

[2024] PBSA 15

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

### 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 Kennett (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 (792 pages), the oral hearing decision (dated 16 February 2024), and the application for set aside (dated 1 March 2024). The application also contains a note from the Respondent's Prison Offender Manager (undated) and a letter from the Respondent (dated 20 February 2024).

### Background

3. On 4 January 2016, the Respondent received a determinate sentence of imprisonment for nine years following conviction for rape to which he pleaded guilty. He also received a concurrent four-year sentence for assault occasioning actual bodily harm (now served). His sentence end date is reported to be in October 2024.
4. The Respondent was aged 25 at the time of sentencing. He is now 34 years old.
5. The Respondent was automatically released on licence on 17 April 2020. His licence was revoked on 9 October 2020, and he was returned to custody on 12 October 2020. This is his first recall on this sentence and his second 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

9. The Respondent's case was referred to the Parole Board by the Applicant to consider whether to direct his release.
10. The case proceeded to an oral hearing before a single-member panel. Oral evidence was taken from the Respondent, his Prison Offender Manager (**POM**) and his Community Offender Manager (**COM**). The Respondent was legally represented throughout the hearing. He declined to give oral evidence to the panel. 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 receiving the release decision, the Respondent has stated that he does not wish to be released and, if released, he will not comply with his licence conditions. The Respondent's own letter states that he would like to have the release decision set aside as he "*can't say in all good faith that [he] will follow [his] licence conditions*". In particular he says he will be likely to breach the exclusion zone to see his family. His POM notes that the Respondent declined to give evidence to the panel as "*he hoped this would indicate his reluctance to take part in the process and make it more likely that he would not be granted parole*".

- 16.The Respondent's COM is no longer supporting release on the basis that the Respondent has said he would breach a licence condition put in place to protect the victim of the index offence.
- 17.The application argues that this is a significant change in circumstances. I disagree, on the basis that if the Respondent's position concerning his licence was not stated at the hearing (and it could not have been since he did not give evidence) then it cannot be said that his position has changed.
- 18.However, notwithstanding the flaw in the Applicant's submission, there is clearly new information available pertaining to the Respondent's attitude towards compliance which is, in my view, sufficient to bring it within the scope of the set aside rule.
- 19.I am satisfied that the panel would not have made a direction for release had it been aware of this new information 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 stated that he would likely not comply with a licence condition set in place to protect his victim.

## Decision

- 20.For the reasons I have given, the application is granted, and the decision of the panel dated 16 February 2024 is set aside.

**Stefan Fafinski**  
**25 March 2024**