

[2023] PBSA 21

## Application for Set Aside by Pickett

### Application

1. This is an application by Pickett (the Applicant) to set aside the decision not 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 (12 March 2023), and the application for set aside (1 April 2023).

### Background

3. On 1 July 2019, the Applicant received a total sentence of imprisonment for 66 months following conviction for dwelling burglary (with intent to steal), wounding/inflicting grievous bodily harm, possessing an offensive weapon in a public place and battery. His sentence expires in September 2024.
4. The Applicant was aged 25 at the time of sentencing. He is now 29 years old.
5. The Applicant was automatically released on licence on 10 December 2021. His licence was revoked on 8 March 2022, and he was returned to custody the following day. This is his first recall on this sentence and his first parole review since recall.

### Application for Set Aside

6. The application for set aside has been drafted and submitted by solicitors acting for the Applicant.
7. It submits that there has been an error of law or fact.

### 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 3 October 2022 before a three-member panel. This was adjourned for further information, including a psychological risk assessment (**PRA**) and various other updated reports. No oral evidence was taken.
10. The hearing reconvened on 7 February 2023. The Applicant was legally represented throughout the hearing. Oral evidence was given by the Applicant's Prisoner Offender



Manager (POM), his current and previous Community Offender Managers (COM) and a HMPPS psychologist.

11. The panel did not direct the Applicant's release.

### The Relevant Law

12. Rule 28A(1) 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(2), 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 offered no representations in response to this application.

### Discussion

16. The application makes a number of points. It states that written closing submissions were provided "*but were not referred to within the decision whatsoever*". Paragraph 4.1 of the decision notes that written submissions were received and considered. The decision does not need to repeat any such submissions in full, and, even if it did, a failure to do so would not constitute an error of law or fact.

17. It is also submitted that the evidence at the oral hearing was not reflected accurately in the decision, and it was therefore not clear whether the evidence had been given due regard.

18. Various examples are given. First, that witnesses confirmed there was no core offending behaviour work required and that this was not reflected in the decision. I do not know whether they did so or not. However, although the decision does not explicitly record the views of the witnesses regarding core offending behaviour work, the panel does set out its own very clear reasons as to why it considers there to be

such work outstanding. There is no evidence of an error of fact regarding the views of witnesses and, in any event, the panel would be entitled to disagree with any such views.

19. It is also stated that the decision does not acknowledge that a positive drug test which came back after the hearing covered a period of time when the Applicant admitted lapsing into drug use. It does, however, note that the Applicant had been keen to impress upon the panel that the test would not be positive. I cannot see that the panel has made an error of fact: the Applicant unquestionably tested positive for drugs. Whether or not this was during the course of a relapse is irrelevant as far as the panel's independent risk assessment is concerned (notwithstanding the psychologist's view that a lapse would not necessarily increase risk).

20. It is finally stated that the panel gave no regard to a lack of violent behaviour in the community or custody after recall. This may be so, but a failure to do so would not constitute an error of fact.

21. Even if I had found any or all of these points to have been an error of fact (which, to be clear, I do not), I cannot, in any case, see that the panel would have reached a different decision but for those claimed deficiencies. The decision reflects the panel's concerns, its own assessment as to why risk reduction work needs to be done in custody, and its view that the Applicant does not have sufficient insight or self-awareness of his own risks and triggers.

## Decision

22. For the reasons I have given, the application for set-aside is refused.

**Stefan Fafinski**  
**19 April 2023**