

**[2024] PBSA 37****Application for Set Aside in the case of Roberts****Application**

1. This is an application initiated by the Chair of the Parole Board (the Applicant) in the case of Roberts (the Prisoner) to set aside the decision to direct his release. The decision was made by a panel after an oral hearing on 20 March 2024. This is an eligible decision.
2. I have considered the application on the papers. These are the dossier, the oral hearing decision, and the application for set aside.

**Background**

3. On 17 July 2020, the Prisoner received a determinate sentence of four years and four months following his conviction for dwelling burglary and theft. He has a significant history of substance misuse, including crack cocaine and amphetamine, and has admitted that most of his offending has been directly related to alcohol and drug misuse. The Prisoner has also struggled to manage extreme emotions. He has an extensive history of offending, including offences of violence. He was aged 33 at the time of sentencing and is now 36 years old.
4. The Prisoner was automatically released on licence on 31 May 2022 and was recalled on 8 September 2022 following concerns about his behaviour. He was re-released on the direction of the Parole Board on 9 January 2023 and was again recalled to custody on 6 June 2023 following an allegation of further offending, although he was later acquitted at court.

**Application for Set Aside**

5. The application for set aside has been initiated by the Chair of the Parole Board following new information being provided about the Prisoner's custodial behaviour. The oral hearing panel had been advised of the developments but had already issued its decision in the case. The panel advised that any application to set aside would be a matter for the Chair of the Parole Board. The Secretary of State had indicated that he was unwilling to make any application because the primary risk of substance misuse was already known and had been addressed within the plans for release.

**Current parole review**

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6. The Prisoners's case was referred to the Parole Board by the Secretary of State to consider whether to direct re-release in this case. The case proceeded to an oral hearing and evidence was heard from the Prisoner, his Community Offender Manager (COM) and his Prison Offender Manager (POM).
7. The panel explored security information from the prison. The Prisoner had been found with weapons, had been involved in an altercation on a prison wing, had not taken his prescribed medication properly and had used drugs. Set against these concerns, the Prisoner had engaged with work in custody to address his misuse of drugs. He had also completed an accredited course to address his decision making.
8. Witnesses at the hearing supported release in this case. The panel noted the long history of drug and alcohol misuse and the link between this and the Prisoner's offending. It noted the behaviour concerns in prison but also took note of the completion of offence focussed work. The panel determined that the Prisoner met the test for release and therefore directed his release on licence.
9. Following the panel's release decision, a number of incidents in custody were reported to the Parole Board.
10. On 5 April 2024 the Prisoner produced a positive drug test result, although it seems that this was evidence of prescribed medication and it did not proceed to an adjudication.
11. On 4 April 2024, the Prisoner was considered to be 'red eyed' when standing in the queue for his medication. On 23 April 2024, he was found to be under the influence of substances. He presented with slurred speech and red eyes, and was found to have a burnt vape element and a small amount of 'suspicious' paper. The paper gave a positive indication for illicit drugs and an adjudication for this is outstanding.
12. On 26 April 2024, staff reported that the Prisoner and two other prisoners were under the influence of substances in a cell.

## The Relevant Law

13. 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.
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 (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 Parties**

16. As I have already noted, the Secretary of State did not wish to make an application to set aside in this case.

17. Legal representations on behalf of the Prisoner submit that he was frustrated because the earlier positive drug test result evidencing his prescribed medication had seen him placed on report. He accepts that he turned to substance misuse but suggests that this is a lapse and not a relapse. He says that he asked for help from support services in prison and has since maintained abstinence.

### **Discussion**

18. I have little difficulty in determining that the information now before me is a relevant consideration. I cannot be satisfied that the panel would have been minded to direct release in this case had the reported information relating to the Prisoner been placed before the panel prior to the release direction being given.

### **Decision**

19. I am satisfied that it is in the interests of justice for the decision of the panel following an oral hearing on 20 March 2024 to be set aside.

**Robert McKeon**  
**12 June 2024**