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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re PAUL A. GRINKER,

on Habeas Corpus.

B288812

(Los Angeles County
Super. Ct. No. LA021739)

ORIGINAL PROCEEDINGS; petition for writ of habeas corpus. Susan M. Speer, Judge. Petition granted.

Michael Satris, under appointment by the Court of Appeal, for Petitioner.

Xavier Becerra, Attorney General, Phillip J. Lindsay, Senior Assistant Attorney General, Julie A. Malone, Supervising Deputy Attorney General, and Jennifer O. Cano, Deputy Attorney General, for Respondent.

We consider whether Department of Corrections and Rehabilitation (CDCR) regulations adopted to implement Article I, section 32, subdivision (a)(1) of the California Constitution (hereafter section 32(a)(1)) validly exclude petitioner Paul A. Grinker (Grinker), an admittedly nonviolent “Third Strike” offender sentenced to an indeterminate term, from early parole consideration relief under section 32(a)(1). The outcome here is controlled by our opinion in *In re Edwards* (September 7, 2018, B288086) ___ Cal.App.5th ___ (*Edwards*), published this same day. We grant Grinker’s petition and order early finality of our decision in this court.

I. BACKGROUND

In 1996, a jury convicted Grinker of being a felon in possession of a firearm (former Pen. Code, § 12021, subd. (a)(1)) and found 81 prior serious felony conviction allegations true. The trial court sentenced Grinker to 25 years to life pursuant to the Three Strikes law. (Pen. Code, §§ 667 subds. (b)-(i), 1170.12, subds. (a)-(d).) On direct appeal, we struck several of the prior serious felony conviction allegations but otherwise affirmed the judgment. (*People v. Grinker* (Feb. 18, 1998, B109973) [nonpub. opn.].)

Years later, in February 2018, the Board of Parole Hearings (Board) found Grinker suitable for parole under Penal Code section 3041, and that decision became final on June 13, 2018. Grinker’s minimum eligible parole date (MEPD) for section 3041 parole purposes, however, is February 25, 2019, and Grinker will not be paroled under Penal Code section 3041 until his MEPD. (Pen. Code, § 3046 subd. (a)(2).)

On March 19, 2018, Grinker filed a habeas corpus petition challenging the CDCR's regulations implementing section 32(a)(1) because they exclude third-strike offenders serving an indeterminate sentence for a nonviolent offense from parole consideration under section 32(a)(1), enacted as part of Proposition 57, the Public Safety and Rehabilitation Act of 2016. We appointed counsel for Grinker and directed counsel to file an amended petition addressing the validity of CDCR's regulations. Appointed counsel (the same attorney representing the petitioner in *Edwards*) thereafter filed an amended petition and we issued an order to show cause why the relief requested in the petition should not be granted.

II. DISCUSSION

The legal issue presented in this case is identical in all material respects to the issue presented in *Edwards*. Our discussion of the merits will therefore be brief. Grinker is entitled to a writ of habeas corpus because, for the same reasons stated in our opinion in *Edwards*, the key provision of the regulations that makes him ineligible for early parole consideration relief under section 32(a)(1) (Cal. Code Regs., tit. 15, § 3491, subd. (b)(1)) is inconsistent with the constitutional provision and therefore void. (*Henning v. Division of Occupational Saf. & Health* (1990) 219 Cal.App.3d 747, 757-758.)

All that is left for us to mention concerns the specific remedy to be ordered. As already noted, the Board found Grinker suitable for parole in February of this year. We therefore believe it is appropriate, and consistent with California Rules of Court, rule 8.387(b)(3)(A), to order early finality in this court of the decision we reach in this proceeding.

DISPOSITION

The petition for habeas corpus is granted. The California Department of Corrections and Rehabilitation is directed to treat as void and repeal that portion of section 3491, subdivision (b)(1) of title 15 of the California Code of Regulations challenged in this proceeding. The Board of Parole Hearings shall determine whether Grinker is eligible on the merits for early parole release under section 32(a) (notwithstanding Cal. Code Regs., tit. 15, subd. 3492(c)(9)) within 5 days of the date this opinion is final. If determined to be eligible, Grinker shall be released forthwith, taking into account any necessary compliance with Penal Code section 4755, section 3075.2 of title 15 of the California Code of Regulations, or other release procedures required by law.

This opinion shall be final in this court ten days from the date of the opinion's filing.

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BAKER, Acting P. J.

We concur:

MOOR, J.

SEIGLE, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.