

[2024] PBSA 70

**Application for Set Aside by the Secretary of State for Justice
in the case of Doran****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 Doran (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 (719 pages), the decision (dated 24 June 2024), and the application for set aside (dated 2 October 2024). I have also seen an adjudication report dated 27 July 2024, a hospital letter dated 3 October 2022, and two emails from the Respondent's prison case manager dated 21 October 2024 and 24 October 2024, all of which were provided by the Respondent's legal representative on his behalf.

Background

3. On 1 December 2014, the Respondent was convicted of robbery to which he pleaded guilty. He received an extended sentence with a custodial period of nine years and three years on extended licence. He also received a concurrent determinate sentence of 40 months for causing serious injury by dangerous driving. He was also convicted of using a vehicle while uninsured but received no separate penalty. His sentence end date is in August 2026.
4. The Respondent was aged 33 at the time of sentencing. He is now 42 years old.
5. He was automatically released on licence on 2 July 2020. His licence was revoked on 22 October 2021, and he was returned to custody on 29 November 2021.

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 change in circumstances which came to light after the panel made its decision. It is argued that the panel would 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 was considered by a two member panel at an oral hearing on 19 June 2024. The panel heard evidence from the Respondent, his Prison Offender Manager (POM) and his Community Offender Manager (COM). The Respondent was legally represented throughout the proceedings. The panel directed the Respondent's release.
11. Since the Respondent is serving an extended sentence, the release direction was provisional for 21 days to allow an application for reconsideration to be made. With no such application having been received, the decision became final on or around 15 July 2024.

The Relevant Law

12. 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.
13. 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)).
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 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

15. The Respondent has submitted representations in response to the application which will be considered in the **Discussion** section below.

Discussion

16. At the time of the hearing, the Respondent was in open prison conditions.

17. The Applicant notes that, since the hearing, the Respondent had been returned to closed conditions following a number of concerns regarding large quantities of controlled prescription drugs being found in his cell. He was warned on 27 June 2024 that any further non-compliance could lead to a return to closed conditions. He was subsequently found again in unauthorised possession of medication and returned to closed conditions. He received three proven adjudications for unauthorised possession on 26 June 2024, 27 June 2024 and 5 July 2024. He was also adjudicated on 27 July 2024 for failing to provide a urine sample for a mandatory drug test (MDT).
18. In consequence of this, the Respondent's COM is of the view that his risk would no longer be manageable in the community since the Respondent has shown a lack of compliance to the extent that he was returned to closed conditions and therefore is no longer confident that he would comply with the conditions of his licence.
19. In directing the Respondent's release, the panel noted that risk factors included a lack of consequential thinking skills and substance misuse.
20. The Respondent submits that, although there have been issues in respect of medication, this does not directly link to a risk of serious harm to the public if the Respondent was re-released. It is noted that almost all the medication found had been prescribed to the Respondent, save for quetiapine, which the Respondent acknowledges was not lawfully prescribed to him but which (as the Applicant conceded) was used to help the Respondent sleep.
21. It is argued that there is no evidence of substance misuse, nor history of the Respondent committing offences while under the influence of prescribed (or non-prescribed) medication. Following the June adjudication, all medication was stopped, which aggravated a significant shoulder injury (evidenced by the Respondent in the form of hospital correspondence) causing him pain and discomfort. It is noted that the Respondent had been prescribed painkilling medication.
22. Moreover, although the Respondent had been suspected of providing a urine sample which did not appear to be fresh, or his own, the genuine sample did not test positive for illicit drugs. The Respondent is also confirmed to have been discharged from Phoenix Futures as he has completed all work necessary and there are no current concerns with substance misuse issues.
23. The release licence includes conditions relating to drug testing and disclosure of prescribed medication and a general ongoing condition to comply with any specified offending behaviour work (including in relation to drug misuse).
24. Turning to the statutory test, it is self-evident that there has been a change in circumstances relating to the Respondent. He has been returned to closed conditions since the hearing.
25. I must next consider whether this change in circumstances would have affected the panel's decision to release the Respondent had it happened prior to the direction for release being made. On all the evidence before me, while the Respondent's actions were indicative of poor consequential thinking, there is nothing to suggest that his

risks have increased by virtue of substance misuse. Indeed, he is no longer engaged with the substance misuse service since he has completed all work and there are no current concerns. There are licence conditions in place to monitor and manage the Respondent's compliance with medication (including the unusual condition to disclose prescribed medication and dosages). The panel which directed release commended his improved thinking skills. While the events after the hearing might call this view into question, I do not, on balance, consider that it would – in all the circumstances of the case – have swayed the panel sufficiently that it would not have continued to direct the Respondent's release.

26. Therefore, I am not persuaded that the threshold for set aside has been reached.

Decision

27. For the reasons I have given, the application is refused.

Stefan Fafinski
29 October 2024