

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DEPT 100

Date: AUGUST 10, 2010
Honorable: PETER ESPINOZA
NONE

Judge J. A. RAMIREZ
Bailiff NONE

Deputy Clerk
Reporter

(Parties and Counsel checked if present)

BH 006167

In re,
TERRAKEDIS STINSON,
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 July 2, 2009 by the Petitioner, the Return filed on June 28, 2010 by the Respondent and the Traverse filed on July 15, 2010 by the Petitioner. The Petitioner challenges the Governor's February 25, 2009 decision to reverse the Board of Parole Hearings' (Board) October 2, 2008 finding that he is suitable for parole. This was the Petitioner's third finding of suitability.

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 August 7, 1981 after a conviction for first degree murder. He was sentenced to 25 years to life. His minimum parole eligibility date was April 6, 1996. He has now served 29 years in prison. The Petitioner was previously found suitable for parole by the Board on August 23, 2002 and on June 30, 2005, but those decisions were reversed by Governors Davis and Schwarzenegger, respectively.

Facts

The record reflects that on September 9, 1980, the Petitioner, Michael Johnson and Claude Moore entered Granados Mexican restaurant armed with handguns to commit a robbery. Johnson held his gun to the head of the owner, Carlos Granados, and demanded money. The Petitioner pointed his gun at a patron, Fernando Arellano. Granados moved and Johnson shot and killed him. As this happened, Arellano ducked and tried to run away, but the Petitioner shot him in the side. Moore grabbed money from the cash register and the crime partners all fled the restaurant to a waiting car. Arellano was later taken to a hospital and survived. See 1981 Probation Officer's Report (POR), pgs. 6-7. The Petitioner was 18 years old at the time of the offense. See 2008 Board Hearing Transcript (HT), pg. 15. The Petitioner told the 2008 Board that after Arellano began to run, Johnson yelled at him to shoot and he panicked and shot him. HT, pgs. 20-21.

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The Petitioner does not have any prior offenses. POR, pg. 4; HT, pg. 29. However, he admits that he was a member of the Crips gang since he was 16 years old. HT, pgs. 11-12. He continued to participate in gangs early in prison, but formally disassociated in 1990. HT, pg. 52. In prison, he received 13 115 disciplines, including his last discipline in 1991. He has been free of any discipline or even counseling for minor misconduct for 17 years. HT, pg. 51.

Upon his release, the Petitioner plans to live at one of two transitional homes that accepted him into their programs. He also received a job offer as a clerk at one of those programs. Additionally, the Petitioner has offers of residence from his sister and his brother and has contacted job programs for potential employment. HT, pgs. 37-43.

The Petitioner's 2008 psychological report indicated that he is an overall low risk of future violence and that he fell within the low range for psychopathic traits, propensity for violence and likelihood of general recidivism. See 2008 Psychological Report (PR), pgs. 7-9. The report indicated that while he is remorseful for Granados' death, he showed limited empathy for Arellano. However, the report noted that this has not prevented the Petitioner from changing his behavior and being pro-social. PR, pgs. 5, 8-9.

The Board's Finding of Suitability

The Board found the Petitioner suitable for parole on October 2, 2008. After considering the Petitioner's commitment offense, his gang history and his misconduct early in his incarceration, the Board determined that he would not pose an unreasonable risk of danger to society. The Board noted that the Petitioner has no prior offenses. The panel also found that the Petitioner accepts responsibility and has remorse for his offense, that he has been an exemplary inmate since 1991 and that he has realistic parole plans. HT, pgs. 77-81.

The Governor's Reversal

The Governor reversed the Board's finding of suitability on February 25, 2009. The Governor based his decision on the Petitioner's commitment offense, his insight regarding the offense and his need for further gang-focused self-help in light of his gang history. The Governor concluded that the negative factors outweighed the positive factors cited by the Board. See Governor's 2009 Reversal Letter (GR), pgs. 1-3.

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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, atrocious, or cruel, because multiple victims were injured or killed and because the motive was very trivial in relation to the offense. Cal. Code Regs., tit. 15, § 2402, subds. (c)(1)(A) and (c)(1)(E); GR, pg. 2. These findings are supported by the record, as the Petitioner shot and injured one man and his crime partner shot and killed another in order to obtain money from the restaurant, which was a very trivial motive in relation to the offense.

However, the Governor may base a reversal 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. Here, the commitment offense alone does not continue to indicate a current risk of violence, after 29 years of violence-free rehabilitation.

The Petitioner has no juvenile or adult prior record. Cal. Code Regs., tit. 15, § 2402, subds. (d)(1) and (d)(6). He has experienced reasonably stable relationships with others, as evidenced by his continued family support. Cal. Code Regs., tit. 15, § 2402, subd. (d)(2); HT, pgs. 42-43. As noted by the Board, he demonstrated remorse for his offense. Cal. Code Regs., tit. 15, § 2402, subd. (d)(3); HT, pg. 79. The Petitioner was 18 years old at the time of the offense and is now 48 years old, which reduces the probability of recidivism. Cal. Code Regs., tit. 15, § 2402, subd. (d)(7). He has realistic plans for his release, including offers of residence from transitional homes and family members, as well as marketable skills earned in prison. Cal. Code Regs., tit. 15, § 2402, subd. (d)(8). Finally, the Petitioner's participation in educational, vocational and self-help programs in prison have enhanced his ability to function within the law upon his release. Cal. Code Regs., tit. 15, § 2402, subd. (d)(9).

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As noted by the Board, the Petitioner’s post-conviction record strongly supports a finding that he no longer poses a danger to public safety. Therefore, the Governor’s findings regarding the offense, absent a rational nexus between those facts and current dangerousness, do not provide some evidence of unsuitability. *Lawrence*, 44 Cal.4th at 1227. The Governor also considered the Petitioner’s insight and his gang-related self-help efforts, as discussed below.

The Petitioner’s Insight

The Governor also found that the Petitioner lacks insight, because his most recent psychological report indicated that he has limited empathy for the victim who did not die during the offense.¹ PR, pgs. 5, 8; GR, pg. 3. Neither the report, nor the Governor provided evidence in the record to support that conclusion, other than the evaluator’s rejection of the Petitioner’s reasoning that he participated in the gang and the offense to impress others and fit in. PR, pg. 5, 8. However, as the Petitioner’s assertion regarding his motivation is not irrational or dishonest, it does not indicate a lack of insight sufficient to deny parole. See *In re Palermo* (2009) 171 Cal.App.4th 1096, 1112. Moreover, the evaluator concluded that any lack of insight regarding why the Petitioner participated in the offense did not prevent him “from changing his behavior and acting in prosocial ways” since 1991. PR, pg. 9. The report also noted that the Petitioner has maintained his positive behavior, despite the disappointment of two prior Governor reversals of parole grants and determined that the Petitioner presents a low risk of future violence if released. PR, pg. 9.

The Petitioner does not deny his role in the offense. He indicated that the effect on the deceased victim and his family was “real bad, they lost their faith, a wife lost her husband, and they lost their business” and that the effect on the injured victim was “the same thing. It had a big effect on him, he could have died.” PR, pg. 5. Thus, it appears that the Petitioner has sufficient insight regarding his offense, as found by the Board, and the Governor’s and psychological evaluator’s belief that he lacks insight, absent evidence in the record to support that determination, do not provide a sufficient basis to deny parole. See *In re Dannenberg* (2009) 173 Cal.App.4th 237, 255-56; *In re Calderon* (2010) 184 Cal.App.4th 670, 690 (the mere incantation of a lack of insight has no talismanic quality and is probative only if it is demonstrably shown in the record and is indicative of current dangerousness).

¹ The Governor also cited statements the Petitioner made before his sentencing and in 1993. However, such past statements are not evidence of a current lack of insight, in light of his more current statements in that regard. See *In re Vasquez* (2009) 170 Cal.App.4th 370, 385-86.

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The Petitioner's Programming

The Governor found that the Petitioner has not sufficiently participated in gang-related self-help programs, given his history of gang involvement. The Governor noted that the Petitioner was involved with his gang since he was 16 years old, that the offense was committed with fellow gang members and that he continued to be involved in gang activities until 1990. Thus, the Governor found the Petitioner needs additional self-help and therapy relating to gangs. GR, pg. 2. The Petitioner's past gang involvement prior to the offense and early in prison does not continue to provide some evidence of his current dangerousness, in light of his 20 years of positive, gang-free rehabilitation since. See *Calderon* (2010) 184 Cal.App.4th 670, 687-88; *In re Criscione* (2009) 173 Cal.App.4th 60, 76.

Further, the Governor's finding that the Petitioner needs more gang-related self-help is unfounded. The record indicates that the Petitioner has participated in numerous self-help programs, including the Youth Adult Awareness Program, for which prison staff commended him for his work counseling young gang members and would-be gang members about life in prison and choosing a different path than he did, as well as Crim-anon, which specifically addresses criminal and gang issues. HT, pgs. 47-50. The Governor's unsubstantiated finding that the Petitioner needs more such programming does not support the reversal. See *In re Roderick* (2007) 154 Cal.App.4th 242, 274.

Conclusion

The Governor's February 25, 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. Therefore, 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 October 2, 2008 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.

The court order is signed and filed this date. The clerk is directed to send notice.

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