SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DEPT 100

Date:	DECEMBER 23, 2010			
Honorable:	PATRICIA SCHNEGG	Judge	J. A. RAMIREZ	Deputy Clerk
	NONE	Bailiff	NONE	Reporter

(Parties and Counsel checked if present)

BH 007156
In re,
REDENTOR GALANG,
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 20, 2010, by Redentor Galang ("Petitioner"), the Return filed on November 5, 2010, by the Respondent, and the Traverse filed on November 19, 2010, by Petitioner. Petitioner challenges the Board of Parole Hearings' ("Board") February 9, 2010 finding that he is not suitable for parole. 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 Petitioner currently presents an unreasonable risk of danger to society. (See *In re Lawrence* (2008) 44 Cal.4th 1181, 1205-06; Cal. Code Regs., tit. 15, § 2402.)

Petitioner was received in the Department of Corrections on October 4, 1985, after a conviction for second degree murder with the use of a firearm. He was sentenced to 16 years to life in prison. His minimum parole eligibility date was November 10, 1993. The record reflects that the commitment offense occurred on December 27, 1982. Petitioner was a member of a Filipino gang that was at war with a Mexican gang. The Mexican gang had just killed a leader of the Filipino gang. The Filipino gang leader's funeral was on his birthday, and the members of his gang got angry at the funeral and decided to get revenge on the other gang. Petitioner drove one car, and another gang member drove another car. When some potential victims were located the other car drove into an alley, and Petitioner drove his car around to the other end for more strategic positioning. However, when Petitioner got his car to the other end of the alley, the other car was gone. Petitioner did not know where it went. He later found out that the gang members in the other car murdered two men. Petitioner did not know this, and was still driving around looking for members of the other gang. He and his passengers saw two men at a pay phone, and Petitioner pulled over to block them in while his passengers got out and fired at them. Neither of them were killed.

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, § 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 Board's decision must be based upon some evidence in the record of the inmate's current dangerousness. (*In re Lawrence*, 44 Cal.4th at 1205-06.) "[T]he standard of review is whether there exists 'some evidence' that an inmate poses a current threat to public safety, rather than merely some evidence of the existence of a statutory unsuitability factor." (*In re Shaputis* (2008) 44 Cal.4th 1241, 1254.) "[T]he relevant inquiry for a reviewing court is . . . whether the identified facts are probative to the central issue of current

dangerousness when considered in light of the full record before the Board or the Governor." (*In re Lawrence* (2008) 44 Cal.4th 1181, 1221.)

The Board found Petitioner unsuitable for parole after a parole consideration hearing held on February 9, 2010. Petitioner was denied parole for three years. The Board concluded that Petitioner was unsuitable for parole and would pose an unreasonable risk of danger to society and a threat to public safety. The Board based its decision on a number of factors, including Petitioner's commitment offense, a lack of insight, and his credibility as to the role of alcohol.

The Board said that the commitment offense was cruel and atrocious. (Cal. Code Regs., tit. 15, § 2402, subd. (c)(1).) It supported this determination by noting that the crime "demonstrates an exceptionally callous disregard for human suffering in that these people weren't even gang affiliated, had nothing to do with Mr. Edgar Pablo..." (2010 Parole Hearing Transcript, p. 78:1-3.) "[E]xamples of aggravated conduct reflecting an 'exceptionally callous disregard for human suffering,' are. . . 'torture,' as where the '[v]ictim was subjected to the prolonged infliction of physical pain through the use of non-deadly force prior to act resulting in death,' and 'severe trauma,' as where '[d]eath resulted from severe trauma inflicted with deadly intensity; e.g., beating, clubbing, stabbing, strangulation, suffocation, burning, multiple wounds inflicted with a weapon not resulting in immediate death or actions calculated to induce terror in the victim.'" (*In re Scott*, (2004) 119 Cal.App.4th 871, 891.) Here, the record does not support the determination that the crime was committed with a callous disregard for human suffering because there is no evidence of torture or a death resulting from severe trauma inflicted with deadly intensity. The Board could have supported its finding that the crime was especially cruel and atrocious by pointing out that there were multiple victims attacked, but it didn't. Even if it had, with Petitioner having served 28 years on his 16-life sentence, his commitment offense is not so atrocious as to, by itself, offer evidence of current dangerousness.

After a long period of time, immutable factors, such as the commitment offense, may no longer indicate a current risk of danger to society in light of a lengthy period of positive rehabilitation. (*In re Lawrence*, *supra*, 44 Cal.4th 1181, 1211.) Where other factors indicate a lack of rehabilitation, the aggravated circumstances of the commitment offense may provide some evidence of current dangerousness, even decades after its commission. (*Id.* at 1228.) Here, the Board cited a number of other factors as evidence that Petitioner continues to be dangerous.

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The Boards had "several concerns about [Petitioner's] credibility, insight, and . . . internalization of responsibility and insight. The first articulated "concern of the Panel is the varying versions you've given about the circumstances at the time, your – whether you were intoxicated or you weren't. One statement is I had a sip of beer, the other one, several of them I was woozy." (2010 Parole Hearing Transcript, pp.74:21-75:1.) The Board felt that Petitioner "minimize[d] [his] use of alcohol." (*Id.* at 75:7.) "[W]hen "lack of insight" is invoked as a reason to deny parole, such a finding must be based on an identifiable and material deficiency in the inmate's understanding and acceptance of responsibility for his or her commitment offense." (*In re Macias* (2010) 189 Cal.App.4th 1326, 1347.) Petitioner's varying descriptions of his level of intoxication, whether he had a sip or whether he was woozy, is immaterial to a finding of lack of insight because the statements do not show a material deficiency in his understanding and acceptance of responsibility for the commitment offense. It does not support a finding of minimization or a lack of insight.

The next concern the Board articulated to support its finding that Petitioner lacks insight was that Petitioner said in a 2004 psychological evaluation that he had no idea that the other gang members planned the shootings. This six-year-old statement does not show a current lack of insight. In 2002, Petitioner stated that he knew what was going to happen when he drove his car towards the victims. With the exception of the statement in 2004, he has accepted responsibility. Petitioner's statement in 2004 does not show a current lack of insight, and provides no evidence of current dangerousness.

The next concern the Board discussed related to the opinion of a 2003 Board Report evaluator who said that Petitioner "had not exactly, in their opinion, completely disassociated [himself] from, I would say, the gang attitude and the gang mentality . . . The writer tended to believe that [Petitioner] had, [Petitioner] had tendencies to be involved in activities similar to [his] prior gang affiliations as reflected in the 115 on that battery on an inmate without serious injury." The Board continued, "But during an interview in December '02, you stated you were no longer involved with the Satanas, and that since the incident of the commitment offense, your relationship with the other gang members had dissolved, or as he stated, the homies have disowned me. But the writer was not convinced that you had severed your attitude. So there's behavior and there's attitude." (*Id.* at p. 74:16-23.) The opinion of a 2003 Board Report evaluator is not relevant to determine Petitioner's current attitude. "Current psychological evaluations are generally most relevant to an assessment of current dangerousness. (*In re Lawrence, supra, 44 Cal.4th at pp. 1223-1224* [outdated psychological evaluations, which are contradicted by later evaluations, do not supply "some evidence"]"(*In re Rico* (2009) 171 Cal.App.4th 659, 676.) Here, the author of the Board Report's opinion is not even based on any expertise in judging people's

psychological state or attitude. It was also seven years old at the time of the hearing. The opinion of the 2003 Board report evaluator does not provide any evidence that Petitioner is currently dangerous; especially because the evaluator's opinion is based on a decade-old 115 Petitioner received. The Board noted the positive factors of Petitioner's record, "such as the fact that [he had] not had a serious discipline since 2000, and that's to [his] advantage and to [his] credit..." (2010 Parole Hearing Transcript, p.83:20-22.)

The Board also had a concern that the 2008 psychological evaluator said, "It would be beneficial for the inmate to be involved in AA to learn the model and work the steps." It related this to a concern about Petitioner's minimization of his alcohol use. However, there is no indication that the evaluator's comment was meant to be in regards to an alcohol problem of Petitioner. Alcoholics Anonymous is beneficial even to those who do not have an alcohol problem, because it forces one to reflect upon oneself. In fact, the evaluator concluded that there was no Axis I diagnosis of an alcohol problem. A summary of Petitioner's psychological evaluations going back to 1986 shows that he has never been diagnosed on Axis I to have an alcohol problem. In 1992, however, the psychiatric evaluation diagnosed Petitioner with an Axis I condition, Psychoactive Substance Abuse, in remission. Petitioner had no alcohol related arrests prior to his life crime. He has always maintained that alcohol did not play a part in his decision to participate in the life crime. To admit that he had an innate instinct which allowed him to commit the life crime, uninfluenced by the judgment-clouding effect of alcohol, is acceptance of responsibility. When one blames alcohol, it is a form of avoiding responsibility. His 115 in 1988 for inmate manufactured alcohol does not trigger a requirement that he have extensive participation in AA as a requirement to be paroled. Petitioner's lack of experience in AA does not provide any evidence of current dangerousness.

Next, the Board expressed concern about a statement Petitioner made that the victims were not responsible for his gang leader's death. The Board equated the statement as "meaning that if [it] had been the right people or the right persons, it would have been all right." (2010 Parole Hearing Transcript, p.77:7-9.) Petitioner's statement that the people who were retaliated against were not even the right people is a valid acknowledgement of the fact that the crime was more tragic because the victims were innocent members of the public, rather than members of a criminal gang. Even the board said that the crime was reflected "an exceptionally callous disregard for human suffering in that these people weren't even gang affiliated." Petitioner's statement does not provide any evidence of a lack of insight.

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"[W]hen 'lack of insight' is invoked as a reason to deny parole, such a finding must be based on an identifiable and material deficiency in the inmate's understanding and acceptance of responsibility for his or her commitment offense." (*In re Macias* (2010) 189 Cal.App.4th 1326, 1347.) A survey of the landmark "insight" cases shows that those inmate's "claims reflected an unapologetic attempt to make the commitment offense seem less aggravated than it was and to mitigate the perpetrator's state of mind." (*Id.* at 1350.) Here, the Board's concerns with Petitioner noting that the victims were not gang members, his six-year-old statement that he didn't know his crime partners were going to shoot the victims, his statement that he regretted being at the scene, whether of not he was "woozy" or just had a sip of alcohol, and the 2004 psychological evaluators opinion that Petitioner still had the gang attitude, do not provide any evidence of current dangerousness. Nothing mentioned shows a material deficiency in Petitioner's understanding or acceptance of responsibility. Petitioner has not made an unapologetic attempt to make the commitment offense seem less aggravated, or to mitigate his state of mind. The Board erred in relying on Petitioner's insight as a reason to deny parole.

The Board must set a parole date unless the Petitioner is unsuitable for parole because he poses an unreasonable risk of danger to society, based on all relevant, reliable information available to the panel. (Cal. Code Regs., tit. 15, § 2402, subds. (a),(b); Pen. Code § 3041.) Due process of law requires the Board to provide "a definitive written statement of its reasons for denying parole" (*In re Sturm* (1974) 11 Cal.3d 258, 272.) "The Board cannot, after having its parole denial decision reversed, continue to deny parole based on matters that could have been but were not raised in the original hearing. Such piecemeal litigation would undermine the prisoner's right to a fair hearing and the ability of courts to judicially review and grant effective remedies for the wrongful denial of parole." (*In re Prather* (2010) 50 Cal.4th 238, 260-261.) "We may uphold the parole authority's decision, despite a flaw in its findings, if the authority has made clear it would have reached the same decision even absent the error." (*In re Dannenberg* (2005) 34 Cal.4th 1061, 1100.) Here, the Board's findings were flawed and the decision cannot be upheld.

The Court finds that the Board's decision that the Petitioner is unsuitable for parole is not supported by some evidence in the record. 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 within 120 days in accordance with due process, and in conformance with this opinion. (*In re Prather, supra*, 50 Cal.4th 238, 258.)

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

Minutes Entered
12-23-10
County Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

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Counsel for Petitioner:

Counsel for Respondent:

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

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12-23-10
County Clerk

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** OF ORIGINAL FILED Los Angeles Superior Court DEC 29 2010 John A. Clarke, Executive Officer/Clerk By _____, Deputy Carmen Sortillon
PLAINTIFF/PETITIONER: REDENTOR GALANG	
CLERK'S CERTIFICATE OF MAILING CCP, § 1013(a) Cal. Rules of Court, rule 2(a)(1)	CASE NUMBER: BH007156

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:

- ☐ Order Extending Time
- ☐ Order to Show Cause
- ☐ Order for Informal Response
- ☐ Order for Supplemental Pleading
- ☑ Order re: Petition for Writ of Habeas Corpus
- ☐ Order re: Writ Error Coram Nobis
- ☐ Order re: Appointment of Counsel
- ☐ 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.

December 29, 2010
DATED AND DEPOSITED

JOHN A. CLARKE, Executive Officer/Clerk

By: _____, Clerk
Carmen Sortillon

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