SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Criminal Division

Clara Shortridge Foltz Criminal Justice Center Dept. - 100

25CJHC00034-01 **August 28, 2025**

In re: **8:30 AM**

Adkins, David Russell

Honorable William C. Ryan, Judge
B. Perez, Judicial Assistant Not Reported, Court Reporter

PC1473

NATURE OF PROCEEDINGS: Hearing on Writ of Habeas Corpus

The following parties are present for the aforementioned proceeding:

No Appearances

The matter is called for Hearing on Writ of Habeas Corpus.

The Court having read and considered the Defendant's Petition for Writ of Habeas Corpus filed on Monday, March 24, 2025, the petition is denied.

ORDER RE: MEMORANDUM OF DECISION (HABEAS CROPUS)
(Underlying Case No.: GA007013)

IN CHAMBERS

Petition for Writ of Habeas Corpus by Petitioner David Adkins (Petitioner), represented by Avram Frey, Esq., Summer Lacey, Esq., Melissa Camacho, Esq., Steven M, Watt, Esq., and Allison Frankel, Esq. Respondent, the Honorable Gavin Newson, Governor of the State of California, represented by Deputy Attorney General Jennifer Cano. Denied.

BACKGROUND

In 1992, a jury convicted Petitioner of three counts of first-degree murder, with true findings for firearm use enhancements. (Pen. Code,[1] §§ 187, subd. (a); 12022, subd. (a)(1); 12022.5.) Petitioner was 16 years old at the time of these crimes. The trial court sentenced Petitioner to life without the possibility of parole. By operation of law, Petitioner became eligible for a youth offender parole hearing pursuant to Penal Code section 3051, subdivision (b)(4). Petitioner is currently serving his sentence at the Richard J. Donovan Correctional Facility, located in San Diego, California.

On November 14, 2019, the Board of Parole Hearings (Board) conducted Petitioner's initial parole suitability hearing. The Board found Petitioner suitable for parole based on his low risk assessment rating, lack of criminal history aside from the commitment offense, meaningful participation in prison programming, lack of institutional misconduct, remorse, and positive release plans. (Initial Parole Consideration Hearing Transcript (HT), dated Nov. 14, 2019, attached to Petn. as Exh. 28, at pp. 47-58.) The Board also acknowledged that, as a youth offender, Petitioner had diminished culpability and "nearly all the hallmark features" of youthfulness. (HT at p. 54.)

On April 1, 2020, the Governor reversed the Board's grant of parole based on Petitioner's lack of insight and credibility. (Indeterminate Sentence Parole Release Review (Governor's Reversal), dated Apr. 1, 2020, attached to Petn. as Exh. 27, at pp. 1-2.) At a subsequent April 14, 2022, hearing, the Board found Petitioner unsuitable for release on parole. In November 2024, Petitioner voluntarily waived his right to a hearing for 2 years.

On March 24, 2025, Petitioner filed the instant petition challenging the Governor's reversal. Petitioner contends (1) that the Governor's constitutional authority to reverse parole grants violates due process and youth offenders' constitutional and statutory right to a meaningful opportunity to obtain release; and (2) that the Governor's decision is "not supported by any evidence in the record." (Petn., at p. 18.)

On May 19, 2025, this court issued an Order to Show Cause. On July 10, 2025, Respondent filed a Return. On August 7, 2025, Petitioner filed a Traverse.

COMMITMENT OFFENSE[2]

On the night of the commitment offense, Petitioner was at his girlfriend's house drinking alcohol and doing drugs. For reasons that are not entirely clear, but perhaps after being bullied and feeling belittled, Petitioner and his crime partner went to the master bedroom and retrieved the father's shotgun and ammunition. The pair returned to the guesthouse, where they fatally shot three girls in the head at close range. The girls were 16 or 17 years old. Petitioner's friend first shot Petitioner's girlfriend, and Petitioner then shot the other two girls. Petitioner and his friend then stole the parents' car and fled from Los Angeles to Salem, Oregon, where they were later arrested.

APPLICABLE LEGAL PRINCIPLES

The Governor is constitutionally authorized to make "an independent decision" as to parole suitability. (Cal. Const., art. V, § 8, subd. (b); In re Rosenkrantz (2002) 29 Cal.4th 616, 660.) His parole decisions are governed by Penal Code section 3041.2 and section 2402 of title 15 of the California Code of Regulations.[3] The Governor must consider "[a]ll relevant, reliable information available" (§ 2402, subd. (b)), and his decision must not be arbitrary or capricious. (Rosenkrantz, supra, at p. 677.)

Factors tending to show unsuitability include the nature of the commitment offense, a previous record of violence, an unstable social history, sadistic sexual offenses, psychological factors, and institutional behavior constituting serious misconduct. (§ 2402, subd. (c).) Factors tending to show suitability include a lack of a juvenile record, a stable social history, signs of remorse, that the crime was committed due to significant life stress, a lack of a history of violent crime, that the inmate's current age reduces the probability of recidivism, that the inmate has realistic plans for release or marketable skills that can be utilized upon release, and that the inmate's institutional behavior indicates an enhanced ability to be law-abiding upon release. (§ 2402, subd. (d).) The weight and importance of these factors are left to the judgment of the Board and Governor. (§ 2402, subds. (c)–(d).)

Penal Code section 4801, subdivision (c), mandates that when an inmate committed his or her life offense before attaining 25 years of age, both the Board and the Governor are 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." (Pen. Code, § 4801, subd. (c).) The requirement that the Board and the Governor take into account that an inmate was a juvenile at the time of the life offense is based in part upon the fact that "'[j]uveniles are [] more capable of change than are adults, and their actions are less likely to be evidence of "irretrievably depraved character" than are the actions of adults.'" (In re Perez (2016) 7 Cal.App.5th 65, 93.) In undertaking the youthful offender analysis, the Board and the Governor must "take this requirement seriously" and give more than mere "lip service" to the youthful offender factors. (See Perez, supra, 7 Cal.App.5th at p. 93.)

Although the Governor must consider the same factors as the Board, he may weigh them differently. (In re Prather (2010) 50 Cal.4th 238, 257, fn. 12.) The paramount consideration in making a parole eligibility decision is the potential threat to public safety upon an inmate's release. (Id. at p. 252.) The Governor's decision must be based upon some evidence in the record of the inmate's current dangerousness. (In re Lawrence (2008) 44 Cal.4th 1181, 1205–1206 (Lawrence).) Only a modicum of such evidence is required. (Id. at p. 1226.) "This standard is unquestionably deferential, but certainly is not toothless, and 'due consideration' of the specified factors requires more than 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." (Id. at p. 1210.) But the Governor has discretion to be more stringent or cautious in determining whether a defendant poses an unreasonable risk to public safety. (In re Shaputis (2008) 44 Cal.4th 1241, 1258 (Shaputis I).)

In reviewing the decision of the Governor, the court is not entitled to reweigh the circumstances indicating suitability or unsuitability for parole. (In re Reed (2009) 171 Cal.App.4th 1071, 1083.) Instead, "'[r]esolution of any conflicts in the evidence and the weight to be given the evidence are within the authority of the [Governor].' [Citation.]" (Lawrence, supra, 44 Cal.4th at p. 1204, quoting In re Rosenkrantz, supra, 29 Cal.4th at p. 656.)

"As long as the Governor'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 Governor's decision." (Rosenkrantz, supra, 29 Cal.4th at p. 677.)

DISCUSSION

Challenge to Governor's Reversal Power

Petitioner first contends that the Governor's power to reverse parole decisions violates the due process rights of youth offenders. He asserts that the Governor should not be permitted to reverse parole in any youth offender case.

The Governor's power to reverse parole decisions comes from Article V, section 8 of the California Constitution, which provides the following:

No decision of the parole authority of this state with respect to the granting, denial, revocation, or suspension of parole of a person sentenced to an indeterminate term upon conviction of murder shall become effective for a period of 30 days, during which the Governor may review the decision subject to procedures provided by statute. The Governor may only affirm, modify, or reverse the decision of the parole authority on the basis of the same factors which the parole authority is required to consider. The Governor shall report to the Legislature each parole decision affirmed, modified, or reversed, stating the pertinent facts and reasons for the action. (Cal. Const., Art. V, § 8, subd. (b).)

The Governor's decision is subject to judicial review to ensure compliance with due process requirements, including the requirement that the decision be supported by "some evidence" in the record. (Rosenkrantz, supra, 29 Cal.4th at p. 658.) This review ensures that the Governor's decision is not arbitrary or procedurally flawed, while also not encroaching on the executive branch's broad authority. (In re Butler (2014) 231 Cal.App.4th 1521, 1530.)

In youth offender cases, both the Board and the Governor are also required to give great weight to the factors of youth. (§ 2447; Pen. Code, § 4801, subd. (c).) The Governor is presumed to have properly performed his official duties. (Evid. Code, § 664.) Thus, in reversing a parole decision, the Governor has necessarily already considered the youth factors as a due process protection.

Here, the Governor indicated that in making his decision, he "carefully examined the record for evidence demonstrating [Petitioner's] increased maturity and rehabilitation, and gave great weight to all the factors relevant to his diminished culpability as a youth offender—his impulsivity and immaturity—and his other hallmark features of youth." (Governor's Reversal, at p. 1.) Furthermore, as discussed below, the court finds that the record supports the Governor's findings.

There is no evidence in the instant case that the Governor "failed to engage in an individualized consideration of the factors concerning parole suitability," or that the reversal reflects any "blanket policy" of denying parole to all youth offenders which prevents a meaningful opportunity to obtain release. (See Rosenkrantz, supra, 29 Cal.4th at p. 623 [rejecting constitutional argument that the Governor had a blanket policy of denying parole to all murderers].) Petitioner has not demonstrated that the Governor's constitutional authority to review and reverse parole decisions, either in general or in this specific case, violates due process.

Parole Suitability Determination

Petitioner next challenges the Governor's "some evidence" determination. As indicated, at Petitioner's first suitability hearing on November 14, 2019, the Board found Petitioner suitable for parole based on his low risk assessment rating, lack of criminal history aside from the commitment offense, meaningful participation in prison programming, lack of institutional misconduct, remorse, and positive release plans. The Board noted that Petitioner had issues with insight and credibility, but it concluded that these issues were mitigated by Petitioner's status as a youth offender. (HT at p. 54.)

The Governor reversed the Board's grant of parole based on Petitioner's lack of insight and credibility. The Governor acknowledged that Petitioner committed the crime when he was 16 years old and that he has since been incarcerated for over 29 years. The Governor indicated that he "carefully examined the record for evidence demonstrating [Petitioner's] increased maturity and rehabilitation, and gave great weight to all the factors relevant to his diminished culpability as a youthful offender—his impulsivity and immaturity—and his other hallmark features of youth." (Governor's Reversal, at p. 1.)

The Governor then cited Petitioner's 2019 Comprehensive Risk Assessment, noting that the evaluating clinician had opined that while Petitioner's ability to fully grasp the potential consequences of his actions was in some ways compromised by his youthfulness and impulsivity, "'his decision to go with his crime partner and retrieve the shotgun suggests some level of understanding of the ramifications.'" (Governor's Reversal, at p. 1, quoting Comprehensive Risk Assessment (CRA), dated Sept. 3, 2019, at p. 13, attached to Petn. as Exh. 29.)

The Governor also acknowledged that Petitioner has made efforts to improve himself in prison, including participating in several self-help programs, obtaining his GED, and receiving positive work ratings. The Governor indicated that he gave great weight to Petitioner's subsequent growth in prison. The Governor found, however, that the positive factors were outweighed by factors demonstrating unsuitability; namely, Petitioner's lack of insight and credibility.

Lack of Insight and Credibility

An inmate's failure to gain insight or understanding into his commission of the life offense is a relevant consideration in determining parole suitability. (Shaputis I, supra, 44 Cal.4th at 1260.) An inmate's lack of

insight is not listed as an unsuitability factor in either Penal Code section 3041 or its corresponding regulations. The Board, however, is required by regulation to consider "[a]ll relevant, reliable information" when determining an inmate's parole suitability, including the inmate's "past and present attitude toward the crime . . . ." (§ 2402, subd. (b).) The California Supreme Court has "expressly recognized that the 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." (In re Shaputis (2011) 53 Cal.4th 192, 218 (Shaputis II).) Lack of insight "can 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, if confronted by them again, would likely react in a similar way." (In re Ryner (2011) 196 Cal.App.4th 533, 547.) "[T]he 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 itself or together with the commitment offense has some rational tendency to show that the inmate currently poses an unreasonable risk of danger." (Id. at pp. 548-549.)

An inmate's insight, or lack thereof, is also intertwined with credibility. Generally, the Board and the Governor cannot discount an inmate's version of events if it is not physically impossible and does not strain credulity such that it can be considered delusional, dishonest, or irrational. (In re Hunter (2012) 205 Cal.App.4th 1529; In re Twinn (2010) 190 Cal.App.4th 447, 466 (Twinn).) The parole authority also cannot condition the inmate's parole on an admission of guilt or an adoption of the official version of the crime. (Twinn, supra, 190 Cal.App.4th at p. 466.) That is not to say, however, that any account of the underlying offense or an inmate's role in it must be accepted by the parole authority if it is plausible. (In re Sanchez (2012) 209 Cal.App.4th 962, 974 (Sanchez).) Credibility and therefore plausibility are for the parole authority to determine. (Ibid.) Thus, when "the parole authority declines to give credence to certain evidence, a reviewing court may not interfere unless that determination lacks any rational basis and is merely arbitrary." (Ibid., quoting Shaputis II, supra, 53 Cal.4th at p. 215.)

Here, the Board asked Petitioner to explain why he shot the victims. Petitioner first admitted that insight is a continuous concept rather than "something that you just understand and you get it," and that he was still in the process of "getting it." (HT at p. 8.) He continued, however, that he was angry, in a rage, and "triggered" because one of the victims told him he was worthless and that his girlfriend should not waste her time with him. (HT at p. 9.) Petitioner indicated that this brought back memories of his abusive childhood and that he "just saw red." (HT at p. 9.) Petitioner said that he shot the victim who was picking on him and then shot the other victim for laughing at him. (HT at p. 13.)

The Board asked Petitioner about his decision to go into the house and retrieve the shotgun. Petitioner responded, "I don't remember any conversation about it. I don't remember the walk. I don't remember going to the bedroom. I don't remember grabbing the shotgun. Um, I—I know—I know what happened. I'm not denying that it happened. I just have no recollection—no recognition of it at all." (HT at p. 11.)

Petitioner confirmed that he remembered shooting the victims but not going to get the shotgun. Petitioner explained, "I don't remember that part. I don't remember that part. There are, uh, bits and pieces of that week that I—I don't remember. We'd been using a lot that whole week and the week before." (HT at p. 11.) Petitioner indicated that he had taken LSD, smoked pot, consumed alcohol, and did cocaine on the day of the commitment offense and that he was "high" like he had "never been before." (HT at p. 12.)

When the Board asked Petitioner why he felt the need to escalate the violence so drastically, he indicated that he lacked coping skills and that at the time he did not know why he was angry or triggered by the behavior. (HT at p. 14.)

The clinician conducting Petitioner's risk assessment just prior to his suitability hearing indicated that Petitioner "has struggled to come to terms with his violent behavior in the commitment offense, and is still in the process of fully understanding all of the causative and motivating factors that contributed to his violent behavior in the commitment offense." (CRA, at p. 10.) The clinician further opined that "[Petitioner] has struggled to understand the underlying causative factors for his violent behavior in the commitment offense." (CRA, at p. 11.)

In Petitioner's CRA, the clinician indicated that "[Petitioner] reiterated that he has trouble understanding what occurred because it happened so quickly. He recounted some of the details again, and added that he does not know why he shot the two girls." (CRA, at p. 11.)

The Board also stated that credibility was "kind of an issue for us." (HT at p. 49.) The Board continued:

We believe you that you don't remember what you said 19 years ago when you were [16], um, issue of whether you were high as you had never been before is kind of questionable. You appear to be able to drive after that and you remember what happened, where you went, how long the distances are, things of that nature. So there was some credibility issue there on insight too."
(HT at p. 49.)

Relatedly, the Governor found that Petitioner lacked credibility because he was able to remember details from before, during, and after the crime, but not the moment he decided to retrieve a shotgun and return to shoot the girls. The Governor was "troubled by [Petitioner's] inability or unwillingness to discuss the details of the crime and what led him to kill the victims." (Governor's Reversal, at p. 2.) The Governor noted that Petitioner told the Board that he was so high on drugs that he "could not remember what happened in the period of time between the argument between his crime partner and gave little explanation for his decision to retrieve a gun and commit multiple murders." (Governor's Reversal, at p. 2.) The Governor agreed with the clinician's findings during the 2019 CRA evaluation that Petitioner was "still in the process of fully understanding all of the causative and motivating factors that contributed to his violent behavior in the commitment offense." (CRA, at p. 10.) The Governor further highlighted the clinician's conclusion that "it is difficult to understand his motivations for [] shooting them, and the deeper reasons for resorting to such violent behavior that was so

out of proportion to the situation and level of provocation." (CRA, at p. 12.) Lastly, the Governor noted that the Board had also found that Petitioner lacked insight. In sum, the Governor found that Petitioner "must do more to deepen his insight and develop the tools to control his triggers before he can be safely released." (Governor's Reversal, at p. 2.)

Petitioner cites In re Stoneroad (2013) 215 Cal.App.4th 596; In re Young (2012) 204 Cal.App.4th 288; and In re Juarez (2010) 182 Cal.App.4th 1316 to contend that the Governor erred in relying on Petitioner's spotty memory to find that he lacks insight and credibility. In each of those cases, the Court of Appeal concluded that the petitioners' inability to remember their commitment offenses was not necessarily indicative of a lack of insight into the causes of their criminal conduct.

This case is distinguishable. First, the petitioners in Stoneroad, Young, and Juarez were perceived to have a total lack of recall. Petitioner here remembered and recounted many details of before, during, and after the crime, including arguments before the shooting, the act of shooting the victims, and then driving to Salem, Oregon, but he could not remember why he and his crime partner decided to go find the father's shotgun and shoot the victims. The Governor and the Board both found that this specific lack of recall raised a credibility issue.

Second, in Stoneroad, the Court of Appeal found no evidence suggesting that the petitioner's inability to recall the commission of his crimes obstructed his understanding of the factors that caused him to commit them. (Stoneroad, supra, 215 Cal.App.4th at p. 630; see also Young, supra, 204 Cal.App.4th at p. 308 [no evidence that the lack of recall impaired the petitioner's insight in a way that was rationally indicative of current dangerousness].) The court noted that the psychologists who evaluated the petitioner had accepted the lack of recall as genuine and "none suggested it has in any way impaired his insight into the factors that caused him to commit his crimes." (Stoneroad, at p. 630.) To the contrary, here, both the clinician conducting Petitioner's risk assessment and the Board found that Petitioner lacked insight and had trouble understanding the factors that caused him to resort to such violence. Petitioner's CRA states that he "has struggled to come to terms with his violent behavior in the commitment offense, and is still in the process of fully understanding all of the causative and motivating factors that contributed to his violent behavior in the commitment offense." (CRA, at p. 10.) The Governor found that this lack of insight has obstructed Petitioner's understanding of the causative factors of his crimes, reflecting current dangerousness until Petitioner does more to deepen his insight and develop tools and strategies to control his triggers.

Moreover, in Juarez, the Court of Appeal indicated that the parole authority is "certainly entitled" to rely on a finding that a prisoner lacks credibility to deny parole after it considers the individualized circumstances of a case. (Juarez, supra, 182 Cal.App.4th at p. 1341.) That is what the Governor did here.

In sum, the court finds that the record contains some evidence to support the Governor's finding of current dangerousness due to Petitioner's lack of insight and credibility into the commitment offense and his associated triggers.

25CJHC00034-01 **August 28, 2025**

In re: **8:30 AM**
Adkins, David Russell

DISPOSITION

Accordingly, the Order to Show Cause, having served its purpose, is DISCHARGED, and the Petition for Writ of Habeas Corpus is DENIED. The Clerk is ordered to serve a copy of this order upon counsel for Petitioner and upon Deputy Attorney General Jennifer Cano, as counsel for Respondent, the Governor of the State of California.

_____
Footnotes:

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

[2] The facts of the commitment offense are based on the description of the crime in the Comprehensive Risk Assessment (CRA), dated Sept. 3, 2019, at p. 4, attached to Petition as Exh. 29.)

[3] All further undesignated statutory references are to title 15 of the California Code of Regulations.

Minute order is prepared by B. Munoz on August 29, 2025.

CLERK'S CERTIFICATE OF MAILING

I, David W. Slayton, Executive Officer/Clerk of Court of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served a copy of the above minute order of August 28, 2025 upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States Mail at the courthouse in Los Angeles, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Dated: August 29, 2025 By: /s/ B. Munoz
B. Munoz, Deputy Clerk

Avram Frey, Esq. ACLU Foundation of Northern California, Inc. 39 Drumm St. San Francisco, CA 94111 afrey@aclunc.org Summer Lacey, Esq. Melissa Camacho, Esq. ACLU Foundation of Southern California, Inc.	Steven M. Watt, Esq. Allison Frankel, Esq. American Civil Liberties Union Foundation 125 Broad St., 18th Floor New York, NY 10004 swatt@aclu.org afrankel@aclu.org Department of Justice – State of California

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

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1313 W 8th St., Suite 200 Los Angeles, CA 90017 slacey@aclusocal.org mcamacho@aclusocal.org	Office of the Attorney General 300 South Spring Street, Suite 1702 Los Angeles, CA 90013 Attn: Jennifer Cano, Deputy Attorney General