Filed 3/28/12 In re Farrar CA2/1

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

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| In re<br><br>MARY EILEEN FARRAR<br><br>on Habeas Corpus. | B233938<br><br>(Los Angeles County<br>Super. Ct. Nos. SA018516, BH007708) |

ORIGINAL PROCEEDING; petition for writ of habeas corpus. Patricia M. Schnegg, Judge. Petition granted.

Mary Eileen Farrar, in pro. per.; and Susan L. Jordan, under appointment by the Court of Appeal, for Petitioner.

Kamala D. Harris, Attorney General, Julie L. Garland, Assistant Attorney General, Phillip Lindsay and Gregory J. Marcot, Deputy Attorneys General for Respondent.

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Mary Farrar is an inmate confined at the Central California Women's Facility, serving a sentence of 11 years to life in state prison on a 2002 conviction of two counts of kidnapping and two counts of residential robbery, each with the use of a firearm. She began her prison term on October 3, 2002, and her minimum parole eligibility date passed on September 21, 2010.

On October 30, 2009, the Board of Parole Hearings (the Board) determined that Farrar was not suitable for parole, setting forth various factors, as discussed, *post*. After the decision became final, Farrar sought review in the Los Angeles Superior Court, which denied her petition for writ of habeas corpus on April 21, 2011. Farrar sought review in our court, and we issued an order to show cause why relief should not be granted.

We hold that not a modicum of evidence supports the October 30, 2009 decision of the Board to deny parole to Farrar for five years. (*In re Shaputis* (2011) 53 Cal.4th 192 (*Shaputis II*).) Accordingly, we grant the petition, vacate the Board's decision, and remand the matter to the Board to conduct a new parole-suitability hearing consistent with due process and the Supreme Court's decision in *In re Prather* (2010) 50 Cal.4th 238 (*Prather*).

## FACTUAL AND PROCEDURAL BACKGROUND

### Commitment offense

One night in 1994, when Farrar was 25 years old, she and her criminal cohorts[1] were abusing cocaine, marijuana and alcohol. The group executed a plan to rob Carey Levi. Farrar had worked as a housekeeper for Levi and had a romantic relationship with him. Accompanied by two armed men, Farrar gained entry to Levi's Pacific Palisades residence by asking for money for her child. With Levi was his fiancée, Patricia Howlett. While Farrar pointed a gun at Levi and Howlett, her cohorts blindfolded and bound them. Ringleader Peewee decided that there "wasn't enough money" in the house, so they took Levi and Howlett to the home of Willy Faye Cotton and kept them overnight. Farrar's

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[1] The ringleader, "Peewee," is not identified in the record by any other name. The safe house they used was owned by Willy Fay Cotton, the girlfriend of Peewee's uncle.

cohorts forced Levi, at gunpoint, to go to his bank to withdraw funds. Farrar stayed behind and guarded Howlett, at gunpoint, at Cotton's house. When the others failed to return, Farrar untied Howlett, drove her to a telephone booth, and left Howlett at the booth after giving her money for a taxi. Howlett knew who Farrar was and asked Farrar, while they were in the car, whether Farrar and Levi were "really messing around."

Farrar remained in California for two years after committing the offenses. She moved to Washington, married, changed her surname, and worked in a job in collections. In 1999, Farrar returned to California to take care of her younger sister after Farrar's mother and another sister died in a car accident. Farrar did not commit any crimes, but worked and took care of her family.

Farrar was arrested in 2001. In 2002, Farrar was convicted of two counts of kidnapping and two counts of residential robbery, each with the use of a firearm. The trial court (Hon. Katherine Mader) sentenced Farrar to a term of life plus four years.

**Childhood**

Farrar, who was born when her mother was 17 years old, is the oldest of six siblings, three of whom are half siblings. Farrar's parents separated when she was seven years old. Her father sexually abused her for a period of 10 years. Her mother abused her physically and mentally.

According to the June 22, 2009 comprehensive risk assessment report of Stephen Pointkowski, Ph.D., Farrar's mother began leaving her alone to take care of her siblings when Farrar was eight, while her mother "'ran the street'" with men. Her mother also struck her with "extension cords, belts, her fists, feet, etc." and continually called Farrar a "'bitch'" or "'ho.'" Her stepfather occasionally abused her.

Farrar told Dr. Pointkowski that she "had to choose between being physically abused by her mother or sexually abused by her father throughout her upbringing."

Farrar was affiliated with the Rollin 60's Crips from the age of 13 years. She disaffiliated from the gang at age 17.

**Juvenile and criminal history**

As a juvenile, Farrar engaged in bullying other students for money, jewelry or their lunches; she was placed in California Youth Authority (CYA) at age 17.

As an adult, Farrar incurred two misdemeanor convictions: forgery in March 1993, and burglary in August 1993.

Dr. Pointkowski reported that "Ms. Farrar readily acknowledged a pattern of poor impulse/behavioral control during her adolescence/young adulthood. She characterized herself as a 'time bomb' when she was 'bullying, running with the wrong crowd.' Her impulse/behavioral control has apparently been satisfactory during the entirety of her incarceration (i.e., no RVR 115s or 128A infractions)."

**In-prison conduct**

Farrar has ***never*** had a rules violation report (115) or a counseling chrono (128A).

Farrar has earned numerous vocational certificates and has participated extensively in self-help programs. She earned her general equivalency diploma (GED)[2] and has earned college credits. At the time of the hearing, Farrar was nine units away from completing an associates of arts (AA) degree.

Farrar has earned an extensive number of laudatory chronos from teachers, workshop leaders, and work supervisors. Dr. Pointkowski reported: "Supervisor ratings have always been satisfactory or better. She has received several laudatory chronos regarding her work performance within the last six months (e.g., 12/15/08, 01/15/09, and 01/17/09). She was named student of the month on 01/01/06. Postconviction progress reports reflected completion of Vocational Graphic Arts on 02/23/04 and Vocational Electronics I on 03/07/05. [¶] Ms. Farrar indicated she has completed about eighteen college units via Coastline Community College. She said she is currently enrolled in a History course. [¶] The inmate noted she is presently enrolled in Battered Women's Support (BWS) group, bible study, Houses of Healing, and [Narcotics Anonymous].

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[2] The record shows that Farrar earned her GED twice—once in CYA and again in prison.

Other self-help participation has included Anger and Stress Management (2009), Victim Awareness (2009 and 2008), Communication (2009 and 2007), Job Success (2009), GED Connection Writing (2009), process-focus group (2008), advanced level of the Alternatives to Violence Project (AVP, 2008), Parenting (2008 and 2007), Job Success (2008), domestic violence group (2004), survivor's group (2004), and grief and loss group (2004)."

**Insight**

In the section of the comprehensive risk assessment entitled, "INMATE'S UNDERSTANDING OF LIFE CRIME," Dr. Pointkowski reported: "The inmate admittedly participated in the planning of the robbery but claimed she did not intend to rob or kidnap the victims (i.e., she allegedly believed she could cue her codefendants at the last minute that it was not okay to rob the victim and claimed they 'busted in anyway')."

In the section entitled, "REMORSE AND INSIGHT INTO LIFE CRIME," Dr. Pointkowski reported: "Although Ms. Farrar blamed herself per se for her instant offense, this appeared superficial given her assertions that she had no intentions of robbing or kidnapping the victims just prior to entering the victim's residence. Such assertions seemed dubious, given that she accompanied two codefendants and Mr. Levi to the bank and in the absence of documentation suggesting that she was coerced into committing crimes. [¶] When asked to identify the underlying causal factors of her instant offense, she replied, 'Stupidity. I can't blame it on what I've been through. [I wasn't] woman enough to say "no it's not right." The plan backfired; I had no control. I let it happen without being brave or saying no. I was a coward. And Levi did so much for me and I betrayed him.' [¶] Upon being asked to comment on how her crime impacted the victims, she responded, 'I felt his pain all these years. I felt he had to live with being afraid, someone coming in and looking over his shoulder. Same thing with Patricia [Howlett], she had to live with that fear. That's how I felt when I g[o]t raped, and he held the gun to my head. I imagine the trauma that they suffered.' [¶] Insight and remorse are abstract concepts, which do not readily lend themselves to operationalized

definition or quantifiable measurement. Therefore, any opinions regarding insight and remorse are subjective in nature, and should be interpreted with this caveat in mind."

At the hearing before the Board, months after her June 9, 2009 interview with Dr. Pointkowski, Farrar told the commissioners that the original plan was to commit a robbery. She fully participated in the planning of the robbery and explained that she participated in the crime because she was indebted to the ringleader, Peewee. Peewee had provided the means for her and her daughter to move away from the home of Farrar's abusive father. Farrar stated that she "participated all the way until the time that it ended." Farrar stated at the hearing that "I plotted to go to this man's house and take these people and to rob him." She "agreed with everything" that Peewee decided. She stated that guarding Howlett, rather than forcing Levi to go to the bank, did not make her innocent, and "I'm not trying to minimize." She admitted that, along with the others, she was armed, threatened the victims and took full responsibility for her actions.

When asked why she was qualified to leave prison, Farrar responded: "The turning point in my life was when I moved to the State of Washington. I fled an abusive relationship, landed in a battered women's shelter, found me a job, got on my own. I had another child. I wanted to better myself. I started going to counseling. [¶] . . . [¶] . . . One-on-one . . . counseling. I participated in groups in the community, domestic violence groups, substance abuse groups, and I was around a whole different class of people, friendly people, women who embraced me and accepted me for who I was, and the counseling helped. I wanted to be somebody. The jobs helped me to build self-confidence and know that I can do anything, and I—tried to put my past behind me, but I couldn't."

When Presiding Commissioner Anderson asked Farrar, "Who are you today as a person?" she responded, "Today I am a woman with deep remorse for my past. I can't even explain word for word why I did what I did. I do understand why I took that path to led me to have criminal mentality or low self-esteem, but the woman I am today is the total opposite of the young girl I was back then. I have compassion. I love people. I'm totally against crime, and people hurting one another. I'm a mother. I'm a grandmother.

I step up to help anybody that I can. [¶] . . . [¶] . . . I have this personal relationship with my creator, who gave me insight, and I know that everything happened for him to shape me and make me the woman that I am today so that some day he can use me for his purpose."

Farrar told the commissioners that when Dr. Pointkowski interviewed her in June 2009, they had only a few minutes to discuss the crime. She said that she did not "have time to actually go into or explain" her motivation or current insight.

At the hearing, Farrar elaborated upon her statements to Dr. Pointkowski. She told the commissioners that her comment that she believed at that time that she would be able to stop the crime from being committed was actually her attempt to explain to Dr. Pointkowski that she felt, for a moment, "like someone's going to do something that's wrong or a child doing something where they might get cold feet." Farrar explained that she had told Dr. Pointkowski that she had planned a robbery, but not a kidnapping: "I didn't go there with intentions to kidnap them. I went there with intentions to rob them." She explained that she was trying to tell the psychologist how she was feeling, not her plan: "I was just telling him, since he was a psychologist, everything that was going on with me, how I was feeling. I had—I admitted to everything and told him I took responsibility [for] everything, and I had every intention when I went to that house of doing it. I was just telling him for that split second I was like—I didn't want to do it, but I did it."

Presiding Commissioner Anderson read part of a letter of Kim Snow, Farrar's AA/NA sponsor, stating that Farrar shows "great remorse."

Presiding Commissioner Anderson, himself, acknowledged that Farrar took responsibility for the crimes and had examined why she committed the offenses: "The inmate did discuss the life crime today and we want to thank her for that and being candid with the Board. It's in her favor, and I already put this on the record, and [she] examined why this commitment offense occurred. She takes responsibility."He then commented that he did not understand her linking of poor self-esteem to her current understanding of why she joined with her cohorts in committing the offenses: "I am of

the opinion that I don't know why this crime occurred. Everybody's got self-esteem issues if you look at it. We all [are] going out and buying stuff. That's why the cosmetics industry and clothing industry is billions of dollars in this society, so we can take care of our self-esteem. . . . That's not why you go out and rob people. You need to examine your insight into the causative factors of this conduct. You need to continue to explore why did this crime occur."

Presiding Commissioner Anderson went on to recognize her remorse: "The Board believes that she is remorseful." He then commented that Farrar's explanation of the offense to the commissioners at the hearing conflicted with statements she had made nine months earlier to Dr. Pointkowski that she had believed that she could have called off the robberies at the last moment. Presiding Commissioner Anderson said: "[S]o, what's really the truth? . . . So your insight needs to be really solidified in terms of here's what really happened. You know, we went in there . . . and rob—get the money [and] get out, [but it] turned into a kidnap and it all went wrong. That's what I see. That's not your words. That's what I see."

**Parole plans**

Farrar plans to live with family members in Washington and work in one of the businesses owned by her brother or sister-in-law. Farrar has arranged for an AA/NA sponsor in Washington. Farrar was invited to a transitional residence/programming provided by Cross Roads in Los Angeles.

Presiding Commissioner Anderson commended Farrar on her excellent parole plans: "With respect to parole plans, parole plans are realistic. She does have viable residential plans and marketable skills. I will say that your parole plans are probably one of the more extensive and better prepared than what normally come through the door, so you've done an excellent job in that area. I just want to commend you for that."

**Comprehensive risk assessment**

In the 2009 comprehensive risk assessment, Dr. Pointkowski concluded that Farrar places in the low to moderate range of psychopathy; low to moderate range in the historical, clinical, and risk management assessment; and in the medium range on the

level of service/case management inventory. He concluded that Farrar presents an overall low to moderate risk to the public upon release.

**Board's decision**

The Board set forth many positive factors that support release on parole. Deputy Commissioner Ray Mora stated: "You're to be commended for obtaining your GED while you've been here. I think you've said it's for the second time because you had it once before, your diploma. You're to be commended for working closer towards getting your AA degree. You should be getting it soon from what you've told me. You're extremely involved in [Narcotics Anonymous]. You're vice chairperson with regards to that organization. You have numerous self-help chronos and certificates with regards to parenting, anger management, victim's awareness. You've got good vocational skills with regards to office services, electronics and graphic arts, and you're to be commended for not receiving any 115's or 128's since the inception of your incarceration. Keep up the good work."

Presiding Commissioner Anderson listed factors upon which the Board based the decision to deny parole. He stated that Farrar took advantage of her relationship with victim Levi and that the victims were abused in that they were tied up and blindfolded.[3] He cited her unstable social history, her criminal history, and her having been on probation and in jail prior to the commitment offense.

Then Presiding Commissioner Anderson set forth the Board's findings that Farrar took responsibility for the crimes, understood why she committed the crimes, and was remorseful. Presiding Commissioner Anderson stated that Farrar takes responsibility for the commitment offense, but then observed that her statements regarding her role in the planning and execution of the commitment offense at the October 2009 hearing were inconsistent with statements she had made to Dr. Pointkowski the previous June. He pointed to her statements in Dr. Pointkowski's report that while Farrar participated in planning the robbery, she believed that she could have stopped her cohorts at the last

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[3] Nothing in the record shows that they were otherwise physically harmed.

possible moment. He told Farrar that her "insight needs to be really solidified in terms of here's what really happened." Although recognizing her remorse, Presiding Commissioner Anderson added that Farrar needs "to develop a clear understanding of the nature and magnitude of this commitment offense."

## DISCUSSION

Penal Code section 3041 creates a cognizable liberty interest in parole, within the protection of the California Constitution's due process clause. (Cal. Const., art. I, § 7, subd. (a); *In re Lawrence* (2008) 44 Cal.4th 1181, 1204 (*Lawrence*).) '"[P]arole applicants in this state have an expectation that they will be granted parole unless the Board finds, in the exercise of its discretion, that they are unsuitable for parole in light of the circumstances specified by statute and by regulation."' [Citations.]" (*Lawrence*, at p. 1204.)

### Standard of review

The key criterion upon which the regulations authorize the Board to deny parole is that the inmate "will pose an unreasonable risk of danger to society if released from prison." (Cal. Code Regs., tit. 15, § 2281, subd. (a).) In making that determination, the Board must consider all relevant, reliable, available information, including the inmate's criminal and social history, mental state, commitment offenses and attitude concerning it, and "any other information which bears on" the inmate's suitability for release. (*Id*. at subd. (d).)

The regulations list "general guidelines" that identify factors that the Board should consider when determining whether an inmate is suitable, or unsuitable, for parole. (Cal. Code Regs., tit. 15, § 2281, subds. (c), (d).) The listed factors are intended to guide the Board in determining whether the inmate will pose an unreasonable risk to public safety if released from prison. "[T]he Penal Code and corresponding regulations establish that the fundamental consideration in parole decisions is public safety." (*Lawrence*, *supra*, 44 Cal.4th at p. 1205.) Unless public safety requires a lengthier period of incarceration, the presumption is that parole must be granted. (*In re Shaputis* (2008) 44 Cal.4th 1241, 1257–1258 (*Shaputis I*).)

Courts are authorized to review whether the Board's decision to grant or deny parole adheres to the statutory and regulatory factors concerning parole suitability. Judicial review is also appropriate to determine whether the Board's decision adheres to due process standards—whether a decision to deny parole is supported by "'some evidence'" demonstrating that an inmate poses a current threat to public safety." (*Prather, supra*, 50 Cal.4th at p. 252; *Lawrence*, *supra*, 44 Cal.4th at pp. 1207–1209.)

The "some evidence" standard of judicial review "is unquestionably deferential, but certainly is not toothless," under the *Lawrence* decision's mandate. (*Lawrence*, *supra*, 44 Cal.4th at p. 1210.) "[U\nder the 'some evidence' standard, '[o]nly a modicum of evidence is required. . . . As long as the . . . [Board's] 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.'" (*Shaputis II*, *supra*, 53 Cal.4th at p.210, quoting *In re Rosenkrantz* (2002) 29 Cal.4th 616, 677 (*Rosenkrantz*).)

The reviewing court's consideration of the Board's decision is not confined to a determination whether evidence of the statutory and regulatory factors that guide the Board's discretion appear in the record. The reviewing court must look also to the ultimate determination required of the Board: "'[W]hether 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]'" (*Shaputis II*, *supra*, at p. 209, quoting *Prather*, *supra*, 50 Cal.4th at pp. 251–252.) That review "requires more than a rote recitation of the relevant factors"; it requires also examination whether the Board decision is supported by "reasoning establishing a rational nexus between those factors and the necessary basis for the ultimate decision—the determination of current dangerousness." (*Lawrence*, *supra*, 44 Cal.4th at p. 1210.)

That is the review that Farrar seeks from this court.

**Preincarceration history**

In its reliance on historical factors—the commitment offense and Farrar's precommitment history—the Board failed to provide a "rational nexus between the

evidence and the ultimate determination of current dangerousness." "[T]he circumstances of the offense justify a denial of parole only if they support the ultimate conclusion that the inmate *continues* to pose an unreasonable risk to public safety . . . ." (*Shaputis II, supra,* 53 Cal.4th at p. 217.) The Supreme Court has "discouraged narrow reliance on the circumstances of the commitment offense, untethered to considerations of the inmate's present risk to public safety, including the inmate's current state of mind. [Citations.]" (*Ibid.*)

The diminishing predictive value of these factors for Farrar's *future* conduct renders them insufficient to show that she continues to pose a serious public danger. For that reason, reliance on these factors, without identifying how they show a risk of current or future dangerousness, violates the statutory and constitutional requirements of the parole-determination process. (*In re Roderick* (2007) 154 Cal.App.4th 242, 277; *In re Scott* (2005) 133 Cal.App.4th 573, 594–595 [reliance on immutable factor without regard to later circumstances may violate due process].)

**Institutional behavior**

The Board considered and lauded Farrar's "institutional behavior," which demonstrates that she is an exemplary inmate. She has never had a serious rules violation report, nor has she had any "counseling chronos" in all the years she has been incarcerated. Farrar has upgraded vocationally, earning ratings of satisfactory or better. She has earned her GED and, at the time of the hearing, was close to completing her AA degree at Coastline Community College. Her self-help participation is exemplary. She participates in programming designed to address the problems that led her to prison, including narcotics anonymous, a battered women's support group, anger and stress management, and alternatives to violence project. Farrar also participates in programming designed to help her transition into the community, including communication and job success.

**Parole plans**

The Board commended Farrar for her solid parole plans. Again, as stated above, Presiding Commissioner Anderson commended Farrar on her excellent parole plans:

"With respect to parole plans, parole plans are realistic. She does have viable residential plans and marketable skills. I will say that your parole plans are probably one of the more extensive and better prepared than what normally come through the door, so you've done an excellent job in that area. I just want to commend you for that."

Nothing in the record is to the contrary.

**Insight**

"[T]he 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. [Citations]." (*Shaputis II*, *supra*, 53 Cal.4th at p. 218; *Shaputis I*, *supra*, 44 Cal.4th at p. 1261.) A "lack of insight" into past criminal conduct may 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 would react to them similarly if again confronted by them. (*Shaputis I*, at pp. 1260, 1261, fn. 20; *Lawrence*, *supra*, 44 Cal.4th at p. 1213.)

Here, the commissioners expressly found that Farrar was remorseful and took responsibility for the commitment offenses, but then, apparently ignoring its own conclusions, focused on Farrar's low self-esteem explanation, a circumstance that is generally accepted in the professional communities of psychologists and behavioral criminologists as a factor in the causation leading to criminal conduct[4] and her statement

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[4] See, e.g., Samenow, Stanton E., *A Note on the Criminal and "Low Self-Esteem"* (Feb. 23, 2011) Psychology Today <http://www.psychologytoday.com/blog/inside-the-criminal-mind/201102/note-the-criminal-and-low-self-esteem> (as of December 15, 2011); Donnellan, M. Brent et al., *Low Self-Esteem Is Related to Aggression, Antisocial Behavior, and Delinquency* (2005) volume 16, No. 4, Psychological Science 328-335 <http://persweb.wabash.edu/facstaff/hortonr/articles%20for%20class/donnellan%20low%20se%20and%20aggression.pdf> (as of December 15, 2011); Trzesniewski, Kali H., et al., *Low Self-Esteem During Adolescence Predicts Poor Health, Criminal Behavior, and Limited Economic Prospects During Adulthood* (Mar. 2006) volume 42, No. 2, Developmental Psychology 381-390 <http://www.mendeley.com/research/low-selfesteem-during-adolescence-predicts-poor-health-criminal-behavior-and-limited-economic-prospects-during-adulthood> (as of December 15, 2011); Jespersen, Ashley, *Treatment Efficacy for Female Offenders* (2006) volume 1, No. 1, Lethbridge

to Dr. Pointkowski that she could have stopped the offenses at the last moment as demonstrative of her lack of insight. These conclusions are not supported by the record.

Two essential elements are missing. First, the evidence on which the commissioners ostensibly relied to find lack of insight does not show a condition extant at the time of the parole hearing. In fact, Presiding Commissioner Anderson's own assessment was that Farrar had taken responsibility and was remorseful. Second, the commissioners failed to identify how these evidentiary factors relate to the Board's conclusion that Farrar would present a danger to public safety if she were released. Without evidence of present danger, the commissioners' finding cannot constitute a sufficient evidentiary basis; further, without a rational nexus between their findings and a conclusion of current dangerousness, the evidentiary basis (even if it were sufficient) would fail to establish the ultimate fact. "It is not the existence or nonexistence of suitability or unsuitability factors that forms the crux of the parole decision; the significant circumstance is how those factors interrelate to support a conclusion of current dangerousness to the public." (*Lawrence*, *supra*, 44 Cal.4th at p. 1212.)

A finding that a petitioner for parole lacks insight must be based on identifiable and significant defects in her insight into her criminal conduct or its causes, which have "some rational tendency to show that the inmate currently poses an unreasonable risk of danger." (*In re Ryner* (2011) 196 Cal.App.4th 533, 548–549 & fn. 2; *In re Rodriguez* (2011) 193 Cal.App.4th 85, 97.) As the court stated in *Ryner*, when the Board invokes "lack of insight" as a reason to deny parole, its conclusion about the inmate's lack of insight "is indicative of a current dangerousness only if it shows a *material* deficiency in an inmate's understanding and acceptance of responsibility for the crime. To put it another way, the finding that an inmate lacks insight must be based on a factually identifiable deficiency in perception and understanding, a deficiency that involves an aspect of the criminal conduct or its causes that are significant, and the deficiency by

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Undergraduate Research Journal <http://lurj.org/aricle.php/ vol1n1/female.xml ["The Correctional Service of Canada (2004) lists additional issues common to female offenders, including low self-esteem . . . .] (as of December 15, 2011).

itself or together with the commitment offense has some rational tendency to show that the inmate currently poses an unreasonable risk of danger." (*In re Ryner*, *supra*, 196 Cal.App.4th. at pp. 548–549; fn. omitted.)

Announcing its decision that Farrar is not yet suitable for parole because she poses an unreasonable risk of danger if released from prison, the commissioners acknowledged that Farrar "examined why this commitment offense occurred," took responsibility, and was remorseful.

Presiding Commissioner Anderson stated that ***he*** did not understand how Farrar's self-esteem issues related to the commitment offenses. Poor self-esteem was only one factor that Farrar cited. Farrar told Dr. Pointkowski that, as a young woman, she was a "'time bomb.'" At the hearing, Farrar pointed to her lack of judgment and cowardice in planning and participating in the commitment offenses. The record shows that Farrar may not have been perfectly articulate in verbalizing all the factors that caused her criminality, but her statements and conduct demonstrate that she understands that her failure to cope with the physical and sexual abuse against her, her own substance abuse, and her financial dependence on others constituted additional important factors.

Farrar told the commissioners that she began her own self-help and recovery program upon moving to Washington.[5] She confronted the history of physical and sexual abuse she suffered as a child and young woman by finding a battered women's shelter and by participating in one-on-one psychological counseling and group counseling, as well as in domestic violence groups. She overcame her financial dependence on others by finding a job, at which she worked successfully for many years. Farrar addressed her alcohol and narcotics abuse by participating in substance abuse groups, one-on-one psychological counseling, and group counseling. Farrar's continued and excellent participation in substance abuse and other self-help and counseling programs in prison exemplifies her understanding of what led to her criminality.

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[5] Although not mentioned by the commissioners, Farrar's flight is not to be condoned. At the same time, the record amply demonstrates that she lived without incident, neither violent nor otherwise criminal, during that period.

In questioning the full extent of her insight, Presiding Commissioner Anderson expressed concern over Farrar's statement to Dr. Pointkowski at the June 2009 interview that she believed that she could have stopped her cohorts at the last moment. Importantly, at the October 2009 hearing, Farrar disavowed the statement, explaining that she had not had the opportunity to enlarge upon her comment to Dr. Pointkowski. Instead, as she explained, she was attempting to convey some of her muddled thoughts in the minutes before the robbery began. In the moments before the door opened, Farrar entertained the fantasy that she could halt the commission of the offenses, but that moment passed quickly and she participated fully in the offenses. The Board's own evidentiary findings that Farrar is remorseful and took responsibility for the offenses tacitly recognize that her June 2009 statement to Dr. Pointkowski does not reflect Farrar's *current* insight, remorse, or potential dangerousness. (*In re Barker* (2007) 151 Cal.App.4th 346, 369 [If the inmate genuinely accepts responsibility, "'it does not matter how longstanding or recent'" that acceptance may be].)

Farrar admitted that she participated in the planning and execution of the commitment offenses, that she was armed and that she threatened the victims. She also told Dr. Pointkowski that she felt the pain of the victims and imagined their trauma.

The Board's decision thus fails to identify, and the record fails to elucidate, any evidence showing that Farrar lacks insight or that said postulated lack of insight renders her an unreasonable risk of current dangerousness. That nexus is essential to Farrar's due process rights. (*In re Twinn* (2010) 190 Cal.App.4th 447, 472.) "[L]ack of insight, like any other parole unsuitability factor, supports a denial of parole only if it is rationally indicative of the inmate's current dangerousness." (*Shaputis II*, *supra*, 53 Cal.4th at p. 219; *In re Twinn*, at p. 465.) Without that evidence and that nexus, the Board failed to fulfill its duty to provide "more than a rote recitation of the relevant factors with no reasoning establishing a rational nexus between those factors and the necessary basis for the ultimate decision—the determination of current dangerousness." (*Lawrence*, *supra*, 44 Cal.4th at p. 1210.)

Given that Farrar showed compassion for her victim, has never had even one disciplinary report in prison, did not commit any offenses between 1994 and her arrest in 2001, engaged, and continues to engage, extensively in self-help and education programs, has excellent parole plans, and the Board's own determination that she takes responsibility for the offense and is remorseful, the Board's decision fails to reflect "due consideration of the relevant factors." (*Shaputis II*, *supra*, 53 Cal.4th at p. 212.)

While our review "'is limited to ascertaining whether there is some evidence in the record'" to support the Board's decision, we conclude for each of the reasons discussed above that the record lacks evidence—even a "'modicum'" of evidence—to support the parole denial. (*Shaputis II*, *supra*, 53 Cal.4th at p. 210, quoting *Rosenkrantz*, *supra*, 29 Cal.4th at p. 677.)

On this record, the denial of parole cannot be sustained. Farrar is entitled to habeas corpus relief. The Board's denial of parole must be set aside.[6]

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[6] This result renders unnecessary reaching Farrar's contention that the Board's application of "Marsy's Law," the 2008 amendment to section 3041.5, subdivision (b)(3), postponing her next parole hearing, constitutes an ex post facto violation.

## DISPOSITION

The petition is granted, and the decision of the Board of Parole Hearings is hereby vacated. The Board is directed to proceed in accordance with its usual procedures for release of an inmate on parole unless it determines within 30 days of the finality of this decision to conduct a new hearing to determine whether petitioner Mary Eileen Farrar is currently suitable for parole, in accordance with due process of law and consistent with our determination that the evidence in the current record is not sufficient to constitute some evidence that petitioner Mary Eileen Farrar would pose an unreasonable risk to public safety if she were released on parole. (*In re Prather*, *supra*, 50 Cal.4th at pp. 244, 258; see *In re Twinn*, *supra*, 190 Cal.App.4th at p. 474.)

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

MALLANO, P. J.

CHANEY, J.