

[2023] PBSA 31

Application for Set Aside by the Secretary of State for Justice in the case of Wheeler

Application

1. This is an application made by the Secretary of State (the Applicant) to set aside the decision made by a paper panel (the panel) dated the 5 April 2023 to direct the release of Wheeler (the Respondent).
2. I have considered the application on the papers. These are:
 - a) The Decision Letter dated the 5 April 2023;
 - b) The dossier, numbered to page 227, of which the last document is a licence variation application. The panel had a dossier numbered to page 212;
 - c) The Applicant's application dated the 11 May 2023 which is set out on the relevant form; and
 - d) An email dated the 15 May 2023 from the prison where the Respondent is located, advising that a pending adjudication was not proceeded with due to a lack of evidence.

Background

3. On the 19 November 2021, the Respondent received a 26 month sentence of detention following his conviction for burglary and two offences of the theft of a vehicle. He was aged 20 at the time of sentencing and was 21 years old when the panel reviewed his case.
4. The Respondent was automatically released on licence on the 1 July 2022 and was recalled to custody by the Applicant on the 24 August 2022 following a reported breach of licence conditions. The Applicant then referred the Respondent's case to the Parole Board for it to decide whether the Respondent's re-release could be directed.
5. The panel considered the Respondent's case at a paper review on the 5 April 2023 and directed his re-release.

Application to Set Aside

6. In his application, the Applicant submits that:



The Respondent was involved in an alleged assault on another prisoner since the panel's decision to direct his release. The Applicant submits that this is a change in circumstances and is information that was unavailable at the time the panel made its decision.

The Relevant Law

7. Rule 28A(1) of the Parole Board Rules 2019 (as amended by the Parole Board (Amendment) Rules 2023) (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.
8. 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)).
9. 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 Prisoner (the Respondent)

10. In written representations dated the 17 May 2023, the Respondent has outlined his account of the reported events. He submits that there is no new information in the case and that his level of risk has not changed. The Respondent states that the Applicant's application should be dismissed.

Discussion

11. Within the Applicant's application it is reported that the Respondent and another prisoner (M) assaulted a prisoner (J).
12. In a prison interview, J reported that two prisoners had assaulted him. M's account was that J knew something about the Respondent being stabbed in the community and that J had taken up a 'fighting stance'. M claimed that he had then acted to protect the Respondent. M claimed that J threw the first punch.

13. In a prison interview, the Respondent was reported to not be forthcoming with information and had claimed that he was with M when J threw a punch.
14. CCTV was reviewed by the prison which seemed to show that M struck J multiple times to the head and the Respondent kicked J to the head and threw punches to his head.
15. A planned adjudication to address the matter was adjourned and, in an email dated the 15 May 2023, the prison simply advised that the adjudication was not proceeded with due to a lack of evidence. This is despite the interviews with the Respondent, J and M, and a review of CCTV.
16. In his response, the Respondent submits that it was M and J who were involved in a fight. He says that he did not involve himself in the fight, that M pleaded guilty at the subsequent adjudication hearing and that the matter against him was dismissed.
17. In its Decision Letter of the 5 April 2023, the panel stated:

"In terms of his behaviour and compliance in prison, the panel noted that although there were a few negative entries in 2022, he is currently on enhanced regime, he has engaged with education and works in a trusted position. He appears to be benefiting from working and says he would like to find employment when he is in the community."

18. It is clear therefore that the panel was mindful of custodial behaviour in its assessment of the Respondent's case. The Respondent may well be correct in his account of events, however, the detail from the Applicant is still new information and is a relevant consideration. Although the adjudication was not proceeded with by the prison, this does not mean that it can or should be simply discounted by the Parole Board. I cannot be satisfied that the panel would have been minded to direct release had this new information been available before the release decision was given.

Decision

19. For the reasons I have given, I am satisfied that it is in the interests of justice for the final decision of the panel dated the 5 April 2023 to be set aside.

Robert McKeon
22 May 2023