

[2024] PBSA 13**Application for Set Aside by the Secretary of State for Justice
in the case of Spence****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 Spence (the Respondent). The decision was made by a panel after an oral hearing. This is an eligible decision.
2. I have considered the application on the papers. These are the dossier (205 pages), the oral hearing decision (dated 13 December 2023), and the application for set aside (dated 6 March 2024).

Background

3. On 5 August 2021, the Respondent received a determinate sentence of imprisonment for three years and four months following conviction for wounding with intent to do grievous bodily harm to which she pleaded guilty. Her sentence end date is reported to be December 2024.
4. The Respondent was aged 31 at the time of sentencing. She is now 34 years old.
5. The Respondent was automatically released on licence on 5 April 2023. Her licence was revoked on 15 April 2023, and she was returned to custody on 17 April 2023. This is her first recall on this sentence and her first parole review since recall.

Application for Set Aside

6. The application for set aside has been drafted and submitted by the Public Protection Casework Section (**PPCS**) acting on behalf of the Applicant.
7. The application for set aside submits there is further information constituting a significant change in circumstances which came to light after the panel made its decision. It is argued that the panel may not have reached the same decision had this new information been known.
8. The content of the application will be considered in the **Discussion** section below.

Current Parole Review

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9. The Respondent's case was referred to the Parole Board by the Applicant to consider whether to direct her release.
10. The case proceeded to an oral hearing before a single-member panel. Oral evidence was taken from the Applicant, her Prison Offender Manager (**POM**) and her Community Offender Manager (**COM**). The panel directed the Respondent's release.

The Relevant Law

11. Rule 28A(1)(a) of the Parole Board Rules 2019 (as amended) 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.
12. 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)).
13. 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

14. The Respondent has submitted no representations in response to this application and the deadline for representations has now passed.

Discussion

15. The Applicant notes that, since the panel directed release, the Respondent's behaviour has given rise to concern. A safeguarding meeting was held on 22 February 2023 which concluded that the Respondent's risk was no longer manageable in the community.
16. It is further reported that the Respondent had started a relationship with another prisoner (A) whilst in custody. This relationship appears to have continued following A's release at the end of her sentence in January 2024. The relationship had not been disclosed by the Respondent. The licence condition to disclose any developing relationships had been discussed with the Respondent in January 2024 during a release planning meeting. The Respondent denied being in a relationship at that time.

17. Shortly after that meeting, A visited the Respondent and was intercepted while trying to pass the Respondent some tablets. The Respondent was consequently placed on intelligence-led communications monitoring.

18. This monitoring gave rise to a number of concerns:

- a) Discussions about passing the illicit substances;
- b) Speaking in code;
- c) The Respondent admitting to taking illicit substances in custody;
- d) The Respondent stating that she kept illicit substances and sold them to other prisoners;
- e) Controlling behaviour from A towards the Respondent;
- f) The Respondent and A making threats of violence towards each other;
- g) The Respondent threatening to 'cut up A into pieces';
- h) The Respondent talking about stabbing members of the public and buying a machete and a cosh once released; and
- i) The Respondent saying she would not have minded a longer sentence if she had 'finished [the victim of the index offence] off better'.

19. The Respondent is also said to have made threats to other prisoners as well as telling another prisoner that she and A plan to hold someone at knifepoint and rob them once released. A has also sent around £1,000 to the Respondent's prison account. A has also sent photographs of the Respondent's daughter to her (taken from social media). The Respondent's daughter is adopted, and the Respondent is only permitted annual letterbox contact.

20. Following the safeguarding meeting, A was removed from the Respondent's phone list. The Respondent thanked her POM for doing so, describing the relationship with A as toxic and requesting a non-contact condition with A on her licence.

21. However, on 27 January 2024, the Respondent tried to contact A with a greeting card sent via another prisoner, declaring her love for A, referring to A as her wife and planning to meet A on her release date.

22. In its decision, the panel notes (amongst others) relationships, willingness to engage in violence and substance misuse as risk factors. It also notes the Respondent's comment that she has been clean of drugs for three years.

23. There is evidence in the application that suggests that key risk factors remain active. The truthfulness of the Respondent's assertion that she has been drug-free for a considerable period is also called into question.

24. I am satisfied that the panel would not have made a direction for release had it been aware of the change in circumstances relating to the prisoner. I am also satisfied that it is in the interests of justice for the decision to be set aside, since those interests would not be served by releasing a prisoner who was continually evidencing risk-related behaviour and dishonesty in engaging with staff.

Decision

25. For the reasons I have given, the application is granted, and the decision of the panel dated 13 December 2023 is set aside.

Stefan Fafinski
14 March 2024