

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DEPT 100

Date: DECEMBER 9, 2009

Honorable: PETER ESPINOZA

NONE

Judge

J. A. RAMIREZ

Bailiff

NONE

Deputy Clerk

Reporter

(Parties and Counsel checked if present)

BH 005938

In re,

MANUEL CHACON,

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 April 7, 2009 by the Petitioner, the Return filed on September 1, 2009 by the Respondent and the Traverse filed on November 6, 2009 by the Petitioner. The Petitioner challenges the November 25, 2008 finding by the Board of Parole Hearings ("Board") that he is not suitable for parole.

Having independently reviewed the record and giving deference to the broad discretion of the Board 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 *In re Lawrence* (2008) 44 Cal.4th 1181, 1205-06; *In re Rosenkrantz* (2002) 29 Cal.4th 616, 667; Cal. Code Regs., tit. 15, § 2402. Thus, the Board's decision must be vacated.

The Petitioner was received in the Department of Corrections on April 7, 1981 after a conviction for murder in the second degree. He was sentenced to a term of 15 years to life for the committing offense. He is also serving two concurrent terms for related convictions of assault with a deadly weapon and assault to commit murder. His minimum eligible parole date is February 20, 1991. He had served over 27 years in prison at the time of the hearing.

Facts

The record reflects that at approximately 3:05 a.m. on November 19, 1980, the Petitioner shot and killed his wife Yurmalia Chacon and wounded José Rios. The Petitioner had been working as a farm worker in Hollister while his wife and children remained in Long Beach. After not hearing from his wife for a long time, he went to Long Beach, found her, and decided to take the children with him to Hollister. When the children got sick, he returned to Long Beach to look for his wife, but could not find her. After searching, eventually he was told by a woman that his wife had gone to the movies with his cousin, José Rios. He went to his cousin's home but was told his wife was not there. He went back to talk to the woman, who "acted kind of funny," making him suspicious. After an argument, the woman told him to look in a van parked near the house. The Petitioner could see Mr. Rios in the van in bed with a woman. He knocked on the window of the van, and when Rios came out, asked if he had seen his wife. Mr. Rios said he was in bed with his own wife and denied having seen Yurmalia. The Petitioner then asked if he could talk with the woman in the van. When he saw that it was Yurmalia, he got angry, grabbed her by the neck and maneuvered her to his car. Mr. Rios then came over and tried to take her out of the vehicle. When she got out of the car and began to run, the Petitioner took a 9-

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millimeter handgun that was under the car seat and shot her, striking her fatally in the back. He then shot Mr. Rios three times, seriously wounding him.

At the time of the commitment offense, the Petitioner was 26 years old; he was 54 at the time of the Board hearing. He came to the United States from Mexico in 1973 to work in the fields. He has no juvenile or adult criminal record. He has no history of drug or alcohol use.

The Petitioner has programmed in a positive manner during his nearly 28 years of incarceration. He has attended AA.¹ 2008 Board Hearing Transcript (“HT”), pg. 38; 2008 Psychological Report (“PR”), pg. 3. He completed a life skills class (PR, pg. 3) and took an anger management class through the PIA (HT, pg. 24). Also, he is on the waiting list for victim awareness and other self-help courses. HT, pg. 25; PR, pg. 3. He attends church services. HT, pg. 31. The Petitioner has completed a vocation in welding, and was working in the PIA as a furniture upholsterer at the time of the hearing. HT, pg. 22.

During his incarceration the Petitioner has received three 115s, the most recent in 1990. He has no 128A counseling chronos. HT, pg. 22.

The 2008 psychological report considered by the Board is supportive of release. It found that the Petitioner’s overall propensity for violence is in the low range, and his general recidivism risk is also in the low range. PR, pgs. 6-7. It noted the Petitioner’s verbal expressions of regret and sorrow and stated that they seemed appropriate. PR, pg. 4. The report stated that the Petitioner accepts responsibility for the crime, and is able to identify key elements of the crime such as his impulsivity and the fact that he was enraged. PR, pg. 8. It went on to note, “His in-depth understanding of the crime is weak but in line with his cognitive level, language skill, and level of acculturation.” *Id.*

The Petitioner has appropriate and realistic parole plans. Due to an active immigration hold, he will be deported upon his release. Therefore, he plans to return to Mexico where he will live with his brother and farm on agricultural property that his brother has set aside for him. HT, pgs. 31-36; see Exhibit D to Petitioner’s Traverse.

¹ According to the Board, the Petitioner attended AA for “a couple” of years, but the psychological report stated he attended for “about seven” years.

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The Board's Decision

The Board found the Petitioner unsuitable for parole after a parole consideration hearing held on November 25, 2008. The Petitioner was denied parole for one year. The Board concluded that the Petitioner was unsuitable for parole and would pose an unreasonable risk of danger to society and a threat to public safety. The Board based its decision primarily on the commitment offense and the Petitioner's institutional programming. It also mentioned his parole plans. The Board also considered the opposition of the Long Beach Police Department and the Los Angeles County District Attorney's office. While that opposition may not serve as the basis for denying parole, it may be considered. Cal. Code Regs., tit. 15, § 3402.

Standard of Review

The Board must consider "all relevant, reliable information available" and its decision must not be arbitrary or capricious. *Rosenkrantz*, 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 Board's decision must be based upon some evidence in the record of the inmate's current dangerousness. *Lawrence*, 44 Cal.4th at 1205-06. Only a modicum of such evidence is required. *Id.* at 1226.

The Commitment Offense

The Board found that the Petitioner's commitment offense was especially heinous, atrocious, or cruel, because multiple victims were attacked and injured or killed in the same incident. Cal. Code Regs., tit. 15, § 2402, subd. (c)(1)(A). The Court finds that there is some evidence to support this finding. The Petitioner shot and killed his wife, Yurmalia Chacon, and shot and wounded José Rios. There is also some evidence to support a finding that the offense was committed in a manner which demonstrates an exceptionally callous disregard for human suffering. Cal. Code Regs., tit. 15, § 2402, subd. (c)(1)(D). The Petitioner shot Mr. Rios three times, rendering the offense particularly aggravated or violent. The shooting could also have endangered members of the public who could have been struck by stray bullets.

The Board found that the offense was also especially heinous, atrocious, or cruel because it was committed in a dispassionate or calculated manner (Cal. Code Regs., tit. 15, § 2402, subd. (c)(1)(B)), and because the victim was abused (Cal. Code Regs., tit. 15, § 2402, subd. (c)(1)(C)). The Court does not find some evidence to support these findings. The Petitioner shot his wife and cousin when he discovered them sleeping together. The facts indicate that this was a crime of passion arising from the Petitioner's rage in discovering his wife's infidelity. They do not show dispassion or calculation by the Petitioner, as would have been the case if

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he had shot the victims execution-style, or if he had stalked them, lain in wait for them, or shot them while they were asleep. There is also no indication that the victims were abused, defiled, or mutilated as part of the crime. There was no torture, and no pattern of abuse or brutalizing behavior.

The Board may base a denial 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*, 44 Cal.4th at 1221. Particularly after an inmate has served his suggested base term, the underlying facts of the offense will rarely support a finding of unsuitability, without other evidence of current dangerousness. *Id.* at 1211. Here, the 28 year-old commitment offense does not continue to indicate a current risk of violence.

Numerous factors in the record provide evidence of the Petitioner's rehabilitation since he was incarcerated and of his suitability for release. He committed the crime as the result of significant stress in his life, when he discovered his wife in bed with another man. Cal. Code Regs., tit. 15, § 2281, subd. (d)(4). He has no criminal record and does not have a record of assaulting others as a juvenile or committing other crimes with a potential of personal harm to victims. Cal. Code Regs., tit. 15, § 2281, subd. (d)(1). He has no other history of violent crime. Cal. Code Regs., tit. 15, § 2281, subd. (d)(6). The Petitioner is now 54 years old, reducing his probability of recidivism. Cal. Code Regs., tit.15, § 2402, subd. (d)(7). He appears to have reasonably stable relationships with others, as indicated by his family ties and offers of support. Cal. Code Regs., tit. 15, § 2281, subd. (d)(2). The psychological report indicates that he has taken responsibility for his behavior in the offense and expressed regret and sorrow for his actions. Cal. Code Regs., tit. 15, § 2281, subd. (d)(3). His recent institutional discipline record is commendable, with no 115s for 18 years and no 128As at all. Cal. Code Regs., tit. 15, § 2281, subd. (d)(9). He has participated in programs and activities to enhance his ability to function within the law upon his release. Cal. Code Regs., tit. 15, § 2402, subd. (d)(9). He has realistic plans for release. Cal. Code Regs., tit. 15, § 2281, subd. (d)(8).

The Petitioner's Institutional Programming

In its decision, the Board stated its "concern" that the Petitioner needed more self-help programming, and suggested church, AA, and self-help programs. HT, pg. 46, 48. It also suggested that the Petitioner take the GED again. HT, pg. 47.

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The Court finds that there is not some evidence to support a finding that the Petitioner's institutional programming is not supportive of suitability for parole. The record indicates that the Petitioner has pursued the programming suggested by the Board. He attends church services. HT, pg. 31. He attended AA, although he has never had an alcohol or drug problem. HT, pgs. 22-23, 38. He has participated in self-help in the form of a life skills course and a class on anger management, and he was able to discuss with the Board what he had learned from the anger management class about self-control and how to seek help when things go wrong. HT, pgs. 23-24. He recently signed up for the waiting list for victim awareness and other self-help courses. HT, pg. 25.

With regard to his education, the Petitioner is a native Spanish-speaker and used an interpreter for the Board hearing. He had no education in Mexico. PR, pg. 2. The psychological report noted that his short-term memory was impaired and his simple abstract reasoning was weak. PR, pg. 2. The Petitioner took the GED once eight years ago and did not pass. HT, pgs. 25-26. He has, however, signed up to take it again, showing a willingness to continue to improve himself educationally. HT, pg. 26. Moreover, the Petitioner's parole plans are to return to Mexico and be a farmer. There is no evidence that passing the GED or additional educational efforts will reduce his risk of violence or improve his ability to adjust to life in the free community.

Therefore, the Court finds that the record does not support a finding that that the Petitioner's institutional programming is not supportive of release.

Parole Plans

In its decision, the Board told the Petitioner that his parole plans needed more specificity regarding his work and living arrangements. HT, pg. 47. The record does not support a finding that the Petitioner's parole plans lack specificity. He stated that he would live with his brother in Michoacán, Mexico, and documented that his brother has given him an interest in agricultural property there. HT, pg. 34; see Exhibit D to Petitioner's Traverse. The Petitioner intends to farm on that property. See HT, pgs. 32-33. These plans are realistic and appropriate, considering his family ties, his educational background, and his occupational history. He has also demonstrated marketable skills by earning a vocation in welding and working as a furniture upholsterer in the PIA. HT, pg. 22. The psychological report stated that the Petitioner's parole plans "seem feasible and appropriate." PR, pg. 7. An inmate needs only "realistic" plans under the regulations. It is not necessary that an inmate have foolproof or ironclad plans in order to be suitable for parole. See *In re Andrade* (2006) 141 Cal.App.4th 807, 816-17 (abrogated on other grounds by *Lawrence*, 44 Cal.4th at 1215 fn.14). The Petitioner's offers of residence and employment meet that standard.

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The record does not support a finding that the Petitioner's parole plans are a sufficient basis for finding him unsuitable for parole.

Conclusion

The Board's November 25, 2008 decision finding the Petitioner unsuitable for parole is not supported by some evidence in the record of the Petitioner's current risk of danger to society. Therefore, 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 in conformity to the decision of this Court within 120 days.

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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