SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DEPT 100

Date:	FEBRUARY 4, 2010			
Honorable:	PETER ESPINOZA	Judge	J. A. RAMIREZ	Deputy Clerk
	NONE	Bailiff	NONE	Reporter

(Parties and Counsel checked if present)

BH006245
In re,
BRIAN SASS,
Petitioner,
On Habeas Corpus

Counsel for Respondent:

Nature of Proceedings: ORDER RE: WRIT OF HABEAS CORPUS

The Court has read and considered the Writ of Habeas Corpus filed by the petitioner on August 6, 2009 as well as the return and traverse filed in response to this Court's Order to Show Cause. The Petitioner challenges the Governor's June 30, 2009 decision to reverse the Board of Parole Hearings' ("Board") February 6, 2009 finding that the Petitioner is suitable for parole.

Having independently reviewed the record, 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 Cal. Code Reg. Tit. 15, §2402; *In re Rosenkrantz* (2002) 29 Cal.4th 616, 667; *In re Lawrence* (2008) 44 Cal.4th 1181, 1205-06. Thus, the Governor's decision must be vacated.

The Petitioner was received in the Department of Corrections on June 10, 1988 after being convicted of murder in the second degree. He was sentenced to a term of 15 years to life in prison. His minimum parole eligibility date was September 27, 1997.

The record reflects that on July 30, 1987, Petitioner was driving his car while under the influence of alcohol and cocaine. At one point, Petitioner crossed the center line into on-coming traffic. He drove head-on into Victim's vehicle, killing her and her unborn baby. Petitioner's blood alcohol-content was measured at .14 percent.

The record also reflects that prior to the commitment offense, Petitioner had four convictions for driving under the influence and 3 other arrests for the same crime.

Since his incarceration, Petitioner has been cited for serious rules violations twice: once, in 1988, for having his television on too loudly, and once, in 1994, as part of a prison-wide work strike.

Petitioner has upgraded himself educationally by obtaining his GED and earning a number of college credits toward an associate's degree. He has taken classes in legal research, first aid and CPR, emergency preparedness, and respiratory protection. He has earned a vocational certification in welding and is a Master Automotive Technician with over 10 years of experience. He has held institutional jobs as a mechanic crew chief, electrician, teacher's aide, tier tender, peer tutor, clerk and welder with very positive reviews for his work. Petitioner has also participated extensively in self-help programs including Ethical Principles of the 10

Minutes Entered
02-04-10
County Clerk

Commandments, Parenting Skills, Parolee Recidivism Prevention Program, Communication and leadership program, Lifers Therapy Group, Pro-Social Behavior seminar, Creative Conflict Resolution, Breaking Barriers, Anger Management, Life Forum, Healthy Living Workshop, and Stress Management. He has received many favorable chronos for his participation. Petitioner is especially dedicated to Alcoholics Anonymous, as alcohol played a large role in the commitment offense.

In 2002, Petitioner wrote a letter addressed to the Board, which he submitted at his parole suitability hearing that year. In the letter, Petitioner likened alcohol addition to overconsumption of sugar and expressed disappointment that society does not harbor the same negatively toward a diabetic driving after eating too much sugar. Petitioner suggested that many people drive under the influence and he was unlucky that he hurt someone. Petitioner has since rescinded the views expressed in this letter, explaining he was frustrated with the Board and the parole process. Petitioner also admitted that he submitted the letter on the advice of another inmate and now regrets that decision.

Petitioner's most recent psychological report, dated December 29, 2008, was favorable. The doctor wrote that "inmate does not present as glib. He dose not offer excuses or rationalizations for his behavior. He has accepted responsibility for his crime and the involvement that alcohol played in his commitment." Additionally, "Mr. Sass has done an excellent job in exploring the commitment offense and understands the underlying cause beyond alcoholism… he now recognizes that part of his 'drowning away his sorrows' was due to the fact that both of his parents had committed adultery prior to their divorce. He does not use this as an excuse but recognizes that psychologically these multiple contributing factors to his low self esteem reinforced his drinking behavior." The doctor also discussed at length with Petitioner the 2002 letter, concluding that "I don't think the inmate should be commended for writing this letter, but I would recommend to the Board that they look at where he went with the consequences of the letter and the positive move that he has made since writing this letter." Overall, despite the letter, the doctor found that Petitioner's remorse is "unprecedented," he has "outstanding insight" and has had an "outstanding response to treatment." Such conclusions reflect similar views from previous psychological reports.

At Petitioner's 2009 parole suitability hearing, he presented all the record stated above as well as residency plans with his sister, two job offers and contact information for an AA sponsor.

The Board found the Petitioner suitable for parole on February 6, 2009. The Board found that Petitioner accepted responsibility for his role in the commitment offense and developed significant insight into his

behavior and into the crime. That, along with Petitioner's participation in self-help, especially AA, and viable parole plans, convinced the Board that Petitioner is no longer an unreasonable risk of danger to society.

The Governor reversed the Board's finding of suitability on June 30, 2009. While the Governor agreed with the Board that Petitioner has made progress in prison, the Governor also considered Petitioner's commitment offense and the letter of 2002 as unsupportive of release. Based on those considerations, the Governor concluded that paroling Petitioner would be improper.

The Governor is constitutionally authorized to make "an independent decision" as to parole suitability. See *Rosenkrantz, supra*, 29 Cal.4th at 670. The Governor must consider "all relevant, reliable information available" and his decision must not be arbitrary or capricious. *Rosenkrantz, supra,* 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 Governor's decision must be based upon some evidence in the record of the inmate's current dangerousness. *In re Lawrence, supra,* 44 Cal.4th at 1205-06.

The Governor found that the Petitioner's commitment offense was especially atrocious, which is a factor tending to show unsuitability. Cal. Code Regs., tit. 15, §2402, subd. (c)(1). The Governor specified that the offense was carried out in a dispassionate manner, the victim was abused or mutilated, and the motive was very trivial. The Court finds that there is no evidence to support the Governor's findings. While Petitioner's act of driving under the influence was an intentional act, there is not evidence that his striking the victim's car was planned or deliberate, nor was this killing done in an execution-style. Therefore, the offense was not dispassionate and calculated. The record does reflect that the victim's body was hurt badly however, the injuries were the result of the accident; there is no evidence that Petitioner intentionally defiled the victim's body with his car. Moreover, the Petitioner did not commit the offense in a more violent manner than is ordinarily seen, nor did he intentionally subject the victim to prolonged pain or severe trauma over an extended period of time. Thus, while the offense demonstrated a reckless disregard for general safety, it did not demonstrate an exceptionally callous disregard for the victim's suffering. *In re Scott* (2004) 119 Cal.App.4th 871, 891-92.

Additionally, 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, supra*, 44 Cal.4th at 1221. For inmates who have served their base term, as in this case, immutable factors, such as the commitment offense "will rarely constitute a valid basis for a denial or reversal of parole" absent other evidence of current dangerousness. *Lawrence,* supra, 44 Cal.4th at 1211. Here,

the other evidence on the record indicates that Petitioner has participated in numerous self-help therapy programs, upgraded educationally and vocationally, remained violence free while incarcerated, and developed significant insight and remorse into his crimes. Thus, the commitment offense and the Petitioner's prior convictions for driving under the influence do not continues to indicate a current risk of violence, after more than 20 years of positive rehabilitation.

The Governor also found that Petitioner did not have sufficient insight into his crime as evidence by his letter to the Board of 2002, from which the Governor concluded that Petitioner continued to minimize the severity of his crime and that "after numerous years of participation in substance abuse treatment demonstrated that he gained no insight from those years of treatment." The Court agrees that Petitioner's letter of 2002 is not demonstrative of any insight Petitioner may have gained, however, despite the letter, Petitioner's psychological reports serve as evidence that Petitioner has continued gains in insight and remorse. Petitioner's 2005 psychological report found that Petitioner had outstanding insight and his remorse for the victim and the victim's family is unprecedented in this system. In 2008, Petitioner's mental health evaluator concurred and added that Petitioner did an excellent job exploring the commitment offense and coming to terms with the underlying causes. In addressing the 2002 letter, Petitioner's mental health evaluator wrote in 2008: "I opine [sic] that this individual has learned more about himself and the crime by this obviously poorly written memo than he could have learned in may years of therapy." The Court finds that Petitioner's letter of 2002 may have been evidence of a lapse in judgment eight years ago, however the remaining evidence on the record show that Petitioner currently has significant insight and remorse.

The Court also finds other evidence on the record that is supportive of release. Through honest self-discovery, Petitioner has earned some forgiveness from the family of his victim. He has maintained strong ties with his own family and has their support for the future. Petitioner also presented viable parole plans living and working with his family. Cal. Code Regs., tit. 15, §2402, subd. (d)(8).

Overall, the Court finds that the Governor's June 30, 2009 decision, reversing Petitioner's grant of parole, is not supported by some evidence in the record of Petitioner's current risk of danger to society. Accordingly, the petition for writ of habeas corpus is granted and the Governor is ordered to vacate his June 30 decision. The Board's February 6, 2009 decision that the Petitioner is suitable for parole is hereby reinstated. The Petitioner is ordered released in accordance with the parole date that the Board calculated.

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

Minutes Entered
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Counsel for Respondent:

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

Marilee Marshall
Marilee Marshall & Associates, Inc.
Attorneys at Law
523 W. Sixth Street, Suite 1109
Los Angeles, CA 90014
Attorney for Petitioner Brian Sass

Department of Justice – State of California
Office of the Attorney General
Amanda Lloyd, Deputy Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004

Minutes Entered
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