He was returned to custody on 26 June 2024 after a period of being unlawfully at large.

Application for Set Aside

7. The application for set aside has been drafted and submitted by the Public Protection Casework Section (PPCS) acting on behalf of the Applicant.
8. The application for set aside submits there is further information constituting a change in circumstances which came to light after the panel made its decision. It is argued that the panel would not have reached the same decision had this new information been known.



9. The content of the application will be considered in the **Discussion** section below.

Current Parole Review

10. The Respondent's case was referred to the Parole Board by the Applicant to consider whether or not it would be appropriate to direct his release.

11. The case was considered by a single-member panel on the papers on 15 August 2024. The panel directed the Respondent's release.

The Relevant Law

12. Rule 28A(1)(a) of the Parole Board Rules 2019 (as amended) 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 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

15. The Respondent has submitted representations in response to the application which will be considered in the **Discussion** section below.

Discussion

16. The Applicant notes that on 1 August 2024, the Respondent's Community Offender Manager (COM) received a phone call from the Respondent to ask why his application to have a female (A) added to his PIN phone list had been denied.

17. The dossier lists A as a known adult; the Respondent is assessed as presenting a high risk toward known adults (including A). The Respondent has maintained that A is no more than a friend.

18. The COM is said to have asked the Respondent to clarify the nature of his relationship with A. He said again she is no more than a friend and they are not involved in an intimate relationship. The COM stated that emails and photos sent into the prison suggest the relationship is more serious than a friendship.
19. The Respondent is said to have become increasingly hostile during the conversation with his COM. He also said he is able to have relationships with whomever he wishes, providing he tells his COM. He continued to insist his relationship with A is only a friendship. The COM terminated the call due to the Respondent's hostility.
20. The Respondent's COM no longer considers the proposed risk management plan would be sufficient to manage his risks in the community and no longer supports release. They raise concerns about direct threats made to A in prison correspondence and note that he has a history of breaching civil (restraining) orders. Moreover, the Respondent and A are said to continue to contact each other, which would make risk imminent at the point of release.
21. Representations on the Respondent's behalf disputes that he was in a relationship with A, denies that he was in a sexual relationship with A and is not the father of her unborn child. It is submitted that A has contacted the Respondent's solicitor and stated that, although she did send emails and baby scan photographs to the Respondent, she was not referring to the Respondent in those emails, but was instead referring to an ex-partner of hers. A's email was annexed to those representations.
22. The Respondent acknowledges that he made numerous telephone calls to A. He says these were in relation to the whereabouts of his van and some skips that he owned through his company. He said she did not pick up his calls on occasion and continued to call her until he was able to speak with her.
23. It is also noted that the application for set aside contained incorrect information relating to the Respondent's offending history. This information was removed in a revised application and the Respondent was given additional time to submit representations due to that error.
24. It is accepted that there is new information available, but since A has said she is not in a relationship with the Respondent and her emails and photographs refer to an ex-partner, then the new information would not have affected the panel's decision and therefore that decision should not be set aside. Submissions noted that the allegation regarding the status of the relationship with A cannot be evaluated until it has been investigated (and that would take a considerable amount of time).
25. I have looked carefully at the Respondent's PIN phone records and note the following:
- a) On 16 July 2024, he attempted to call A's number 32 times. Not all of these calls were unanswered: amongst a number of very short call durations there are call lengths of 2m 12s, 2m 24s, 6m 25s, 7m 44s, 4m 7s, 28m 10s and 5m 23s; totalling around 56 minutes.

- b) On 15 July 2024, he attempted to call A's number 29 times. Call durations included 3m 56s, 16m 38s, 3m 5s, 14m 43s, 5m 36s, 2m 13s, 3m 27s, 10m 52s, 5m 52s, 4m 44s, 2m 17s, 5m 25s, 2m 7s, 5m 54 and 3m 24s; totalling around 90 minutes.
- c) There is a similar established pattern of multiple call attempts from the Respondent to A's number with some non-negligible call durations from throughout the PIN phone report.

26. I accept the Respondent says he called A until she answered to make an enquiry about his van and skips. However, the PIN phone evidence appears to show a pattern of repeated call attempts with some been significant conversation times.

27. Turning next to the correspondence between A and the Respondent, I see nothing in the three messages from A (all dated 18 July 2024) that suggests that she was talking about anyone other than the Respondent. All messages are addressed to the Respondent. They talk about "u" and include statements such as:

- a) *"u search my phone like a prick"*
- b) *"u have my heart"*
- c) *"u needs to stay in prison where you belong I don't want you out"*
- d) *"u threatened to beat my baby out of me and kill me and kids"*
- e) *"why would u want something to do with a baby u actually threaten to beat out my belly"*
- f) *"the laws are stepping up and cranking down on women beating abusers like u"*
- g) *"I genuinely do still love u"*
- h) *"it is a shame this child is ur dna".*

28. I accept that A now says the emails referred to what an ex-partner had said to her and that what she wrote was untrue. However, the email evidence appears to show direct communication between A and the Respondent with references to past violence and threats of future violence and phrases which suggest something more than a real friendship.

29. It is not for me to say whether or not I believe the Respondent and/or A's account of events. What I do have to consider is whether the new information would have changed the panel's decision to direct the Respondent's release.

30. I find that it would in that the panel would either have made no direction for release or directed an oral hearing to determine the matters potentially relevant to risk arising from the new evidence.

31. I am also satisfied that it is in the interests of justice for the decision to be set aside, since those interests would not be served by releasing a prisoner convicted of controlling and coercive behaviour within an intimate relationship when there is evidence to suggest that he is in a new intimate relationship with someone who he has called persistently and repeatedly and who has referred to possible past and future violence in correspondence to that prisoner.

Decision

32. For the reasons I have given, the application is granted, and the decision of the panel dated 15 August 2024 is set aside.
33. 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.
34. 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.
35. Finally, I have also considered whether an oral hearing is necessary considering the principles in *Osborn v Parole Board* [2013] UKSC 61. In fairness, the Respondent should be given the opportunity to participate in his review, particularly in a situation like this where there may be discrepancies to resolve. The matter is therefore directed to oral hearing.

Stefan Fafinski
09 October 2024