Filed 2/22/12 In re Redwood CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re JE'ANNA REDWOOD, on Habeas Corpus.	B230365 (Los Angeles County Super. Ct. Nos. A753648, BH007026)

ORIGINAL PROCEEDING; petition for writ of habeas corpus. Petition denied.

Heidi L. Rummel and Michael J. Brennan for Petitioner.

Kamala D. Harris, Attorney General, Julie L. Garland, Senior Assistant Attorney General, Phillip Lindsay and Kim Aarons, Deputy Attorneys General, for Respondent.

INTRODUCTION

Petitioner Je'anna Redwood is serving an indeterminate term of 25 years to life for a 1985 first-degree murder conviction with a one year deadly weapon enhancement. On June 26, 2009, the Board of Parole Hearings (Board) found petitioner suitable for parole. On November 19, 2009, Governor Arnold Schwarzenegger reversed the Board's decision. On October 22, 2010, the superior court denied petitioner's petition for writ of habeas corpus. Petitioner filed a new petition with this court, seeking to have the Governor's decision reversed and to be released from prison. We deny her petition.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Parole Board Hearing*

At petitioner's fourth suitability hearing, the Board found her suitable for parole. In support of its finding, the Board cited the following:

1. Nature and Gravity of the Commitment Offense

In June 1984, petitioner was 18, living on the street, surviving by robbing people. She was introduced to Michael Booker (Booker), who was about 25, by someone who suggested he could have petitioner help him if he wanted to commit a robbery.

On June 7, petitioner and Booker lured Michael Ray Tyson (Tyson) to a hotel room with the purpose of robbing him. Booker told petitioner that Tyson had money and wanted to party. While petitioner was in the bathroom, Booker and Tyson began arguing and then fighting. Booker took Tyson's wallet and tossed it to petitioner. Petitioner hid the wallet and joined in the fight.

Booker took out a knife and stabbed Tyson a couple of times. Petitioner grabbed Booker's arm and told him they should let Tyson go. Booker told her, "Stick him . . . . It's either you or him." Petitioner stabbed Tyson five or six times. She tried to leave, but

Booker restrained her. She helped him clean up the room. They carried Tyson's body to the third floor and threw it out the window.

Petitioner acknowledged that she initially stabbed Tyson because Booker told her to. But then, she meant to kill him, "But it wasn't just him that I wanted to kill." She explained that Booker "told me to stab him, and he also said that if he let him go, he would rape me, and because of my whole past, being abused and raped, sexually assaulted by my fathers and caretakers, that triggered my anger and rage, and at that moment, all I saw were the men that hurt me."

The Board described petitioner's crime as "horrendous," a "premeditated robbery and heinous and unforgivable." Petitioner's description of the crime "was extraordinarily dispassionate," despite the nature of the crime. Additionally, "the motive for the murder is absolutely inexplicable. You didn't have to kill him to rob him. It makes no sense, which is why it's so hard to understand." The Board added that despite the nature of the crime, "because of [petitioner's] positive adjustment and the considerations that show [she] no longer pose[d] a risk of danger to society," the Board would be making "this grant of suitability after considering the other circumstances that might be argued to show unsuitability."

2. Prior Criminality

The Board noted that as a juvenile, petitioner was a constant runaway. She burglarized her mother's house and a motel. She perpetrated two acts of child molestation while in a juvenile facility.

As an adult, she had "a couple" of arrests for prostitution. She also admitted committing thefts and selling drugs to support herself. She used drugs and alcohol. She had "some failed grants of probation, failed to profit from society's attempting to correct [her] criminality." She also "had some serious misconduct when [she was] first incarcerated. [She had] a total of 15 115's, the last one was [on] February 19th of 1995,

and there [were] a couple of serious ones."[1] In addition, the Board noted, petitioner had "50 128's," most of them for failure to report to work.[2] The most recent ones were on September 23, 2005, for disrespect toward the prison staff, and on January 9, 2007, for improper use of tools.[3]

3. Psychological Factors

After discussing petitioner's prior criminality, the Board added, "Other considerations that may tend to show unsuitability over the years, certainly we talked a lot about minimization, and not minimization of other events and other crimes, such as your prostitution and you've got a number of 115's for homosexual behavior within the institutional setting, . . . and even as recently as 2007, with the 2007 psych report, you were still in denial about being willing to admit that you did prostitution, . . . or that you did homosexual behavior even though the documentation was kind of staring at us right in the face, but today when [the Board] asked you about it, you were very forthcoming. You explained why it's been so difficult for you to talk about that."

The Board found it obvious that since 2007, petitioner had worked very hard to overcome the shame and guilt that she felt regarding her behavior. The Board observed that petitioner had shown "a lack of insight over the years." However, both in her written and verbal testimony before the Board, she now showed "extraordinary insight. Not only into your life crime but into your behaviors that led up to the life crime, the problems that you've had in the institution. You know what your triggers are. . . . [Y]ou seem to know

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1 Form 115 is used for a Rules Violation Report. Petitioner had 10 serious "115's" between September 1985 and August 1994. She had three administrative "115's" in 1989, 1990 and 1995.

2 Form 128 is used for a "custodial counseling chrono," documenting minor misconduct. Petitioner had a number of "128's" between July 1985 and December 1999. She had two additional "128's" in September 2005 and January 2006.

3 The record indicated the violation was dated 2007 in error; the incident occurred in 2006.

what you would do in those cases and where you would go for help and how you would alleviate those feelings."

4. Suitability for Parole

Despite the negative factors, the Board found that petitioner was "suitable for parole because of the positive aspects of [her] case [which] heavily outweigh[ed]" the negative aspects. It explained, "Specifically, the areas that we find you suitable are based on the following considerations, and there was significant stress in your life up through your commitment offense" including "emotional abuse, physical abuse, sexual abuse from multiple parties at multiple times that—when you were a very young girl, and it obviously had a severe impact on who you are and the person you became."

In addition, "[a]s far as remorse goes, you have expressed, very . . . genuine and heart-felt remorse . . . ." Petitioner not only expressed remorse but also showed it by donating time and money to charitable organizations. In addition, she wrote to Tyson's family expressing remorse.

The Board observed that petitioner "finally started to mature and start looking into [her]self and once [she] started down that road, [she] did an excellent job." She had taken vocational training in a number of areas, including upholstery, graphic arts, working with hazardous materials, and office skills.

Petitioner also became involved in a self-help group with AA and NA. She served on the executive board of that group and was practicing the twelfth step of reaching out to other people to help them improve their lives. She had completed programs in Creative Conflict Resolution and anger management. She was involved in a Christian 12-step program, participated in bible studies, community fellowship, and Convicted Women Against Abuse. She got her GED and had taken some college courses. She participated in the canine program, training dogs to assist people with disabilities.

The Board noted as well that petitioner had "very realistic parole plans." She had "two viable residential plans" in transitional housing programs, one of which offered her a job as well. She also had a job offer to be an apartment maintenance manager in an

apartment complex her adoptive mother and stepfather owned. In addition, she had marketable job skills acquired in prison.

Finally, petitioner had been "able to reestablish somewhat of a stable social history." She was close with her adoptive mother and had friends in the community who visited her regularly and were supportive. She had paid her court-ordered restitution. In addition, her "age, at present, as compared to [her] initial incarceration . . . indicate[d] a reduced risk for recidivism."

B. *Governor's Letter*

The Governor reversed the Board's finding that petitioner was suitable for parole. He "considered various positive factors" cited by the Board, including her education and job training, participation in self-help and therapy, offers of residence and jobs.

However, "[d]espite the positive factors [he] considered," the Governor was concerned, in that "the murder [petitioner] committed was especially atrocious because the victim was unarmed, unsuspecting and outnumbered." He was "also deeply concerned by [petitioner's] ongoing pattern of rules violations and misconduct in prison. . . . In denying her parole, the 2007 Board said, 'But a series of 128s or a recent 128, has to give a hearing group a moment of thought, to say that if you can't follow the rules in prison then you're going to have a real problem following the rules outside of prison.' I agree. The recency of these instances of misconduct coupled with [petitioner's] established pattern of violating prison rules demonstrates that she is either unwilling or unable to conform her conduct to society's laws and that she would be unable to comply with the conditions of parole."

The Governor was "also concerned about [petitioner's] failure to develop insight into her predatory sexual behavior." She had repeatedly been disciplined for engaging in sexual behavior while incarcerated and had denied culpability. The Governor stated, "Given that the most recent mental-health evaluator did not have access to the complete record regarding [petitioner's] sexual behavior, I am concerned that this issue remains unaddressed. My concern is supported by the fact that, during her 2009 parole

consideration hearing, [petitioner] admitted to engaging in sexual behavior in prison, but she added, 'I try to minimize my role in that' because of the 'shame.' Her comments indicate that she still struggles with these issues and has not developed sufficient insight into her own sexual behavior. This evidence of her lack of insight into her predatory sexual behavior, combined with her history of inability or unwillingness to conform her conduct within the law, demonstrates that she is still capable of committing dangerous acts. Until this issue is resolved, I believe that [petitioner] continues to pose a current, unreasonable risk to public safety if released at this time."

The Governor believed that petitioner's mental health evaluations raised additional concerns. They showed that she was defensive and had a "'tendency to deny or minimize some of her past behavior.'"

The Governor concluded, "The gravity of the crime is a factor supporting my decision, but I am particularly concerned by the evidence that [petitioner] is still either unable or unwilling to conform her conduct to the law and that she has not done enough to ensure that she will not engage in future violence. I am also troubled that she lacks insight into her predatory sexual behavior and still exhibits some of the same traits that contributed to her life offense. This information indicates that [petitioner] would present a current, unreasonable risk of danger to society if released at this time. . . .

"At age 44 now, after being imprisoned for more than 25 years of her 26 years to life sentence, [petitioner] has made some creditable gains in prison. But given the current record before me, and after considering the very same factors the Board must consider, I believe her release would pose an unreasonable risk of danger to society at this time. Accordingly, I REVERSE the Board's 2009 decision to grant parole to [petitioner]."

DISCUSSION

A. *Standard of Review*

As the Supreme Court recently reaffirmed in *In re Shaputis* (2011) 53 Cal.4th 192, "'in evaluating a parole-suitability determination by either the Board or the Governor, a

reviewing court focuses upon "some evidence" supporting the core statutory determination that a prisoner remains a current threat to public safety . . . . Specifically, . . . because the paramount consideration for both the Board and the Governor under the governing statutes is whether the inmate currently poses a threat to public safety, and because the inmate's due process interest in parole mandates a meaningful review of a decision denying parole, the proper articulation of the standard of review is whether there exists "some evidence" demonstrating that an inmate poses a current threat to public safety, rather than merely some evidence suggesting the existence of a statutory factor of unsuitability. [Citation.]' [Citation.]" (*Id*. at p. 209, fn. omitted.)

Under this standard, "'[o]nly a modicum of evidence is required. Resolution of any conflicts in the evidence and the weight to be given the evidence are matters within the authority of [the Board or] the Governor. . . . [T]he precise manner in which the specified factors relevant to parole suitability are considered and balanced lies within the discretion of [the Board or] the Governor . . . . It is irrelevant that a court might determine that evidence in the record tending to establish suitability for parole far outweighs evidence demonstrating unsuitability for parole. As long as the . . . decision reflects due consideration of the specified factors as applied to the individual prisoner in accordance with applicable legal standards, the court's review is limited to ascertaining whether there is some evidence in the record that supports the . . . decision.' [Citations.]" (*In re Shaputis*, *supra*, 53 Cal.4th at p. 210.)

The determination as to which evidence in the record is convincing is one left to the discretion of the Board or Governor. (*In re Shaputis*, *supra*, 53 Cal.4th at p. 211.) "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. In that circumstance the denial of parole is arbitrary and capricious, and amounts to a denial of due process. [Citation.]" (*Ibid*.)

With the foregoing principles in mind, we turn to petitioner's claims in the instant case.

B. *Commitment Offense as Predictor of Current Dangerousness*

Petitioner first contends that her commitment offense, followed by more than 15 years of good conduct and exemplary rehabilitation, no longer predicts her current dangerousness. The aggravated nature of the commitment offense "does not in and of itself provide some evidence of current dangerousness to the public unless the record also establishes that something in the prisoner's pre- or postincarceration history, or his or her current demeanor and mental state, indicates that the implications regarding the prisoner's dangerousness that derive from his or her commission of the commitment offense remain probative of the statutory determination of a continuing threat to public safety." (*In re Lawrence* (2008) 44 Cal.4th 1181, 1214.)

Here, while the Governor stated that "[t]he gravity of the crime is a factor supporting my decision," he went on to discuss other factors, including petitioner's history of disciplinary problems and lack of insight into her predatory sexual behavior, which convinced him that petitioner would present a continuing threat to public safety if released on parole. He thus did not impermissibly rely on petitioner's commitment offense alone as evidence of current dangerousness.

Neither did he, as petitioner claims, ignore her intervening efforts at rehabilitation. He stated that he "considered various positive factors" cited by the Board, including petitioner's education and job training, participation in self-help and therapy, offers of residence and jobs.

As previously stated, the Supreme Court has made it clear that the determination as to which evidence in the record is convincing is one left to the discretion of the Board or Governor. (*In re Shaputis*, *supra*, 53 Cal.4th at p. 211.) We cannot overturn the Governor's exercise of that discretion so long as there is some evidence which supports his decision. (*Ibid*.)

C. *Mischaracterization of Petitioner's Statements*

Petitioner also contends the Governor mischaracterized her statements in order to conclude that she lacked insight into the commitment offense. Specifically, she

challenges his statement that she had a "'tendency to deny or minimize some of her past behavior.'"

It is true, as petitioner claims, that the record shows that she had made progress in admitting and taking responsibility for her past behavior. However, the record also supports the Governor's conclusion that petitioner had a tendency to become defensive when confronted with past behavior and to deny or minimize that behavior.

When the Board was talking to petitioner about her prostitution and asked her about something in her report, her immediate response was to become defensive. She never admitted or denied the contents of the report but stated that she was "not sure where that came from" and she did not know why it was in her file.[4] When the Board noted she was a juvenile at the time the incident occurred, petitioner responded, "I was never talked to by the police about anything or anything, and I'm not—I don't know why it's even there . . . ."

When questioned about subsequent arrests for prostitution, she explained that in one in which there was no disposition, she "went on an out-call service, no sex was involved or anything, so it was like a sting operation."

The Board pointed out that her 2007 psychological report[5] indicated that she denied prostitution. It asked petitioner if she prostituted herself. She responded, "I did pose as a prostitute, yes. I posed so that I could rob the tricks, do that kind of thing. If I had to do it, I did. . . . I'm ashamed at what I did, yeah." The Board responded, "Okay. But it doesn't mean you didn't do it." Petitioner answered, "No."

The Board then turned to homosexual behavior in prison, for which petitioner had been disciplined and which she acknowledged was "a violation of a rule." She admitted that she had told the psychologist in 2007 that "it wasn't sex. It was horse play. We

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4 The probation officer's report recounts two incidents when petitioner was a juvenile in which she took a young boy into the restroom and engaged in sexual behavior. One incident was reported to the police; the other was not.

5 This was apparently the most recent report.

were just, you know, messing around." She explained, "I try to minimize my role in that since this time." The reason was that she was "ashamed of what I've done."

Petitioner acknowledged that she had never had a healthy romantic relationship, but thought she had acquired the tools "to manage my life and keep—keep the shame and the guilt out of the picture and cultivate a friendship and then go into a relationship." She then explained how she had worked to identify "why I react to things, my causes, my triggers . . . ." Those triggers were her "basic needs not being met, security and feeling loved and worthy and needed." When those needs "are compromised, I act out. I acted out in fear, in retaliation and shame and guilt and those things caused me to make some very poor choices, very bad choices, ultimately taking the life of Mr. Tyson."

While petitioner was forthcoming about her commitment offense, she was less so about her sexual behavior. She still had difficulty admitting what she had done and acknowledged that she tried to minimize it due to the shame involved. On the record, we cannot say that the Governor mischaracterized petitioner's statements regarding her past criminal behavior. Her statements showed that she was defensive and still had a "'tendency to deny or minimize some of her past behavior.'"

Petitioner also argues that the Governor's characterization of her "as a 'sexual predator' is unwarranted, unfair, and unsupported by the record." We disagree. The record shows, and petitioner herself acknowledged that she used sexual behavior in order to get her needs met or for financial gain.

D. ***Mischaracterization of Petitioner's Disciplinary History in Prison***

Petitioner contends the Governor "blatantly" mischaracterized her 16 years of discipline-free conduct, which does not support his conclusion that she poses a current danger. The Governor expressed his concern over petitioner's "ongoing pattern of rules violations and misconduct in prison."

The Governor observed that "[i]n denying her parole, the 2007 Board said, 'But a series of 128s or a recent 128, has to give a hearing group a moment of thought, to say that if you can't follow the rules in prison then you're going to have a real problem

following the rules outside of prison.' I agree. The recency of these instances of misconduct coupled with [petitioner's] established pattern of violating prison rules demonstrates that she is either unwilling or unable to conform her conduct to society's laws and that she would be unable to comply with the conditions of parole."

The record shows that the majority of petitioner's rules violations occurred in the early years of her incarceration. She had not been disciplined for any rules violations since 1995. She was counseled for rules violations in 2005 and 2006. No violations had been recorded since that time.

As noted in her June 2009 progress report: "[Petitioner] was last seen by [the Board] on 6/14/07 for a subsequent hearing. She was denied parole for 2 years. The following recommendations were made: get self-help, and stay discipline free, and earn positive chronos. [Petitioner] continues to adhere to these recommendations. She has remained disciplinary free, continues to participate in numerous self-help groups and continues to earn positive chronos."

Thus, the record does not support a finding that, at the time of her parole hearing, petitioner had an "*ongoing* pattern of rules violations and misconduct." (Italics added.) She had a *history* of violations and misconduct, but the misconduct was neither ongoing nor recent.

The question before us, however, is not whether there is evidence to support a factor of unsuitability cited by the Governor but "'whether there exists "some evidence" demonstrating that an inmate poses a current threat to public safety.'" (*In re Shaputis*, *supra*, 53 Cal.4th at p. 209.) We address that question below.

E. *Evidence of Current Threat to Public Safety*

The Governor's denial of parole rests mainly on the findings that petitioner's defensiveness, minimization of responsibility and lack of insight into her behavior pose a current threat to public safety. The Supreme Court in *Shaputis* underscored that "'changes in a prisoner's maturity, understanding, and mental state' are 'highly probative . . . of current dangerousness.' [Citation.]" (*In re Shaputis*, *supra*, 53 Cal.4th at p. 218.)

Thus, an inmate's failure to gain insight into his or her conduct "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. [Citations.]" (*Ibid*.) Because the Board and the Governor must "consider '[a]ll relevant, reliable information' that 'bears on the prisoner's suitability for release,'" "the inmate's insight into not just the commitment offense, but also his or her other antisocial behavior, is a proper consideration." (*Id*. at pp. 218-219.)

The court noted that while a finding on an inmate's insight may be subjective, it is "no more subjective or conclusory than a finding on the inmate's 'past and present mental state,'" one of the statutory suitability factors. (*In re Shaputis*, *supra*, 53 Cal.4th at p. 219.) It added that "it has long been recognized that a parole suitability decision is an 'attempt to predict by subjective analysis whether the inmate will be able to live in society without committing additional antisocial acts.' [Citations.] Past criminal conduct and current attitudes toward that conduct may both be significant predictors of an inmate's future behavior should parole be granted. [Citations.]" (*Ibid*.)

The court cautioned, however, "that while 'subjective analysis' is an inherent aspect of the parole suitability determination, it plays a proper role only in the *parole authority's* determination. [Citation.] The courts' function is one of objective review, limited to ensuring that the Board's or Governor's analysis of the public safety risk entailed in a grant of parole is based on a modicum of evidence, not mere guesswork. [Citation.] It is the parole authority's duty to conduct an individualized inquiry into the inmate's suitability for parole. [Citation.] The courts consider only whether some evidence supports the ultimate conclusion that the inmate poses an unreasonable risk to public safety if released. [Citation.]" (*In re Shaputis*, *supra*, 53 Cal.4th at p. 219, fn. omitted.)

Here, we conclude that some evidence supports the Governor's determination that petitioner is not suitable for parole. It is true that petitioner acknowledged her participation in the commitment offense and expressed remorse for those actions. However, petitioner continued to be defensive about her sexual behavior when

questioned about it. Her first response was to deny the nature of her actions or to minimize the nature or significance of her actions. She acknowledged lying about her homosexual behavior to the psychologist before the previous parole hearing, and she was aware that she was minimizing her role in that behavior due to shame. However, she continued to minimize what she had done.

Petitioner also acknowledged that shame was one of the factors that "caused me to make some very poor choices, very bad choices, ultimately taking the life of Mr. Tyson." Her failure to address and develop insight into one of the factors which led to the commitment offense provides some evidence that she poses a current threat to public safety. Stated otherwise, there is a "'rational nexus' between the inmate's dangerous past behavior and the threat the inmate currently poses to public safety." (*In re Shaputis, supra,* 53 Cal.4th at p. 218.) Accordingly, "some evidence" supports the Governor's decision to deny parole to petitioner, and we must uphold that decision. (*Id*. at p. 210.)[6]

DISPOSITION

The petition for writ of habeas corpus is denied.

JACKSON, J.

We concur:

WOODS, Acting P. J.

ZELON, J.

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[6] Petitioner's motion to strike Exhibit AA, which postdates the Governor's decision, is granted.