SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DEPT 100

Date: September 21, 2009			
Honorable: PETER ESPINOZA	Judge / Bailiff	J. A. RAMIREZ	Deputy Clerk / Reporter

(Parties and Counsel checked if present)

BH 006960
In re,
WIILIE DUCKSWORTH,
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 Petition for Writ of Habeas Corpus filed on April 17, 2009 by the Petitioner, the Return filed on August 4, 2009 by the Attorney General, and the Traverse filed on September 3, 2009 by the Petitioner. The Petitioner challenges the Governor's March 5, 2009 decision to reverse the Board of Parole Hearings' ("Board") October 9, 2008 finding that the Petitioner is suitable for parole. This is the second consecutive time the Governor has reversed a Board finding that the Petitioner is suitable for parole.

Having independently reviewed the record, and 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 March 17, 1981 after being convicted for first degree murder. He was sentenced to 26 years to life in prison. His minimum parole eligibility date was October 1, 1995.

Facts

The record reflects that on April 26, 1980, the Petitioner stabbed Brian Finley to death following an argument over a $250 debt. There were 19 to 21 stab wounds of various depths and superficiality. Appellate Decision (*People v. Ducksworth*), August 18, 1982, pg. 4. The Petitioner turned himself in to authorities several days after the murder occurred.

According to the appellate decision, the Petitioner stated that the victim had been "free-basing" cocaine and, as a result of their conversation, suddenly swung at him with a knife. The Petitioner also stated that during the scuffle that followed, he feared for his life and stabbed the victim in self-defense. *Id.*, pgs. 5-6. However, at the 2008 Board hearing, the Petitioner clarified that although the victim suddenly attacked him, once the victim was disarmed, the fatal stabbing was not an act of self-defense. Board Hearing Transcript (HT), pgs. 25, 38.

The Petitioner was 29 years old at the time of the offense and is now 59 years old. Prior to the committing offense, he had a high school degree and had attended three years of college. He did not have a juvenile criminal record. As an adult, he had been convicted of forgery on at least two occasions as well as possession of heroin on one occasion. Probation Officer's Report (POR), pg. 9.

While in prison, the Petitioner has had no 115s and has maintained an excellent institutional record. HT, pg. 22. He completed vocational training in furniture upholstery and auto upholstery. He worked as a peer

mentor for a Substance Abuse program and has participated in an array of self-help programs, including Art Therapy, Amer-I-Can, Anger Management, Bridging Program, IMPACT, Project Change, Self Esteem and Assertiveness, Reality & Decision-Making, Rational Behavior Training, Beginning Stress Management Training, Relaxation Training Group, Process Oriented Therapy Group, Life Skills, and a Parent Education Program. Governor's Reversal, pg. 2.

The Petitioner's most recent psychological report was prepared on June 16, 2008. The report affirmed that the Petitioner believes that he was attacked by the victim, but once the victim was disarmed, it was no longer self-defense. 2008 Psychological Report (PR), pg. 4. The report concluded that he is a low risk of future violence and of future parole violations if he were to be released on parole. *Id.*, pgs. 7-8. The report noted the Petitioner has plans to live at Walden House in Los Angeles, which provides for housing, food, employment, substance abuse treatment and religious studies. *Id.*, pg. 3.

The Board's Finding of Suitability

The Board found the Petitioner suitable for parole on October 9, 2008. The Board found that the Petitioner would not pose an unreasonable risk of danger to society if he were released. It noted that he does not have a juvenile record. HT, pg. 35; Cal. Code Reg. Tit. 15, §2402 (d)(1). It found that he had a stable social history and has received a high school diploma and three years of college courses prior to the committing offense. HT, pgs. 35-36; Cal. Code Reg. Tit. 15, §2402 (d)(2). The Board found that the Petitioner has shown remorse for the crime and also has realistic parole plans and a marketable skill. HT, pgs. 36-37; Cal. Code Reg. Tit. 15, §2402 (d)(3) and (d)(8). It also found that his institutional behavior indicated an enhanced ability to function within the law upon release, as he had no 115s during his many years in prison and had attended numerous self-help classes. HT, pg. 37; Cal. Code Reg. Tit. 15, §2402 (d)(9).

The Governor's Reversal

The Governor reversed the Board's finding of suitability on March 5, 2009. The Governor based his decision on the Petitioner's commitment offense and his lack of full insight into the circumstances surrounding the committing offense. He also considered the opposition of the Los Angeles County District Attorney's Office and the Los Angeles Police Department. While such positions are to be considered, they may not serve as the basis for denying parole. Cal. Code Regs., tit. 15, § 3042.

Standard of Review

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. Only a modicum of such evidence is required. *Id.* at 1191.

The Commitment Offense

The Governor found that the Petitioner's commitment offense was especially atrocious because he stabbed his victim approximately 20 times, abusing his victim and displaying an exceptionally callous disregard for the victim's suffering. Governor's Reversal, pg. 2; Cal. Code Regs., tit. 15, §2402, subds. (c)(1)(C) and (c)(1)(D). The Court finds that there is some evidence to support the Governor's finding that the offense displayed an exceptionally callous disregard for the victim's suffering. The Governor noted that the autopsy report revealed that the victim had stab wounds in his chest, back, eyebrows, eyelids, shoulder, neck, ear and hands. Governor's Reversal, pg. 2.

However, the California Supreme Court has held that a finding that an inmate is unsuitable for parole may be based upon the circumstances of the committing offense, or other immutable factors, 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. Here, the 28 year old offense alone does not support a finding that the Petitioner is currently a risk of future violence. Thus, the issue is whether other factors relied upon by the Governor provide some evidence of the Petitioner's current dangerousness. In this case, the chief factor which was relied upon was the Governor's belief that the Petitioner lacks insight into the circumstances surrounding the offense.

The Petitioner's Insight

The Governor found that the Petitioner lacks insight into the committing offense and has attempted to "minimize his involvement" into the crime because he has previously stated that he stabbed his victim in self-defense. Governor's Reversal, pg. 2. As noted by *In re Shaputis* (2008) 44 Cal. 4th 1241, 1260, an inmate's version of the events may provide some evidence that he lacks remorse or insight, if it is supported by other evidence in the record. Such evidence may be in the form of facts in the record that directly refute an inmate's claims or in the form of conclusions set forth in the psychological report. *Id.* No such evidence appears in this case.

The record does not contradict the Petitioner's claim that the victim initially attacked him. The record is also clear that the Petitioner does not now believe that his crime was committed in self-defense. The Board

noted that the Petitioner's views on the self-defense issue were elicited at his most recent psychological evaluation of June 16, 2008:

> "The inmate verbalized that he accepts responsibility for the crime as stated in the record. Mr. Ducksworth stated that there were some issues brought up by the Board originally because he kept using the term "self-defense." He said once he understood the legal use of the word, it did not make sense in his case. The inmate affirmed that he was attacked by the victim, but once the victim was disarmed, it was no longer self-defense." HT; pgs. 24-25; PR, pg. 4.

The 2008 psychological report further noted that the Petitioner "accepts responsibility for the crime as stated in the record and can identify key characteristics." It concluded that he is a low risk of future violence. PR, pgs. 7-8.

As noted in *In re Vasquez* (2009) 170 Cal. App. 4th 370- 385-386, an inmate's past claims of self defense do not support a finding of a lack of insight if the inmate's current statements and the psychological report contradict that finding. On the basis of the record presented in this case, the Court rejects the Governor's finding that the Petitioner lacks insight and is thus unsuitable for parole.

Conclusion

The Governor's 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. Therefore, the petition for writ of habeas corpus is granted. The Governor is ordered to vacate his March 5, 2009 decision and the Board's October 9, 2008 decision finding the Petitioner suitable for parole is hereby reinstated.

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:

Willie D. Ducksworth

Minutes Entered
9-21-09
County Clerk