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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re VINCENT VAN MOTLEY, on Habeas Corpus.	B234058 (Los Angeles County Super. Ct. No. BH007362)

APPEAL from an order of the Superior Court of Los Angeles County, Patricia Schnegg, Judge. Reversed.

Kamala D. Harris, Attorney General, Julie L. Garland and Jennifer A. Neill, Assistant Attorneys General, Phillip Lindsay and Amy M. Roebuck, Deputy Attorneys General, for Appellant.

Marilee Marshall, under appointment by the Court of Appeal, for Respondent.

Respondent Vincent Van Motley was convicted in 1980 of first degree murder, kidnapping, robbery, and forgery. In 2008, the Board of Parole Hearings (Board) denied parole, finding Motley's release posed an unreasonable risk to public safety, and deferred his next parole hearing for four years. Motley challenged the Board's decision by way of a petition for a writ of habeas corpus filed in the superior court. The superior court concluded the Board's decision was not supported by "some evidence," reversed the Board's order, and ordered the Board to hold a new hearing comporting with due process. The Warden of the prison where Motley is currently incarcerated (Warden) filed a timely notice of appeal. We conclude there was "some evidence" supporting the Board's conclusion that Motley was unsuitable for release because he posed an unreasonable risk to public safety. Accordingly, we reverse the superior court's order.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Procedural history.*

After a bench trial, Motley was convicted in 1980 of first degree murder, kidnapping, robbery, and two counts of forgery. (Pen. Code, §§ 187, subd. (a), 209, 211 470.)[1] The court found true the allegations that the murder occurred during commission of a kidnapping and robbery, and that Motley personally used a firearm and inflicted great bodily injury and death. (§ 190.2, former §§ 12022.5, 12022.7.) The trial court initially sentenced Motley to life in prison without the possibility of parole on the murder and kidnap charges, and imposed a determinate term of 22 years on the remaining counts and enhancements. At the time of the crimes, Motley was 17 years old; he was 18 at the time of sentencing.

Motley appealed. In an unpublished opinion, this court reversed one of the forgery counts. (*People v. Motley* (39534, June 2, 1982), pp. 18-19.) We held that Motley had not personally waived his right to a jury trial on the special circumstance allegations on the murder count. (*Id.* at p. 19.) Accordingly, we remanded for a jury trial

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[1] All further undesignated statutory references are to the Penal Code.

on those allegations. (*Id.* at p. 32.) After remand, the trial court sentenced Motley to 25 years to life on the murder and kidnapping counts, plus two years, for a total term of 29 years to life, plus life.

Motley was committed to the California Department of Corrections on August 1, 1980. His life term began on September 6, 1983, and his minimum parole eligibility date was September 28, 2004. On February 1, 1988, Motley escaped from prison;[2] he was eventually apprehended and sentenced to an additional consecutive two years as a result.

On October 8, 2008, at Motley's second suitability hearing, the Board denied parole for a period of four years, concluding that his release posed an unreasonable danger to society. At that time, Motley was 47 years old and had been incarcerated for approximately 28 years. Motley challenged the Board's denial in a petition for a writ of habeas corpus brought in the superior court on September 30, 2010. After issuing an order to show cause and appointing counsel for Motley, the superior court on April 15, 2011, granted Motley's habeas petition. The court concluded the Board's decision was not supported by "some evidence." The Warden filed a timely notice of appeal (§ 1507) and a petition for a writ of supersedeas. We granted the supersedeas petition and stayed the superior court's April 15, 2011 order pending further order of this court.

2. *The commitment offense.*

As reflected in our 1982 opinion, in a probation report prepared in 1980, and by Motley's statements to an evaluating psychologist and at the 2008 hearing, the facts underlying the commitment offense were as follows. In May 1979, 17-year-old Motley was living in Altadena with his great-grandmother. Victim Robert Engen lived across the street with a roommate, William Caudill. Engen and his wife were temporarily separated. (*People v. Motley, supra,* 39534 at pp. 7-8.) Engen owned a new, silver 1979 Pontiac Firebird Trans Am automobile. (*Id*. at p. 7.)

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[2] The circumstances surrounding Motley's escape are discussed in more detail *post.*

In early May 1979, Motley unsuccessfully attempted to purchase a Trans Am from a local car dealership. (*People v. Motley, supra*, 39534 at pp. 7-8.)

Motley watched Engen's house for several weeks, in order to determine when Engen's roommates would be gone. On May 15, 1979, Motley went to Engen's house with a gun, at a time when he knew the roommates were out and Engen would soon be leaving for work. He hid the gun behind a couch and retrieved the keys to the Trans Am from an upstairs room. When Motley encountered Engen in the house, Motley poked his fingers in Engen's back to simulate a gun and made Engen go upstairs to get the keys, even though he knew they were in his (Motley's) pocket, in order to "buy some time to think." Motley then retrieved the gun from behind the couch and told Engen they were going " 'for a ride.' " (*People v. Motley, supra*, 39534 at p. 13.) Motley forced Engen to drive the Trans Am to the Chaney Trail in Altadena. There, Motley forced Engen out of the car and down the trail. According to one version of events, Motley then hit Engen in the back of the neck, and/or choked him, causing Engen to fall to the ground. Engen chased Motley back to the car; Motley again struck him across the back of the neck; and Engen fell and said he was "going to get" Motley. (*Ibid*.) Motley shot Engen, hitting his back. Engen fell and Motley shot him again. According to another version of events, Motley had Engen lie on the ground while Motley counted to 100. While Motley was walking away, Engen began to get up and threatened to "get" Motley; Motley fired two shots, hitting Engen in the back and head. Motley denied intending to kill Engen or taking any items from his body. He had planned to simply tie him up on the trail and leave. He did not remember shooting more than twice. He fired the second shot "from impulse," or because Engen was screaming in pain and Motley wished to quiet him, or because he felt threatened by Engen.

After killing Engen, Motley returned to the home Caudill and Engen shared and asked Caudill if he had seen " 'Eugene,' " because Motley wished to talk to him about his Trans Am. Caudill did not know anyone who called Engen " 'Eugene' "; however, Engen was in the habit of keeping a blank check in his wallet, and his checks were misprinted with the name Eugene. Later that day, Motley gave his cousins rides in the

Trans Am. The next day Motley used Engen's credit cards to purchase shoes and a watch.

When Engen did not return home on May 14, Caudill filed a missing persons report with police and notified Engen's wife. Engen's wife reported to police that the Trans Am had been stolen.

On May 15, 1979, a sheriff's deputy on patrol in San Bernardino County observed Motley driving the stolen Trans Am, and attempted to effectuate a traffic stop. (*People v. Motley, supra*, 39534 at pp. 4-5.) Motley led the deputy on a high speed chase across the border into Arizona. When Motley finally stopped, a deputy searching the car found Engen's wallet, credit cards, gasoline receipts bearing Engen's name, a rifle, a dismantled shotgun, ammunition, and luggage. (*Id.* at pp. 5-6.) Motley gave the deputy several different accounts of how the murder occurred, but accurately told deputies where Engen's body could be found.

An autopsy disclosed that Engen had been shot four times, twice in the head and twice in the back. Each shot was independently fatal. One of the shots to Engen's head was a " 'close contact wound.' " (*People v. Motley, supra*, 39534 at pp. 11-12, 17.)

3. *Psychological evaluations.*

(i) *1988 and 2003 evaluations.*

A psychological evaluation conducted in March 1988 concluded that Motley suffered from "Personality Disorder Schizoid Type," which was related to the commitment offense. Motley had "mildly improved within the structured institutional setting but still needed extensive programming including group therapy and stress management." The psychologist concluded that Motley's violence potential was difficult to determine.

In 2003, a second psychologist concluded Motley suffered from Antisocial Personality Disorder with narcissistic features. Nevertheless, Motley appeared to present little threat to the safety of others. Motley "continued to minimize problems and to demonstrate limited insight into causative factors underlying the commitment offenses." The doctor recommended Motley participate in therapy programs.

(ii) *2008 Evaluation.*

In 2008 a third psychologist, Dr. Joe Reed, evaluated Motley. Dr. Reed evaluated three "actuarial assessment instruments" in estimating Motley's potential for violent reoffense: the "Psychopathy Check List–Revised (PCL-R)," the "History-Clinical-Risk-20 (HCR-20)", and the "Level of Service[/]Case Management [I]inventory (LS/CMI)." The first two estimate an individual's risk of violence in the community, while the third estimates an inmate's general risk for recidivism. Motley scored in the low to moderate range on the PCL-R, the low range on the HCR-20, and the medium to high range on the LS/CMI. Dr. Reed concluded that Motley presented a "low risk of violence in both the structured prison and the community settings as compared to US adult male offenders." Dr. Reed did not factor the LS/CMI result into his conclusion, because that instrument does not predict violent recidivism.

Dr. Reed concluded that Motley suffered from "Personality Disorder Not Otherwise Specified with narcissistic features," which had "improved." This disorder was "related to [Motley's] history of impulsivity and behavioral control problems, all of which appears to have been related to the instant offense." Motley did not require mental health treatment. Dr. Reed opined that Motley had adequate insight into the causative factors underlying the commitment offense. He explained that Motley: "has developed greater maturity and insight into his personality limitations especially regarding his poor emotional adjustment regarding the death of his mother and later difficult emotional adjustment regarding the death of his great grandmother in 1987. He has also developed better insight into his personality limitations regarding his egocentricity and tendency toward selfish and violent behavior. The inmate's increasing age and his maturity developed within the structured prison setting also appear to have reduced his personality disorder and narcissistic features, decreasing his risk of antisocial behavior. The inmate did not appear to minimize his violent criminal behavior resulting in the injury and death of the victim, and he demonstrated some empathy and remorse . . . . Inmate Motley clinically appears to have adequately explored the commitment offense and come to terms with the underlying causes."

4. *Motley's expressions of insight and remorse.*

Motley told Dr. Reed that he realized he had " 'destroyed [Engen's] life for an inanimate object,' " and " 'negatively affected his family by taking their husband and father away.' " When asked by Dr. Reed to discuss the causative factors underlying the commitment offense, Motley stated, " 'prior to my mother's death she had always talked about getting me a Trans Am at my graduation. After her death anytime I saw a Trans Am I connected with her. But after thinking about it, getting the car did not connect me to her. It was kind of a delusion.' " He also opined that he committed the crimes out of " 'fear of him going to get me. Greed. Getting something I did not work for. If I had not had taken the firearm.' " Motley observed, " 'at seventeen, I was a selfish spoiled jerk who basically was greedy.' " At the 2008 hearing, when asked why he had been so intent on taking the victim's vehicle, Motley replied, "Basically because at that time it became a symbol, a connection with my mother." He "felt closer to her by having the car." After her death, he "no longer cared about life." Motley felt "[e]xtremely" remorseful. He told the Board that he had accepted responsibility for the crime, and had earned the privilege of being released into society.

5. *Criminal and social history.*

According to information in the probation report, the 2008 psychological report, and developed at the 2008 hearing, Motley was raised by his maternal grandmother until the age of 13, when he moved to Florida to live with his father, who was in the Air Force. His mother and female relatives had spoiled him, and his father was stricter. Motley was a promising athlete. However, he became involved in a romantic relationship with a girl against the wishes of both his father and the girl's parents. He was frequently truant and his grades dropped. He stole checks from his girlfriend's parents and forged one of their signatures to obtain $300 to pay for an abortion for the girlfriend. He was fired from two jobs at supermarkets for stealing. He also stole sports equipment from his school and a motorbike or bicycle from his father. Persons who knew Motley in Florida described him as a " 'lady's man' " and able to " 'con' others out of money.' " Motley once impersonated a police officer, stopping a female driver and telling her he was working

undercover and needed to see her license. He was just "having fun." He was also involved with selling alcohol to minors. In 1977, when Motley was 15, his mother died suddenly. He dropped out of school in 11th grade. Motley's father opined, when Motley was arrested for the murder, that Motley did not know right from wrong, had never expressed remorse, and that previous psychiatric intervention had not assisted him or explained his unstable behavior.

6. *Record while incarcerated.*

Motley claimed to have earned his General Education Degree (GED) while incarcerated; however, there was no record of such in his file. As of 2008, he was pursuing an Associate of Arts (AA) degree through a community college. He was taking "[g]eneral interest" classes including Psychology, Sociology, and Nutrition.

As of the 2008 hearing, Motley claimed to have completed some training in vocational baking and nine months in vocational plumbing, but had not received vocational certifications in either. He had worked as a stock clerk, in building maintenance, and on the yard crew while incarcerated and, with one exception, had received above average or exceptional performance evaluations.

At the time of the hearing, Motley had completed two months of a "Cage Your Rage" anger management program and four months of "Life Without Crutches," a substance abuse program.

On February 1, 1988, Motley escaped from the Tehachapi Correctional Institution. Motley somehow obtained a complete correctional officer's uniform and drove away in a jeep assigned to the institution's security housing unit, where Motley worked. Several days later Motley was found at an Oklahoma bus station. He had a gun in his luggage and ammunition in his pants pocket. He also had a Department of Corrections badge. He admitted taking the uniform and badge from the prison and walking out the front door. Motley pleaded guilty to escape. He explained, in a statement to the probation officer, " 'I guess what it boils down to is I got in a uniform and just walked out of the institution. . . . [T]here was no legitimate reason. . . . I just woke up tha[t] a.m. and decided.' " The probation officer opined that, contrary to Motley's statement, the escape took "much

forethought, planning and sophistication . . . . One can only imagine to what length the defendant had to go . . . to secure the varied and miscellaneous items required to accomplish his escape. Given the defendant's intelligence, sophistication, manipulation and charm, this officer wonders if given the same, or similar, type of opportunity in the future, if the defendant would behave in a similar manner."

Motley received six other CDC 115's while incarcerated, between 1988 and 1990,[3] for accepting a gift from a staff member, delay of count, and destruction of state property.[4] Motley had received seven CDC "128A's."[5] The most recent occurred in 2002, and involved "cell standards"; the preceding infraction, issued in 2001, was for "being out of bounds."

7. *Parole plans.*

If paroled, Motley planned to live with his grandmother and aunt in their home in Apple Valley. He did not have specific employment plans. He wished to work with terminally ill patients or at-risk youth, or in the plumbing, janitorial, building maintenance, or clerical fields.

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[3] A " 'CDC 115' " refers to a rules violation report that documents misconduct that is believed to be a violation of law or is not minor in nature. (*In re Roderick* (2007) 154 Cal.App.4th 242, 249, fn. 3; Cal. Code Regs., tit. 15, § 3312, subd. (a)(3).)

[4] The 2008 psychological evaluation listed the CDC 115's as follows. In March and April 1988, Motley was disciplined four times for destruction of state property. The incidents involved (1) a "light fixture cover in [Motley's] cell"; (2) a "bent shelf" in his cell; (3) a lost library book; and (4) a torn seat. The 1989 violation for accepting a gift from a staff member was issued after Motley and five other inmates "had a bottle of Royal Crown cola in the kitchen." The most recent CDC 115 was issued in February 1990 for "[d]elay of count," which was "reduced to administrative level."

[5] A " 'Custodial Counseling Chrono' " (CDC Form 128-A) documents minor misconduct and counseling provided for it. (*In re Roderick, supra,* 154 Cal.App.4th at p. 269, fn. 23; *In re Smith* (2003) 109 Cal.App.4th 489, 505; Cal. Code Regs., tit. 15, § 3312, subd. (a)(2).)

8 *The basis for the Board's unsuitability finding and the Superior Court's reversal.*

The Board found Motley's release presented an unreasonable danger to society because: the commitment offense was especially heinous and atrocious; Motley had an unstable social history and had engaged in criminal conduct prior to the life crime; he continued to minimize his involvement in, and displayed a "nonchalant" attitude toward, the crime; he had failed to participate adequately in self-help and vocational programs while incarcerated; and his parole plans were inadequate. The Board viewed Motley's credibility as suspect, based on his evasive or uncorroborated answers and demeanor at the hearing. The Board noted that Motley still presented as "selfish, egotistical, and narcissistic," and talked about the life crime in a "nonchalant" manner. The Presiding Commissioner noted: "It's been identified in your C-File that you are a con man and I could sure see it." Consequently, the Board considered Motley's purported acceptance of responsibility and expressions of remorse suspect. The Board praised Motley's lack of prison discipline since 1990 and the fact he had recently begun participating in two self-help programs. However, the Board concluded the negative factors outweighed the positive.

On April 15, 2010, the superior court granted Motley's habeas petition and reversed the Board's decision, finding it was not supported by "some evidence." The superior court held that the immutable factors of the nature of the crime and Motley's teenage lawbreaking no longer supported a finding of current dangerousness; there was inadequate evidence Motley minimized the crime, lacked insight, or was not credible; Motley's failure to complete self-help programming or vocational training did not support the Board's finding, as such activities were not legally required; his parole plans were adequate, and a job offer was not a prerequisite for parole; and the psychological evaluation did not support an unsuitability finding. The court faulted the Board for its "troubling statement" to Motley that he had to earn his way out of prison by " 'doing the things the Board asks you to do.' "

DISCUSSION

1. *Standard of review and applicable legal principles.*

When a superior court grants relief on a petition for habeas corpus without an evidentiary hearing, we review the decision de novo. (*In re Lazor* (2009) 172 Cal.App.4th 1185, 1192; *In re Rosenkrantz* (2002) 29 Cal.4th 616, 677 (*Rosenkrantz*); *In re Criscione* (2009) 180 Cal.App.4th 1446, 1458.)

Pursuant to Penal Code section 3041, subdivision (a), the Board shall normally set a parole release date one year prior to an inmate's minimum eligible parole release date, unless it determines that public safety requires a lengthier period of incarceration. (§ 3041, subd. (b)); *In re Lawrence* (2008) 44 Cal.4th 1181, 1204 (*Lawrence*); *In re Shaputis* (2008) 44 Cal.4th 1241, 1256 (*Shaputis I*); *In re Shippman* (2010) 185 Cal.App.4th 446, 454.) Release on parole is the rule, rather than the exception. (*In re Lawrence, supra,* at p. 1204; *In re Jackson* (2011) 193 Cal.App.4th 1376, 1384; *In re Aguilar* (2008) 168 Cal.App.4th 1479, 1486.) When determining whether an inmate is suitable for parole, the Board considers a variety of factors set forth in the pertinent regulations, as well as any additional reliable and relevant information that bears on the inmate's suitability for release.[6] (*In re Shaputis* (2011) 53 Cal.4th 192, 218-219

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[6] Circumstances tending to establish unsuitability for parole include that the prisoner (1) committed the offense in an especially heinous, atrocious, or cruel manner; (2) has a previous record of violence; (3) has an unstable social history; (4) has sexually assaulted another individual in a sadistic manner; (5) has a lengthy history of severe mental problems related to the offense; and (6) has engaged in serious misconduct while in prison or jail. (Cal. Code Regs., tit. 15, § 2402, subd. (c); *Lawrence, supra,* 44 Cal.4th at p. 1202, fn. 7; *Rosenkrantz, supra*, 29 Cal.4th at pp. 653-654.) Circumstances tending to show suitability for parole include that the inmate (1) does not have a juvenile record of assaulting others or committing crimes with the potential of personal harm to victims; (2) has a stable social history; (3) has shown signs of remorse; (4) committed the crime as the result of significant stress in his or her life, especially if the stress built up over a long period; (5) committed the crime as a result of Battered Woman Syndrome; (6) lacks any significant history of violent crime; (7) is of an age that reduces the probability of recidivism; (8) has made realistic plans for release, or has developed marketable skills that can be put to use upon release; and (9) has engaged in institutional activities suggesting an enhanced ability to function within the law upon release. (Cal. Code Regs.,

(*Shaputis II*); Cal. Code Regs., tit. 15, § 2402, subds. (c) & (d); *Lawrence, supra*, 44 Cal.4th at p. 1202, fn. 7.) The "regulatory suitability and unsuitability factors are not intended to function as comprehensive objective standards," but as general guidelines. (*Shaputis II, supra,* at p. 218.) " '[T]he importance attached to any circumstance or combination of circumstances in a particular case is left to the judgment of the panel.' " (*Ibid.*)

As our Supreme Court has recently emphasized, our review of the Board's decision is highly deferential. (*Shaputis II, supra*, 53 Cal.4th at pp. 198-199.) "The essential question in deciding whether to grant parole is whether the inmate currently poses a threat to public safety." (*Id.* at p. 220.) A reviewing court focuses on " 'whether there exists "some evidence" demonstrating that an inmate poses a current threat to public safety,' " rather than merely on whether some evidence supports the suitability factors. (*Shaputis II, supra*, at p. 209; *In re Prather* (2010) 50 Cal.4th 238, 251-252; *Lawrence, supra,* 44 Cal.4th at p. 1191.) "The executive decision of the Board or the Governor is upheld unless it is arbitrary or procedurally flawed." (*Shaputis II*, *supra*, at p. 221.) "Whether to grant parole to an inmate serving an indeterminate sentence is a decision vested in the executive branch, under our state Constitution and statutes. The scope of judicial review is limited" (*id.* at pp. 198-199) and "narrower in scope than appellate review of a lower court's judgment." (*Id.* at p. 215.) The "some evidence" standard is intended to serve the interests of due process by guarding against arbitrary or capricious parole decisions without overriding or controlling the exercise of executive discretion. (*Id.* at p. 199.) Review under the " 'some evidence' " standard "is *more deferential* than substantial evidence review, and may be satisfied by a lesser evidentiary showing." (*Id.* at p. 210, italics in original.) Only a modicum of evidence is required. (*Ibid.*; *Rosenkrantz, supra,* 29 Cal.4th at p. 677; *Lawrence, supra,* at p. 1204.) On the

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tit. 15, § 2402, subd. (d); *Lawrence, supra*, at p. 1203, fn. 8; *Rosenkrantz, supra*, at p. 654.)

other hand, the standard " 'certainly is not toothless' " and must be sufficiently robust to reveal and remedy any evident deprivation of constitutional rights. (*Shaputis II, supra,* at p. 215; *Lawrence, supra,* 44 Cal.4th at p. 1210.)

Resolution of conflicts in the evidence and the weight to be given the evidence are matters for the Board, not a reviewing court. The precise manner in which the specified factors are considered and balanced lies within the Board's discretion. The parole authority's interpretation of the evidence must be upheld if it is reasonable in the sense that it is not arbitrary, and reflects due consideration of the relevant factors. (*Shaputis II, supra,* 53 Cal.4th at p. 212.) It is irrelevant that a court might determine the evidence tending to establish suitability outweighs contrary evidence. (*Id*. at p. 210; *Rosenkrantz, supra,* 29 Cal.4th at p. 677; *Lawrence, supra,* 44 Cal.4th at p. 1204.) It is not the court's role "to decide *which* evidence in the record is convincing. [Citation.] Only when the evidence reflecting the inmate's present risk to public safety leads to but one conclusion may a court overturn a contrary decision by the Board or the Governor." (*Shaputis II, supra,* at p. 211.)

2. *The Board's decision was supported by the evidence.*

With the foregoing principles in mind, we conclude the Board's unsuitability finding was supported by "some evidence."

Some of the relevant factors favored a suitability finding. Motley has never committed sexual assaults; he has no previous record of violence; and his age, 47 at the 2008 hearing, somewhat reduces the likelihood of recidivism. The Board's conclusion that Motley had an unstable social history, that is, a " 'history of unstable or tumultuous relationships with others,' " (*Shaputis II, supra,* 53 Cal.4th at p. 212, fn. 9), was not supported by a modicum of evidence. Motley's mother was lenient and "spoiled" Motley; he had a strained relationship with his father, who was stricter than his mother; Motley dated a girl in defiance of his father's and the girl's parents, resulting in an unplanned pregnancy; and Motley dropped out of school. These facts, without more, do not demonstrate a history of unstable or tumultuous relationships. (Cf. *Shaputis II, supra,* at p. 212 [petitioner had long history of abusing his wives and daughters, including

molesting at least of his daughters].) Contrary to the Warden's argument, the fact Motley's relatives—some of them quite elderly—did not regularly visit him in prison also does not amount to any evidence of this factor.

Other aspects of the record did support the Board's decision, however. First, the evidence amply supports the Board's finding that the murder was especially heinous, atrocious, and cruel. The offense was carried out in a dispassionate and calculated manner. The probation report accurately described it as an "execution-style murder." Motley forced the victim to drive to and then walk down a trail, whereupon he shot him in the back and head four times. The motive for the crime was very trivial: Motley wanted Engen's Trans Am automobile. He chose Engen as a victim because he believed it would be easier to steal the car from Engen than from a car dealership. The victim was abused to some extent: Motley forced him to drive to a remote location and then struck and/or choked him before killing him, experiences that must have caused the victim extreme distress before his death. Despite Motley's statements that he connected the car with his deceased mother, who had purportedly promised to buy him a Trans Am, it does not appear the crime was the result of significant stress in his life. Instead, it was the result of greed and narcissism. (See Cal. Code Regs., tit. 15, § 2402, subds. (c)(1), (d)(4).)

Although Motley had no arrests or sustained petitions as a juvenile, and had not engaged in violent conduct prior to the life crime, he did have a history of committing uncharged crimes with the potential for personal harm to the victims. (Cal. Code Regs., tit. 15, § 2402, subd. (d)(1).) Motley had stolen and forged checks from his girlfriend's parents; stolen sports equipment from his school; was fired from two jobs for stealing; impersonated a police officer and stopped a female driver because he was "having fun"; and sold alcohol to minors. At the very least, the offenses of impersonating an officer and selling liquor to minors had the potential for harm to others. These facts demonstrate the murder was not an isolated, aberrant incident; instead it was part of a pervasive pattern of criminality and the culmination of an increasingly serious pattern of theft. (*Shaputis I, supra,* 44 Cal.4th at p. 1259 [where life crime is culmination of a pattern of

criminal conduct, the inmate's criminal history may be an indicator of current dangerousness].)

As the Board recognized, Motley's record of prison discipline is generally favorable. However, his 1988 escape cannot be overlooked. (See Cal. Code Regs., tit. 15, § 2402, subd. (c)(6); *Shaputis II, supra,* 53 Cal.4th at pp. 218-219.) In that incident, Motley displayed considerable cunning and sophistication in managing to simply walk out the prison door and drive off in a prison jeep. His misconduct was not limited to escaping: he was found with a gun and ammunition, items that clearly suggested he intended to embark on additional criminal endeavors. Clearly, as of 1988, Motley posed a danger to society and had completely failed to make strides toward rehabilitation.

The foregoing circumstances, of course, are all temporally remote, immutable factors that occurred decades before the 2008 hearing. They remain relevant to the assessment of Motley's current dangerousness only if something in Motley's pre- or post-incarceration history, or current demeanor and mental state, "indicate[] that the implications regarding the prisoner's dangerousness" deriving from them remain probative. (*In re Lawrence, supra*, 44 Cal.4th at p. 1214; *In re Ryner* (2011) 196 Cal.App.4th 533, 545.)

Such a connection is evidenced by other factors, including Motley's 2008 psychological evaluation, his failure to gain insight into the crime, and his failure to participate in self-help and other programs. First, the "LS/CMI" assessment indicated Motley had a medium to high risk of general recidivism. Dr. Reed did not factor this result into his overall risk assessment, apparently because the test gauged only the potential for *violent* reoffense. However, an inmate's potential for any type of significant recidivism, not just his or her potential for violence, is highly relevant to the parole authority's determination. Among the factors to be considered by the Board is whether the inmate will be able to live in society without committing additional antisocial acts. (*In re Reed* (2009) 171 Cal.App.4th 1071, 1081; *Rosenkrantz, supra,* 29 Cal.4th at p. 655.) "Antisocial acts" include, in addition to crimes of violence, actions posing a risk

of causing personal or financial harm to others. (*In re Reed*, *supra*, at p. 1081.) Thus, the LS/CMI's prediction that Motley presented a medium to high risk of recidivism tended to support the Board's conclusion.

Second, Motley's most recent psychological evaluation indicated that he still suffered from "Personality Disorder Not Otherwise Specified with narcissistic features," although his condition was "improved." While the personality disorder was not categorized as a "major mental illness," the psychologist explained that it appeared "related to [Motley's] history of impulsivity and behavioral control problems, all of which appears to have been related to the instant offense."

Despite the psychologist's conclusion that Motley had adequately explored the commitment offense and come to terms with the underlying causes, the record contains a modicum of evidence from which the Board could have concluded otherwise. (See *Shaputis II, supra,* 53 Cal.4th at p. 213; *In re Rozzo* (2009) 172 Cal.App.4th 40, 62 [parole authority has broad discretion to disagree with the State's forensic psychologists].) To be sure, Motley admitted that, at the age of 17, he had been a " 'selfish spoiled jerk who basically was greedy.' " He told the psychologist and the Board that he felt remorse. Motley also explained that he took the car because it was a symbol of connection with his deceased mother. The psychologist opined that Motley's mother's death had exacerbated his symptoms of impulsivity and his behavioral problems for several years thereafter. Motley also experienced a "difficult emotional adjustment regarding the death of his great grandmother in 1987." We observe that he escaped from prison on February 1, 1988, and received four of his seven CDC 115's in March and April 1988, close in time to his great grandmother's death. These facts suggest that Motley's condition may indeed worsen when he suffers a loss or setback.[7]

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[7] To the extent the Board did not expressly rely upon certain aspects of the record we discuss here, "[i]t is axiomatic that appellate review for sufficiency of the evidence extends to the entire record, and is not limited to facts mentioned" in a statement of decision. (*Shaputis II, supra*, 53 Cal.4th at p. 214, fn. 11.) "It would be a perversion of the deferential 'some evidence' standard if a reviewing court were permitted [to] go

In the face of these serious concerns, the Board could reasonably conclude Motley had failed to adequately address his personality disorder and the psychological factors that impelled him to react to his mother's death in such a wildly irrational way. Despite almost 30 years of incarceration, Motley had only participated in two self-help programs and had only been involved in each for a few months prior to the 2008 hearing.[8] Neither program was completed until early 2009, *after* the hearing. It is of course correct, as the superior court observed, that "nothing in the governing regulations" requires "any minimum quantity of rehabilitative programming." (*In re Rodriguez* (2011) 193 Cal.App.4th 85, 101.)[9] But here, Motley's personality disorder and inability to deal with loss or difficult life circumstances appear to be the causative factors of, or at least directly related to, his crimes. His failure to meaningfully participate in self-help or therapy therefore suggests current dangerousness. Where an inmate has "failed to make efforts toward rehabilitation . . . the aggravated circumstances of the commitment offense may well continue to provide 'some evidence' of current dangerousness even decades after commitment of the offense." (*Lawrence, supra,* 44 Cal.4th at p. 1228; *In re Shippman, supra,* 185 Cal.App.4th at p. 461 [Board could reasonably conclude inmate's participation in two self-help programs were only building blocks which required further

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beyond the evidence mentioned by the parole authority to conclude that a finding lacks evidentiary support, but forbidden from doing so to confirm that a finding is supported by the record." (*Ibid.*)

8 The 2008 psychological evaluation stated that Motley has "programmed well since his last psychological evaluation" in 2003, but the only self-help or therapeutic programs listed were the two that Motley began shortly before the hearing.

9 *In re Rodriguez* also reasoned that "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, supra,* 193 Cal.App.4th at p. 101.) In our view, under the circumstances presented here, the complete lack of such programming is also highly significant.

expansion before he could develop the necessary skills to prevent further violence]; *In re Rozzo, supra,* 172 Cal.App.4th at pp. 62-63 [where inmate minimized his participation in brutal murder, and had not engaged in effective therapy or rehabilitative programming that might have eliminated the racial animus that motivated the crime, the circumstances of the commitment offense continued to have probative value in predicting his dangerousness].) Moreover, Motley failed to show any insight into why he escaped from prison in 1988. He told the Board that he simply "didn't look beyond that point of driving out that gate." He was "in that mood that [he] didn't care" about the consequences.

The Board could also reasonably conclude that Motley had minimized certain aspects of his crimes, indicating a lack of insight. Where an inmate's version of a crime is implausible or contradicted by physical evidence, courts have not hesitated to find a lack of insight. (See, e.g., *Shaputis II, supra,* 53 Cal.4th at pp. 201-203, 214; *In re McClendon* (2003) 113 Cal.App.4th 315, 319-321; *In re Smith* (2009) 171 Cal.App.4th 1631, 1638-1639; *In re Taplett* (2010) 188 Cal.App.4th 440, 450.) Motley stated at the hearing, and/or to the psychologist, that he had not expected to run into Engen in the house; his original intent was to tie Engen up and leave him on the trail, not kill him; and he shot Engen because he "felt threatened" when Engen said he was " 'going to get' " him. Aspects of this account were inconsistent with the physical evidence, and implausible. Motley shot Engen four times: twice in the back of the head, once in the back, and once in the back of the chest. All four wounds were independently fatal. One of the shots to the head was a " 'close contact wound.' " (*People v. Motley, supra,* 39534 at pp. 11-12.) These circumstances make Motley's story that he shot from a distance of 15 feet, out of fear, implausible. Further, if Motley had not expected to encounter Engen in the house and did not intend to kill him, he would have had no need to bring along a gun when he went to steal the car. Motley's callous behavior after the murder—driving his cousins around in "his" new car, using Engen's credit cards to purchase three pairs of shoes and an expensive watch—were far more consistent with a callous murder for financial gain than with the story that he never intended to hurt Engen. Motley's

reference to Engen as "Eugene" immediately after the murder—a name he would only have learned by examining the misprinted check in Engen's wallet—suggested he had immediately inventoried his victim's property after the murder. Under these circumstances, the Board was not required to adopt the psychologist's conclusion that Motley did not minimize his behavior.

"As *Shaputis* [*I*] illustrates, a 'lack of insight' into past criminal conduct can reflect an inability to recognize the circumstances that led to the commitment crime; and such an inability can imply that the inmate remains vulnerable to those circumstances and, if confronted by them again, would likely react in a similar way. [Citations.] Thus, an inmate's 'lack of insight' can provide a logical nexus between the gravity of a commitment offense and a finding of current dangerousness." (*In re Rodriguez, supra,* 193 Cal.App.4th at p. 98.) An inmate's level of insight, *Shaputis II* reasoned, is "well within the scope of the parole regulations," which direct the parole authority to consider the inmate's past and present attitude toward the crime, expressions of remorse, and all relevant, reliable information that bears on the prisoner's suitability for release. (*Shaputis II, supra,* 53 Cal.4th at p. 218.) *Shaputis II* recently explained that the "presence or absence of insight is a significant factor in determining whether there is a 'rational nexus' between the inmate's dangerous past behavior and the threat the inmate currently poses to public safety." (*Ibid*.) "[L]lack of insight pertains to the inmate's current state of mind, unlike the circumstances of the commitment offense, the factor primarily at issue in *Lawrence*. [Citation.] Thus, insight bears more immediately on the ultimate question of the present risk to public safety posed by the inmate's release." (*Id.* at p. 219.) *Shaputis II* recognized that section 5011 and the relevant regulation prohibits the Board from conditioning parole on an admission of guilt, but nonetheless reasoned that "an *implausible* denial of guilt may support a finding of current dangerousness, without in any sense requiring the inmate to admit guilt as a condition of parole. In such a case it is not the failure to admit guilt that reflects a lack of insight, but the fact that the denial is factually unsupported or otherwise lacking in credibility." (*Id*. at p. 216.) Here, Motley's implausible statements about the crime demonstrate lack of insight, rendering

the immutable facts of the nature of the crime, his prior criminality, and his 1988 escape, relevant to evaluation of his current dangerousness.

The Board's concern about Motley's inadequate parole plans was also supported by the record. While an inmate need not have a firm job offer[10] or ironclad parole plans (*In re Powell* (2010) 188 Cal.App.4th 1530, 1543), the lack of a job offer is hardly "irrelevant," as Motley contends. The Board is required to consider whether the 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); *In re Powell, supra,* at p. 1543.) Here, despite his many years of incarceration and the 2003 Board's urging, Motley had failed to become certified in any vocation, although he had completed a small percentage of work towards that goal. When asked what he planned to do if released, Motley replied, "At this time, I don't know." He expressed an interest in working with at risk youth or as a caregiver for the terminally ill, but the record contains no indication these goals were feasible in the near future. Given Motley's vague and inchoate plans, and limited marketable skills, there was a modicum of evidence supporting the Board's conclusion regarding this factor.

The foregoing factors, considered together, provided a modicum of evidence that Motley's release would pose an unreasonable risk of danger.[11] In light of the longstanding nature of his personality disorder and his failure to participate in any type of rehabilitative programming until a few months before the hearing, the Board was not

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10 The Board expressly recognized, in its decision, that a job offer was not a prerequisite to parole.

11 The parties disagree about whether Motley's demeanor and responses at the hearing supported the Board's finding that Motley was not credible, and whether the superior court reweighed the evidence and substituted its own credibility finding. Upon our review of the record, we cannot say the Board's credibility determination was arbitrary. (See generally *In re Juarez* (2010) 182 Cal.App.4th 1316, 1341.) Given our conclusion that "some evidence" supported the Board's decision, we need not further address the parties' contentions regarding whether the superior court improperly reweighed the evidence.

required to assume Motley had conquered the impulsivity, narcissism, and psychological issues that had plagued him as a teenager and were still extant when he escaped from prison in 1988. The amoral nature of Motley's crime is striking: he brutally murdered a neighbor because he was obsessed with a car. The crime was not an isolated incident, unlikely to recur; instead, as in *Shaputis II*, it was the culmination of an ongoing and escalating pattern of theft. This was not a situation in which Motley had a once-in-a-lifetime motive to kill (see *In re Van Houten* (2004) 116 Cal.App.4th 339, 356) which was unlikely to recur. Motley minimizes his intentions in the life crime. Motley's parole plans were not impressive, suggesting financial difficulties are likely to remain a problem for him. Without evidence that Motley has meaningfully addressed the causative factors underlying his crimes, the Board could conclude there is no certainty Motley will not commit further crimes if he suffers emotionally troubling losses, financial difficulties, or other setbacks. The Board gave due consideration to the relevant factors, and its decision was not arbitrary. (*Shaputis II*, *supra*, 53 Cal.4th at p. 212.) Given the highly deferential standard of review (*id.* at pp. 198-199), we conclude there was "some evidence" to support the Board's unsuitability finding.

DISPOSITION

The trial court's order granting Motley's petition for a writ of habeas corpus is reversed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

ALDRICH, J.

We concur:

KLEIN, P. J.

KITCHING, J.