

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DEPT 100

Date: APRIL 15, 2011
Honorable: PATRICIA SCHNEGG
NONE

Judge E. HERNANDEZ
Bailiff NONE

Deputy Clerk
Reporter

(Parties and Counsel checked if present)

BH007362

In re,
VINCENT VAN MOTLEY,
Petitioner,

Counsel for Petitioner:

On Habeas Corpus

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 September 30, 2010, by Vincent Motley ("Petitioner"), the Return filed on February 25, 2011, by the Respondent, and the Traverse filed on March 7, 2011, by Petitioner. Petitioner challenges the Board of Parole Hearings' ("Board") October 8, 2008 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 August 1, 1980, after a conviction for first degree murder with kidnap for robbery. He was sentenced to a total of 29 years to life in prison, plus life. His minimum parole eligibility date is September 28, 2004. The record reflects that on May 15, 1979, Petitioner entered the victim's home and threatened him at gun point. He subsequently kidnapped the victim for the purpose of robbing him of his vehicle, a Trans Am. After driving the victim to a deserted area, the inmate ultimately shot the victim twice in the chest area and twice in the head, killing him. The inmate was arrested on May 16, 1979, in Kingman, Arizona.

The Board must consider "all relevant, reliable information available" and its decision must not be arbitrary or capricious. (*In re Rosenkrantz*, 29 Cal.4th 616, 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.)

The Board found Petitioner unsuitable for parole after a parole consideration hearing held on October 8, 2008. Petitioner was denied parole for four 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 Petitioner's commitment offense, prior criminality, unstable social history, past and present mental state, insufficient involvement in self-help, institutional misconduct, and inadequate parole plans.

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The Board said the commitment offense weighed “heavily” against suitability. (Cal. Code Regs., tit. 15, § 2402, subd. (c)(1)(E).) It noted that the crime was committed in a calculated and dispassionate manner. When “[t]he offense was carried out in a dispassionate and calculated manner, such as an execution-style murder,” it supports a finding that the “prisoner committed the offense in an especially heinous, atrocious or cruel manner.” (Cal. Code Regs., tit. 15, §2402, subd. (c)(1)(B).) Here, Petitioner killed the victim with a “close contact wound” to the left side of the back of the victim’s head. The victim was also shot in the right side of the back of his head. (Return, Exhibit 2, p.11.) The execution style death that the victim suffered supports the conclusion that the crime was committed in an especially heinous manner. However, it no longer heavily weighs against suitability.

The Board also mentioned Petitioner’s prior criminality, although he had no documented arrests. It discussed Petitioner’s admission to pretending to be a police officer and stealing a bicycle when he was young. In addition, the Board said Petitioner had an unstable social history. It supported this by saying that after Petitioner stayed with his mother, he went to stay with his father, and his father did not meet his expectations. It also said that Petitioner’s mother spoiled him before she passed away.

However, after a long period of time, immutable factors, such as the commitment offense, prior criminality, and unstable social history, 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 Petitioner’s past and present mental state, insufficient involvement in self-help, institutional misconduct, and inadequate parole plans as evidence that Petitioner is currently dangerous.

The Board determined that Petitioner posed an unreasonable risk of danger, in part, because of his past and present mental state. The Board said, “[y]ou continue to minimize your involvement with the crime and you blame – Today we got the impression that you are still blaming the fact that this was a delusion for you; that you had to have that Grand Am¹ and that you didn’t really care about anything when your mother passed away.” (2008 Parole Hearing Transcript, p. 79:9-14.) The “delusion” the Board refers to was mentioned in Petitioner’s 2008 psychological evaluation. Petitioner was asked to discuss causative factors underlying the commitment offense, and part of his response was, “Prior to my mother’s death she had always talked about

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The Board also felt that Petitioner’s past and present mental state weighed against suitability because it felt Petitioner demonstrated “selfish, egotistical, and narcissistic type traits.” (2008 Parole Hearing Transcript, p. 79:16-17.) The Board said that Petitioner was “so self-centered and so egotistical that it makes it very, very difficult for me to even consider giving you a date, even though you’ve been down 29 years.” (*Id.* at p. 79:23-80:2.) However, the Board failed to provide any reasoning as to how its determination contributes to Petitioner’s current dangerousness. Petitioner’s psychological evaluation said, “The inmate also showed some insight into his personality limitations regarding his selfish egoism.” (2008 Psychological Report, p. 6.) The Board did not properly support its conclusion on this issue, and did not relate it to current dangerousness. This does not support the Board’s decision to deny parole.

The Board also determined that Petitioner lacked insight because it said he was not credible. “So when you’re not credible, you lack insight into the causative factors that led you to commit the crime. . .” (*Id.* at 81:5-7.) The Board’s simplistic view of the relationship between credibility and insight is incorrect. Lacking insight into the causative factors is related to an inmate’s deficient understanding of what led him to commit the crime, not whether he is credible. Egregious credibility concerns could perhaps provide evidence of dangerousness in certain scenarios, however, the Board did not make that determination, nor is this a situation where that would be the case.

The Board noted that Petitioner had seven 115s during his incarceration. However, Petitioner’s last 115 was in 1990 for delaying of count. This does not provide evidence of dangerousness.

The Board also felt that Petitioner was an unreasonable risk to society because he had not been involved sufficiently in self-help since his last hearing, despite his recent participation in Cage your Rage (anger management) and Life Without a Crutch (substance abuse). As it was recently said, “We find nothing in the

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governing regulations that require any minimum quantity of rehabilitative programming. More importantly, the significance of rehabilitative programming comes into play only when after years of such programming a prisoner is unable to gain insight into his antisocial behavior despite those years of therapy and rehabilitative programming. (*In re Rodriguez* (2011) 193 Cal.App.4th 85, 101.) Here, the Board said, “you also need to participate in self-help programming in order to gain an enhanced ability to function upon release.” (2008 Parole Hearing Transcript, p. 89:12-14.) Petitioner’s psychological evaluation said, “While additional self-help therapy groups and related training is encouraged for this inmate, it is not clinically suggested as a necessary condition for parole.” (2008 Psychological Evaluation, p. 15.) The Board has failed to show how this concern “constitutes a basis for determining that currently [Petitioner] would present an unreasonable risk of danger to the public if released.” (*In re Rodriguez* (2011) 193 Cal.App.4th 85, 101.)

The Board also told Petitioner that “[t]he other thing that we found about your current mental state that makes you unsuitable, as I mentioned before, is your lackadaisical attitude about your situation here.” (2008 Parole Hearing Transcript, p. 83:18-21.) The Board gave an example of Petitioner’s “lackadaisical attitude.” “In fact, even when you gave your closing statement. When I asked you how do you feel you were suitable [*sic*], you said, ‘I’ve earned the privilege because I accept my responsibilities for my actions.’” (*Id.* at 83:21-24.) Petitioner’s statement does not support the Board’s determination that he is currently dangerous.

The Board also denied Petitioner parole because he had no job offer and no verified parole plans. It was also concerned that Petitioner had not completed a vocation while in prison. It is a factor tending to show suitability for release when a “prisoner has made realistic plans for release *or* has developed marketable skills that can be put to use upon release.” (Cal. Code Regs., tit. 15, § 2402, subd. (d)(8), emphasis added.) Here, Petitioner’s parole plans are to live with his grandmother and his aunt in Apple Valley. Although his verifying letters were lost, this alone would not support a finding of current dangerousness.² The Board confirms everything before a parole decision is finalized. Considering that Petitioner had realistic plans to live with his grandmother and aunt, his lack of verification letters does not materially change the essence of his plans. However, the Board’s error was larger than this. It said that living with elderly individuals without a job is not a “viable parole plan.” (2008 Parole Hearing Transcript, p. 86:4.) A job offer is not a prerequisite for parole, and there is no maximum age for a person who wishes to let an unemployed parolee live in his or her home.

² Evidence was submitted that supports Petitioner’s assertion that his support letters were lost. (Petition, Exhibits C & D.)

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Petitioner's lack of a completed vocation also does not support a finding of current dangerousness, as the law does not require this.³

Finally, the Board denied Petitioner parole because it felt that his 2008 psychological evaluation was not totally supportive of parole. It noted that Petitioner was rated in the "low to moderate" range for psychopathy, and the "medium to high" range for general recidivism. However, his overall risk assessment concluded that Petitioner is a "low" risk for violent behavior in the community setting. "[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.) Here, a portion of the risk assessment, which seems negative when considered in a vacuum, does not support a finding of current dangerousness when the whole record is taken into account; especially considering that his overall risk assessment is "low."

The Board made a troubling statement to Petitioner towards the end of its decision. It said, "[y]ou've got to earn your way out of here and that's by taking various courses and doing the things the Board asks you to do . . . we have the keys on this side, and you're going to do it our way or you're not going to move out of here." (2008 Parole Hearing Transcript, p. 86:4.) 84:1-7.) This statement butchers the legal standard in parole hearings and does not strengthen the legitimacy of the Board's decision. A prisoner does not need to do what the Board recommends in order to be released from prison. As long as a prisoner, who is otherwise eligible for parole, does not pose an unreasonable risk of danger to society if released from prison, he should be released.

³ Petitioner received a laudatory chrono dated September 30, 2008, saying, "Inmate MOTLEY . . . has been assigned as a Yard Crew Worker on Facility D, since July 2004. MOTLEY has demonstrated and maintained excellent work performance. MOTLEY always completes his assigned duties in a timely manner and assists in special projects. MOTLEY has shown a great deal of interest in his job assignments. He has exceptional skills and knowledge; this is evident in the quality and quantity of the work he completes. MOTLEY has been utilized as a critical worker on numerous occasions during Modified Programs, often working long hours without complaint. MOTLEY has also assisted in the training of new Yard Crew workers. MOTLEY always displays a positive attitude in his dealings with staff, and is cordial in dealings with staff and inmates." This can be characterized as evidence that Petitioner has marketable skills.

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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 are 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.

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

Marilee Marshall, Esq.
Marilee Marshall & Associates, Inc.
523 W. Sixth Street, Suite 1109
Los Angeles, CA 90014
Attorney for Petitioner, Vincent Van Motley

Carrie A. Frederickson, Esq.
Angelo, Kilday & Kilduff, LLP
601 University Avenue, Suite 150
Sacramento, CA 95825
Attorneys for Respondent

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Finally, the Board denied Petitioner parole because it felt that his 2008 psychological evaluation was not totally supportive of parole. It noted that Petitioner was rated in the "low to moderate" range for psychopathy, and the "medium to high" range for general recidivism. However, his overall risk assessment concluded that Petitioner is a "low" risk for violent behavior in the community setting. "[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.) Here, a portion of the risk assessment, which seems negative when considered in a vacuum, does not support a finding of current dangerousness when the whole record is taken into account; especially considering that his overall risk assessment is "low."

The Board made a troubling statement to Petitioner towards the end of its decision. It said, "[y]ou've got to earn your way out of here and that's by taking various courses and doing the things the Board asks you to do . . . we have the keys on this side, and you're going to do it our way or you're not going to move out of here." (2008 Parole Hearing Transcript, p. 86:4.) 84:1-7.) This statement butchers the legal standard in parole hearings and does not strengthen the legitimacy of the Board's decision. A prisoner does not need to do what the Board recommends in order to be released from prison. As long as a prisoner, who is otherwise eligible for parole, does not pose an unreasonable risk of danger to society if released from prison, he should be released.

³ Petitioner received a laudatory chrono dated September 30, 2008, saying, "Inmate MOTLEY . . . has been assigned as a Yard Crew Worker on Facility D, since July 2004. MOTLEY has demonstrated and maintained excellent work performance. MOTLEY always completes his assigned duties in a timely manner and assists in special projects. MOTLEY has shown a great deal of interest in his job assignments. He has exceptional skills and knowledge; this is evident in the quality and quantity of the work he completes. MOTLEY has been utilized as a critical worker on numerous occasions during Modified Programs, often working long hours without complaint. MOTLEY has also assisted in the training of new Yard Crew workers. MOTLEY always displays a positive attitude in his dealings with staff, and is cordial in dealings with staff and inmates." This can be characterized as evidence that Petitioner has marketable skills.

Minutes Entered 04-15-11 County Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DEPT 100

Date: APRIL 15, 2011

Honorable: PATRICIA SCHNEGG

NONE

Judge

E. HERNANDEZ

Bailiff

NONE

Deputy Clerk

Reporter

(Parties and Counsel checked if present)

BH007362

In re,
VINCENT VAN MOTLEY,
Petitioner,

On Habeas Corpus

Counsel for Petitioner:

Counsel for Respondent:

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 are 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.

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

Marilee Marshall, Esq.
Marilee Marshall & Associates, Inc.
523 W. Sixth Street, Suite 1109
Los Angeles, CA 90014
Attorney for Petitioner, Vincent Van Motley

Carrie A. Frederickson, Esq.
Angelo, Kilday & Kilduff, LLP
601 University Avenue, Suite 150
Sacramento, CA 95825
Attorneys for Respondent

Minutes Entered
04-15-11
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 APR 25 2011 John A. Clarke, Executive Officer/Clerk By <u>Virginia Torres</u> , Deputy
PLAINTIFF/PETITIONER: VINCENT VAN MOTLEY	
CLERK'S CERTIFICATE OF MAILING CCP, § 1013(a) Cal. Rules of Court, rule 2(a)(1)	CASE NUMBER: BH007362

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 25, 2011
DATED AND DEPOSITED

JOHN A. CLARKE, Executive Officer/Clerk

By: Virginia Torres, Clerk

Marilee Marshall, Esq.
Marilee Marshall & Associates, Inc.
523 W. Sixth Street, Suite 1109
Los Angeles, CA 90014
Attorney for Petitioner, Vincent Van Motley

Carrie A. Frederickson, Esq.
Angelo, Kilday & Kilduff, LLP
601 University Avenue, Suite 150
Sacramento, CA 95825
Attorneys for Respondent