

[2023] PBSA 15

Application for Set Aside in the case of Briggs

Application

1. This is an application initiated by Briggs (the Applicant) to set aside the decision made by a paper panel (the panel) dated the 15 February 2023 not to direct his release.
2. I have considered the application on the papers. These are:
 - a) The Decision Letter dated the 15 February 2023;
 - b) The dossier, numbered to page 131, of which the last document is the panel's Decision Letter. The panel had a dossier numbered to page 123. I note that the panel's Decision Letter refers to 125 pages, although it would seem that this number included the content pages.
 - c) An application from the Applicant in the form of written representations from his legal representative dated the 8 March 2023; and
 - d) An email from [redacted] Police dated the 7 February 2023, attached to the legal representations, stating that matters against the Applicant have been discontinued.

Background

3. On the 27 May 2022, the Applicant received a determinate sentence comprising of 15 months in custody following his conviction for assault occasioning actual bodily harm (AOABH) (the Index Offence). He was aged 35 at the time of sentencing and was 36 years old when the panel reviewed his case.
4. On the 21 July 2022, the Applicant was released earlier than the automatic release point in his sentence by the Secretary of State under Home Detention Curfew. The Secretary of State revoked his licence and he was recalled to custody on the 28 October 2022 as a result of concerns about the Applicant's alcohol use. Three days before being recalled, the Applicant had been arrested for possession of cannabis and suspicion of an offence of AOABH against a female friend with whom he had been drinking. Police at the time had reported that the Applicant was '*extremely drunk*'.
5. The Applicant's case was considered by the panel on the 15 February 2023. The panel determined that his recall to custody had been appropriate and that he did not meet the test for release. In its Decision Letter, the panel noted concerns about



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how risk might escalate rapidly if the Applicant misused drugs or alcohol in the community. The panel identified a long-standing problem with alcohol and drugs and that the Applicant had returned to alcohol misuse on licence. In the panel's view, the external controls of any risk management plan would be insufficient to protect the public from harm and the panel had not been persuaded that the Applicant would be sufficiently able to understand and manage his own level of risk.

6. It seems that at the time of its decision, there had been nothing further provided to the panel about the police investigation, although it has since been established that the matter had been discontinued. It was of course open to the panel to adjourn and await this information. It was also open to the Applicant and/or his legal representative and/or the Secretary of State to put this information before the panel. No representations were provided to the panel by the parties to the case. The panel did not adjourn and therefore it is reasonable, in my view, to consider that the panel was satisfied that it had sufficient evidence before it to conclude the Applicant's review.

Application to Set Aside

7. In his application, the Applicant submits that:
 - a) The matters for which he was recalled have concluded with no further action being taken by the Police;
 - b) His last drug related offences were over 10 years ago;
 - c) The Applicant didn't seek to minimise his behaviour or the reasons for his recall; and
 - d) The Applicant is willing to engage in work to address his offending behaviour.

The Relevant Law

8. Rule 28A(1) 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. Rule 28A(1) also provides that the Parole Board may seek to set aside certain final decisions on the initiation of the Board Chair.
9. The types of decisions eligible for set aside are also set out in rule 28A(1). Final 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 made the decision on the papers (rule 21(7)).
10. 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 made if information that had not been available to Board at the time of the direction had been so available, or
- c) a direction for release would not have been made 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 Secretary of State (the Respondent)

11. The Respondent has confirmed that he has no representations to make.

Discussion

12. There is no error of law or fact in this case and the Applicant is only able to argue that his release would have been directed had it not been for such an error. His grounds to set aside the panel's decision are based on his view that he does not minimise his behaviour, is willing to engage with offence focussed work, has not committed a drug related offence in over ten years and that the allegation at the time of recall has since been discontinued. Aside from the latter point, the grounds put forward by the Applicant present his views as to why he disagrees with the panel. The panel was entitled, on the evidence, to reach the conclusions it did and the Applicant's grounds do not establish an error of law or fact.

13. The fact that the allegation against him was discontinued was not known to the panel at the time, although as I have established the panel was clearly satisfied that it had sufficient evidence to conclude his review fairly. The concerns raised by the panel would, in my view, have still been established by the evidence regardless of the outcome of the matter. Panels of the Parole Board examine risk related behaviour and are not restricted simply to established convictions. In any event, the fact that there is new information would only be a ground for a decision to be set aside if the panel had directed release. The panel did not direct release in this case.

Decision

14. For the reasons I have given, I am not persuaded that the final decision of the panel dated the 15 February 2023 should be set aside. The application is refused.

Robert McKeon
31 March 2023