

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DEPT 100

Date: SEPTEMBER 30, 2009
Honorable: PETER ESPINOZA
NONE

Judge J. A. RAMIREZ
Bailiff NONE

Deputy Clerk
Reporter

(Parties and Counsel checked if present)

BH 005717

In re,
RONNIE BARELA,
Petitioner,
On Habeas Corpus

Counsel for Petitioner:

Counsel for Respondent:

Nature of Proceedings: ORDER RE: PETITION FOR WRIT OF HABEAS CORPUS

The Court has read and considered the Petition for Writ of Habeas Corpus filed on January 9, 2009 by the Petitioner. The Petitioner challenges the Governor's February 8, 2007 decision to reverse the Board of Parole Hearings' ("Board") September 13, 2006 finding that the Petitioner is suitable for parole.

Having independently reviewed the record, giving deference to the broad discretion of the Governor in parole matters, the Court concludes that the record does not contain "some evidence" to support the determination that the Petitioner currently presents an unreasonable risk of danger to society and is, therefore, not suitable for release on parole. See Cal. Code Reg. Tit. 15, §2402; *In re Rosenkrantz* (2002) 29 Cal.4th 616, 667; *In re Lawrence* (2008) 44 Cal.4th 1181, 1205-06. Thus, the Governor's decision must be vacated.

The Petitioner was received in the Department of Corrections on October 9, 1981 after being convicted of second degree murder and attempted murder with the use of a firearm. He was sentenced to 15 years to life in prison with a two-year firearm enhancement. He was also sentenced to a term of nine years with a two year enhancement for the attempted murder charge to be served concurrent to his life term. His minimum parole eligibility date was January 6, 1991.

The record reflects that at the time of the commitment offense, Petitioner was a member of the "eastside Torrance" gang. On January 17, 1981, Petitioner attended a party where members of a rival gang were also guests. Petitioner and Victim, a rival gang member, began to argue. Victim told Petitioner to leave the party prompting Petitioner to draw out a handgun. Victim again asked Petitioner to leave so Petitioner shot Victim twice, killing him. As Petitioner ran away, a witness chased after him so Petitioner fired twice at the witness. Petitioner missed. He was arrested the next day.

While incarcerated, Petitioner has earned a GED and an Associate of Arts degree. He has earned a vocational certification in dry cleaning and worked as a teacher's aide, porter, janitor, and clerk. Petitioner has participated in a number of self-help programs and has earned positive chronos for his involvement. At his last parole suitability hearing, Petitioner presented a positive psychological report, viable parole plans and showed that he maintained strong ties with his family and friends in the free society.

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The Board found the Petitioner suitable for parole on Sept 13, 2006. The Board found that Petitioner accepted responsibility for his role in the victim's death and understood the nature and magnitude of his participation in the crime. That, along with Petitioner's participation in self-help, psychological report and parole plans, convinced the Board that Petitioner is no longer an unreasonable risk of danger to society.

The Governor reversed the Board's finding of suitability on February 8, 2007. While the Governor agreed with the Board that Petitioner has made progress in prison, the Governor also considered Petitioner's commitment offense and past criminal record as unsupportive of release. Based on those considerations, the Governor concluded that releasing Petitioner would be improper.

The Governor is constitutionally authorized to make "an independent decision" as to parole suitability. See *Rosenkrantz, supra*, 29 Cal.4th at 670. The Governor must consider "all relevant, reliable information available" and his decision must not be arbitrary or capricious. *Rosenkrantz, supra*, 29 Cal.4th at 670; Cal. Code Regs., tit.15, §2402, subd. (b). The paramount consideration in making a parole eligibility decision is the potential threat to public safety upon an inmate's release. The Governor's decision must be based upon some evidence in the record of the inmate's current dangerousness. *In re Lawrence, supra*, 44 Cal.4th at 1205-06.

The Governor found that the Petitioner's commitment offense was especially heinous, atrocious, or cruel, because it was committed against multiple victims and the motive for the act is very trivial. Cal. Code Regs., tit. 15, §2402, subds. (c)(1)(A) & (c)(1)(E). The Court find this is the case, however, the Governor may base a reversal of parole upon the circumstances of the offense only if the facts are probative of the "ultimate conclusion that an inmate *continues* to pose an unreasonable risk to public safety." *Lawrence, supra*, 44 Cal.4th at 1221. The Governor does not address how Petitioner's participation in the crime reflects that he is a current danger today. Here, the commitment offense occurred over 20 years ago. For inmates who have served their base term, as in this case, immutable factors, such as the commitment offense "will rarely constitute a valid basis for a denial or reversal of parole" absent other evidence of current dangerousness. *Id.* at 1211. Additionally, as reflected by Petitioner's successful *Dillion* motion brought at his trial, his actual participation in the crime was not especially heinous, atrocious or cruel. Therefore, although the Governor's findings regarding the facts of the offense are supported by evidence in the record, absent a rational nexus between those facts and current dangerousness, those findings do not provide some evidence of the Petitioner's current unsuitability. *Lawrence, supra*, 44 Cal.4th at 1227.

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The only other reason the Governor cited for his reversal was Petitioner's juvenile record, which the Governor found "unacceptable. The Court finds that Petitioner does have an extensive criminal record for the two years prior to the commitment offense as a result of Petitioner's gang involvement. However, the Governor did not articulate how Petitioner's criminal record from over two decades ago indicates that Petitioner is a current danger. To the contrary, the record indicates that while in prison, Petitioner renounced his gang affiliation and has worked hard in self-help programming dealing with his prior criminal and gang behavior. The passage of time and Petitioner's institutional behavior supports a grant of parole at this time.

Overall, the Court finds that while the Governor cited specific facts from the record, he did not articulate how these reasons show Petitioner is currently an unreasonable risk of danger to society. The Court finds with the Board that Petitioner is no longer an unreasonable risk of danger to society and is suitable for parole. Accordingly, the petition for writ of habeas corpus is granted and the Governor is ordered to vacate his February 8, 2007 decision. The Board's September 13, 2006 decision that the Petitioner is suitable for parole is hereby reinstated. The Petitioner is ordered released in accordance with the parole date that the Board calculated.

The court order is signed and filed this date. The clerk is directed to send notice.

A true copy of this minute order is sent via U.S. Mail to the following parties:

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