

[2023] PBSA 79

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

1. This is an application (the Application) made on 8 November 2023 by the Secretary of State (the Applicant), pursuant to Rule 28A of the Parole Board Rules 2019 (as amended) (the Parole Board Rules), to set aside a decision (the Decision) made by a Parole Board Panel (the Panel) to direct the release of Bradbury (the Respondent).
2. The decision was made by a single member panel ultimately on paper and given in a decision letter dated 16 October 2023 and issued on 17 October 2023. The determination on paper was made with the agreement of the Respondent, following an unfortunate history of lengthy adjournments and unsuccessful attempts at an oral hearing. This is an eligible case for setting aside under that Rule.
3. The substantial grounds on which the Application is made is on the basis of new information or change of circumstances and that it is in the interests of justice to set aside the Decision (see Rule 28A (3) and (4)).
4. The new information and change of circumstances are essentially the same: namely information regarding allegations as to incidents involving conduct of the Respondent occurring before the Decision but not available to the Panel at the time. The basis of the change of circumstances is the same: the change being the discovery, after the Decision, of this new information. In either case it is said that had the Panel been aware of that information or change of circumstances it would not have directed his release.
5. It is also relevant to note that since the Application was made further allegations have come to light of an incident also occurring before the Decision (but not coming to light until afterwards) which has been submitted to the Parole Board on behalf of the Secretary of State (the Further Information). These incidents are dealt with in more detail below.
6. I have considered the Application on the papers. These are (1) the dossier now running to some 250 pages including the Decision, (2) the Application for set aside dated 8 November 2023, (3) the Further Information, and (3) representations made on behalf of the Respondent by his legal representatives in a letter dated 16 November 2023 (the Representations) in response both to the Application and the Further Information.



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Background

7. The Respondent was born on the 27 March 1994 and is accordingly now aged 29 years. On 6 October 2015 (when aged 21 years) he was sentenced for an offence of robbery (to which he pleaded guilty) and given an extended sentence of 6 years in custody and an extended licence period of 5 years. His sentence expiry date is September 2026. He was released on licence on 7 April 2020 but was recalled on the 8 April 2022 following a break down in observance of his licence conditions. He was eventually returned to custody on 18 April 2022.
8. This was his first recall on this sentence. Following the recall, the Secretary of State referred the matter to the Parole Board in the usual way.
9. The Respondent has a record of convictions going back to the age of 14. A number of these convictions involved offences of disorderly behaviour, arson and battery (in 2010), robbery, affray, threatening behaviour, criminal damage, and possession of a bladed article. Records also disclose him having breached a number of community orders. The index offence involved breaking into a jewellery shop with 5 other males (attacking the glass front with axes and sledgehammers to gain entry), smashing display cabinets, and stealing items of jewellery including high value watches. The shop estimated the loss and damage at some £55,000.
10. Perhaps unsurprisingly, by the time the matter came before the Panel identified risk factors included pro-criminal lifestyle and associates, pro-criminal thinking, behaviour and attitudes, and drug misuse. As the Decision also noted: *"It is unclear from the dossier what if any structured offending behaviour work he has completed to address these risk factors."*
11. Following his release on licence his initial response to licence supervision appeared acceptable but, in the spring of 2022, he started to fail to keep planned appointments (even after two warning letters), appeared to be not residing as directed, had switched off his phone, and, as he told the Panel, was getting paranoid. He was eventually traced to his girlfriend's house but when Police Officers arrived to tell him of the recall decision, he grabbed a knife and threatened to harm himself. An altercation ensued involving him head-butting one of the Officers (for which he eventually received another 12 weeks imprisonment after pleading guilty). Following recall his custodial behaviour appears to have been generally acceptable, positive, and compliant, though he received two adjudications (not involving violence). He achieved Incentives and Earned Privileges (IEP) status. Concerns as to his mental health have been raised. He appears to have undertaken a Resolve programme but there was no information about what if any progress he made. He had been prescribed methadone and mental health medication in the past but told the Panel he had not used drugs since July 2022 (after his recall) and that his mental health medication had been withdrawn shortly after recall.

The Application for Set Aside

12. The Application relies on the following information sent to the Public Protection Casework Section (PPCS) on 20 October 2023 from the Parole Board who had itself received it from the Prison Offender Manager (POM). The Parole Board then

forwarded the information to the PPCS to consider if a set aside application would be appropriate. None of this information was before the Panel by the date of the Decision.

13. In substance the allegation is that the Respondent made phone calls on the prison PIN system between 10 and 12 October 2023 first, to a named female individual threatening to blow up her house and stab her dad and second to another female individual threatening to burn down her mum's house, petrol bomb her house, and to stab somebody. It was thought that one of these calls was directed at his now ex-girlfriend, possibly in response to the breakdown of their relationship on or about 11 October 2023.
14. The Community Offender Manager (COM) commented that the matter was being investigated by the Police and that had he been aware of these incidents (and having regard to the previous conviction for arson and battery) he would not have recommended release. The Application calls for a full re-examination of the case to make a further determination of the Respondent's risk of serious harm should he be released (particularly in the context of domestic violence), his commitment to leading an offence free life and his ability to adhere to controls on his behaviour in a community setting.
15. The Further Information concerns an incident that allegedly occurred on 22 October 2023 when it is said that the Respondent, with two others, forced entry to another prisoner's cell. It is suspected that an assault then took place as the prisoner concerned presented with injured ribs following the incident. The entry was caught on CCTV but, there being no CCTV available in the cell, the assault could not be confirmed.

Current parole review

16. I have set out above how the matter was referred to the Parole Board following the Respondent's recall. It appears the single member panel first sat with an oral hearing on 8 February 2023 which was adjourned part heard. A further hearing fixed for 24 August 2023 was adjourned for personal reasons affecting the Chair. It was refixed for 16 October 2023 when telephone contact with the COM and the Respondent's legal representative broke down. Following discussion with the COM and Respondent the single member Chair agreed to conclude the matter on the papers with the result indicated above.
17. The Respondent was, as indicated, legally represented. Evidence consisted of the dossier (then some 231 pages) and from the POM and COM.

The Relevant Law

18. Rule 28A(1)(a) of 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.

19. 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)).
20. 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 (the Representations)

21. The Respondent has submitted a letter dated 16 November 2023 from his legal representatives in response to the Application.
22. The thrust of the Representations are as follows.
23. First, in relation to the initial allegations, the Respondent denies knowing the female the subject of the first telephone call (believing it to be a duplication of the allegation in respect of the second female with the incorrect name recorded). As regards the second female he admits knowing her, admitted making threats but asserts they were merely empty and were never intended to be carried out. He denies any romantic attachment.
24. Second, as regards the Further Information, he denies any assault on another prisoner.
25. In the circumstances it is submitted the Application should not be granted, or if granted, should be referred back to the same Chair.

Discussion

26. Notwithstanding the submissions made on behalf of the Respondent, I have no hesitation in concluding that had the allegations set out in the Application and Further Information been before the Panel, then the fullest investigation would have been called for and a direction for release would not, in the absence of such investigation, have been granted. It is not for me to resolve the allegations at this stage. Suffice it to say the Respondent admits making threats to the second female mentioned above, albeit, he maintains, not seriously intended. In the context of a past history of some violence and arson, further investigation is plainly required of what appears to be a change of circumstances from those previously presented, and where a further risk assessment will also plainly be needed in light of these new

serious allegations. What steps the police, if any, have so far taken is also not yet known.

Decision

27. In these circumstances I am satisfied that the requirements of Rule 28A are met. The application for set aside is accordingly accepted.

HH Roger Kaye KC
27 November 2023