

# SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DEPT 100

Date: SEPTEMBER 7, 2010  
Honorable: PETER ESPINOZA  
NONE

Judge J. A. RAMIREZ  
Bailiff NONE

Deputy Clerk  
Reporter

(Parties and Counsel checked if present)

BH 006638

In re,  
ANTONIO MANUEL CHAVEZ,  
Petitioner,

Counsel for Petitioner:

On Habeas Corpus

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 8, 2010 by the Petitioner. The Court has also read and considered the Return filed on May 4, 2010 and Amended Return filed on July 28, 2010 by the Warden, and the Traverse filed on May 12, 2010 and Amended Traverse filed on August 12, 2010 by the Petitioner. The Petitioner challenges the Governor's July 21, 2009 decision to reverse the Board of Parole Hearings' (Board) March 3, 2009 finding that he is suitable for parole. The Governor has reversed three previous Board findings 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 *In re Lawrence* (2008) 44 Cal.4th 1181, 1205-06.; *In re Rosenkrantz* (2002) 29 Cal.4th 616, 667; Cal. Code Reg. tit. 15, § 2402. Thus, the Governor's decision must be vacated and the Board's grant of parole reinstated.

The Petitioner was received in the Department of Corrections on August 29, 1980 after a conviction for second degree murder. He was sentenced to 16 years to life. His minimum parole eligibility date was February 11, 1989. The Petitioner has served 30 years in prison.

## Facts

The record reflects that on December 9, 1979, the victim, Michael Rodriguez, was inside the motel room of his sister. The Petitioner was in a vehicle near the motel room with other persons, including Diane Serna. A knock was heard at the door and upon it being opened, a dead rat was thrown into the residence by Ms. Serna. The victim and his sister were told that "this is for your big kid's dinner." The victim ran outside to confront the persons in the vehicle, which had been blocked by a "big wheel" bicycle. The Petitioner alighted from the vehicle, pulled out a knife and confronted the victim. The victim grabbed the bike and swung it in the direction of the knife, and then threw the bike down and ran. As the Petitioner chased him, the victim fell, and the Petitioner stabbed him. The victim subsequently died of the wounds. The Petitioner indicates that he was under the influence of PCP and heroin when the offense was committed. 2009 Board Hearing Transcript (HT), pgs. 7-17, July 21, 2009 Governor's Reversal (GR), pg. 1.

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During the 2009 Board hearing, the Petitioner took full responsibility for the offense and expressed remorse for his actions. HT, pgs. 9, 20, 26-28.

The Petitioner was 25 at the time of the commitment offense and is now 56 year old. He had a previous criminal record as an adult, which included reckless driving, possessing heroin, and illegally using controlled substances. GR, pg. 2; HT. However, his institutional behavior in prison has been positive, as he received no 115 disciplines in prison. GR, pg. 2. He earned his GED and has attended college courses while in prison. 2008 Psychological Report (PR), pg. 2. He has vocational training in welding and professional heating and air conditioning. He has also availed himself of an array of self-help and therapy, including Alcoholics Anonymous (AA), Narcotics Anonymous (NA), anger management, stress management, and other programs. His involvement in AA and NA began in 1987 and he has worked as a group leader and steering committee member for AA, NA. He has also taught Bible study, Spanish HIV courses, and has tutored inmates and volunteered with the Hospice Support Services. In addition, the Petitioner has maintained supportive relations with friends and family during his incarceration, and he has adequate parole plans, including offers of residence and jobs. GR, pg. 2.

The Petitioner's 2008 psychological report found that he is in the low range for psychopathy. PR, pg. 7. The report concluded that he is a low-moderate to moderate risk of future violence, based primarily on historical factors. PR, pg. 8; HT, pg. 103. The report also stated that he has developed insight into the factors which led to the murder. PR, pgs. 5, 8; HT, pg. 104.

### The Board's Finding of Suitability

On March 3, 2009, the Board found that the Petitioner was suitable for parole and would not pose an unreasonable risk of danger to society. The Board stated that despite the serious nature of the commitment offense, the Petitioner's suitability was indicated by his positive institutional record, insight, expression of remorse, and realistic parole plans. HT, pgs. 96-112. The Board noted that it felt the Petitioner was "truly deserving of a date." HT, pg. 107.

### The Governor's Reversal

The Governor reversed the Board's finding of suitability on July 21, 2009. The Governor based his decision on the Petitioner's commitment offense, his failure to accept full responsibility for the offense, his lack

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of insight regarding his issues with anger and drugs, and his elevated risk which was noted in his most recent psychological report.

### Standard of Review

The Governor is constitutionally authorized to make “an independent decision” as to parole suitability. See *Rosenkrantz*, 29 Cal.4th at 670. The Governor must consider “all relevant, reliable information available” and his decision must not be arbitrary or capricious. *Id.*; 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. *Lawrence*, 44 Cal.4th at 1205-06. Only a modicum of such evidence is required. *Id.* at 1226.

### The Commitment Offense

The Governor found that the Petitioner’s commitment offense was especially heinous because it was carried out in a dispassionate and calculated manner, demonstrated an exceptionally callous disregard for human suffering, and the motive for the offense was extremely trivial. GR, pg. 3. See Cal. Code Regs., tit. 15, § 2402, subds. (c)(1)(B), (c)(1)(D), and (c)(1)(E).

The Court finds that the record does not support a finding that the offense was carried out in a dispassionate and calculated manner, as the Petitioner was reacting to a series of events that unfolded and escalated quickly. See *In re Weider* (2006) 145 Cal.App.4th 570, 587-588 (if offense occurs during a struggle or altercation, it is not dispassionate or calculated). In addition, the record does not support a finding that the offense demonstrated an exceptionally callous disregard for human suffering. An “exceptionally callous disregard for human suffering” means that “the offense in question must have been committed in a more aggravated or violent manner than that ordinarily shown in the commission of second degree murder.” *In re Scott* (2004) 119 Cal.App.4th 871, 891. Here, the offense was no more aggravated or violent than is ordinarily shown in a second degree murder. See *In re Lee* (2006) 143 Cal.App.4th 1400, 1412. However, the Court finds that there is some evidence to support the Governor’s conclusion that the motive for the offense was very trivial. The Petitioner actions were unnecessary, as the victim was unarmed and was running away when the Petitioner stabbed him.

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The Governor may base a reversal of parole on the circumstances of the commitment offense only if those facts support the ultimate conclusion that the inmate continues to pose an unreasonable risk to public safety. *Lawrence*, 44 Cal.4th at 1221. Thus, the relevant inquiry is whether the circumstances of the commitment offense, when considered in light of other facts in the record, including the passage of time and attendant changes in the inmate’s psychological or mental attitude, are such that they continue to be predictive of current dangerousness. *Id.* Here, the offense alone is not some evidence of current danger in light of the Petitioner’s 30 years of violence-free, and substance-abuse free rehabilitation.

The Governor concluded that a rational nexus between the offense and Petitioner’s current dangerousness existed on the basis of the Petitioner’s failure to fully accept responsibility for the offense, his lack of insight regarding his anger and drug issues, and the elevated finding in his psychological report, as discussed below.

Failure to Accept Full Responsibility

The Governor stated that the Petitioner had not yet accepted full responsibility for the murder because he has “continuously minimized his actions” in the offense. GR, pg. 3. The Governor cited statements that the Petitioner made shortly after the offense occurred, as well as other statements made while in prison that suggested that the offense was the result of an accident.

As indicated by the California Supreme Court in *In re Shaputis* (2008) 44 Cal.4th 1241, 1260, an inmate’s inability to gain insight regarding his antisocial behavior may provide some evidence that he remains dangerous and is unsuitable for parole. Here, the Petitioner admitted that he minimized his role until 1992, and the Board found that while the Petitioner minimized his actions previously, he does not do so now. HT, pgs. 9, 11, 102. The Board pointed out that several earlier psychological reports had repeated statements that the Petitioner made in prior years, without obtaining his current version of the events. HT, pgs. 9-10, 24-26.

The Petitioner’s acknowledgement of responsibility was repeated several times during the hearing. HT, pgs. 9, 11, 26-28. His most recent psychological report concluded that the Petitioner accepted the Probation Officer’s Report as stated. PR, pg. 5. The report also stated that the Petitioner had acknowledged that he had introduced the weapon to the situation and that he did not value life at the time of the offense. It concluded that his insight “seems appropriate.” PR, pgs. 5, 8.

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The Court finds that the record supports the Board’s conclusion that the Petitioner accepts full responsibility and does not maintain that it was an accident, and that the Governor’s finding on this issue does not provide a nexus between the commitment offense and the Petitioner’s current dangerousness. *In re Calderon* (2010) 184 Cal.App.4th 670, 690.

Lack of Insight Regarding Anger and Drug Issues

The Governor expressed concern that the Petitioner lacks insight into his anger and substance abuse issues. He indicated that the Petitioner remains unable to recognize and deal with potential triggers for anger and substance abuse because the Petitioner indicated that he has no interest in drugs at all and has developed self-control. Thus, the Governor concluded that he remains at risk for a relapse. GR, pg. 3.

The record does not provide some evidence to support this concern. The Petitioner has no serious disciplines in 30 years in prison, and none dealing with substance abuse. He openly acknowledged the role of drugs in his life at the time of the offense. HT, pgs. 35, 37. His commitment to abstinence and his growth and maturity was also noted in the 2008 psychological report. It stated that the Petitioner:

“ . . . has immersed himself in anger management and stress management courses. He indicated that he uses meditation, yoga, his religion and prayer to reduce stress. This individual has demonstrated a tremendous amount of patience while incarcerated, and has not acted out against anyone in a violent manner. . . .

“Mr. Chavez has been alcohol and drug free for many years now. . . . He has also not been involved in any gang activity for many years. He has been making efforts to conduct his life in a pro-social way and has coped with stress in a positive, nonviolent manner.” PR, pg. 9.

The Court finds that the record does not support the Governor’s findings regarding the Petitioner’s insight regarding anger and substance abuse issues.

2008 Psychological Report

The Governor also expressed concern regarding the Petitioner’s most recent psychological report. The report concluded that the Petitioner’s risk for future violence was in the low-moderate to moderate range. PR,

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pg. 10. The Governor found that these elevated ratings indicate that he still poses an unreasonable risk of danger if released at this time. GR, pg. 4.

However, the report's elevated assessments were based primarily on historical factors, including the Petitioner's prior criminal history, age when the offense was committed, unstable relations, and substance abuse history. PR, pg. 8. These are factors which will not change with time. Where a report's negative assessment is based on attenuated, static factors, it does not provide evidence of current dangerousness. *In re Aguilar* (2008) 168 Cal.App.4th 479, 490. Further, immutable factors alone may not be the basis of a determination of current risk. *Lawrence*, 44 Cal.4th at 1221.

The Court concludes that the elevated risk assessment in the 2008 report, which relied on immutable historical factors, does not provide evidence of the Petitioner's current dangerousness.

## Conclusion

As noted by the Board, there is evidence in the record of the Petitioner's suitability for parole. He does not have a juvenile record. Cal. Code Regs., tit. 15, § 2402, subd. (d)(1). He has expressed remorse for the offense. Cal. Code Regs., tit. 15, § 2402, subd. (d)(3). He lacks any significant history of violent crime. Cal. Code Regs., tit. 15, § 2402, subd. (d)(6). The Petitioner was 25 years old at the time of the offense and is now 56 years old, which reduces the probability of recidivism. Cal. Code Regs., tit. 15, § 2402, subd. (d)(7). He has developed realistic plans for his release. Cal. Code Regs., tit. 15, § 2402, subd. (d)(8). The Petitioner's institutional behavior and rehabilitative programming also indicate an enhanced ability to function within the law upon release. Cal. Code Regs., tit. 15, § 2402, subd. (d)(9).

The Court finds that Governor's July 21, 2009 decision to reverse the Board's finding that the Petitioner is suitable for parole is not supported by some evidence in the record of the Petitioner's current risk of danger to society. *In re Ross* (2009) 170 Cal.App.4th 1490, 1513. The Petition for writ of habeas corpus is granted.

As nothing in the record suggests that the Petitioner is unsuitable for parole, the Governor's reconsideration would be futile. The Governor is ordered to vacate his decision and the Board's March 3, 2009 decision is hereby reinstated. The Petitioner is ordered released in accordance with the parole date that the Board calculated. See *In re Aguilar* (2008) 168 Cal.App.4th 1479, 1491; *In re Masoner* (2009) 179, Cal.App.4th 1531, 1541.

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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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