

[2024] PBSA 16

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

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 Goddard (the Respondent). The decision was made by a panel after an oral hearing held on 4 January 2024. This is an eligible decision.
2. I have considered the application on the papers. These are the dossier, the oral hearing decision dated 9 January 2024 and the application for set aside dated 12 March 2024.

Background

3. On 26 February 2021, the Applicant received a sentence of 27 months' imprisonment following conviction for assault occasioning actual bodily harm, to which he pleaded guilty.
4. The Applicant was aged 26 at the time of sentencing. He is now 29 years old (he was 28 when his oral hearing was held).
5. He was automatically released on licence on 26 August 2022. His licence was revoked on 8 September 2022, and he was returned to custody on 27 April 2023. There had been an allegation of domestic violence, although this was not proceeded with, he was later convicted only of criminal damage.
6. 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 the Public Protection Casework Section (PPCS) acting on behalf of the Applicant.
8. It submits that there has been a change in circumstances which came to light after the decision to direct the Respondent's release. The application reveals that there was an allegation that the Respondent seriously assaulted another prisoner on 20 January 2024. This was a sustained assault and involved sexual assault and humiliation. The matter is being investigated by the Police.

Current parole review



3rd Floor, 10 South Colonnade, London E14 4PU



www.gov.uk/government/organisations/parole-board



info@paroleboard.gov.uk



@Parole_Board



0203 880 0885

9. The Respondent's case was referred to the Parole Board by the Applicant to consider whether his re-release could be directed following revocation of his licence.
10. The case proceeded to an oral hearing on 4 January 2024 before a single member panel. The panel heard evidence from the Respondent, his Prison Offender Manager (**POM**) and his Community Offender Manager (**COM**). The Respondent was legally represented throughout the hearing.
11. The panel directed the Respondent's release.

The Relevant Law

12. Rule 28A(1)(a) 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. 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 provided a response out of time but it was considered nevertheless. It was made on a Stakeholder Response Form dated 20 March 2024. The Respondent queried why this application was not made until now when the allegation was from January. The Respondent asks that the application be refused, submitting that the investigation may take some time and he can be managed in the community under strict conditions whilst this takes place.

Discussion

16. It is argued on behalf of the Applicant that there has been a change in circumstances. In addition to the outline of the allegation of a serious assault, as set out above, the Applicant has provided an up-to-date assessment from COM. The COM is of the view

that risk cannot be managed in the community given the allegation which was said to have occurred in the controlled environment of a prison. The COM also opines that the risk management plan provided to the panel would now not be capable of managing risk.

17. I am satisfied that the above constitutes a change in circumstances which has occurred since the decision to release was made.
18. In determining the application for set aside, I will first consider whether the events described above would have affected the panel's decision to direct the Respondent's release.
19. The Respondent is assessed as a high risk of serious harm to the public. The panel concluded that the decision to recall him had been appropriate. The panel considered his behaviour in custody since recall. He had been adjudicated for a fight with another prisoner in July 2023. The Respondent told the panel that this was a fight where both parties received black eyes but they are now friends. The panel received evidence in the dossier that there had been mediation between the prisoners and that the adjudication attracted a suspended award which had not been implemented. The panel heard evidence from the POM that the Respondent's behaviour had improved after that and he was enhanced prisoner. The panel also heard evidence that the Respondent had completed courses to address his risk factors including anger management. The panel specifically noted in its conclusion that the Respondent's behaviour had improved, and he was an enhanced status prisoner for the first time, therefore it is clear that this contributed to the decision to release him.
20. Both the COM and POM told the panel that they supported his re-release to designated accommodation. As noted above, as a result of the further allegation of violence, the COM no longer recommends release.
21. The new information provides evidence to suggest the Respondent is continuing to display active risk factors identified by the panel, namely his use of violence, poor temper control and lack of consequential thinking skills. The allegation also potentially reveals further risk factors around the use of sexual violence and humiliation.
22. In light of these developments, I am satisfied that the direction for release would not have been given if the events detailed in the application had taken place before that direction was given.
23. Having decided that the panel's decision to direct release would have been affected, I must also consider whether it is in the interests of justice for its decision to be set aside. Having considered the information, I am satisfied that it is in the interests of justice for the panel's decision to be set aside. In my opinion, the interests of justice would not be served if the release of a prisoner took place in the knowledge he had been alleged to be involved in a sustained attack on another person after receiving the decision to direct his release, and that incident had been considered serious enough to refer it to the police.

Decision

24.The application for set-aside is accepted.

Cassie Williams
25 March 2024