

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DEPT 100

Date: APRIL 11, 2014
Honorable: WILLIAM C. RYAN
NONE

Judge R. SAIKI
Bailiff NONE

Deputy Clerk
Reporter

(Parties and Counsel checked if present)

BH009249

In re,

INFINITY,

Petitioner,

On Habeas Corpus

Counsel for Petitioner:

Counsel for Respondent:

Nature of Proceedings: MEMORANDUM OF DECISION
(Habeas Corpus)

IN CHAMBERS

Petition for Writ of Habeas Corpus by Infinity, born Frank James Strong ("Petitioner"), represented by Marilee Marshall, Esq. Deputy Attorney General Jennifer Cano for Respondent. Granted.

The Petitioner was received in the Department of Corrections and Rehabilitation on March 13, 1981 after a conviction for first degree murder. Penal Code section 187. He was sentenced to a term of 25 years to life in prison. He is currently serving his sentence at R. J. Donovan Correctional Facility in San Diego, CA. His minimum parole eligibility date was April 21, 1995. He has now served 33 years in prison. The Petitioner was previously found suitable for parole by the Board on February 29, 2012 and February 7, 2013.

The Court has read and considered the Petition for Writ of Habeas Corpus filed on August 19, 2013 by the Petitioner, the Return filed on March 5, 2014 by the Respondent and the Traverse filed on March 20, 2014 by the Petitioner. The Petition challenges the Governor's July 3, 2013 decision to reverse the Board of Parole Hearings' ("Board") February 7, 2013 finding that the Petitioner is suitable for parole. This was the Petitioner's second finding of suitability.

Summary

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. Thus, the Governor's decision must be vacated and the Board's grant of parole reinstated.

Facts

The record reflects that on the night of May 3, 1980 and early morning hours of May 4, 1980, the Petitioner brutally beat his girlfriend, Jackie Schepis ("victim") to death over a period of many hours. Petitioner

Minutes Entered
04-11-14
County Clerk

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was under the influence of PCP and alcohol at the time of the death and continued to be intoxicated over the next few days while the body decomposed in the apartment. Petitioner eventually transported victim and buried her in a shallow grave. Board of Parole Hearings Transcripts, ("HT"), pp. 11-12, 16-18.

The Petitioner was previously convicted of battery on a peace officer (1966), robbery (1969, 1973, 1974 (Texas)), importation of a controlled substance (1971) as well as multiple convictions for driving under the influence. HT, pp. 36-38.

Petitioner has received no CDCR 115s in the last 21 years of incarceration and only two in approximately 34 years of incarceration. None of these involved substance abuse of any kind. HT, p. 71. He has not received a CDCR 128A since 2003. *Ibid.* Petitioner has parole plans which include acceptance into PREP (Partnership for Re-entry Program) and Francisco Homes transitional living homes, multiple vocations and numerous chronos for participation in AA/NA. HT, pp. 72-75.

The Petitioner's January 2008 Comprehensive Risk Assessment ("CRA"), attached as exhibit C to the petition indicated that petitioner was a low risk for future violence. 2008 CRA, p. 9. His 2010 CRA, also attached as exhibit C to the petition, stated that he was a low to moderate risk for violence in the free community. 2010 CRA, p. 22.

The Board's Finding of Suitability

The Board found the Petitioner suitable for parole on February 7, 2013. After considering the Petitioner's commitment offense, the Board determined that he would not pose an unreasonable risk of danger to society. HT, p. 67. The Board found that petitioner displayed additional insight into the causative factors for the commitment offense as compared to his statements at past hearings. Petitioner did not blame his use of PCP and alcohol on the night of the crime as the causative factor for the crime. HT, p. 68-69. The Board also considered the Petitioner's 2010 Comprehensive Risk Assessment report which found that petitioner was a low-moderate risk for violence in the free community (2010 CRA, p. 22) as well as the 2013 Supplemental Risk Assessment ("SRA") which found that petitioner "displayed no procriminal or antisocial attitudes likely to result in violence. In all likelihood, his impulse control and coping skills are markedly improved relative to when he entered prison." 2013 SRA, p. 5, attached as exhibit C to the petition. The 2008 CRA also found that petitioner was a low risk for future violence and that there was "no evidence of behavioral instability or

Minutes Entered 04-11-14 County Clerk

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impulsivity.” 2008 CRA, pp. 8-9. His classification score of 28 is the lowest that it can be for an inmate with his commitment offense. HT, p. 59, 74; 2010 CRA, p. 17.

The Governor’s Reversal

The Governor reversed the Board’s finding of suitability on July 3, 2013. *See* Governor’s Reversal attached as exhibit 7 to the Return. The Governor based his decision on the Petitioner’s commitment offense, lack of insight and elevated risk assessments. Return, p. 2. Additionally, the Governor considered the opposition to parole by the Los Angeles County District Attorney’s Office. While such opposition must be considered, it may not, in and of itself, serve as the basis for a denial of parole. Penal Code § 3042. The Governor concluded that the negative factors outweighed the positive factors cited by the Board.

Applicable Legal Principles

The Governor is constitutionally authorized to make “an independent decision” as to parole suitability. Cal. Const., art. V, § 8, subd. (b); *In re Rosenkrantz* (2002) 29 Cal.4th 616, 670. His parole decisions are governed by Penal Code section 3041.2 and section 2402 of Title 15 of the California Code of Regulations. The Governor must consider “all relevant, reliable information available” and his decision must not be arbitrary or capricious. *Rosenkrantz, supra*, at 670; Cal. Code Regs., tit.15, § 2402, subd. (b).

Although the Governor must consider the factors found by the Board, he may weigh them differently. *In re Elkins* (2006) 144 Cal.App.4th 475, 490. 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* (2008) 44 Cal.4th 1181, 1205-06. Only a modicum of such evidence is required. *Id.* at 1226.

Factors tending to show unsuitability include the nature of the commitment offense, a previous record of violence, an unstable social history, sadistic sexual offenses, psychological factors and institutional behavior constituting serious misconduct. Cal. Code Regs., tit. 15 § 2402, subd. (c). Factors tending to show suitability include a lack of a juvenile record, a stable social history, signs of remorse, the crime was committed due to significant life stress, the criminal behavior was the result of intimate partner battering syndrome, a lack of a history of violent crime, the inmate’s current age reduces the probability of recidivism, the inmate has realistic

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plans for release or marketable skills that can be utilized upon release, and the inmate's institutional behavior indicates an enhanced ability to be law-abiding upon release. Cal. Code Regs., tit. 15 § 2402, subd. (d). The weight and importance of these factors are left to the judgment of the Board and Governor. Cal. Code Regs., tit. 15, § 2402, subds. (c) and (d). The court may not reweigh the circumstances indicating suitability or unsuitability for parole. *In re Shaputis* (2008) 44 Cal.4th 1241, 1260 (hereafter *Shaputis I*); *In re Reed* (2009) 171 Cal.App.4th 1071, 1083.

Thus, unless a petitioner can demonstrate that there is no evidence to support the Governor's conclusion that the inmate is a current danger to public safety; the petition fails to state a *prima facie* case for relief and may be summarily denied. *People v. Duvall* (1995) 9 Cal.4th 464, 475.

Discussion

The Governor found that the Petitioner's commitment offense was especially heinous, atrocious, or cruel, because the petitioner viciously beat the victim to death. Cal. Code Regs., tit. 15, § 2402, subds. (c)(1)(A-E); HT, pp. 11-12, 16-18.

However, the Governor may base a reversal of parole upon immutable factors, such as 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. Here, the commitment offense does not continue to indicate a current risk of violence, after 21 years of violence-free rehabilitation, absent a rational nexus between those facts and current dangerousness. *Id.* at 1227. The Governor also considered lack of insight into the commitment offense and elevated risk assessments, as discussed below.

The Governor found the Petitioner lacks insight regarding his offense, because of comments made at prior Board hearings. Furthermore, his statements made at the latest hearing in February 2013 did not blame "the system" for his commitment crime nor did he blame alcohol. *See* Governor's Reversal, p. 2. Rather, petitioner attempted to explain his past way of thinking and past rationale for the offense. An inmate's failure to gain insight regarding the nature and magnitude of his offense or to express genuine remorse provides some evidence that he is currently dangerous. *Shaputis I, supra*, 44 Cal.4th at 1260. However, a "lack of insight" supports a finding of unsuitability, only if it is rationally indicative of current dangerousness. *Lawrence, supra*, 44 Cal.4th at 1191. If an inmate accepts responsibility for the material aspects of his conduct and offense,

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understands the causes of the offense and demonstrates remorse, such a finding will not support a denial of parole. *In re Ryner* (2011) 196 Cal.App.4th 533, 549. Here, petitioner did not blame “the system” as he had in the past nor did he blame his crime on alcohol, despite the role that PCP and alcohol clearly played in the crime. HT, pp. 17-19. Petitioner did not attempt to minimize any past physical abuse against his girlfriend, Jackie Schepis, but rather stated that his conscious failure to do anything about his known alcohol abuse led to physical abuse and ultimately murder of the victim. HT, pp. 19-21.

The Governor also took issue with petitioner’s failure to attend a “credible substance abuse” program. Reversal, p. 2. Petitioner has, however, participated in 429 weeks of AA/NA as of November 2010. HT, p. 28, 69-70.

As stated above, the Governor based his reversal on petitioner’s elevated risk assessments as well. Petitioner’s 2010 Comprehensive Risk Assessment report found that petitioner was a low-moderate risk for violence in the free community. 2010 CRA, p. 22. However, the 2013 SRA found that petitioner “displayed no procriminal or antisocial attitudes likely to result in violence. In all likelihood, his impulse control and coping skills are markedly improved relative to when he entered prison.” 2013 SRA, p. 5. Furthermore, the 2008 CRA also found that petitioner was a low risk for future violence and that there was “no evidence of behavioral instability or impulsivity.” 2008 CRA, pp. 8-9. His classification score of 28 is the lowest that it can be for an inmate with his commitment offense. HT, p. 59, 74; 2010 CRA, p. 17.

Lastly, the Board noted that petitioner had been accepted for transitional housing and job training, has vocational trades and has support letters from family. HT, pp. 54-56, 63, 73-75.

Conclusion

The Petitioner does not have a juvenile record of assaulting others. Cal. Code Regs., tit. 15, § 2402, subd. (d)(1). He has experienced reasonably stable relationships with others, as evidenced by his continued family support. Cal. Code Regs., tit. 15 § 2402, subd. (d)(2). He expressed remorse and accepts responsibility for his offense. Cal. Code Regs., tit. 15 § 2402, subd. (d)(3); HT, p. 72. The Petitioner was 32 at the time of the offense and is now 66, which reduces the probability of recidivism. Cal. Code Regs., tit. 15 § 2402, subd. (d)(7). He has realistic plans for his release, including transitional housing, further job training, AA/NA and family support. Cal. Code Regs., tit. 15 § 2402, subd. (d)(8). Finally, his participation in educational,

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vocational and self-help programs has enhanced his ability to function within the law upon his release. Cal. Code Regs., tit. 15 § 2402, subd. (d)(9).

For all the foregoing reasons, the Petition for a Writ of Habeas Corpus is GRANTED. The Governor's July 3, 2013 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. As nothing in the record suggests that the Petitioner is unsuitable for parole, the Governor's reconsideration would be futile. The Governor's decision is vacated and the Board's February 7, 2013 decision is hereby reinstated. *Aguilar, supra*, 168 Cal.App.4th at 1491; *In re Masoner* (2009) 179 Cal.App.4th 1531, 1541. The Petitioner is ordered released in accordance with the date set by the Board using the Board's "usual procedures for release of an inmate unless within 30 days the Board determines in good faith that cause for rescission of parole exists and initiates appropriate proceedings to determine that question". *In re Twinn* (2010) 190 Cal.App.4th 447, 473-474.

The Clerk is ordered to serve a copy of this decision upon attorney for Petitioner, Infinity, and upon Deputy Attorney General Jennifer Cano as attorney for the Respondent Warden of R. J. Donovan Correctional Facility located in San Diego, CA.

The court order is signed and filed this date.

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

Marilee Marshall
Attorney at Law
Marilee Marshall & Associates, Inc.
523 West Sixth St., Suite 1109
Los Angeles, CA 90014
Attorney for Petitioner, Infinity

Department of Justice – State of California
Office of the Attorney General
Jennifer O. Cano, Deputy Attorney General
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Attorney for Respondent

Minutes Entered
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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 ORIGINAL FILED Superior Court of California County of Los Angeles
PLAINTIFF/PETITIONER: INFINITY (aka FRANK JAMES STRONG)		APR 21 2014 Sherri R. Carter, Executive Officer/Clerk By: Virginia Torres, Deputy
CLERK'S CERTIFICATE OF MAILING CCP, § 1013(a) Cal. Rules of Court, rule 2(a)(1)		CASE NUMBER: BH009249


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"/> Memorandum of Decision (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.

April 21, 2014
DATED AND DEPOSITED

SHERRI R. CARTER, Executive Officer/Clerk

By: , Clerk
Virginia Torres

Marilee Marshall
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