

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DEPT 100

Date: DECEMBER 6, 2010
Honorable: PETER ESPINOZA
NONE

Judge J. A. RAMIREZ
Bailiff NONE

Deputy Clerk
Reporter

(Parties and Counsel checked if present)

BH007021

In re,
ERIC BROWN,
Petitioner,
On Habeas Corpus

Counsel for Petitioner:

Counsel for Respondent:

Nature of Proceedings: ORDER RE: WRIT OF HABEAS CORPUS

The Court has read and considered the Writ of Habeas Corpus filed by the petitioner on May 24, 2010 as well as the return and traverse filed in response to this Court's Order to Show Cause. Having independently reviewed the record, giving deference to the broad discretion of the Board in parole matters, the Court concludes that the Board did not articulate reasons why 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 Board's decision must be vacated.

The Petitioner was received in the Department of Corrections on September 10, 1985 after being convicted of murder in the first degree with the use of a weapon and involuntary manslaughter. He was sentenced to a term of twenty five years to life in prison with an additional five year enhancement for the murder conviction. The sentence for manslaughter was stayed. His minimum parole eligibility date was January 17, 2004.

The record reflects that on November 15, 1983, Petitioner argued with his girlfriend, Rosa Fricke, about another man she was seeing. Petitioner tripped Fricke and put her in a chokehold but then let her up. She went to the kitchen to grab a knife which prompted Petitioner to grab a pipe and strike her in the head several times. Fricke tried to use the knife she grabbed, but Petitioner took it and stabbed her. Then, Petitioner choked her and bound her hands. Petitioner went outside but soon returned and discovered Fricke jumping out the window. Petitioner stopped her, dragged her inside and beat her. He left her, alive, in the bathroom as he cleaned up. He took money from her purse and left the house to buy cocaine. When he returned, Fricke was not breathing. Petitioner fled the state but called his mother and confessed to the killing. He turned himself in to authorities several months later.

The record also reflects that prior to the commitment offense, Petitioner worked as a private security guard. For his work, he carried a gun. On December 22, 1982, victim John Dwyer improperly parked his vehicle in front of the business Petitioner was guarding. When Petitioner confronted Dwyer about the vehicle, Dwyer fought back. Petitioner pulled his gun and shot and killed Dwyer. Petitioner was convicted of involuntary manslaughter right before the life crime occurred.

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When speaking of the life crime, Petitioner added that at that time in his life, he was angry and depressed because he believed he was losing his girlfriend to another man and his was losing his career due to the manslaughter conviction. Petitioner stated that at the time, he believed his self worth was based on the success of his relationship and his career and "when those two were gone, [he] felt deprived and deficient."

The record reflects that prior to these two crimes, Petitioner was convicted for carrying a loaded firearm. He also admitted to drug and alcohol abuse during the time leading up to the life crime.

Since Petitioner has been incarcerated, he has received two citations for major rule violations, with the most recent one in 1995. Neither involved violence. He received one in 1990 for testing positive for alcohol. Petitioner denies this charge and postulates that it may have been a result of using mouth wash.

While incarcerated, Petitioner has upgraded educationally by completing Biblical studies courses in college and is working toward his bachelor's degree. He has upgraded vocationally by becoming an ordained minister. He has worked as a porter, furniture builder and clerk and earned positive reviews for his performance. Petitioner has also participated in many self-help therapy programs including Religious Advisory Committee, Men's Advisory Council, Victims-Offender Reconciliation group, Men's Violence Prevention Seminar, Parenting Education, Creative Conflict Resolution, Weekly Insight and Anger Management group, PHASES Life Skills, Changing Faces, Celebrate Recovery, 40 Days of Purpose, Self-Esteem by God's Design and Love Lifted Me recovery. He also has extensive participation in Alcoholics Anonymous/Narcotics Anonymous to address his prior substance abuse.

At Petitioner's most recent parole suitability hearing, he presented a psychiatric evaluation which found that Petitioner ranked in the low range of psychopathy, posed a low risk for violent recidivism and, overall, posed a low risk of violent re-offense in the free community. The report reflects that Petitioner believes his sentence is fair and he demonstrated his growth since the life crime, stating "I had so many people during that time [in my life] that would have helped me... I was ashamed to let people know... [I've] learned not to isolate and to go to someone when [I] need help." The evaluating doctor concluded that Petitioner "provided an appropriately detailed account of the circumstances before, during and after his instant offense. His account demonstrated that he lacks responsibility for all of his actions involved in his crime." The doctor added that

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Petitioner "demonstrated appropriate insight to his personality dynamics, crime and the causative factors of the life crime... additionally, he showed remorse for his actions and empathy for his victim."

At the parole suitability hearing, Petitioner also presented future residency plans with a transitional program for parolees and has strong family support.

The Board found the Petitioner unsuitable for parole on November 2, 2009 and denied Petitioner for a period of three years. The Board based its decision on the heinousness of the commitment offense, his prior criminal record and unstable social history along with Petitioner's lack of credibility and his lack of insight with regard to his 115 rules violation incurred in 1990.

In reviewing a Board's decision, courts are to read the record for evidence which both supports the Board's reasoning and an ultimate conclusion that Petitioner poses a current threat to public safety. *In re DeLuna* (2005) 126 Cal.App.4th 585, 593-594; see also *In re Lawrence* (2008) 44 Cal.4th 1181.

The Board found the facts of the commitment offense and Petitioner's prior criminal record and unstable social history to be unresponsive of release. Cal. Code Regs., tit. 15, §2402, subs. (b) & (c). While the Board may consider such factors in deciding whether an inmate is suitable for parole, is also required to articulate a rational nexus between its reasons and an ultimate conclusion that Petitioner current poses a risk of danger to society. See *In re Criscione* (2009) 173 Cal. App. 4th 60; see also *In re Lawrence* (2008) 44 Cal.4th 1181; see also *In re Shaputis*, (2008) 44 Cal. 4th 1241. Here the Board does not explain how the facts of a crime which occurred over twenty seven years ago or the circumstances of Petitioner's prior relationships and actions before this crime indicate that he is currently dangerous to society. Moreover, after a long period of time such immutable factors may no longer indicate a current risk of danger to society in light of a lengthy period of positive rehabilitation. See *Lawrence*, 44 Cal.4th at 1211. Here, Petitioner has remained free from violence for almost three decades and has demonstrated an effort to program and rehabilitate during his time in prison. Petitioner was recently evaluated as demonstrating "prosocial behaviors and attitudes" with "no evidence" of narcissism, grandiose attitude or defensiveness. In light of Petitioner's many years of positive rehabilitation while incarcerated, extensive efforts in programming and commitment to remaining free from violence, to be discussed further below, the life crime and his prior criminal record does serve as not evidence that Petitioner currently poses an unreasonable risk of dangerousness to society.

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The Board found "some problems" with Petitioner's credibility because "there are several discrepancies in the record that's before us today and what you told the Panel and what you've told the Panel on several different occasions and that goes to the 115 on the alcohol." While Petitioner has always denied this 115 citation, which is in contrast to his conviction for the violation by prison officials, the Court does not find that this is evidence Petitioner is a current risk of danger to society. The Board need not find that Petitioner is being truthful in the matter, but it must articulate why its findings that Petitioner lacks credibility with regard to this rule violation is indicative of his current dangerousness. Respondents argue that Petitioner's continued denial of guilt for this 115 is relevant to a bid for parole because it demonstrates his has a propensity to lie and because alcohol played a role in the commitment offense. However, the Board did not cite these reasons; rather the Board is silent on the matter. Given the extraordinarily deferential standard of review already provided to the Board, "it would be inappropriate for courts to salvage the Board's inadequate findings by inferring factors that might have been relied upon," and thus the Court is limited by the words of the Board. *In re Roderick* (2007) 154 Cal.App.4th 242, 265. Considering Petitioner's stated understanding of the role drugs and alcohol played in his life, of what caused his substance abuse, his commitment to AA/NA and sobriety, the non-violent nature of the rule violation and the Board's failure to related this incident to Petitioner's current risk of danger, the Court finds Petitioner's lack of credibility due to his denial of his 115 citation from 1990 is not evidence supporting a finding that he is unsuitable for parole.

Respondent continues, arguing that Petitioner made conflicting statements regarding other situations, such as claiming "self defense" for his manslaughter conviction (original quotes) and denying some drug use. Again, these specifics were not cited by the Board in its decision. Moreover, the record indicates that Petitioner does not call the manslaughter "self defense," as Respondent cites. Rather, in reading the record, Petitioner explained there was a confrontation with the victim, that he believed at the time he was scared and fired, thus leading to his imperfect self-defense mitigation to the murder charge. Petitioner also states that shooting was not the right thing to do and he should have dealt with the situation differently. With regards to the drug use, Respondent argued that Petitioner's current position differs from a unproven fact contained in the probation officers report from over twenty ago. The remainder of the current record indicates that Petitioner is aware of his prior substance abuse problem and understands that stress from his career and relationship and his failure to seek help from others caused him to use drugs. This acceptance of his drug problem is legitimate and complete and prior insufficient insight into the matter carries little weight. *In re Lee*, (2006) 143 Cal. App. 4th 1400.

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The Board found that Petitioner does not have insight into the causative factors of his crime and because of such, he cannot ensure that he can avoid similar behaviors in the future. When "lack of insight" is invoked as a reason to deny parole, such a finding must be based on an identifiable and material deficiency in the inmate's understanding and acceptance of responsibility for his or her commitment offense. *In re Macias*, 2010 Cal. App. LEXIS 1924. Here, the Board does not identify any such material deficiencies. The record includes many statements made by Petitioner during the hearing about his prior belief that his value was based in his success in his career and his relationship, about how his failures at both caused him to use drugs and alcohol, about how he became depressed because of his manslaughter conviction and his girlfriend's other relationship. Petitioner identified all these causes of his behavior and has addressed how he would handle the situation differently should he be confronted with the same stressors again. Petitioner's statements are echoed in his psychological report leading to the doctor's conclusion that he has sufficient insight into the causative factors of his crime. Respondent is correct that the Board need not believe Petitioner's self serving version of the crime, but "where undisputed evidence shows that the inmate has acknowledged the material aspects of his or her conduct and offense, shown an understanding of its causes, and demonstrated remorse, the Board's mere refusal to accept such evidence is not itself a rational or sufficient basis upon which to conclude that the inmate lacks insight, let alone that he or she remains currently dangerous." *Id.* Here, Petitioner's statements from the current parole suitability hearing and psychological report show his insight as well as his statements from his last parole hearing and several previous psychological reports. In light of the record, the Court finds it was improper for the Board to conclude Petitioner's level of insight proved sufficient that he remains a current risk of danger to society without identifying any material deficiencies in his insight.

Overall, the Court finds the Board did not sufficient identify evidence on the record supporting a finding that Petitioner currently poses an unreasonable risk of danger to society. Accordingly, the petition for writ of habeas corpus is granted. The Board is ordered to vacate its decision denying parole and thereafter conduct a new parole hearing for the Petitioner within 120 days of this decision in accordance with due process of law and consistent with this order.

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

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Counsel for Respondent:

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

Marilee Marshall, Esq.
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SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES		Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Clara Shortridge Foltz Criminal Justice Center 210 West Temple Street Los Angeles, CA 90012		CONFORMED COPY OF ORIGINAL FILED Los Angeles Superior Court DEC - 8 2010 John A. Clarke, Executive Officer/Clerk By <u>Carmen Sortillon</u> , Deputy
PLAINTIFF/PETITIONER: ERIC BROWN		
CLERK'S CERTIFICATE OF MAILING CCP, § 1013(a) Cal. Rules of Court, rule 2(a)(1)		CASE NUMBER: BH007021

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that this date I served:

- | | |
|--|---|
| <input type="checkbox"/> Order Extending Time | <input checked="" type="checkbox"/> Order re: Writ of Habeas Corpus |
| <input type="checkbox"/> Order to Show Cause | <input type="checkbox"/> Order re: Writ Error Coram Nobis |
| <input type="checkbox"/> Order for Informal Response | <input type="checkbox"/> Order re: Appointment of Counsel |
| <input type="checkbox"/> Order for Supplemental Pleading | <input type="checkbox"/> Copy of Petition for Writ of Habeas Corpus /Suitability
Hearing Transcript for the Attorney General |

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to the cause. I served this document by placing true copies in envelopes addressed as shown below and then by sealing and placing them for collection; stamping or metering with first-class, prepaid postage; and mailing on the date stated below, in the United States mail at Los Angeles County, California, following standard court practices.

December 8, 2010
DATED AND DEPOSITED

JOHN A. CLARKE, Executive Officer/Clerk
By: Carmen Sortillon, Clerk
Carmen Sortillon

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