Filed 3/23/15 In re Davidson 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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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

In re JOSEPH DAVIDSON, on Habeas Corpus.	B258081 (Los Angeles County Super. Ct. Nos. BH009646, GA032947)

ORIGINAL PROCEEDINGS; petition for writ of habeas corpus, William C. Ryan, Judge. Petition denied.

John P. Olin for Petitioner.

Kamala D. Harris, Attorney General, Jennifer A. Neill, Senior Assistant Attorney General, Jessica N. Blonien, Supervising Deputy Attorney General, and Amber N. Wipfler, Deputy Attorney General, for Respondent.

Petitioner Joseph Davidson challenges Governor Edmund G. Brown, Jr.'s, reversal of a decision by the Board of Parole Hearings (Board) finding him suitable for release on parole. We conclude there was a modicum of evidence to support the Governor's conclusion that Davidson was unsuitable for release because he posed an unreasonable risk to public safety. Accordingly, we deny Davidson's petition for a writ of habeas corpus.

PROCEDURAL BACKGROUND

On December 16, 1998, a jury convicted Davidson of second degree murder of his mother. Davidson who 14 years old at the time of the crime, was tried and convicted as an adult. The trial court sentenced him to an indeterminate term of 19 years to life. On January 7, 2014, Davidson appeared before the Board for a youthful offender parole hearing. (Pen. Code, § 3051, subd. (b)(2).)[1] This was Davidson's second parole hearing. In 2011, the Board deemed Davidson unsuitable for parole in a split decision. In 2014, the Board found Davidson suitable for parole, subject to review by the Board sitting en banc and the Governor's office. (Cal. Const., art. V, § 8; §§ 3041, subd. (b), 3041.1.)

On April 25, 2014, Governor Brown reversed the Board's suitability finding, concluding that Davidson "currently poses an unreasonable danger to society if released from prison." Davidson challenged the Governor's reversal in a petition for writ of habeas corpus brought in the superior court, which was denied. He then petitioned this court for relief. We summarily denied his writ of habeas corpus.

Davidson filed a petition for review, arguing that the Governor's reversal was based on speculation and incorrectly applied newly enacted section 4801, subdivision (c) which requires the parole authority to "give *great weight* to the diminished capacity of juveniles as compared to adults . . . ." in determining whether Davidson is suitable for parole. (§ 4801, subd. (c), italics added.) The California Supreme Court granted Davidson's petition, and transferred the matter back to us with directions to vacate our summary denial and issue an order to the Secretary of the Department of Corrections and Rehabilitation to show cause

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[1] All further statutory references are to the Penal Code unless otherwise indicated.

"why the Governor did not abuse his discretion in reversing the [Board's] January 2014 determination that [Davidson is] suitable for parole, and why the Board's decision . . . should not be reinstated," in light of *In re Shaputis* (2011) 53 Ca1.4th 192 (*Shaputis II*), *In re Lawrence* (2008) 44 Ca1.4th 1181 (*Lawrence*) and sections 3051, subdivision (e), and 4801, subdivision (c). Based on these authorities, the petition, the State's return and Davidson's reply, we conclude the Governor acted within his discretion in reversing the Board's decision to grant Davidson parole. Accordingly, we deny Davidson's petition for a writ of habeas corpus.

FACTUAL BACKGROUND

Preconviction History

Davidson was born in 1981. His biological mother was homeless, and abused drugs and alcohol. Davidson was born with drugs in his system. The identity of Davidson's biological father is unknown. The newborn was placed in foster care 10 days after his birth, and remained there until the Davidsons adopted him at age three. Apart from some disruptive behavior and two suspensions from school for fighting with peers, Davidson's history reflects no behavioral difficulties or contact with juvenile authorities prior to his life crime. Davidson began drinking alcohol at age 11 and, by the time he was 13, was drinking alcohol and smoking marijuana on a weekly basis. He disavowed use of any other drugs, and has no history of psychiatric hospitalization or mental health treatment, and denied that he was intoxicated or under the influence of drugs the day he killed his mother.

The commitment offense

The Governor's indeterminate sentence parole release review (reversal) accurately summarizes the underlying facts regarding Davidson's commitment offense, as follows:

"On August 16, 1996, Tinann Davidson and her 14-year-old son, Joseph Davidson, were preparing to move to Las Vegas and had gotten into minor arguments during the day. Mr. Davidson had retrieved his father's .38 caliber handgun from his parents' bedroom and contemplated suicide. He decided not to kill himself because it went against his religious belief that he would go to hell if he did so and because a friend had once told him that it was better to kill the person who was the source of your problems than to kill yourself. Deciding

against suicide, Mr. Davidson took the handgun downstairs intending to kill his mother. When he saw a wall plaque with the Ten Commandments, however, he decided against it. Later that afternoon, Mr. Davidson told neighborhood friends that he was going to shoot his mother.

"That afternoon, Mr. Davidson went to a closet, retrieved a set of earplugs, and put them in to muffle the sound of gunshots. He walked downstairs to find his mother seated at the dining room table while dinner was cooking on the stove. He hid the gun behind his back and told his mother that he had a stomachache so that she would get close to him. Mr. Davidson then shot her in the head, killing her. He took off his shoes, turned off the stove, went back to his neighbor's house, and told his friends what he had done. He then went to a payphone and called 911 to report his crime.

"Mr. Davidson was arrested that night. He asked officers, 'Is she dead, God I hope so man I shot my mom I finally did it.' He also stated, 'I had been meaning to kill that bitch all my life.' When he was interviewed at the police station, Mr. Davidson said that he hated his mother and that he knew one day he would kill her. He noted that he had wanted to kill his mother for 'the last six years' and that 'for five fucking years (that's a long ass time) every morning I woke up I thought about killing her.' Mr. Davidson reported that at 'about eight [years old] I said fuck it I should go kill that bitch.' He said that he discovered where his father hid the handgun when he was about 11 years old and that playing with the gun was 'exciting, like finding a damn treasure.' He reported that he had taken the gun to school once in the 8th grade because he believed his mother was coming to school and wanted to kill her there, and that he had tried to kill her on another occasion by putting rubbing alcohol into a soda to poison her. Mr. Davidson said that he wished he had killed his mother sooner."

Criminal history and record while incarcerated

When he was arrested, Davidson was 14 years old with no criminal record. At the time of the 2014 parole hearing, Davidson had been in juvenile hall and then prison for 18 years. He had a spotless disciplinary history and no record of violence or threats of violence in prison. He had earned his GED, had completed approximately 50 units of college course work, was working on a degree in business management, had completed a multitude of self-

help and therapeutic courses while incarcerated, and was deeply involved in religious programs and a Protestant ministry.

Parole plans upon release

Davidson had completed vocational training in community and office services and consumer electronics, and had worked in prison in maintenance positions and as a clerk. He had no confirmed job offer, or firm plans for employment. He had also received on-line legal clerk training through Palo Verde College, and had completed some work toward obtaining an associate's degree in biblical studies. The 2014 Board found Davidson was potentially employable in the fields of consumer electrics, installation of telecommunications and fiber electronics, or as a data entry clerk.

Davidson had offers of housing from friends or a relative to stay as long as necessary until space was available for him at a 12 to 24 month residential program into which he had been accepted.

Davidson's psychological evaluations and expressions of remorse and insight

By the time of the 2014 parole hearing Davidson had undergone three psychological evaluations which revealed the following information.

a. September 2010 Comprehensive Risk Assessment

After her psychological assessment conducted in anticipation of Davidson's 2011 parole hearing, Donna Robinson, Ph.D., reported Davidson had been in foster care from the time he was a newborn until he was adopted by the Davidsons. He was their only child. Davidson's father was a free-lance set designer for movies, and his work frequently required the family to relocate. His mother did not work outside the home. Davidson's parents' relationship was mostly "positive" until he was seven, when it became "volatile" due to issues of his father's infidelity. The volatility ended when Davidson was 13 and his parents "tried to work on their marriage."

Davidson reported no violence or child abuse during his childhood, and neither of his parents abused drugs or alcohol. Davidson's mother was responsible for discipline in the home. She gave Davidson verbal corrections, typically directed at poor academic performance or dirty clothes, and periodically struck (but did not injure) him with a belt,

discipline that typically coincided with quarterly school progress reports revealing his "barely average grades." The family moved frequently due to his father's work, and Davidson reported "zero" peer relationships, outside of one slightly older boy who lived nearby and some younger acquaintances at church. He "didn't hit it off" with other kids at school, who "picked on" him after his mother humiliated him ("came to school and dragged [him] out of the seventh grade"). Davidson had no gang affiliations in the free community or in prison, and never held a job before his incarceration.

Davidson reported no history of psychiatric hospitalizations or medications. He began having recurring suicidal thoughts and fantasies at age 13; by the age of 14 he experienced them on a weekly basis. Davidson participated in psychotherapy while in juvenile hall, but not in prison. Davidson told Dr. Robinson that he began contemplating his mother's death when he was eight (and wished she would die in an accident). By the time he was 12 those thoughts had developed into a "homicidal rage."

With regard to her assessment of Davidson's remorse for and insight about his crime, Dr. Robinson stated at the outset that: "It should be noted that remorse and insight are abstract concepts, which do not lend themselves to operationalized definitions or measurement. Therefore, any opinions regarding remorse and insight are subjective in nature, and should be interpreted with this caveat in mind." Dr. Robinson noted that, although Davidson insisted he felt remorse for the murder of his adopted mother, he showed "no visible signs of regret, guilt, or emotion as he spoke of ending his mother's life in a calculated way." "His words failed to communicate any genuine emotions or credible remorse," and "[h]is empathy appeared to be more for himself than for the victim of the life crime, which was his mother." Dr. Robinson observed that Davidson "communicated less than optimal insight" about his own personality and factors that contributed to his life crime, noting that a "lack of insight correlates with recidivism."

In terms of his "OVERALL RISK ASSESSMENT," Dr. Robinson opined that, after weighing all available data, "Mr. Davidson present[ed] a relatively low-moderate risk for violence in the free community." (Boldface omitted.)

b. August 2013 Comprehensive Risk Assessment

An updated comprehensive risk assessment of Davidson was conducted in July 2013, by C. Clarizio, Psy.D. Addressing steps taken in Davidson's development since his 2011 parole hearing, Dr. Clarizio stated, "[i]t is evident that Mr. Davidson's thoughts and behaviors were callous and impulsive in the past. The association between past and future criminal behavior tends to decrease as the value of the rewards for pro-social behavior increases. It appears that Mr. Davidson has come to recognize the inerrant rewards surrounding pro-social behaviors and associations and appeared to have worked diligently during his incarceration to understand himself in a more comprehensive manner, which was not within his skill set as a juvenile."

When asked how his life might have turned out had he not gone to prison, Davidson told Dr. Clarizio that he would either have committed suicide or tried to run away. He said that, although he had not planned to kill his mother on the day he did so, he had "thought about it regularly; it was going to happen." He believed "the life crime was not an isolated incident and that if he hadn't come to prison he would have continued down the same harmful path."

Davidson accepted personal responsibility for the crime, expressed empathy for the victim and "was able to adequately report what it meant to have remorse and insisted that he felt remorse" for killing his mother, he expressed these sentiments without emotion or the noticeable changes in behavior or affect one would expect from someone reporting such feelings of guilt and remorse. Notwithstanding his flat affect, Dr. Clarizio opined that, at age 31, Davidson "appeared to have gained insight into his prior maladaptive behaviors and thought processes," and "clearly under[stood] himself in a more psychologically sophisticated manner" than when he committed the crime at age 14. Dr. Clarizio also observed that "[a]nother important salient dynamic risk factor [was] Mr. Davidson's . . . accept[ance] [of] full responsibility for role in the" killing of his mother.

c. November 2013 Comprehensive Risk Assessment

Dr. Clarizio conducted a second psychological assessment in November 2013, following the enactment of the Youthful Offender Act (Sen. Bill No. 260) which requires that, in determining his suitability for parole, great weight be given to the fact that Davidson was a juvenile when he committed his offense.[2] (Sen. Bill No. 260 (2013–2014 Reg. Sess.) §§ 1–5.) Dr. Clarizio observed that Davidson, then 32 years old, had no history and displayed no evidence of mental illness or mood disorders. Other than the murder of his mother, Davidson had no history of serious, spontaneous violence or impulsivity either in the free community or in prison. She also observed, however, that the "range of [Davidson's] emotional expressions was limited and incongruent with the topics that were being discussed. Specifically, his affective expressions remained unwavered, even when speaking about the life crime." Further, he "appeared to meet the criteria for Narcissistic Personality Disorder," an essential feature of which was a "lack of empathy." Davidson's history indicated a lack of empathy, as evidenced by physical fights he engaged in while in school "and the shooting of his mother by age 14."

With regard to Davidson's remorse for and insight into the offense, Dr. Clarizio noted that Davidson "reported accepting personal responsibility for the life crime as well as voicing feelings of remorse and empathy for the victim. However, he did not express these feelings though behavioral observations (i.e., there were minimal fluctuations in his tone and no noticed changes in his affect or behavior when speaking about the victim or the crime as one would expect from someone reporting feelings of guilt and remorse), he made few statements reflecting his reported feelings of remorse and empathy for the

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[2] Specifically, Senate Bill No. 260, now codified at new section 3051, and amended sections 3041, 3046 and 4801 of the Penal Code, provides in pertinent part that, "[w]hen a prisoner committed his or her controlling offense, as defined in subdivision (a) of Section 3051, prior to attaining 18 years of age, the board, in reviewing a prisoner's suitability for parole . . . , shall give great weight to the diminished culpability of juveniles as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity of the prisoner in accordance with relevant case law." (§ 4801, subd. (c).) We discuss Senate Bill No. 260 at length below.

victim and his statements often appeared rehearsed and superficial. Hence, this observation was expressed to Mr. Davidson, as in addition, it was his mother's life he took. He stated, 'After the last Hearing the family said they recognized my feelings as genuine.' Nonetheless, the current evaluator as well as the 2010 evaluator both noted a significant lack of emotion. Mr. Davidson was asked when the last time he cried was. He stated, '5 days ago.' He was asked the reason he cried. He stated, 'Actually, it was happiness and love.' Hence, he was asked when the last time he cried when he felt 'bad' about something. He stated, 'In 2006.'[3] All things considered, it appeared that he does regret committing the life crime; however, these feelings of regret appear to have stemmed from his own loss, rather than the loss to the victim and her family. His thoughts and feelings regarding the crime are indicators of his general attitude."

Consistent with her prior observations and those of Dr. Robinson, Dr. Clarizio opined, that, "Davidson appeared to present with a general lack of concern for the negative consequences that his actions (criminal and non-criminal) had on others." Further, although Davidson "verbalized guilt and feelings of remorse for the life crime, he [did] not appear to be genuinely experiencing those emotions as his behavioral cues were incongruent with his reported emotions. He appeared unable to put himself 'in another person's shoes' and appeared indifferent to the feelings of others." In the specific context of the Senate Bill No. 260's requirements, Dr. Clarizio observed:

"Mr. Davidson was 14 years old at the time of the Controlling Offense. Hence, the undersigned considered the diminished culpability of juveniles compared to adults, the hallmark features of youth and any subsequent growth or increased maturity of Mr. Davidson since his commitment offense during his time in prison.

"When speaking with Mr. Davidson, it became evident that when committing the controlling offense as a juvenile, he demonstrated immaturity, impulsiveness and

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[3] Dr. Clarizio noted the prison environment was seen as "non-conducive to showing emotion," but that Davidson's past expressions "indicat[ed] there are times and places where he can show emotion."

recklessness. He appeared to have an underdeveloped sense of responsibility, a lessened ability to anticipate and appreciate consequences of his actions and an extreme susceptibility to negative peer influences. These characteristics alone (devoid the commitment offense) are not necessarily atypical of juveniles. He acted as a 14 year old child would when confronted with a difficult choice. He stated, 'I had family and school counselors try to help me, but each time I refused. Once I feared child protective services and of being displaced again. Another time, I had a friend that was in the same situation, he told, and it made it worse for him at home with the punishments.'

"Mr. Davidson was asked how he felt as a juvenile in relation to his peers with regard to maturity. He stated, 'I felt much more immature, emotionally; things others could just brush off, like being made fun of, I couldn't. Academically, I performed better.' When asked why he thought he acted impulsive, he stated, 'I acted impulsive when I felt desperation, when I felt there was no other option.'

"Mr. Davidson is currently 32. He was 14 years old at the time of his controlling offense; hence, he has physically 'grown up' in prison. During his incarceration, he participated in self help groups, has received no recent disciplinary/behavioral reports and has presented with no documented violent behaviors since the life crime. He was able to relate an adequate understanding of the life crime and what factors he believed led him to that point. Hence, a number of risk factors appear to have been ameliorated by growth and maturity; a personality characteristic which was clearly underdeveloped at the time of the controlling offense. All things considered, Mr. Davidson appeared to have psychologically matured during his incarceration. It is opined that if Mr. Davidson had the coping skills he developed as an adult, he *may* have chose [sic] a different option rather than murder. Conversely, his narcissistic personality and lack of empathy continues to be concerning and should be the focus of treatment in the future."

After considering all the data, Dr. Clarizio ultimately concluded that Davidson presented a "low-moderate or slightly elevated risk of violence if released into the free community." (Boldface and italics omitted.) That risk could be decreased further if, among other things, Davidson developed better insight into aspects of his personality that

"may have contributed to his past maladaptive choices and behaviors." She remained concerned that the lack of insight, coupled with Davidson "lack of general empathy and shallow affect when speaking about the murder of his mother," "appeared to raise his risk [of recidivism] more significantly than any other factor . . . ." and required additional treatment.

Parole Board Hearings

a. 2011 Parole hearing

Davidson's initial parole suitability hearing was conducted by a three-member panel in February 2011. In a split decision following that hearing, the majority acknowledged that Davidson had an unblemished disciplinary history in prison, and had completed his high school education, as well as some college and vocational courses. He had also been a peer tutor and had "immersed [him]self in all kinds of substance abuse and self help programs, and taken just about every program . . . made available to [him]." Indeed, one commissioner observed that it had "been quite awhile since [he had] seen so many positive documents in a folder about post-conviction factors." Nevertheless, after evaluating the required criteria (Cal. Code Regs., tit. 15, § 2402), the majority determined Davidson would pose an unreasonable risk of danger to society or a threat to public safety if released from prison, and was not yet suitable for parole.

In reaching its conclusion, the majority noted that its greatest concern was with "the area of past and present mental state and attitude toward the crime." Like Dr. Robinson, the majority was "bothered" that, "in speaking about the life crime, [Davidson came] across as just rehearsed words. There's a total lack of emotion and [the Board didn't] find remorse for the loss of [his] mother." Other than when Davidson spoke about his father, the panel found his "presentation . . . rehearsed and flat and void of emotion." In the opinion of the dissenting commissioner, Davidson had "managed to evidence just about every single element of suitability [for parole] that [the panel was] given as guidelines to consider." With regard to evidence of Davidson's remorse for the crime, the dissent believed his acts of contrition reflected his level of remorse, and the commissioner had no need "to see [Davidson] . . . , gnashing [his] teeth or ripping [his]

shirt or falling apart." The dissent also noted that "the biggest factor that weighed on [him] was [Davidson's] age . . . . It was very difficult for [the commissioner] to understand how [he could] not consider [Davidson] a different man today than [he was] when [he was] 14 years old."

The panel scheduled Davidson's next parole hearing for three years later. In the interim, the majority advised Davidson to take heed of Dr. Robinson's concern that, unless "he uncovere[d] the full range of causative factors of his life crime," he remained vulnerable to experience similar dynamics in future relationships, which could increase his potential for violence. To that end, the majority stated it was "imperative" that Davidson "find the nexus between the cold-blooded killing of [his] own mother and the reasons beyond the anger that led [him] to such a horrible, horrible crime."

b. 2014 Parole Hearing

Davidson's second parole eligibility hearing on January 7, 2014 was conducted in accordance with Senate Bill No. 260. Pursuant to that act, the Board conducted its review bearing in mind the requirement that it "giv[e] great weight to the diminished culpability of juveniles as . . . compared to adults, the hallmark features of youth and any subsequent growth and maturity" demonstrated by Davidson. The Board concluded that Davidson posed no unreasonable risk of danger to society or threat to public safety, and was therefore eligible for parole.

Addressing the specific factors considered in reaching its conclusion, the Board noted that as a 14 year old, Davidson's anger, poor communication skills, immature and unsophisticated reasoning ability, susceptibility to peer pressure, and stress as a result of his conflicts and difficult relationship with his mother contributed to his flawed decision to take her life. The Board also noted that Davidson, who was 34 at the time of the hearing, had no history of other crime or violence either before or during his 20 years in custody.

In reaching its decision, the Board said it applied great weight to several aspects of Davidson's history, the crime, and certain hallmark features of youth, such as rebelliousness, the inability fully to appreciate the consequences of his crime, and his age,

isolation and emotional immaturity at the time of the crime. The Board noted that "rebelliousness" was a particularly prominent and relatively routine hallmark of youth. Davidson's rebelliousness had focused primarily on his "exceptionally controlling" mother with whom he had had experienced major and minor friction since age four. Although he had been "ill equipped to respond appropriately" to his mother's controlling nature at age 14, the Board concluded Davidson had since developed the understanding and ability to respond more appropriately in a future relationship involving a similar dynamic.

The Board also noted that another particular hallmark of youth is the inability to image or anticipate the real life consequences of one's acts. In contemplating the murder of his mother, the 14-year-old Davidson was unable to grasp the consequences of such a crime, not just in terms of his prosecution for murder, but also the impact on his father, extended family and himself. At the time, Davidson had believed "the world did not like his mom," and did not consider incarceration.

The Board observed that Davidson's age at the time he committed the crime was a "significant factor," particularly in light of his emotional isolation and immaturity. Because Davidson was "significantly cloistered" during his childhood, he lacked "the benefit of interactions with other individuals at various junctures which might have provided the sounding board that could have resulted in better decision making."

The Board relied heavily on the evaluations performed by Drs. Robinson and Clarizio to support its findings. In her December 2013 assessment, Dr. Clarizio specifically observed that it was "evident that when committing the controlling offense as a juvenile, [Davidson] demonstrated immaturity, impulsiveness and recklessness," and "appeared to have an underdeveloped sense of responsibility, a lessened ability to anticipate and appreciate consequences of his actions and an extreme susceptibility to negative peer influences." Although those characteristics were not atypical for a 14 year old, Davidson described himself as "much more immature emotionally" than his peers and, unlike them, unable to brush things off.

The panel also focused on the fact that during both parole hearings and in his psychological evaluations, "Davidson's presentation . . . [was] somewhat unemotional."

"Mr. Davidson has dealt with this subject matter in the past. We found that he was forthright in our discussion with him. During our deliberation, we discussed, as apparently previous Panels and clinicians have as well, Mr. Davidson's presentation which is somewhat unemotional. It was commented upon by several of his supporters today.[4] It's mentioned in the record, and Mr. Davidson commented upon it when asked. Ultimately, the Panel decided that putting ourselves in Mr. Davidson's shoes if we could, faced with an environment such as this hearing room with a father observing everything and subject matter which is sensitive and difficult and highly emotional, that it's logical that an individual would strive to suppress outward display of emotion in order to effectively communicate that emotion and the material at hand. And in this case, the Panel believes that Mr. Davidson has done just that, to his credit."

Later, focusing specifically on the issue of remorse, one commissioner stated: "I would also like to make a few comments about remorse. It came up as a topic during the course of the hearing. And I think remorse is an important factor, one that points towards suitability. You've told us that you're remorseful. And I believe that. In fact, I have no doubt about it. And how I get to that conclusion, when I see somebody who is truly remorseful, I see it accompanied by true change. And you talked about your commitment to heading in a positive direction. You spent some time talking to me about that. And you talked about the remorse you had for what you've done and the magnitude of the offense. And from that, you were led to this commitment you told me about. And more than just telling me about it, your actions evidence it clearly . . . . That was abundantly

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4 In his statement of support, Davidson's father told the Board his son had "never been an emotional person. He's always been a very calm person. His emotions don't show. And so far as his remorse for what he did, when he committed this crime and every Sunday after church I would go to the juvenile hall to visit him, and we would sit down and talk and cry together. . . . And [Davidson] just broke down and started crying. So he does—he has shown remorse . . . ."

clear to me. And all of that together tells me you were truly committed to moving in a positive direction and as a direct result of the remorse you felt for what you've done."

The Governor's reversal

In reversing the Board's order granting parole to Davidson, the Governor first addressed the task before him, stating: "The question I must answer is whether Mr. Davidson will pose a current danger to the public if released from prison. The circumstances of the crime can provide evidence of current dangerousness when the record also establishes that something in the inmate's pre- or post-incarceration history, or the inmate's current demeanor and mental state, indicate that the circumstances of the crime remain probative of current dangerousness. (*In re Lawrence*[, *supra*,] 44 Cal.4th [at p.] 1214.) I am required to give 'great weight to the diminished culpability of juveniles as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity of the prisoner' when determining a youthful offender's suitability for parole. (Pen. Code, § 4801, subd. (c).)"

The Governor affirmed the existence of most of the positive factors the Board relied on in reaching its decision. He expressly recognized Davidson's "length of incarceration, lack of juvenile violent crime, stable social history while incarcerated, staff support, participation in self-help programs, positive social relationships in prison and in the community, lack of rules violations, and the significant stress in his life at the time of the crime."

Addressing the requirements of section 4801, subdivision (c), the Governor went on to state: "I recognize that Mr. Davidson's culpability is diminished because he was only 14 when he committed this crime. If he was less than a year younger when he committed the murder, he could not have been tried as an adult and would already be released from custody. His biological mother abused drugs and alcohol during her pregnancy and Mr. Davidson tested positive for drugs when he was born and had delayed development. For the first three years of his life, he lived in foster homes. He was finally adopted by Tinann and William Davidson when he was three years old. By Mr. Davidson's account, his mother was harsh and controlling to the point of being

somewhat smothering. She isolated him from others and did not draw appropriate boundaries. The two had frequent conflicts, which were apparently buffered by his father's presence. Mr. Davidson and his mother were scheduled to move to Las Vegas, leaving his father in Los Angeles. The prospect of living only with his mother made him feel trapped and hopeless. He was ill-equipped to deal with their difficult relationship because of his age and emotional immaturity and considered committing suicide to escape. Ultimately, he decided to murder his mother. Since he has been incarcerated, Mr. Davidson has done well. He has never been disciplined for any misconduct during his nearly 18 years of incarceration. He has participated in therapy and his father and other surviving family members have been supportive. Mr. Davidson has made progress on his educational and vocational training and receives positive work ratings. He participated in and facilitated many self-help groups. I commend him for making these efforts. He has matured in many ways since he committed this crime."

The Governor noted that he had afforded "great weight to Mr. Davidson's diminished culpability, the challenges he attempted to resolve through this crime, and his increased maturity." In reversing the Board's decision, the Governor identified the negative factors on which he relied to find that Davidson remained unsuitable for parole and would pose an unreasonable danger to society if released. Specifically, the Governor remained "troubled by the consistent observations that Mr. Davidson still does not evidence the type of emotion that is consistent with empathy and remorse. He has had three psychological evaluations and has participated in two parole suitability hearings. During all of this, experts have taken note of Mr. Davidson's significant lack of emotion."[5] "These evaluations give me pause, especially in the context of

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[5] The Governor pointed to Davidson's 2010 evaluation in which Dr. Robinson observed that, Davidson showed "no visible signs of regret, guilt, or emotion as he spoke of ending his mother's life in a calculated way." Although Davidson claimed "he 'actually experience[d] significant emotions pertaining to his crime,'" Dr. Robinson believed "his words failed to communicate any genuine emotions or credible remorse." The majority of the panel members at the first parole hearing said Davidson "had 'a total

Mr. Davidson's crime. He contemplated killing his mother for years before coldly doing so. Many children experience similar conflicts with their parents and struggle with their inability to change their circumstances or escape the control of their parents. But it is extraordinarily rare for a child to seriously contemplate killing a parent as a solution and even more rare to carry out the murder. The 2013 psychologist opined that Mr. Davidson's lack of general empathy and shallow affect when discussing this crime 'appeared to raise his risk more significantly than any other factor'. . . ."

DISCUSSION

Davidson contends that the reasons on which the Governor relied in reversing the Board's decision were speculative, bore no relation to his current dangerousness, and failed to accord great weight to his youth at the time of the murder. Before we turn to these contentions, some legal background is necessary.

1. Controlling legal principles.

a. Recent developments in law

Beginning with *Graham v. Florida* (2010) 560 U.S. 48 [130 S.Ct. 2011, 176 L.Ed.2d 825] (*Graham*), followed by *Miller v. Alabama* (2012) 567 U.S. ___ [132 S.Ct. 2455, 183 L.Ed.2d 407] (*Miller*), and concluding with *People v. Caballero* (2012) 55 Cal.4th 262 (*Caballero*), the United States and California Supreme Courts have explored, in light of the constitutional prohibitions on cruel and/or unusual punishment, the limits of the government's power to punish juveniles tried as adults. In *Graham*, the United

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lack of emotion' and was without 'remorse for the loss of [his] mother," and "found his demeanor . . . 'rehearsed and flat and void of emotion.'" After her first assessment of Davidson in August 2013, Dr. Clarizio noted that Davidson's "display of emotion was nil." Reassessing him several months later, Dr. Clarizio similarly observed that, although Davidson "verbalized guilt and feelings of remorse for the life crime, he [did] not appear to be genuinely experiencing these emotions as his behavioral cues were incongruent with his reported emotions." Even the Board which found Davidson suitable for parole after his 2014 parole hearing commented on his "limited display of emotions." "On the other hand," the Governor also acknowledged that Davidson's father "claimed that his son ha[d] experienced and expressed true emotion for his crime," but had "'never been an emotional person . . . . His emotions don't show.'"

States Supreme Court concluded that the Constitution prohibits the imposition of an LWOP sentence on a juvenile offender for any crime other than homicide. (*Graham*, at p. 48.)

Thereafter, in *Miller*, *supra*, 567 U.S. at p.___ [183 L.Ed.2d 407], the Supreme Court, noting that a mandatory LWOP sentence is the harshest penalty constitutionally available for juveniles, concluded that a sentencing court may only impose LWOP on a juvenile convicted of murder following a "certain process" that takes into account "how children are different." (*Id*. at pp. 424, 426.) Specifically, the sentencing court must consider the offender's youth and the hallmark features of youth—among them, immaturity, impetuosity, and failure to appreciate risks and consequences—that are indicative of lesser culpability and greater capacity for change compared to adults. (*Id*. at p. 423.) The court must consider, in an individualized way, the nature of the offender and the offense (for example, as relevant, a juvenile offender's background or upbringing, mental and emotional development, and the possibility of rehabilitation). (*Id*. at pp. 421–423.)[6]

In *Caballero*, *supra*, 55 Cal.4th 262, the California Supreme Court summarized the *Mille*r holding as requiring "sentencers in homicide cases 'to take into account how children are different, and how those differences counsel against irrevocably sentencing

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[6] The Miller court's summary of its holding explains the meaning of "individualized sentencing": "To recap: Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional. It neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him. Indeed, it ignores that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth—for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys. [Citations.] And finally, this mandatory punishment disregards the possibility of rehabilitation even when the circumstances most suggest it." (*Miller*, *supra*, 567 U.S. at p. ___ [183 L.Ed.2d at pp. 422–423].)

them to a lifetime in prison.' (*Miller, supra,* 567 U.S. at p. ___ [132 S.Ct. at p. 2469].)" (*Caballero,* at p. 268, fn. 4.) *Caballero* was not a homicide case. Rather, it concluded that *Graham, supra,* 560 U.S. 48 and *Miller* applied to a de facto (functionally equivalent) LWOP sentence of 110 years to life imposed on a 16–year–old convicted of three counts of attempted murder. (*Caballero,* at pp. 265, 268–269.) The *Caballero* court concluded that "*Graham*'s analysis does not focus on the precise sentence meted out. Instead, as noted above, it holds that a state must provide a juvenile offender 'with some realistic opportunity to obtain release' from prison during his or her expected lifetime. (*Graham, supra,* 560 U.S. at p. ___ [130 S.Ct. at p. 2034].)" (*Caballero,* at p. 268.) The court encouraged "the Legislature to enact legislation establishing a parole eligibility mechanism that provides a defendant serving a de facto life sentence without possibility of parole for nonhomicide crimes that he or she committed as a juvenile with the opportunity to obtain release on a showing of rehabilitation and maturity." (*Id*. at p. 269, fn. 5.)

By focusing on the differences between adult and juvenile offenders, *Graham, supra,* 560 U.S. 48, *Miller*, *supra*, 567 U.S.___ and *Caballero, supra,* 55 Cal.4th 262 stress the need for courts consider these differences when sentencing juvenile offenders. These cases tell us that a sentence that fails to afford a juvenile offender a meaningful opportunity to obtain release on parole within his or her lifetime constitutes cruel and unusual punishment under the Eighth Amendment. Senate Bill 260 was enacted as a direct response to those cases to provide an opportunity for a juvenile offender sentenced to prison for specific crimes to be released on parole irrespective of the sentence imposed by the trial court. (Sen. Bill No. 260 (2013–2014 Reg. Sess.) § 4, p. 7; see § 3051, subd. (h) [identifying exemptions from section].)

Senate Bill No. 260 provides, in pertinent part, "that, as stated by the United States Supreme Court in *Mille*r[, *supra*, 567 U.S. ___] 183 L.Ed.2d 407, 'only a relatively small proportion of adolescents' who engage in illegal activity 'develop entrenched patterns of problem behavior,' and that 'developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds,' including 'parts of the

brain involved in behavior control.' The Legislature recognizes that youthfulness both lessens a juvenile's moral culpability and enhances the prospect that, as a youth matures into an adult and neurological development occurs, these individuals can become contributing members of society. The purpose of this act is to establish a parole eligibility mechanism that provides a person serving a sentence for crimes that he or she committed as a juvenile the opportunity to obtain release when he or she has shown that he or she has been rehabilitated and gained maturity, in accordance with the decision of the California Supreme Court in [*Caballero, supra,*] 55 Cal.4th 262 and the decisions of the United States Supreme Court in [*Graham, supra,*] 560 U.S. 48 and [*Miller, supra,*] 183 L.Ed.2d 407." (Sen. Bill No. 260 (2013–2014 Reg. Sess.) § 1, pp. 2–3.) Senate Bill No. 260 provides an opportunity for a juvenile offender to be released on parole irrespective of the sentence imposed by the trial court by requiring the Board to conduct "youth offender parole hearings" to consider the release of juvenile offenders sentenced to prison for specified crimes.

New section 3051 provides that juvenile offenders sentenced to life terms of less than 25 years to life shall receive a hearing during his or her 20th year of incarceration (§ 3051, subd. (b)(2)), and that hearing "shall provide for a meaningful opportunity to obtain release." (§ 3051, subd. (e).) To that end, "in order to provide [a] meaningful opportunity for release," the Board must "review and, as necessary, revise existing regulations and adopt new regulations regarding determinations of suitability made pursuant to this section, subdivision (c) of section 4801, and other related topics, consistent with relevant case law . . . ." (*Ibid.*) Further, any psychological evaluations and risk assessments used by the Board "shall be administered by licensed psychologists employed by the board and shall take into consideration the diminished culpability of juveniles as compared to that of adults, the hallmark features of youth, and any subsequent growth and increased maturity of the individual." (§ 3051, subd. (f)(1).) In conducting youthful offender parole hearings under section 3051, the Board is required to "give great weight to the diminished culpability of juveniles as compared to adults, the

hallmark features of youth, and any subsequent growth and increased maturity of the prisoner in accordance with relevant case law." (§ 4801, subd. (c).)

The new procedures created by Senate Bill No. 260 ensure that prisoners such as Davidson, who were juveniles at the time they committed their life crimes, get the benefit of the type of evaluation compelled by *Miller*, *supra*, 567 U.S.___, *Graham*, *supra*, 560 U.S. 48 and *Caballero*, *supra*, 55 Cal.4th 262 at a point in time that gives them a meaningful opportunity to "obtain release based on demonstrated maturity and rehabilitation." (*Graham*, at p. 75.)

b. Parole determinations by the Board and Governor

"The essential question in deciding whether to grant parole is whether the inmate currently poses a threat to public safety." (*Shaputis II*, *supra*, 53 Cal.4th at p. 220). Under the established framework, the Board has the "initial responsibility to determine whether a life prisoner may safely be paroled." (*Id*. at p. 215.) Release on "'parole is the rule, rather than the exception.'" (*Lawrence*, *supra*, 44 Cal.4th at p. 1204.)

When determining whether an inmate is suitable for parole, the Board considers a variety of regulatory factors, as well as any additional reliable and relevant information as guidelines that bear on the inmate's suitability for release.[7] (*Shaputis II*, *supra*, 53

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[7] Circumstances that tend to establish unsuitability for parole include that the prisoner (1) committed the offense in an especially heinous, atrocious, or cruel manner; (2) has a previous record of violence; (3) has an unstable social history; (4) has sexually assaulted another individual in a sadistic manner; (5) has a lengthy history of severe mental problems related to the offense; and (6) has engaged in serious misconduct while in prison or jail. (Cal. Code Regs., tit. 15, § 2402, subd. (c); *Lawrence*, *supra*, 44 Cal.4th at p. 1202, fn. 7; *In re Rosenkrantz* (2002) 29 Cal.4th 616, 653–654 (*Rosenkrantz*).)

Circumstances tending to show suitability for parole include that the prisoner (1) does not have a juvenile record of assaulting others or committing crimes with the potential of personal harm to victims; (2) has a stable social history; (3) has shown signs of remorse; (4) committed the crime as the result of significant stress in his or her life, especially if the stress built up over a long period; (5) committed the crime as a result of Battered Woman Syndrome; (6) lacks any significant history of violent crime; (7) is of an age that reduces the probability of recidivism; (8) has made realistic plans for release, or

Cal.4th at pp. 218–219; Cal. Code Regs., tit. 15, § 2402, subds. (c), (d); *Lawrence*, *supra*, 44 Cal.4th at p. 1202, fn. 7.) In determining the suitability for parole of a youthful offender, the Board must consider these factors giving "great weight to the diminished culpability of juveniles as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity of the prisoner in accordance with relevant case law." (§ 4801, subd. (c).) The "regulatory suitability and unsuitability factors are not intended to function as comprehensive objective standards," only as general guidelines. (*Shaputis II*, at p. 218; Cal. Code Regs., tit. 15, § 2402, subds. (c.), (d).) "[T]he importance attached to any circumstance or combination of circumstances in a particular case is left to the judgment of the panel." (*Shaputis II*, at p. 218.)

When the Board determines an inmate convicted of murder is suitable for parole, the Governor has the constitutional authority to conduct an independent review of the Board's decision. (Cal. Const., art. V, § 8, subd. (b); Pen. Code, § 3041.2; *Shaputis II*, *supra*, 53 Cal.4th at pp. 215, 221; *Lawrence*, *supra*, 44 Cal.4th at p. 1203.) The Governor may affirm, modify, or reverse the decision based on the same factors which the Board is required to consider. (Cal. Const., art. V, § 8, subd. (b); see Pen. Code, § 3041.2.) The Governor's discretion with respect to parole decisions is as broad as the Board's discretion. "The Governor's 'decision must reflect an individualized consideration of the specified criteria and cannot be arbitrary or capricious,' but '[r]esolution of any conflicts in the evidence and the weight to be given the evidence' and 'the precise manner in which the specified factors relevant to parole suitability are considered and balanced lies within the discretion of the Governor . . . .' [Citation.] 'Although "the Governor's decision must be based upon the same factors that restrict the Board in rendering its parole decision" [citation], the Governor undertakes an

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has developed marketable skills that can be put to use upon release; and (9) has engaged in institutional activities suggesting an enhanced ability to function within the law upon release. (Cal.Code Regs., tit. 15, § 2402, subd. (d); *Lawrence*, *supra*, 44 Cal.4th at p. 1203, fn. 8; *Rosenkrantz*, *supra*, 29 Cal.4th at p. 654.)

independent, de novo review of the inmate's suitability for parole [citation]. Thus, the Governor has discretion to be "more stringent or cautious" in determining whether a defendant poses an unreasonable risk to public safety." (*Lawrence*, *supra*, 44 Cal.4th 1181, 1204.)'" (*In re Vicks* (2013) 56 Cal.4th 274, 297–298, fn. omitted (*Vicks*); *In re Shaputis* (2008) 44 Cal.4th 1241, 1258 (*Shaputis I*); *In re Prather* (2010) 50 Cal.4th 238, 257, fn. 12 (*Prather*).)

c. Appellate review

Both the Board and Governor's decisions "are subject to the same level of judicial scrutiny: a court inquires whether there is 'some evidence' related to the relevant factors that supports the decision. [Citation.] Because 'the fundamental consideration in parole decisions is public safety . . .' [citation], 'the relevant inquiry is whether some evidence supports the *decision* of the Board or the Governor that the inmate constitutes a current threat to public safety, and not merely whether some evidence confirms the existence of certain factual findings' [citation]. 'It is settled that under the "some evidence" 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 . . . ." [Citations.]' [Citation.]" (*Vicks*, *supra*, 56 Cal.4th at pp. 298–299.)

The California Supreme Court has emphasized that the "'some evidence'" standard is extremely deferential. (*Shaputis II*, *supra*, 53 Cal.4th at pp. 198–199.) "The essential question in deciding whether to grant parole is whether the inmate currently poses a threat to public safety." (*Id*. at p. 220.) The reviewing court must focus on whether there exists some evidence demonstrating the inmate poses a current threat to public safety, not just whether there is some evidence to support the suitability factors. (*Id*. at p. 209; *Prather*, *supra*, 50 Cal.4th at pp. 251–252; *Lawrence*, *supra*, 44 Cal.4th at p. 1191.) "The executive decision of the Board or the Governor is upheld unless it is arbitrary or procedurally flawed." (*Shaputis II*, at p. 221.) "Whether to grant parole to an inmate serving an indeterminate sentence is a decision vested in the executive branch,

under our state Constitution and statutes. The scope of judicial review is limited" and "narrower in scope than appellate review of a lower court's judgment." (*Id.* at pp. 198–199, 215.) The "'some evidence'" standard is intended to serve the interests of due process by guarding against arbitrary or capricious parole decisions without overriding or controlling the exercise of executive discretion. (*Id*. at p. 199.) "[T]he parole authority's interpretation of the evidence must be upheld if it is reasonable, in the sense that it is not arbitrary, and reflects due consideration of the relevant factors." (*Id*. at p. 212.) "[R]eview under the "'some evidence'" standard is *more deferential* than substantial evidence review, and may be satisfied by a lesser evidentiary showing." (*Id*. at p. 210.) "'[O]nly a modicum of evidence is required.'" (*Ibid*.; *Rosenkrantz*, *supra*, 29 Cal.4th at p. 677; *Lawrence*, at p. 1233.) Although appellate review is extremely deferential, it is "'not toothless,'" and "'must be sufficiently robust to reveal and remedy any evident deprivation of constitutional rights.'" (*Shaputis II*, at p. 215; *Lawrence*, at p. 1210.)

We do not "ask whether the inmate is currently dangerous. That question is reserved for the executive branch. Rather, the court considers whether there is a rational nexus between the evidence and the ultimate determination of current dangerousness." (*Shaputis II*, *supra*, 53 Cal.4th at p. 220.) The nexus to current dangerousness is critical. *Lawrence* and *Shaputis I* "clarified that 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—not merely 'some evidence' supporting the Board's or the Governor's characterization of facts contained in the record." (*Prather*, *supra*, 50 Cal.4th at pp. 251–252.) "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.) The Board "must determine whether a particular fact is probative of the central issue of current dangerousness when considered in light of the full record." (*Prather*, *supra*, 50 Cal.4th at p. 255.)

It bears repeating that resolution of evidentiary conflicts and the weight the evidence is to be accorded are matters for the Board or Governor, not us. We must uphold the Board or Governor's interpretation of the evidence if it is reasonable in the sense that it is not arbitrary, and reflects due consideration of the relevant factors. (*Shaputis II, supra*, 53 Cal.4th at p. 212.) It does not matter that we might conclude that the evidence tending to establish suitability outweighs contrary evidence. (*Id*. at p. 210; *Rosenkrantz*, *supra*, 29 Cal.4th at p. 677; *Lawrence*, *supra*, 44 Cal.4th at p. 1204.) It is not our role "to decide which evidence in the record is convincing. [Citation.] 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." (*Shaputis II, supra*, 53 Cal.4th at p. 211, italics added.)

With these standards in mind, we review the reversal and explain our conclusion that some evidence supports the Governor's conclusion that Davidson remains a current danger if released.

2. The Governor considered the appropriate factors and his reversal is supported by at least a modicum of evidence.

Davidson argues the Governor erred in concluding he currently poses an unreasonable risk to society if paroled because he "still does not evidence the type of emotion that is consistent with empathy and remorse." He contends that the Governor's conclusion is speculative, bears no relation to his current dangerousness and fails to accord great weight to the fact that he was 14 years old when he committed the offense.

The Governor's explanation for his reversal reflects two interrelated reasons for his decision: Davidson "contemplated killing his mother for years before coldly doing so" and, notwithstanding his claim that he felt remorse, even 18 years after committing the murder, Davidson "still [did] not evidence the type of emotion that is consistent with empathy and remorse." Noting that children often experience conflict with their parents, and struggle against their inability to change their circumstances or escape parental control, the Governor observed that "it is extraordinarily rare for a child to seriously contemplate killing a parent as a solution and even more rare to carry out the murder."

Davidson takes issue with the Governor's lengthy recitation of his concededly "heinous" and coldly calculated murder of his mother. Davidson is correct that a "mere recitation of the circumstances of the commitment offense, absent articulation of a rational nexus between those facts and current dangerousness, fails to provide the required 'modicum of evidence' of unsuitability." (*Lawrence, supra*, 44 Cal.4th at p. 1227.) However, as the Governor correctly observed, the circumstances of the crime can provide evidence of current dangerousness when the record also establishes that something in the inmate's pre- or postincarceration history, *or the inmate's current demeanor* and mental state, indicate that the circumstances of the crime remain probative of current dangerousness. (*Id*. at p. 1214.) The Governor did not merely recount the details of the crime in concluding Davidson remained too dangerous for release. On the contrary, affording "great weight to . . . Davidson's diminished culpability, the challenges he attempted to resolve through this crime, and his increased maturity," the Governor concluded he continued to pose an unreasonable risk of danger to the public.

The psychologists' reports described Davidson's expressed remorse for the killing as disingenuous and not credible. Both Drs. Robinson and Clarizio expressed consistent concern about Davidson's lack of insight and emotion. Noting that lack of insight is one of the predictors of poor outcomes, Dr. Robinson also cautioned that "remorse and insight are abstract concepts, which do not lend themselves to operationalized definition or measurement" and therefore "any opinions regarding remorse and insight are subjective in nature, and should be interpreted with this caveat in mind."

As the Supreme Court made clear in *Shaputis II*, *supra*, 53 Cal.4th 192, "[c]onsideration of an inmate's degree of insight is well within the scope of the parole regulations. The regulations do not use the term 'insight,' but they direct the Board to consider the inmate's 'past and present attitude toward the crime' (Regs., § 2402, subd. (b)) and 'the presence of remorse,' expressly including indications that the inmate 'understands the nature and magnitude of the offense.' (Regs., § 2402, subd. (d)(3)). These factors fit comfortably within the descriptive category of 'insight.'" (*Shaputis II*, at p. 218.) "[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.]" (*Ibid.*)

The Governor did not accept as genuine Davidson's consistently unemotional expressions of remorse. He pointed to three psychological evaluations in which Davidson's significant lack of emotion and flat affect led his evaluators to conclude he failed to convey any genuine emotion or credible remorse. Panel members from both parole hearings made similar observations about Davidson's nonexistent or limited display of emotion, with the 2011 panel concluding Davidson demonstrated a complete absence of "remorse for the loss of [his] mother." The Governor did acknowledge that Davidson's father "claimed that his son has experienced and expressed true emotion for his crime," but was "never been an emotional person . . . ."[8] The Governor acknowledged the significant strides Davidson made to improve himself during his incarceration, but found them outweighed by negative factors demonstrating he was not yet "ready to be released." Specifically, the Governor indicated his concurrence with Dr. Clarizio's 2013 assessment that Davidson's "lack of general empathy and shallow affect when discussing this crime 'appeared to raise his risk more significantly than any other factor,'" and he continued to need treatment focused on "his narcissistic personality and lack of empathy."

The "fundamental consideration in parole decisions is public safety" and "the core determination of 'public safety' under the statute and corresponding regulations involves

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[8] We note that the father's only description of Davidson's expression of remorse for the murder involved the time period shortly after the killing. Specifically, Davidson's father said: "And so far as his remorse for what he did, when he committed this crime and every Sunday after church I would go to the juvenile hall to visit him, and we would sit down and talk and cry together. . . . And [Davidson] just broke down and started crying. So he does—he has shown remorse."

Davidson himself told Dr. Clarizio in late 2013 that, although he had recently cried out of "happiness and love," it had been seven years since he cried because he felt "bad" about something.

an assessment of an inmate's *current* dangerousness." (*Lawrence*, *supra*, 44 Cal.4th at p. 1205.) The critical question for us is whether our review of the whole record reveals at least a modicum of evidence—not merely supposition or speculation—to support the Governor's conclusion that Davidson's lack of empathy and deficiencies in adequately conveying true remorse demonstrate that he remains a threat to public safety. (*Id*. at p. 1213.) "'As long as the . . . decision reflects due consideration of the specified factors as applied to the individual prisoner in accordance with applicable legal standards, [our] review is limited to ascertaining whether there is some evidence in the record that supports the . . . decision.' [Citations.]" (*Shaputis II*, *supra*, 53 Cal.4th at p. 210.)

a. The record

Three risk assessments were conducted for Davidson in conjunction with his 2011 and 2014 parole hearings. Both reviewing psychologists agreed Davidson was narcissistic, disingenuous in his presentation, and failed convincingly to demonstrate genuine remorse for his mother's murder. In 2010, Dr. Robinson observed that Davidson behaved in a self-aggrandizing manner, while "[t]he range of his emotional expression was somewhat restricted and self-focused." Dr. Robinson explained it was "[e]vident in Mr. Davidson's disclosures was his tendency to be somewhat grandiose. He had a ready answer for virtually every question posed; however, his responses had a superficial, rote quality to them that was devoid of a deep range of emotions." She observed that, although Davidson "insisted that he experienced profound remorse for his past choices . . . [he] failed to relate that quality in a credible manner. His empathy appeared to be more for himself than for the victim of his life crime." From this, Dr. Robinson concluded Davidson would pose a low to moderate risk for violent recidivism if released.

Dr. Clarizio voiced similar concern after her first evaluation of Davidson in 2013. She noted that, although two years had passed since his prior assessment, Davidson's "features of narcissism . . . appeared yet to subside." Davidson told Dr. Clarizio that he understood Dr. Robinson's concern about his lack of emotion and self-absorbed presentation. Nonetheless he continued to behave "in a similar fashion." He "could not relate anything about his personality/character that he would like to improve," and his

"range of . . . emotional expressions was limited and incongruent with the topics that were being discussed." "Notably," Davidson displayed "little affect" when discussing the murder of his mother and his "display of emotion was nil."

After her second evaluation of Davidson, Dr. Clarizio concluded he presented a low to moderate danger of violent recidivism. Explaining her conclusion, Dr. Clarizio said she had found several aspects of Davidson's presentation "concerning," most notably his continued failure to show any remorse for having murdered his mother. Dr. Clarizio was also troubled by the fact that, although Davidson had provided a comprehensive written relapse prevention plan, that plan was "dissimilar to his verbalized plan" in which he "simply listing random triggers" without any internalization or evidence of understanding. She believed Davidson might be manipulative, and "attend[ed] groups perhaps to give the appearance of rehabilitation." Davidson's narcissism was also evident in such things as his belief that his murder conviction would not pose "a significant problem when applying for employment or housing if released," and in "his desire for facilitating groups, rather than being a student and learning from them."

Consistent with prior evaluations, Dr. Clarizio noted that Davidson continued to "lack[] empathy" and seemed "to have difficulty recognizing the desires, subjective experiences, and feelings of others." His expressions of remorse "appeared rehearsed and superficial" and, to the extent he had any "feelings of regret [they] appear[ed] to have stemmed from his own loss, rather than the loss to the victim and her family." Dr. Clarizio found that Davidson "appeared to present with a general lack of concern for the negative consequences that his actions (criminal and non-criminal) had on others" and, although "he verbalized guilt and feelings of remorse for the life crime, he does not appear to be genuinely experiencing those emotions . . . and appeared indifferent to the feelings of others."

Dr. Clarizio acknowledged that Davidson was only 14 at the time of the murder, and noted that "a number of risk factors appear to have been ameliorated by growth and maturity." Still, his "narcissistic personality and lack of empathy continue[d] to be concerning" and required further focused treatment. In conclusion, Dr. Clarizio said

"most concerning, is [Davidson's] lack of general empathy and shallow affect when speaking about the murder of his mother. This factor alone appeared to raise his risk [of violent recidivism] more significantly than any other factor and should couple his treatment for his personality disorder."

Consistent with the psychologists' assessments, both panels at Davidson's parole hearings remarked on his lack of emotion or remorse. In 2011, one majority panel member said Davidson's presentation came "across as just rehearsed words." The majority also noted it had observed "a total lack of emotion and [they didn't] find remorse for the loss of [Davidson's] mother." Moreover, except when he spoke about his father, Davidson's "presentation [was] rehearsed and flat and void of emotion." In 2014, Davidson's family members attested to his remorse, which the Board found to be genuine, even though his "presentation . . . [was] somewhat unemotional."

As discussed above, the Governor is not bound by the Board's interpretation of the evidence and undertakes an independent, de novo review of whether an inmate is suitable for parole. (*Lawrence*, *supra*, 44 Cal.4th at p. 1204.) The Governor may be "'more stringent or cautious' in determining whether a defendant poses an unreasonable risk to public safety." (*Ibid.*) The evidentiary record before us is one from which the Governor reasonably could conclude either that Davidson did or that he did not convey genuine remorse. It is not our function to "resolve or reweigh . . . evidentiary conflict[s]," and the differing opinions regarding Davidson's remorse do not entitle him to habeas relief. (*In re Shigemura* (2012) 210 Cal.App.4th 440, 457.) The pivotal question for us is whether the record contains at least a modicum of evidence to support the Governor's conclusion that Davidson posed a current danger to public safety. (*Shaputis II*, *supra*, 53 Ca1.4th at p. 221.) It does.

We reject Davidson's contention that there is no nexus between his lack of remorse and the Governor's conclusion that he continued to pose an unreasonable risk of danger to the public. Davidson is correct that a "mere recitation of the circumstances of the commitment offense, absent articulation of a rational nexus between those facts and current dangerousness, fails to provide the required 'modicum of evidence' of

unsuitability." (*Lawrence*, *supra*, 44 Cal.4th at p. 1227.) Here, however, the Governor did more than merely recount Davidson's volatile relationship with his mother and the grisly details of her murder in concluding Davidson remained too dangerous for release. Rather, as the Governor explained in accordance with *Lawrence*, Davidson remained unsuitable for parole because "something in [his] pre- or postincarceration history, or in [his] current demeanor and mental state, indicate[d] that the circumstances of the crime remain[ed] probative of current dangerousness." The Governor specifically pointed to the psychologists' consistent observations over the course of three years that Davidson lacked emotion, a concern shared by both Board panels. The Governor agreed that Davidson's lack of emotion about the murder of his mother, and "lack of general empathy and shallow affect when discussing [his] crime 'appeared to raise his risk [of recidivism] more significantly than any other factor.'" The Governor's observations provide the requisite nexus between Davidson's lack of remorse and his elevated risk of recidivism.[9]

Finally, we reject Davidson's contention that the Governor failed to afford "great weight to the diminished culpability of juveniles as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity of the prisoner in accordance with relevant case law." (§ 4801, subd. (c); see *Shaputis II*, *supra*, 44 Cal.4th at p. 1258 [parole authorities, subject to the same standards, must give great weight to these factors]; see also *Rosenkrantz*, *supra*, 29 Cal.4th at p. 660.)

In reversing the Board's decision, the Governor explicitly stated that he had given "great weight to Mr. Davidson's diminished culpability, the challenges he attempted to resolve through this crime, and his increased maturity." The Governor discussed the

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[9] Davidson's assertion that the Governor based his decision on a subjective interpretation lacks merit. By their nature, parole decisions always involve some degree of subjective evaluation. (*Shaputis II*, *supra*, 53 Cal.4th at p. 219 ["[I]t 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"].)

section 4801, subdivision (c) factors, focusing on Davidson's troubled childhood and volatile relationship with his mother. He observed that, as a young teen, Davidson was "ill-equipped to deal with their difficult relationship because of his age and emotional immaturity," acknowledged Davidson's efforts at rehabilitation while incarcerated, and noted he had "matured in many ways since he committed this crime."

However, the Governor also pointed to Davidson's consistent lack of empathy and remorse. He noted that "[m]any children experience similar conflicts with their parents and struggle with their inability to change their circumstances or escape the control of their parents." Very few however "seriously contemplate killing a parent as a solution and even [fewer] . . . carry out the murder." Unlike the average teen, Davidson "contemplated killing his mother for years before coldly doing so." Eighteen years after that event Davidson had made impressive efforts to rehabilitate, but consistently failed to express genuine remorse for that crime or empathy for the victim or her family. The Governor agreed with Dr. Clarizio that Davidson's historical and continued lack of "empathy and shallow affect when discussing his crime 'appeared to raise his risk [of recidivism] more significantly than any other factor.'"

On this record there is no basis to conclude the Governor failed to give "great weight" to the section 4801 factors. The Governor focused at length on Davidson's emotional immaturity at the time of the crime, and the fact that his crime was not the result of youthful impetuosity, but a cold-blooded murder carried out after years of calculated planning. He also reviewed materials indicating that, as a child, Davidson had believed "the world did not like his mom," and failed to appreciate the consequences of his crime. (See *Miller*, *supra*, 567 U.S. at p. ___ [183 L.Ed.2d at p. 423].)

Davidson faults the Governor for not acknowledging that his "expression of emotion would be . . . blunted by the experience" of spending more than half his life in prison, an environment unconducive to the expression of emotion. This criticism is unfounded, given the Governor's specific acknowledgement that Davidson, who had been incarcerated for 18 years, had a history of not displaying emotion both before and during his incarceration. To the extent that Davidson argues the Governor should be

faulted for failing to acknowledge the specific connection between his lack of emotion and the nature of prison life, it is unclear how the Governor would be aware of this explanation. Davidson made no such claim during his parole hearings or to his evaluators. Rather, when asked why he showed no emotion in discussing his crime, Davidson explained only that he had "been emotional about this in the past." Davidson speculates that this is the case but, apart from Dr. Clarizio's comment that the prison environment may be seen as nonconductive to showing emotion, the record contains no evidence linking the impact of years of life incarcerated on a youthful offender's disinclination or inability to express emotion. We cannot ascertain on this cold record that Davidson's flat affect or lack of empathy resulted from the prison environment, particularly in light of his father's statement that Davidson had never been an emotional person.[10]

The Governor focused squarely and appropriately on whether Davidson demonstrated rehabilitation, the effect of his consistently unempathic flat affect and lack of remorse on Davidson's chance of violent recidivism and the risk he could pose to public safety if paroled. (*Lawrence*, *supra*, 44 Cal.4th at p. 1220, fn. 19 [parole statutes "contemplate the consideration of an inmate's rehabilitation as an integral element of a parole suitability determination"].) In enacting Senate Bill No. 260, the Legislature specifically said that "[n]othing in this act is intended to undermine the California Supreme Court's holdings in [*Shaputis II*, *supra*,] 53 Cal.4th 192, [*Lawrence*, *supra*,] 44 Cal.4th 1181, and subsequent cases." (See Sen. Bill No. 260 (2003–2014 Reg. Sess.) § 1.) Senate Bill No. 260 does not affect the Governor's discretion to deny parole if the record contains evidence a prisoner continues to pose an unreasonable risk of danger to the public. In compliance with Senate Bill No. 260, the Governor acknowledged and

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[10] There is also some evidence that Davidson's ability to express emotion was not diminished by prison life. In 2010 and 2013, respectively, Davidson described his mood most days as "fervent" or "good." He also told Dr. Robinson that he tried to be an empathetic person, and "cr[ied] on a regular basis."

placed great weight on Davidson's age at the time of the commitment offense and the hallmark features of youth. Notwithstanding those considerations, the Governor concluded Davidson was not yet sufficiently rehabilitated to justify his release from prison.

Davidson has failed to demonstrate entitlement to habeas relief. Accordingly, his petition is denied.

DISPOSITION

The petition for writ of habeas corpus is denied.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

ROTHSCHILD, P. J.

BENDIX, J.*

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