

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DEPT 100

Date: APRIL 15, 2010

Honorable: PATRICIA SCHNEGG
NONE

Judge J. A. RAMIREZ
Bailiff NONE

Deputy Clerk
Reporter

(Parties and Counsel checked if present)

BH 006517

In re,
WILKS JACKSON,
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 November 25, 2009 by the Petitioner, the Return filed on February 26, 2010 by the Warden and the Traverse filed on March 12, 2010 by the Petitioner. The Petitioner challenges the Board of Parole Hearings' (Board) September 29, 2009 finding that he is not suitable for parole. The decision was rendered at a rehearing, pursuant to this Court's grant of a prior Petition that challenged the Board's September 30, 2008 finding that he was not suitable.¹

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 Reg. tit. 15, § 2281. Thus, the Board's decision must again be vacated.

The Petitioner was received in the Department of Corrections on December 17, 1974 after a conviction for murder in the first degree. He was sentenced to 7 years to life. His minimum parole eligibility date was April 19, 1981. At the time of the rehearing, the Petitioner had served nearly 35 years in prison for the offense.

Facts

The record reflects that on January 28, 1974, the Petitioner and his crime partner, both 17 years old, were sharing a bottle of wine when they decided to commit a home invasion robbery. They went to the home of Leroy Sims and Irene Anschutz and knocked on the door. When Mr. Sims answered the door, the Petitioner's crime partner pushed his way inside and hit Mr. Sims in the head with a bottle. Ms. Anschutz was forced her into a bedroom, where an assailant took some money from her and then hit her until she became unconscious. When she came to, Ms. Anschutz found Mr. Sims lying in the kitchen and the home had been ransacked. Mr. Sims died of a heart attack precipitated by the assault. See Appellate Court Opinion, pgs. 1-2; Probation Officer's Report (POR), pgs. 6-7.

The Petitioner was adjudicated or counseled as a juvenile for petty theft in 1968, four burglaries between 1968 and 1969, a strong-arm robbery of a classmate in 1969 and purse snatching in 1973. POR, pgs. 3-4; 2009

¹ See *In re Jackson* (BH005784).

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Board Hearing Transcript (HT), pg. 12. The Petitioner also told the Board that he semi-regularly used alcohol, marijuana and PCP. HT, pgs. 13-14.

The Petitioner has received six 115 disciplines in prison, including one for manufacturing pruno in 1978 and one for fighting in 1982. His last 115 was received over 24 years ago, in 1985. 2008 Psychological Report (PR), pg. 2. The Petitioner participated in Narcotics Anonymous since 1986, the Victim Empathy Program, the Alternatives to Violence Program, as well as anger management and self-esteem building programs. HT, pgs. 19-25. He earned his GED and a vocation in sewing machine repair, for which he also served as a teaching assistant for many years. He has consistently received good work reports and logged 2,200 hours as a meat cutter in the culinary program. HT, pgs. 16-17, 54. Upon his release, the Petitioner has an offer to live with his step-daughter in Los Angeles. He was also accepted into the PREP transitional housing program, which would provide housing and a job. Additionally, the Petitioner obtained a Narcotics Anonymous sponsor outside of the prison for his relapse prevention plan. HT, pgs. 17, 30-34. The Petitioner had several support letters from family. HT, pgs. 33-34.

The Petitioner's 2008 psychological report indicated that he presents an overall low to moderate risk of future violence. The evaluator noted that due to the Petitioner's history of antisocial behavior at an early age, he may never obtain a "low" risk estimate. The report also indicated that the Petitioner's elevated risk is due primarily to past, immutable factors. PR, pgs. 8-9.

The Board's Decision

The Board found the Petitioner unsuitable for parole after a rehearing held on September 29, 2009. The Petitioner was again denied parole for one year. The 2009 panel considered some of the same factors considered by the 2008 panel, which this Court previously held does not support a finding of unsuitability in the August 26, 2009 order granting the Petitioner's former petition.² Additionally, the 2009 panel cited the Petitioner's insight into his offense, a statement in his psychological report and his failure to recite the 12-steps related to the Narcotics Anonymous program. These factors are discussed below.

² Those factors were the commitment offense, the Petitioner's prior juvenile property crimes, his social history and his elevated risk assessment score in his psychological report.

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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, § 2281, 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 Petitioner’s Insight

The Board found that the Petitioner lacks insight regarding the causative factors of his offense, because he stated that he did not know what allowed him to become involved in it. HT, pg. 75. An inmate’s failure to gain insight into his offense, despite years of incarceration, may indicate that he is a current risk of danger to society. See *In re Shaputis* (2008) 44 Cal.4th 1241, 1260. However, while the Petitioner did initially respond, “I don’t know”, when asked what it was that allowed him to participate in the assault on the victims, he then stated that, “I didn’t have no [sic] concern about a human life” and that during the robbery he “panicked.” Later in the hearing, he explained that he became involved in burglaries and robberies because he believed it was “easy money” and because he was a follower, who was easily influenced by the bad crowd he associated with. HT, pgs. 39, 46. He also explained to the Board that he would avoid being involved in violence again by avoiding negative situations and by not following bad influences, as he previously had. HT, pgs. 36-37. Thus, the record indicates that the Petitioner does understand the causative factors leading to his participation in the offense.

As noted by his psychological report, the Petitioner accepts responsibility for his offense and, as the Board acknowledged, he has genuine remorse. PR, pg. 8; HT, pgs. 37, 41, 80. He also wrote a letter to the surviving victim of the offense, apologizing for his participation. HT, pg. 43. Therefore, the Board’s finding that the Petitioner is currently dangerous because of a lack of insight into his offense is not supported by the record.

2008 Psychological Report

The Board also considered a statement in the Petitioner’s 2008 psychological report, which indicated that if the Petitioner “were to return to prior lifestyle issues, his risk of recidivism and re-offending would considerably increase.” PR, pg. 10; HT, pgs. 76-77. However, the Petitioner has not received a serious discipline in over 24 years, he has developed marketable skills in prison and he has realistic parole plans, which

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include offers of residence, a job offer, community support and a relapse prevention plan. The record provides no evidence that the Petitioner would return to prior lifestyle issues, if released. Thus, the hypothetical worst-case scenario raised by the report does not support a finding of unsuitability for parole.

The Petitioner's Programming

The Board also found that the Petitioner's rehabilitative programming was "limited" and was particularly concerned that the Petitioner could not recite the 12-steps from the Narcotics Anonymous program. HT, pgs. 77, 81. However, as noted above, in addition to educational and vocation upgrades, the Petitioner has participated in anger management, self-esteem, victim empathy, alternatives to violence and substance abuse prevention programs in prison. He has participated in Narcotics Anonymous since 1985, with the exception of some periods in which his health or program availability prevented his participation. HT, pgs. 17-20, 25. The Board's finding that the Petitioner needs more programming, absent any evidence of lack of remorse or insight, or evidence of a specific need for further program participation, may not support its finding of unsuitability. See *In re Roderick* (2007) 154 Cal.App.4th 242, 274.

Further, although the Petitioner could only articulate three of the 12-steps in the Narcotics Anonymous program when asked by the Board, he has remained sober for more than 30 years and has secured a sponsor to assist him with the program upon his release. There is no evidence in the record to indicate that he would relapse into substance abuse if released. His inability to recite some of the steps at his parole hearing, alone, does not indicate a current risk of dangerousness.

Conclusion

The Petitioner has demonstrated remorse and has accepted responsibility for his offense. Cal. Code Regs., tit. 15, § 2281, subd. (d)(3). Although he has several prior property offenses, he lacks a significant history of violent crime. Cal. Code Regs., tit. 15, § 2281, subd. (d)(6). The Petitioner was 17 at the time of the offense and is now 54 years old, which greatly reduces the probability of recidivism. Cal. Code Regs., tit. 15, § 2281, subd. (d)(7). He has made realistic parole plans and has developed marketable skills that can be put to use upon his release. Cal. Code Regs., tit. 15, § 2281, subd. (d)(8). Finally, the Petitioner's 35 years of rehabilitation has enhanced his ability to function within the law upon his release. Cal. Code Regs., tit. 15, § 2281, subd. (d)(9). The Board did not articulate a rational nexus between the factors it considered and the Petitioner's current dangerousness and, thus, its decision is not supported by some evidence. *Lawrence*, 44 Cal.4th at 1227; *In re Criscione* (2009) 173 Cal.App.4th 60, 74-75.

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| | NONE | | | |

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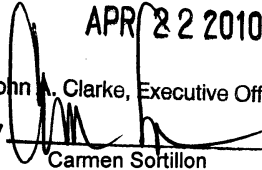
The Board's September 29, 2009 decision, finding the Petitioner unsuitable for parole is not supported by some evidence in the record of the Petitioner's current risk of danger to society. Therefore, the Petition for Writ of Habeas Corpus is granted. The Board is ordered to vacate its decision denying parole and thereafter conduct a new parole hearing for the Petitioner within 90 days. As there is no evidence in the record that supports a finding that the Petitioner is not suitable for parole, the Board is directed to find him suitable for parole unless new or different evidence, subsequent to the 2009 rehearing, indicates he is currently dangerous. See *In re Masoner* (2009) 172 Cal.App.4th 1098, 1109-1110.

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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Marilee Marshall & Associates, Inc.
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Attorney for Petitioner Wilks Jackson

Department of Justice – State of California
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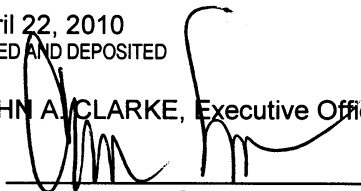
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| SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES | | Reserved for Clerk's File Stamp |
| COURTHOUSE ADDRESS: Clara Shorridge Foltz Criminal Justice Center 210 West Temple Street Los Angeles, CA 90012 | | CONFORMED COPY OF ORIGINAL FILED Los Angeles Superior Court APR 22 2010 John A. Clarke, Executive Officer/Clerk By:  Deputy Carmen Sortillon |
| PLAINTIFF/PETITIONER: WILKS JACKSON | | |
| CLERK'S CERTIFICATE OF MAILING CCP, § 1013(a) Cal. Rules of Court, rule 2(a)(1) | | CASE NUMBER: BH006517 |

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: Petition for 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.

April 22, 2010
DATED AND DEPOSITED

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

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