

[2024] PBSA 9

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

Application

1. This is an application by the Secretary of State (the Applicant) to set aside the decision to direct the release of the above-named prisoner, Lloyd (the Respondent). The decision was made by a panel after a paper hearing on 10 November 2023. This is an eligible decision.
2. I have considered the application on the papers. These are the dossier (149 pages, including the release decision), and the application for set aside dated 9 December 2023 but not received by the Parole Board until the 15 January 2024. (The date on the application form must be incorrect since the application refers to information received from the Community Offender Manager (COM) on 14 November 2023 (below).) I have also received handwritten representations from the Respondent.

Background

3. On 5 August 2021, the Respondent received a determinate sentence of 3 years and 6 months imprisonment following convictions for threats to kill, common assault and possession of cannabis committed in July 2021, to all of which he pleaded guilty. His sentence expiry date is in January 2025.
4. The Applicant was aged 22 at the time of sentencing. He is now 24 years old.
5. He was automatically released on licence on 20 April 2023. His licence was revoked on 11 August 2023, and he was returned to custody on 14 August 2023. 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 was drafted and submitted by the Public Protection Casework Section (PPCS) on behalf of the Applicant.
7. It was submitted that there would have been no direction for release had new information that was not available to the Parole Board when the release decision was made. Additionally, there has been such a change in circumstances that, again, no decision for release would have been made had the change occurred before the decision was for release was made.



8. The brief background to the application is as follows:

- a) The new information consisted of a revelation by the COM (received by the PPCS on 14 November 2023 with further information supplied on 20 December 2023) that the Respondent's former partner was pregnant at the time of his recall. He, however, was led to believe this was another male's unborn child conceived during a relationship which had led to the breakdown of that between the Respondent and the former partner. On 16 November 2023 the Respondent disclosed to the COM that there was a possibility that the unborn child was his, and if so, then he wanted to be part of the child's life and take responsibility.
- b) Subsequent enquiries involving Social Services established that the child was due to be born in February 2024 (which rendered it possible that the Respondent could be the father), but that paternity could not be established until after a DNA sample could be examined following the birth of the child and the obtaining of the appropriate court order.
- c) Additionally, Social Services have expressed concern about the Respondent's potential contact with his former partner and the child in view of risks concerning his violent behaviour. They would need to complete a risk assessment which, in itself, may lead to concerns as to how the Respondent might react to that.
- d) In these circumstances (and also having regard to the fact that the Respondent disclosed a new relationship with a female with three children and uncertainty as to how the Respondent might react) the COM wishes to reconsider the risk assessment plan. Whilst, at this stage release may well not be opposed, some changes in the risk management plan are likely to be recommended; potential outcomes might be to include a period at an Approved Premises (rather than release to his mother's address as at present contemplated), and an additional licence condition (additional to those already recommended) to prevent unsupervised contact with children under the age of 18 without prior permission of his supervising officer and/or Social Services.
- e) Additionally, on 14 November 2023, following the release decision, the Respondent was found to be rude and abusive over concerns about clothes parcel he was waiting for from his current partner, threatened staff, refused to return to his cell causing the staff to have to use force for such purpose. Whilst it also appeared that this may all have come about as a result of upsets over the clothes parcel plus his accidental loss of the number of his current partner, concerns remain that this is an exhibition of parallel previous offending behaviour involving impulsivity, recklessness, and inability to manage his temper and emotions.
- f) On the foregoing basis it was submitted that the Respondent's risk of harm is not manageable in the community within the current risk management plan. As such, the release decision should be set aside, and a full re-

examination of the case should be undertaken in order to consider what amendments to the current plan are required.

Current parole review

9. Following the Respondent's recall, his case was referred, in the usual way under s 255C(4) Criminal Justice Act 2003, to the Parole Board by the Applicant to consider whether to direct his release or not.
10. The case proceeded to a paper review Member Case Assessment hearing on 10 November 2023 before a single member panel. The panel had evidence in the form of the dossier (above) which included personal representations from the Respondent as well as the usual reports and assessments.
11. As previously noted, the panel directed the Respondent's release.
12. The panel noted in the written release decision that:
 - a) The Respondent had a history of convictions going back to 2016 when he was aged 16 and convicted of two offences of Police assault. Since then he has managed to accrue further convictions for violence: battery, ABH, affray and assaults on emergency workers. He has also been convicted of making threats to kill (including in the context of an intimate relationship with a then, but subsequently, ex-partner), and of numerous other offences including criminal damage, possession of a bladed article, public order offences, possession of offensive weapons and exposure.
 - b) His life had suffered significant trauma.
 - c) The index offences were committed whilst on licence and involved threats to kill a victim following, it being said, she had made comments to the effect that the Respondent was a sex offender. The Respondent's reaction had been to empty a can over the victim which the victim believed to contain an accelerant (the trial judge said it was petrol) and which the Respondent threatened to set alight and kill her. He was, on arrest shortly after, found to be under the influence of alcohol, and drugs and in possession of a small amount of cannabis.
 - d) He had, during custody, completed and made good progress under the Kaizen programme (a training course addressing the use of violence and sex offending) and showed increased maturity. On his automatic release in April 2023 to reside at an approved premises, he initially engaged well with Probation and gained full-time employment, applying skills learned on Kaizen. Unfortunately, he then, in the following August, failed to attend appointments and his COM learned that his mental health appeared to be deteriorating and that he had been using alcohol resulting in his recall (which he accepted, and the panel concluded, was, in the circumstances, justified).
 - e) Following his recall, there had been no custodial behaviour concerns, he was standard on the IEP scheme and had resumed medication for his mental health. He told his COM that he had been feeling stressed through lack of money and coping with issues with neighbours and his ex-partner, and on impulse had taken to drink. He had slammed his front door too hard, whereupon a glass panel broke.

- f) On the positive side his COM felt that up to this point he had made good progress, understood the wider impact of his behaviour on others, and had a genuine motivation to change.
- g) So far as risk was concerned the Respondent had been assessed as medium risk of re-offending for both violent and non-violent offences but high risk of non-imminent risk of serious harm to the public and known adults and partners, and medium risk to children. The risk management plan (which the panel accepted as "*robust*") included conditions appropriate to support for his mental health issues, alcohol and drug misuse, weekly meetings with his COM, completion of Kaizen consolidation work, drug testing, alcohol abstinence tag, a requirement to disclose developing relationships, and non-contact with the index offence victim.
- h) The COM had recommended release noting a continued offer of employment, a good working relationship with her and his completion of Kaizen and a manageable risk management plan.
- i) Accordingly, the panel recommended release on that basis.

The Relevant Law

13. Rule 28A(1)(a) of the Parole Board Rules 2019 (as amended by the Parole Board (Amendment) Rules 2022) 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.

14. 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 (as here) (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)).

15. 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

16. I mentioned above that I had also received representations from the Respondent in response to this application.

17. In them the Respondent did not seek to dispute the alleged facts forming the basis of the application for set aside. To be fair, neither did he admit them. Rather he set out the progress he has made in custody in terms of the courses he has completed,

and education received. He indicated he wanted to better himself for his offspring and what is best for the child “*with help and support*”. This is a telling recognition that he needs (and accepts that he needs) such help and support.

Discussion

18. I have no doubt that the alleged factual basis for the application falls well within rule 28A and that the justice of the case also requires the decision to be looked at again. The revelation of a possible paternity issue involving the Respondent was plainly not known to the Panel at the time of the decision to release. The incident involving the Respondent’s loss of self-control in the prison occurred after the decision. Both and, indeed, either, of these matters would have caused any panel to want to examine the allegations and establish the truth or otherwise of them and in light of the findings thereon consider what impact they might have on any decision to release and, if so, on what conditions.

19. Certainly, this is the basis of the submissions presented on behalf of the Applicant and appear to represent the views of the COM (which, I might add, seem to me to be entirely and very fairly consistent with her views and submissions to the Panel). In short, as indicated above, the matter should be looked at again, and assuming the factual basis is established and, of course, subject to further relevant information emerging, the recommendation that the Respondent should be released would be maintained but on the basis that additional conditions were included to reflect the situation regarding the new child, his new relationship and family and the incident in the prison involving loss of self-control. Given nothing untoward happens in the meantime, this seems to me a sensible and proportionate goal to aim at.

Decision

20. Accordingly, the application for set aside is accepted.

HH Roger Kaye KC
31 January 2024