

Filed 6/17/19 In re Bertram CA2/5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re TIMOTHY BERTRAM,

on Habeas Corpus.

B293475

(Los Angeles County
Super. Ct. No. BH011750)

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

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

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Phillip J. Lindsay, Senior Assistant Attorney General, Amanda J. Murray, Supervising Deputy Attorney General, Charles Chung, Deputy Attorney General, for Respondent.

In *In re Gadlin* (2019) 31 Cal.App.5th 784, review granted May 15, 2019, S254599 (*Gadlin*), we held Department of Corrections and Rehabilitation (CDCR) regulations are invalid insofar as they bar early parole consideration for an inmate who is subject to registration under Penal Code section 290 (Section 290) for a prior crime for which the inmate has already fully served his or her sentence (as opposed to inmates who are now incarcerated as a result of a conviction for a crime specified in Section 290). (*Id.* at pp. 789-790.) As we shall briefly explain, we adhere to our decision in *Gadlin* pending final word from our Supreme Court, and under our decision in *Gadlin*, petitioner Timothy Bertram (Bertram)—who is in all material respects similarly situated to Gregory Gadlin—is entitled to early parole consideration.

In 1998, Bertram pled guilty to annoying or molesting a child (former Pen. Code, § 647a), which is a registrable offense under Section 290, subdivision (c). In 2016, well after being released from custody on his former Penal Code section 647a conviction, Bertram pled guilty to multiple counts of burglary (in four separate cases) and received a 12-year prison sentence (plus other sentences ordered to run concurrently).

While serving his burglary sentence, Bertram filed a habeas corpus petition challenging the validity of CDCR regulations that bar him from seeking early parole consideration under provisions added to our state constitution by Proposition 57, the Public Safety and Rehabilitation Act of 2016. (Cal. Const. art. I, § 32, subd. (a)(1); see also Cal. Code Regs., tit. 15, § 3491, subd. (b)(3) “[A]n inmate is not eligible for parole consideration by the Board of Parole Hearings . . . if . . . [¶] . . . [¶] [t]he inmate is convicted of a sexual offense that currently

requires or will require registration as a sex offender under the Sex Offender Registration Act, codified in sections 290 through 290.024 of the Penal Code”].) We issued an order to show cause why relief requested in the petition should not be granted, and CDCR filed a return opposing habeas corpus relief.

The legal issue presented in this case is identical in all material respects to the issue presented in *Gadlin*. Bertram is entitled to a writ of habeas corpus because, for the same reasons stated in *Gadlin*, the regulatory provision that makes him ineligible for early parole consideration—California Code of Regulations, title 15, section 3491, subdivision (b)(3)—is inconsistent with article I, section 32, subdivision (a)(1) of the California Constitution and therefore void. (*Henning v. Division of Occupational Saf. & Health* (1990) 219 Cal.App.3d 747, 757-758.)

Our disposition of this proceeding is accordingly as follows: The petition for habeas corpus is granted. The California Department of Corrections and Rehabilitation is directed to evaluate Bertram for early parole consideration within 60 days of the issuance of our remittitur.

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BAKER, J.

We concur:

RUBIN, P. J.

MOOR, J.