

[2024] PBSA 77**Application for Set Aside by Francis****Application**

1. This is an application by Francis (the Applicant) to set aside the decision made by a Member Case Assessment (MCA) paper panel of the Parole Board dated 6 October 2024 not to direct the Applicant's release.
2. I have considered the application on the papers. These are the oral hearing decision, the dossier, the application for set aside (dated 9 October 2024), and a response from the Public Protection Casework Section (PPCS) on behalf of the Secretary of State (the Respondent) dated 12 November 2024, all provided via email.

Background

3. The Applicant was sentenced to 7 years imprisonment on 27 April 2018 for two offences of wounding, one section 18 and another section 20. The Applicant was convicted post trial. The circumstances of his index offending are that following a routine stop and search the Applicant headbutted and assaulted a police officer, kicking and stamping him whilst on the ground, and by biting a section of the officer's ear off. The Applicant has relevant antecedents including past offences of attempt robbery (2011) and battery (2017). He also has convictions for weapons offences.
4. The Applicant was release automatically on 4 August 2021 but recalled back into custody on the 22 July 2024 following his arrest for being in possession of a knife. Prior to his arrest the Applicant had been pursued by police and was said to be driving at speed. He was detained under s23 of the Misuse of Drugs Act 1971. When the Applicant's vehicle was searched a combat knife was located in the front passenger-side door compartment. The Applicant was duly convicted of this matter on the 23 July 2023 and received a further 6 months term of imprisonment. The Applicant has always denied being in possession of the knife for any nefarious purposes.

Application for Set Aside

5. The application for set aside has been provided by those instructed on the Applicant's behalf and was served on the Parole Board by email on the 9 October 2024. Those instructed have also provided a copy of the relevant section of the Parole Board's decision to support their application.



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6. Legal submissions state that the decision not to release would not have been made but for an error of law or fact, namely that the decision states that prior to recall the Applicant '*was arrested for Rape*'. This is said to be an error of fact.

Current Parole Review

7. The Applicant's case was referred to the Parole Board by the Respondent to consider whether to direct release.
8. The case was considered by a Single Member of the Parole Board at the Member Case Assessment stage (MCA) on the 6 October 2024 and concluded by way of a written decision on the papers. The panel did not direct the Applicant's release, although it intimated that had there been more time before the Applicant's sentence end date (SED) it would have considered sending the Applicant's case to an oral hearing. The Applicant's SED is shown to be February 2025. (Current Parole Board guidance states that cases with less than 26 weeks left until SED ought not to be sent to an oral hearing, unless there are exceptional circumstances to do so).
9. The paper decision was issued on the 6 October 2024.
10. The panel held the Applicant's recall to have been appropriate.
11. The paper decision was amended under the 'slip rule' on October 10 when the error of fact, referred to within the application was identified and corrected.

The Relevant Law

12. 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.
13. The types of decisions eligible for set aside are set out in rules 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)).
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 had been 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 argues that although there is an error of fact at paragraph 2.4 of the decision, the panel did not rely on this error of fact when making its judgment and that as such the decision not to release should stand.

Discussion

Eligibility

16. The application concerns a panel's decision not to direct release following a paper review under rule 25(1). The Applicant argues that the condition in rules 28A(1) and 28A(4)(b) are made out. I agree with this submission. It is therefore an eligible decision which falls within the scope of rule 28A.

The test for set aside

17. In determining the application for set aside, I must consider the impact of the submissions made by those representing the Applicant on the panel's decision not to release the Applicant. This is a two stage process, (i) firstly, do I consider there to be an error of fact or law (ii) if so, would a direction for release have been made if that information had been known.

18. In relation to the Applicant's submission that the decision contains an error of fact, after considering all the evidence before me, including the full parole dossier, I agree that there is a clear error of fact in paragraph 2.4 of the decision. The Applicant was not arrested for rape and there is no evidence of any concerns linked to sexual offending recorded against the Applicant anywhere in the papers.

19. Accepting, therefore, that the decision does contain an error of fact I must now consider the second stage of the process, namely whether a direction for release would still have been made if the error of fact had been known.

20. In my assessment the error of fact is significant in so far as it erroneously links the Applicant to a serious criminal allegation, and it would have been distressing for the Applicant to read the error in the decision. This is unfortunate. However, upon reading the full decision, it is clear to me that the panel did accurately record the circumstances of the Applicant's index offending and recall elsewhere in the papers (see paragraph 2.3 and 2.5). Furthermore, there is no further mention of 'rape', or any other concerns linked to sexual violence within the decision, or papers. The panel also gives a clear, accurate, summary of the evidence relied upon in its conclusion at paragraph 4.3. Accordingly, based on the evidence before me, I am satisfied that the panel did not rely on the error of fact when reaching its decision not to release the Applicant, nor, indeed, when considering the appropriateness of the Applicant's recall. In my judgment, the reference to 'rape' at paragraph 2.4 is anomalous to the rest of the decision and I can find no evidence that it was relied upon by the panel when

completing its risk assessment. As such, I do not accept that the panel would have released the Applicant if the error of fact had not been made.

21. Having made such a finding, I must finally consider whether it is in the interests of justice for the decision to be set aside.

22. I am not so satisfied on all the evidence before me.

Decision

23. I acknowledge that this was a serious error. However, for the reasons I have given, the application is dismissed, and the decision of the panel dated 6 October 2024 should not be set aside.

Heidi Leavesley
25 November 2024