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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re

PAUL BELMONTEZ

on

Habeas Corpus.

B281066

(Los Angeles County
Super. Ct. No. KA029948)

ORIGINAL PROCEEDINGS; petition for writ of habeas corpus.

Petition denied.

Richard D. Pfeiffer, under appointment by the Court of Appeal, for
Petitioner.

Xavier Becerra, Attorney General of California, Philip J. Lindsay,
Senior Assistant Attorney General, Julie A. Malone, Supervising Deputy
Attorney General, and Jill Vander Borgh, Deputy Attorney General, for
Respondent.

Paul Belmontez was found suitable for parole, but later had his suitability finding rescinded. He filed a petition for writ of habeas corpus challenging the rescission, alleging that the Board of Parole Hearings (BPH) had relied on incorrect information. This court issued an order to show cause why the petition should not be granted, and appointed counsel for Belmontez. After considering the petition, the return, the traverse and counsel's argument, we conclude there was sufficient additional evidence to support the BPH's decision and so discharge the order to show cause and deny the petition.

FACTS AND PROCEDURAL HISTORY

In 1997, a jury convicted Paul Belmontez of: 1) second degree murder; 2) gross vehicular manslaughter while intoxicated; 3) driving under the influence and causing bodily injury; 4) driving with a 0.08 percent blood alcohol level and causing bodily injury; 5) driving a commercial motor vehicle with a 0.04 percent blood alcohol level and causing bodily injury; 6) committing a hit and run causing death; 7) false personation; 8) causing bodily injury to another while driving with a suspended or revoked license; and 9) unlawfully displaying a driver's license. It was not the first time Belmontez was convicted after driving under the influence of alcohol. He was sentenced to 15 years to life in state prison. This court affirmed his conviction in *People v. Belmontez* (Jul. 1, 1998, B111396) [unpub. opn.].¹

Belmontez was found suitable for parole on October 6, 2015. Two months later, Belmontez received two disciplinary write-ups from prison staff. The first was a custodial counseling "chrono" noting a minor rules

¹ We take judicial notice of the opinion.

violation, which indicated Belmontez had a window covering hanging in his cell. The second was a rules violation report (RVR) reflecting serious misconduct, alleging Belmontez committed battery on another inmate with a weapon. Those write-ups caused the BPH to schedule a hearing to consider rescinding Belmontez's suitability finding.

At the rescission hearing, the BPH found the RVR to be as "clear as mud." That was because it indicated Belmontez was found not guilty of battery on an inmate, but further stated that he "pled to" participating in a riot.² Belmontez denied ever admitting such participation. He had applied to the disciplinary hearing officer who considered the RVR for clarification of the conflicting statements, but had not heard back from the officer by the time of the rescission hearing. When the rescission hearing commenced, the BPH similarly expressed an interest in receiving clarification from the hearing officer, but because he was not on duty the BPH went forward without his evidence.

The BPH instead called a corrections officer who was present during the dayroom riot in which Belmontez allegedly committed battery upon another inmate. That officer described the melee, positively identified Belmontez as a participant, and denied that anyone sat out the fight. In contrast, Belmontez testified that he wanted nothing to do with the scuffle, and sat against a wall of the dayroom to avoid involvement. He suggested the officer, who described seeing three bald inmates involved in the brawl, had mistaken someone else for Belmontez, who was also bald. With regard to the counseling chrono, however, Belmontez admitted regularly putting a curtain up in his cell to shield him when he used the toilet, even though he knew it was against the rules.

² The original RVR is not contained in the record, but it was described by the BPH.

In the end, the BPH credited the testimony of the corrections officer with regard to Belmontez's participating in a riot, noting that the officer and Belmontez acknowledged knowing one another by sight and that photographs of the scene reflected only one bald Hispanic inmate: Belmontez. The BPH concluded that participation in a riot, along with admittedly violating prison rules, constituted good cause to rescind the earlier suitability determination. Even more than the misconduct itself, the BPH was concerned that Belmontez's engaging in misconduct suggested he still had a criminal mindset, prioritizing his own wishes over their effects on others or the requirements of the rules, just as he had at the time of his commitment offense. One of the commissioners on the BPH panel also noted that Belmontez's psychological assessment warned that should he engage in any institutional violence, it would elevate the low-to-moderate risk assessment he had been given.

Thereafter, Belmontez renewed his inquiry about the accuracy of the RVR, and received a response from the disciplinary hearing officer. The officer stated that the disposition contained a typographical error regarding Belmontez's admitting participation in a riot, and affirmed that he had found Belmontez not guilty and dismissed the RVR. According to the officer, the RVR therefore should have been removed from Belmontez's file. (See Cal. Code Regs., tit. 15, § 3326(a)(2) [when inmate found not guilty or RVR discharged, RVR removed from inmate's central file].) Belmontez thereupon challenged the BPH's decision to rescind his suitability finding by way of a petition for writ of habeas corpus to the trial court. When that was denied, he filed a similar petition in this court, praying for a new rescission hearing given the BPH's misunderstanding of his RVR. We issued an order to show cause why relief should not be granted.

DISCUSSION

Even after parole is granted, the BPH may rescind an inmate's unexecuted parole date for good cause after a rescission hearing. (*In re Caswell* (2001) 92 Cal.App.4th 1017, 1026; Cal. Code Regs., tit. 15, § 2450.) The Department of Corrections and Rehabilitation (CDCR) is charged with reporting to the BPH within 15 days any information that may result in rescission proceedings, including any new disciplinary conduct or other information suggesting that parole should not occur. (Cal. Code Regs., tit. 15, §§ 2451(a) & (d), 2452(b).) At any rescission hearing scheduled after receipt of such information, "the hearing panel shall decide whether the prisoner engaged in the conduct charged and, if so, what action should be taken." (Cal. Code Regs., tit. 15, § 2467(b).)

Resolving conflicts in the evidence is within the BPH's province when assessing the need for rescission. (*In re Powell* (1988) 45 Cal.3d 894, 902.) The BPH then has exclusive authority to decide whether an inmate remains suitable for parole. (*In re Caswell, supra*, 92 Cal.App.4th at p. 1026.) Should the BPH decide to rescind a suitability finding, its decision must be upheld if supported by some evidence. (*In re Powell, supra*, 45 Cal.3d at p. 904.)

Given those standards, we must conclude that the BPH's decision in this matter was supported. The BPH acted upon information that Belmontez received two disciplinary write-ups soon after he was found suitable for parole. When questioned about the first – hanging a curtain in his cell – Belmontez admitted the misconduct and divulged that he had engaged in it on a regular basis. While Belmontez offered an explanation for his actions, he acknowledged that he was aware they were against prison rules even as he took them. In other words, he disregarded known prohibitions and norms to accommodate himself, reminiscent of the mindset that led Belmontez into

the commitment offense – driving under the influence of alcohol despite previous convictions and suspension of his license for such behavior. That is some evidence supporting the BPH’s decision to rescind Belmontez’s parole suitability.

The BPH’s presiding commissioner indicated that if all Belmontez had done was hang a curtain in his cell, it may not have resulted in rescission of his suitability finding. But there was evidence of far more misconduct. The BPH received an RVR indicating that Belmontez participated in a prison riot. By the time of the rescission hearing, the RVR revealed that Belmontez was not disciplined for battering another inmate, but still suggested a possible role in the riot. Once alerted to such misconduct, the controlling regulations charged the BPH with making its own assessment of whether the allegations were true, and whether they affected Belmontez’s parole suitability. (Cal. Code Regs., tit. 15, § 2467.) The BPH did so by taking testimony from a corrections officer who was present during the brawl. The officer positively identified Belmontez as a participant, and the BPH confirmed the officer’s testimony by reviewing photographs of the scene. Evidence that Belmontez was involved in a violent scuffle is some evidence that he was not suitable for parole after all. That conclusion is consistent with a statement in Belmontez’s psychological assessment specifically identifying institutional violence as a factor that would elevate his low-to-moderate risk rating.

It is true that after the BPH determined Belmontez participated in the prison riot, the disciplinary hearing officer clarified that Belmontez never actually admitted such participation. It is also true that one of the commissioners on the BPH panel expressed disappointment in Belmontez’s failure to acknowledge his participation in the riot given the fact that he already admitted it at his disciplinary hearing. However, one commissioner’s

comment does not signify the basis for the entire panel's reasoning. (E.g., *In re Caswell*, *supra*, 92 Cal.App.4th at p. 1032.) Moreover, even had the BPH taken testimony from the disciplinary hearing officer to obtain his clarification, there is no showing that the BPH would have reached a different conclusion regarding rescission. The BPH recognized that the RVR was internally inconsistent and so was not dispositive. It thereupon took independent evidence that affirmatively placed Belmontez in the riot, and received his admission of knowingly violating prison rules. The BPH could properly rely on that evidence alone in reassessing Belmontez's parole suitability.

DISPOSITION

Because some evidence supports the BPH's rescission decision, the order to show cause is discharged and the petition for writ of habeas corpus is denied.

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_____, Acting P.J.

ASHMANN-GERST

We concur:

_____, J.

CHAVEZ

_____, J.

HOFFSTADT