

[2023] PBSA 72**Application for Set Aside by the Secretary of State for Justice
in the case of Barttelot****Application**

1. This is an application by the Secretary of State (the Applicant) to set aside the decision made by an oral hearing panel (the panel) dated the 31 July 2023 to direct the release of Barttelot (the Respondent).
2. I have considered the application on the papers. These are:
 - a) The Decision Letter dated the 31 July 2023;
 - b) An application from the Applicant to set aside the panel's decision, dated the 12 September 2023;
 - c) An application for non-disclosure in support of the application to Set Aside;
 - d) A Duty Member's Decision dated the 15 September 2023 agreeing to the application for non-disclosure;
 - e) The non-disclosure material;
 - f) A gist of the non-disclosure material provided to the Respondent;
 - g) Confirmation from the Applicant that the Respondent's legal representative had not provided an undertaking allowing the non-disclosure material to be provided to them; and
 - h) The dossier of written evidence in this case numbered to page 526.

Background

3. On the 7 September 2001, the Respondent received a life sentence following his conviction for robbery and possession of a firearm (the index offences). His minimum term on that sentence expired on the 16 December 2006. The index offences saw the Respondent and an associate hold up a Royal Mail security van delivering money to a Post Office. The Respondent had a sawn-off shotgun and threatened the security guard before making off with around £25,000.
4. Nearly ten years after the minimum term of his sentence, the Respondent's release was first directed by the Parole Board. He was released in November 2016 and was recalled in December 2018 following his conviction for further offences.
5. On the 6 January 2020, the Respondent was re-released following an oral hearing by the Parole Board. He was recalled to custody for a second time on the 23 May 2022 due to concerns about his behaviour.



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6. On the 13 June 2022, the Applicant referred the Respondent's case to the Parole Board for it to consider whether his re-release could be directed. In the alternative the Parole Board was asked to provide advice to the Applicant about whether the Respondent was ready to move to an open prison.
7. The panel considered the case at oral hearings on the 15 June 2023 and the 24 July 2023. The panel heard evidence from the Respondent, his Community Offender Manager (COM) and the Prison Offender Manager (POM). The Respondent was legally represented and his representative provided written closing submissions which were considered by the panel prior to its conclusion of the case.
8. In its Decision Letter dated the 31 July 2023, the panel directed the Respondent's re-release.

Application to Set Aside

9. The Applicant submits that information has come to light that affects the risk assessment in this case. This information had not been provided to the panel.
10. It is submitted that the information contains allegations of emotional domestic harm and concerns of manipulation within a relationship. There is also an allegation of a weapon being present in the Respondent's home, although a police search did not recover a weapon.
11. The non-disclosure material has been produced in support of the allegations and the Set Aside application.

The Relevant Law

12. 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.
13. 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)).
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 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

15.The Respondent has not provided any response to the application.

Discussion

16.I have reviewed the additional evidence in this case with care and have little difficulty in determining that the new information is a relevant consideration. 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

17.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 31 July 2023 to be set aside.

Robert McKeon
19 October 2023