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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re JENNIFER HALL on Habeas Corpus.	B241582 (Los Angeles County Super. Ct. No. BH007933)

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

PETITION for writ of habeas corpus. Writ granted.

Kamala D. Harris, Attorney General, Jennifer A. Neill, Assistant Attorney General, Claudia H. Phillips and Amanda J. Murray, Deputy Attorneys General for Plaintiff and Appellant.

Law Office of Charles Carbone, Charles F.A. Carbone, and Evan Charles Greenberg for Defendant and Respondent.

This is an appeal by the Board of Parole Hearings (the Board) from a Superior Court order granting petitioner's application for a writ of habeas corpus. The writ was granted after the Board denied parole to Jennifer Hall, ordering instead a further three-year period of incarceration. We agree with the superior court's finding that the Board's conclusion that Hall's release at this time would present an unreasonable risk to public safety is not supported by "some evidence" as required by statute and relevant case law. We affirm.

FACTUAL AND PROCEDURAL SUMMARY

On September 2, 1992, Jennifer Hall shot and killed her boyfriend, Christopher Guerrero. The day of the shooting Hall's ex-husband was in a car accident, and she called Guerrero to come pick her up and take her to the hospital. Later that day, while at her apartment, the two got into an argument over Guerrero's drug use and suspected infidelity. Hall demanded that he leave and retrieved a handgun. As he turned to exit the house, Hall shot him through the lower back. Although she initially claimed that the gun's discharge was accidental, she admitted at her most recent parole hearing that she purposefully pulled the trigger. Hall called 911, but Guerrero died in the hospital the following day.

Hall was convicted of second degree murder (Pen. Code, § 187 et. seq., the commitment offense.) She was sentenced to state prison for an indeterminate term of 15 years to life with a four-year enhancement for the use of a gun (§ 12022.5, subd. (a)). She was 36 years old at the time.

In 2009, a psychological evaluation was conducted for the most recent Board hearing based on an interview with Hall. The forensic evaluator found that Hall's parole plan was feasible. Hall had been accepted into Crossroads, a transitional residential program, where she would receive help with the transition to free society. The evaluator also noted that she remains in regular contact with family and has a plan for maintaining her sobriety upon re-entering the community. This was echoed by the life prisoner evaluation in which correctional officers found that Hall had a "strong support system"

and "viable work skills," and concluded that they did not "foresee any problems should she be granted parole."

The psychological evaluation also included a risk assessment, determining Hall's violence potential in the free community.[1] On a measure of her static risk factors for future violence, Hall's score fell in the "***very low*** range" (8.2 percentile rank). On a more comprehensive measure of her risk factors, which involved historical, clinical, and risk management components, Hall scored in the "*low* range of risk for future violence." The evaluation cited her lack of a criminal history outside the commitment offense. The evaluator also noted that Hall "exhibited many protective factors for risk of violence" and displayed "prosocial attitudes as evidenced by her more than adequate programming in prison." The positive outlook included a caveat that she maintain her sobriety, however the psychologist found that it did not appear that "she will have difficulty refraining from the use/abuse of substances when paroled."

The psychological evaluation mentioned that Hall had difficulty accepting complete responsibility for the crime since, at the time of the evaluation, Hall continued to claim it was an accident. The evaluator found that her insight into the crime was therefore limited. However, the psychologist found that Hall expressed "genuine" and "credible remorse." The evaluation stated that Hall is unable to acknowledge the extent of her rage, but has gained insight into the negative effects of stress and has learned ways to manage it while incarcerated, "as demonstrated by her excellent programming." The evaluation concluded that although she "would undoubtedly benefit from further exploration of the underlying causes of the crime, . . . she still presents as a low risk for future violence." The psychologist found that she therefore poses a "low risk of reoffense if released to the community."

The findings of this recent evaluation were in line with an earlier psychological evaluation in 2004. In that evaluation, a different psychologist similarly found that Hall posed "a ***low*** likelihood to become involved in a violent offense if released into the free

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[1] The estimates for risk of violence were presented categorically: low, moderate, or high.

community." Hall was denied parole at a Board hearing in 2007 and was given a set of recommendations to prepare herself for parole. She followed through on those recommendations by actively participating in self-help groups, improving her parole plans, earning positive marks in her file, and remaining discipline free. In fact, during her almost 20 years of incarceration, she has never received a "CDCR-115 Rules Violation Report" (for nonminor prison infractions) and "only two 128 A Custodial Counseling Chronos" (minor infractions), achieving the lowest possible classification score for an inmate with an indeterminate life sentence. She also has maintained steady work assignments with "above average to exceptional" reviews from her supervisors. Her programming has included vocational training in dentistry, electronics and graphic arts, and she has participated in programs for stress management, anger management and life skills. She also has signed up to be a mentor in the prison's long termer's organization.

At her parole hearing, Hall responded to the concerns identified in these evaluations by taking full responsibility for the crime and admitting she pulled the trigger intentionally. She explained that it was rage and built-up anger that led to her criminal conduct, even though she did not know it at the time. She stated that she has since identified her triggers (lying, stealing, and cheating), connections between these issues and her upbringing, and strategies for approaching difficult situations in the future. The Board also noted that her record during incarceration supported the conclusion that she had learned to deal with anger issues. In addition, the 2009 psychological evaluation stated that Hall has accepted that she has made poor choices of romantic partners and poor decisions under stress, and found that she has "an understanding of some of the factors that contributed to her involvement in dysfunctional relationships and in the commitment crime."

At the parole hearing, the Board issued a three-year denial based on the commitment offense and lack of insight. The Board found Hall posed an unreasonable risk of danger if released, though she had "made strides" toward parole suitability.

Hall sought habeas corpus relief from the Board's denial. The Board contested her petition. The trial court granted the petition, finding that the Board's decision to deny parole was not supported by "some evidence" and the record before it did not support a connection between any lack of insight and current dangerousness. It ordered the Board to vacate its decision and conduct a new hearing. The Board appealed, and on application of the Attorney General, we issued a writ of supersedeas staying the trial court's order pending appeal.

DISCUSSION

When the Board is charged with determining the suitability of an inmate for parole, a grant of parole is the rule and not the exception. (*In re Lawrence* (2008) 44 Cal.4th 1181, 1212 (*Lawrence*); *In re Vasquez* (2009) 170 Cal.App.4th 370, 379-380 (*Vasquez)*.) Our Supreme Court has stated that the "fundamental and overriding question for the Board" is current dangerousness. (*Lawrence*, at p. 1213.) Therefore, proper evidence of parole unsuitability must be probative of whether the inmate's release will unreasonably endanger public safety. (*In re Shaputis* (2011) 53 Cal.4th 192, 200 (*Shaputis II*).)

Although our review of a trial court's determinations regarding issues of fact and subjective judgment is deferential, when evaluating a parole decision we review the administrative record independently of the trial court's decision. (*In re Rosenkrantz* (2002) 29 Cal.4th 616, 667; *In re Smith* (2003) 114 Cal.App.4th 343, 360-361 (*Smith*).) Although de novo, judicial review is limited to the "some evidence" standard articulated in *Shaputis II*: "When reviewing a parole unsuitability determination by the Board . . . a court must consider the whole record in the light most favorable to the determination before it, to determine whether it discloses *some evidence*—a modicum of evidence—supporting the determination that the inmate would pose a danger to the public if released on parole." (*Shaputis II, supra,* 53 Cal.4th at p. 214, italics added.) This standard is extremely deferential and the precise manner in which relevant factors are considered and balanced is within the discretion of the Board. (*Id*. at p. 215.) However, the standard "certainly is not toothless" and must be "sufficiently robust to reveal and remedy any

evident deprivation of constitutional rights" as inmates have a recognized liberty interest in the setting of a parole date. (*Lawrence*, *supra*, 44 Cal.4th at pp. 1210-1212.)

Here, the Board's decision to deny Hall parole was based on the commitment offense and lack of insight. The Board found that the crime was "done in a cruel manner," which demonstrated an "exceptionally callous disregard for human suffering." In the Board's opinion, the motive for the crime was "inexplicable in relation to the offense." The Board detailed how Hall had called the victim to her residence, took out a gun, loaded it, and then intentionally shot the victim in the back. The Board was clearly invoking the regulatory guidelines for parole hearings that detail "Circumstances Tending to Show Unsuitability," which include the bases mentioned by the Board. (Cal. Code Regs., tit. 15, § 2402, subd. (c)(1)(D), (E).)

Although Hall's crime was atrocious, we do not believe there is any evidence that supports a finding that it was committed in an especially cruel manner as understood in the relevant regulations. By definition, all second degree murders involve a callous indifference to the suffering of others. (*Vasquez*, *supra*, 170 Cal.App.4th at pp. 383-384; *Smith*, *supra*, 114 Cal.App.4th at pp. 366-367.) Hall called the victim to her home, they got into an argument, and she shot him in the back. Certainly this exhibits callousness and a disregard for the consequences it caused; these circumstances are common to the crime of murder, the most serious of felonies. But the test for parole eligibility is whether there is a nexus to an unreasonable risk of danger to the public if the prisoner is released.

We find no support for the Board's contention that the motive here was "inexplicable." As Hall stated, she was engaged in a heated fight with the victim over his drug use and suspected infidelity. She explained the rage and jealousy that had built up and led her to pull the trigger. Although these circumstances do not excuse the crime or provide any sort of mitigation, neither do they make the motive for committing the crime inexplicable. As we have discussed, the presumption is that parole will be granted after serving the minimum sentence imposed. We agree with the trial court's determination that the manner in which this crime was committed and the motive for it did not provide some evidence to support a finding of unsuitability for parole.

The second ground on which the Board denied parole was lack of insight. It has been established that an inmate's lack of insight into his or her crime is a potential unsuitability factor. (*Shaputis II*, *supra*, 53 Cal.4th at pp. 225-226.) However, the Board can rely on certain factors to establish unsuitability "'if, and only if, those circumstances are probative of the determination that a prisoner remains a danger to the public.'" (*Id*. at p. 225, quoting *Lawrence*, *supra*, 44 Cal.4th at p. 1212.) Our Supreme Court has identified two types of deficiencies to which this term generally refers: "(1) to inmates who deny committing the crime for which they were convicted or deny the official version of the crime and (2) to inmates who admit their crime but are regarded as having an insufficient understanding of the causes of their criminal conduct." (*Shaputis II*, at p. 226.) The Board reasoned that although Hall had "made strides toward" taking responsibility for the crime, she does not have the proper "present attitude towards the crime."

For the lack of insight finding, the Board heavily relied on, and extensively quoted, the 2009 psychological evaluation report that was in evidence. It cited the psychologist's comments that Hall would "undoubtedly benefit from further exploration" and that her "insight into the causes of the commitment crime [was] limited." However, the clear and repeated conclusion of that evaluation was that Hall presented a low risk of violence and that there was a minimal probability of her reoffending, undermining the Board's reliance on it. The Board also commented on how recent her admission to intentionally shooting the victim was and indicated that it relied on her inability to communicate and be more verbal in the hearing as evidence of her lack of insight. But "[w]here, as here, undisputed evidence shows that the inmate has acknowledged the material aspects of . . . her conduct and offense, shown an understanding of its causes, and demonstrated remorse, the [Board's] mere refusal to accept such evidence is not itself a rational or sufficient basis upon which to conclude that the inmate lacks insight, let alone that . . . she remains currently dangerous." (*In re Ryner* (2011) 196 Cal.App.4th 533, 549.) We conclude that the record before us does not provide "some evidence" that Hall's release would present an unreasonable danger to society. We affirm.

DISPOSITION

The order granting Hall's petition for writ of habeas corpus is affirmed. The Board's decision to deny parole is vacated, and the Board is directed to conduct a new parole suitability hearing in accordance with this opinion within 90 days of its finality. (*In re Prather* (2010) 50 Cal.4th 238, 258.) The stay previously issued is lifted.

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EPSTEIN, P. J.

We concur:

MANELLA, J.

SUZUKAWA, J.