

[2023] PBSA 62**Application for Set Aside in the case of Hussain****Application**

1. This is an application by the Secretary of State (the Applicant) to set aside the decision made by a paper panel (the panel) dated the 19 June 2023 to direct Hussain's (the Respondent's) release.
2. I have considered the application on the papers. These are:
 - a) The Decision Letter dated the 19 June 2023;
 - b) An application from the Applicant to set aside the panel's decision, dated the 29 August 2023;
 - c) Adjudication paperwork;
 - d) The dossier of written evidence in this case numbered to page 295; and
 - e) A response from the Respondent's legal representative dated the 5 September 2023.

Background

3. On the 8 February 2022, the Respondent received a determinate sentence of two years and two months following his conviction for assault occasioning actual bodily harm (AOABH), criminal damage and breach of a restraining order. The victim was his ex-partner and the Respondent has a history of abusive behaviour in relationships. His sentence expiry date is in February 2024.
4. The Respondent was automatically released on licence on 30 December 2022 and was recalled on 15 February 2023 due to concerns about his behaviour and his poor compliance.
5. The Parole Board reviewed the recall at a paper review and in its Decision Letter of the 19 June 2023 directed the Respondent's release. The panel noted positive reports about the Respondent in custody.

Application to Set Aside

6. The Applicant submits that further information has come to light that affects the risk assessment in this case. It has been reported that the Respondent was placed in segregation on 19 August 2023 due to being involved in a fight with a prisoner and assaulting a prison officer.



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The Relevant Law

7. Rule 28A(1) of the Parole Board Rules 2019 (as amended) (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.
8. 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)).
9. 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 the 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 Respondent

10. The Respondent's legal representative has provided a response from the Respondent where he details an explanation for what took place in custody.

Discussion

11. I have little difficulty in determining that the new information is a relevant consideration and I cannot be satisfied that the panel would have been minded to direct release in this case had this new information been before it prior to it making its decision.

Decision

12. For the reasons I have given, I am satisfied that it is in the interests of justice for the decision of the panel dated the 19 June 2023 to be set aside.
13. I must now consider two matters. 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.
14. Noting the previous panel's knowledge of this case, I consider that the previous panel would be best placed to consider the new evidence and I direct that it does

so. The previous panel has the great benefit of having prepared and considered the case, carefully assessing the evidence before it at the time, reaching and documenting its decision.

15. On the evidence before me, I direct that the case should be decided on the papers, unless the previous panel considers that an oral hearing would be preferable, in which case it may set its own directions after the case has been remitted back to it for further consideration.

Robert McKeon
14 September 2023