

[2023] PBSA 75

**Application for Set Aside by the Secretary of State for Justice
in the case of Hafeez****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 27 September 2023 to direct Hafeez (the Respondent)'s release.
2. I have considered the application on the papers. These are:
 - a) The Decision Letter dated the 27 September 2023;
 - b) An application from the Applicant to set aside the panel's decision, dated the 23 October 2023; and
 - c) The dossier of written evidence in this case numbered to page 528.

Background

3. On the 22 December 2015, the Respondent received a sentence of detention totalling nine years and six months following his conviction for robbery, supply of Class B drugs (x3), blackmail, witness intimidation and criminal damage (x2).
4. He was automatically released on licence on the 22 October 2019 and was recalled to custody on the 27 January 2020 following an incident in the early hours of New Years Day in 2020. His sentence expires in July 2024.
5. The panel's review of the case was the third review by the Parole Board since his recall to custody. The panel heard evidence from the Respondent, his Community Offender Manager (COM) and the Prison Offender Manager (POM). The Respondent was legally represented at the oral hearing.
6. In its decision to direct the Respondent's release, the panel noted the work completed by the Respondent in custody to address risk and that he would be likely to work well with professionals managing his case in the community.

Application to Set Aside

7. 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 approached a female nurse in prison on the 16 October 2023, made sexual advances and sexual



comments towards her, and grabbed both her buttocks. The Respondent has been placed on report by the prison and the matter has been referred to the police.

The Relevant Law

8. 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.
9. 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)).
10. 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 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

11. The Respondent's legal representative has provided a response in an email dated the 4 November 2023. It is submitted that the Respondent denies what has been alleged. He says that he and the female nurse '*were having banter together*', and that she pushed her buttocks towards him. The Respondent submits that the nurse is also under investigation. He says that he is not someone who has convictions for matters of a sexual nature and asks that the application to set aside be refused.

Discussion

12. 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

13. 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 27 September 2023 to be set aside.
14. 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.
15. 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.
16. 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
09 November 2023