

**EXECUTIVE REPORT
ON
PAROLE REVIEW
DECISIONS**

**DECISIONS FOR THE PERIOD
January 3, 2011 through December 31, 2011**



BY GOVERNOR EDMUND G. BROWN JR.



OFFICE OF THE GOVERNOR

**MESSAGE FROM THE GOVERNOR
CONCERNING
PAROLE REVIEW DECISIONS**

To the Members of the Senate and Assembly of the State of California:

In accordance with Article V, section 8(b) of the California Constitution, I submit this report on the actions I have taken on decisions by the Board of Parole Hearings in 2011. Of these decisions, I reversed 71 and modified 1. I have included copies of each of these actions.

Sincerely,


Edmund G. Brown Jr.

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

DERRICK TAYLOR, E-66425
SECOND-DEGREE MURDER

AFFIRM:

MODIFY:

REVERSE:

 X

STATEMENT OF FACTS AND REASONS:

Crime

According to the probation report, on November 10, 1989, Derrick Taylor and Charles Batiste met at a dairy located near Beatrix Sullivan's residence. They intended to rob her. The two men gained entry to the property through an alley at the rear of the residence. They entered a detached guestroom located in the back of the house, looking for "something to take." Mr. Batiste covered the window in the guestroom with an afghan-type blanket and fell asleep. When he awoke in the early morning hours, Mr. Taylor was no longer present. Mr. Taylor reported that Ms. Sullivan saw him, so he leaped over the fence, but returned a short time later. After he returned, he entered Ms. Sullivan's main residence, which he then ransacked. As he ransacked the home, Ms. Sullivan entered the guesthouse. Mr. Batiste struck her over the head with an 18-inch brown wooden object.

Mrs. Sullivan fell to the floor and Mr. Batiste struck her head an additional two to three times. Mr. Batiste took the wooden object with him and entered Ms. Sullivan's main residence to join Mr. Taylor. One of the crime partners removed \$80 dollars in cash from Ms. Sullivan's purse in her living room, \$60 dollars of which was later spent on cocaine. Mr. Batiste then drove away in Ms. Sullivan's car. Ultimately, he abandoned the vehicle. Mr. Taylor left the residence some time prior to Ms. Sullivan's murder, and prior to Mr. Batiste's departure.

Ms. Sullivan's body was found by law enforcement authorities. The cause of death was blunt force trauma to the head.

An anonymous caller notified the police of the murder and implicated Mr. Taylor. Thereafter, a warrant was issued, and Mr. Taylor turned himself in to police. He pled guilty to second-degree murder and the court sentenced him to 15 years to life in prison.

GOVERNING LAW:

The question I must answer is whether Mr. Taylor is currently a danger to the public. To answer this, the circumstances of his crime are evidence of his current dangerousness only if the record also establishes that something in his pre- or post-incarceration history, or his current demeanor and mental state, indicate that the implications regarding his dangerousness which stem from his commission of the life offense remain probative of his posing a present threat to public safety within the statutorily-prescribed analysis.¹

DECISION:

The Board of Parole Hearings (Board) found Mr. Taylor suitable for parole based upon his participation in self-help and therapy programs, his expressions of remorse, his acceptance of responsibility for his actions, and his positive institutional behavior. The Board also noted that he enhanced his ability to function within the law upon release and established realistic parole plans. The Board also found that his psychological evaluation in 2008 was favorable.

Mr. Taylor has made laudable gains while incarcerated. He entered prison a high school graduate. During his incarceration, he earned an Associate of Science degree from Palo Verde College in Business Management, graduating with honors. Mr. Taylor completed vocational training in mechanical drawing, vocational computer refurbishing, as well as refrigeration and air-conditioning. He was also trained in plant operations/maintenance painter. Mr. Taylor held skilled institutional positions as a janitor and finish sander. He also worked within the Prison Industry Authority's eyewear department. Mr. Taylor engaged in the following self-help programs: Alcoholics Anonymous, Narcotics Anonymous, Anger Management, Life Without a Crutch, Relapse Prevention Program, Getting it Right series, Coming Back From a Relapse, and Timeless Group. Mr. Taylor also received training on CAL / OSHA Hazardous Communication standard, "Right to Know." Although I commend Mr. Taylor for upgrading himself in prison, I believe these positive efforts are outweighed by several negative factors demonstrating that he remains unsuitable for parole.

Several negative factors indicate that Mr. Taylor poses a current risk to public safety. After carefully reviewing the record that was before the Board, I find that Mr. Taylor is unsuitable for parole. The gravity of the crime is such that considerations of public safety require Mr. Taylor to be incarcerated for a longer period of time. I agree with the 2010 Board that this crime was particularly grave because the victim was elderly and therefore, particularly vulnerable. The Board said, "[W]e have a victim, Mrs. Sullivan, in her own home who was bludgeoned to death and killed in the process of a burglary, a burglary that was committed by [Taylor] and [his] crime partner." The Board added, "This is a crime . . . that's dispassionate also in the fact that the way it occurred. This victim was abused during this commitment offense, and the fact that she was killed by multiple strikes about her person with a clubbing device."

However, there are additional factors, which further indicate that Mr. Taylor is unsuitable for parole at this time. Mr. Taylor claims, as he recently told his 2008 psychological evaluator, that

^{1 1} *In re Lawrence* (2008) 44 Cal. 4th 1181.

he was unaware of Mr. Batiste's intent to murder Ms. Sullivan. According to the evaluation, "The inmate related that when he and his crime partner entered the house to the rear of the property, there was no intention to rob or harm the victim" Mr. Taylor claims that he and Mr. Batiste originally entered the residence only to "crash" in the rear of the house following an all-night party they attended. According to Mr. Taylor, it was not until Mr. Batiste "waived for [Mr. Taylor] to enter the house," and said, "Come on let's burglarize the house" that Mr. Taylor agreed to participate in the crime. Mr. Taylor indicated that "he did not find out that his crime partner had killed the victim until a week later." In fact, Mr. Taylor has consistently denied any awareness that his crime partner had the intent to murder Ms. Sullivan. Mr. Taylor is not required to admit guilt in order to be found suitable for parole (Cal. Pen. Code § 5011). However, his past and present attitude toward the crime are factors that affect suitability for release. (Cal.Code Regs., tit. 15 § 2402(b).) In refusing to accept adequate responsibility, Mr. Taylor demonstrates that he does not entirely understand what he did wrong and what he needs to do differently in the future.

Additionally, according to the probation report, although Mr. Taylor does not have a juvenile criminal record, he has an extensive criminal history as an adult. His criminal record dates back to 1984 and includes convictions for burglary, conspiracy to commit a crime, possessing a controlled substance, being under the influence PCP, maliciously defacing private property with paint, and attempted grand theft person. According to the 2008 psychological evaluation, Mr. Taylor served a prior prison term for possessing drugs and being under the influence of a controlled substance. He also violated the terms and conditions of his probation and parole. Mr. Taylor admitted to his 2008 psychological evaluator that he started drinking alcohol and using marijuana by age 14, and that he started using cocaine and methamphetamine by age 20. According to the 2008 psychological evaluation, Mr. Taylor admitted that he and Mr. Batiste used cocaine and alcohol during an all-night party the Mrs. Sullivan's murder.

Mr. Taylor's criminal record is particularly troubling because, as recently as 2008, his psychological evaluator diagnosed him with Adult Antisocial Behavior disorder. The evaluator concluded, "[H]e does have a history of antisocial personality traits associated with such a diagnostic formulation." The 2010 Board outlined its concerns about Mr. Taylor's history of criminality. The Board concluded, "[Mr. Taylor] w[as] arrested for burglary and convicted, 36 months probation, 180 days in jail, arrested for receiving stolen property, arrested for drug violations, under the influence and possession of drugs, possession of a controlled substance. Because of [his] inability to follow the rules and regulations of society, [he] violated parole and subsequently was sent to prison for that. . . . [Mr. Taylor] w[as] arrested for attempted robbery, which was dismissed. But we looked at the past criminality, specifically the direction of the areas that tend to deal with drugs, drug violations and burglary. . . . [Mr. Taylor] do[es] have an unstable social history, and in fact, [he] failed previous grants for probation and parole. And [he] also failed previous jail commitments and a prior prison term that did not correct [his] behavior. [Mr. Taylor] w[as] involved in drug and alcohol use and addiction prior to CDCR. . . ."

Indeed, Mr. Taylor has an established history of criminality that well predates the life offense. This pattern of violating the law and society's failed attempts to rehabilitate him provide the basis for his most recent evaluator's diagnosis of Adult Antisocial Behavior disorder. This evaluator's current diagnosis of Mr. Taylor is concerning because the evaluator explained that, "[d]ue to the nature of [antisocial] personality traits, this diagnosis [of Antisocial Personality

Behavior disorder] could remain with the inmate until he is able to demonstrate continued prosocial and unimpaired functioning for a protracted period of time without being under a supervised living circumstance.”

The 2010 Board also evaluated Mr. Taylor’s institutional behavior. During his incarceration, Mr. Taylor was disciplined four times for rules violations involving two instances of possessing inmate-manufactured alcohol and two acts of using force and violence during a prison fight. He was also counseled for other misconduct five times, most recently in 1999 for disobeying orders.

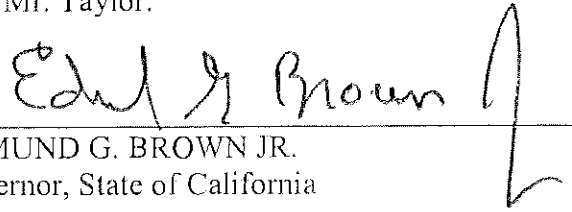
That Mr. Taylor continues to pose a risk of current dangerousness finds support in his 2008 psychological evaluator’s opinion that he is in the “**medium**” category for general recidivism. (Original emphasis.) The evaluator explained that “[h]istorical factors that increase the inmate’s risk for future violence includes previous violence, employment problems, substance abuse and prior supervision failures in the community.”

Although Mr. Taylor has demonstrated some progress in prison, I cannot say that he no longer poses a threat to society. Additionally, the Los Angeles County District Attorney’s Office opposes Mr. Taylor’s parole. The Deputy District Attorney described the murder as “inconceivable, inconceivable, that an 85-year-old lady was bludgeoned to death, sat there or lay there quietly being bludgeoned and not screaming.”

CONCLUSION:

I have reviewed the record carefully and have considered each of the factors for assessing suitability or unsuitability for parole under California Code of Regulations, Title 15, section 2402. In this decision, I have discussed the specific factors that I consider particularly relevant in determining whether Mr. Taylor is suitable for parole at this time. I find that the negative factors discussed above demonstrate why Mr. Taylor remains a current risk to public safety. Therefore, I reverse the decision to parole Mr. Taylor.

Decision Date: 1/6/11


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

ANDREW OTTON, C-80422
FIRST-DEGREE MURDER

AFFIRM:

MODIFY:

REVERSE:

 X

STATEMENT OF FACTS AND REASONS:

Crime

According to the probation report, Andrew Otton arranged to meet Mark Dreisbach on December 20, 1982 to purchase a large quantity of marijuana from Mr. Dreisbach. Before the meeting, Mr. Otton filled multiple envelopes with scraps of paper so that the envelopes would appear to contain cash. During the meeting, Mr. Otton handed the envelopes to Mr. Dreisbach. As Mr. Dreisbach began to open one of the envelopes, Mr. Otton shot him in the head three times with a .25 caliber pistol. Mr. Otton then took about five pounds of marijuana from Mr. Dreisbach.

Mr. Otton was arrested on February 17, 1983. He pled guilty to first-degree murder and was sentenced to 25 years to life in prison.

GOVERNING LAW:

The question I must answer is whether Mr. Otton will pose an unreasonable risk of danger to society if released from prison. In considering whether he poses an unreasonable risk of danger, the circumstances of his crime are evidence of his current dangerousness only if the record also establishes that something in his pre-or post-incarceration history, or his current demeanor and mental state, indicate that the implications regarding his dangerousness which stem from his commission of the life offense remain probative of his posing a present threat to public safety within the statutorily-prescribed analysis.¹

DECISION:

The Board of Parole Hearings found Mr. Otton suitable for parole based upon his participation in self-help and therapy programs, expressions of remorse, educational and vocational training, positive institutional behavior, realistic parole plans, and his reduced risk of recidivism due to his age.

¹ *In re Lawrence* (2008) 44 Cal. 4th 1181.

Mr. Otton has made laudable gains while incarcerated. He earned a high school diploma in 1986 and an Associate of Arts degree in 1991. He also completed a Legal Research Training Course and health education courses. He earned certificates in machine shop and became a journeyman machinist. He held skilled institutional assignments, including yard porter, machinist, and canteen clerk. He also worked for the Department of Forestry. Notably, Mr. Otton has participated in Narcotics Anonymous since 1990. He enhanced his ability to function within the law upon release through participation in self-help and therapy programs, including Healthy Relationships Class, Self-Confrontation Class, Anger Management, Women's Perspective, Correctional Learning Network, bible study courses, Family Relationship Education Enrichment, The Purpose Driven Life Program, Celebrate Recovery Program, Ethics Workshop, Creative Mind Program, Arts-in-Corrections, and Coping with Anger. Although I commend Mr. Otton for upgrading himself in prison, I believe these positive efforts are outweighed by negative factors demonstrating that he remains unsuitable for parole.

The gravity of the crime is such that considerations of public safety require Mr. Otton to be incarcerated for a longer period of time. Mr. Otton committed the premeditated murder in a dispassionate and calculated manner. In discussing the murder with the Board in 2010, Mr. Otton explained that before the murder he had been selling marijuana that he purchased from Mr. Dreisbach. Mr. Otton felt he "wasn't making much profit" selling the marijuana so he and his crime partner, Mr. Regis, set-up a drug deal with Mr. Dreisbach, giving Mr. Otton the opportunity to rob Mr. Dreisbach and kill him. It is clear from Mr. Otton's statement to the Board that his motive for shooting Mr. Dreisbach was inexplicable or trivial in relation to the magnitude of the offense he committed. In fact, Mr. Otton told the Board in 2010 there was "no reason" to kill him.

Additionally, the record indicates that Mr. Otton does not have an adequate understanding of the causative factors of the murder. In 2010, the Board asked Mr. Otton, "[D]o you have any insight into this life crime? Do you have any understanding of how this life crime happened?" Mr. Otton responded:

At the time, when I was the monster, the animal that I was, I was consumed with so many issues. The main issue was my being so young and consumed by drugs and alcohol, the lifestyle, like that. Also, other factors like being an anti-social person, having a rebellious attitude and behavior, my lack of respect for life.

The Board attempted to address the factors that caused Mr. Otton to abuse illegal drugs and involve himself in that "lifestyle." Mr. Otton indicated that he turned to a life of drugs and crime because he did not receive acceptance from his father. He grew up in an intact family and said that until the age of 15 he was "really good," "behaved properly" and "had no problems." However, he explained that he never felt like he could satisfy his father and did not receive positive reinforcement from his father. Mr. Otton told the Board:

[W]hen I didn't get the satisfaction from my father, I didn't, it didn't appease [sic] me, so I turned against my family and chose this lifestyle. When I chose this lifestyle, it escalated and got worse and worse, and I ended up using more drugs. And I was looking for other people to hang out with and also acceptance from other people.

The 2010 Board expressed doubt "if [Mr. Otton] really ha[s] that much insight into [his] crime." The Board stated that it was "a little bit troubled when [Mr. Otton] kept on going back to [his] dad" in discussing the causes of his drug use, and concluded that Mr. Otton did not possess "a whole lot of understanding into this thing." In Mr. Otton's 2009 psychological evaluation, he told the psychologist that the drug lifestyle led to his commission of the murder. In response, the psychologist concluded that Mr. Otton "appears to lack an understanding of what turned him away from the pro-social life modeled by his parents and two brothers."

Mr. Otton does not evidence meaningful insight into the causative factors that led to his substance abuse and criminal behavior. His explanations that drug use and his father's lack of positive reinforcement led to his actions are unpersuasive. According to the records and evaluations contained in the file, Mr. Otton does not appear to have ever explored why, given his supportive home life, he turned to drugs and murdered Mr. Dreisbach. Until he understands what drove him to commit this heinous crime, in spite of the available alternatives, he remains at risk for returning to that lifestyle.

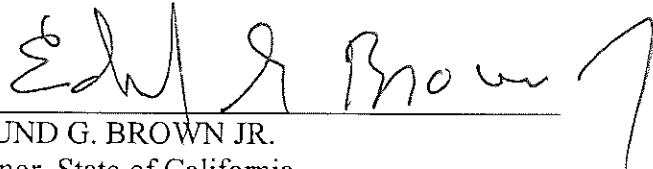
I also believe the Board panel gave inadequate consideration to Mr. Otton's 2010 psychological evaluation. The psychologist determined that Mr. Otton scored in the "MODERATE" range for violent and general recidivism. (Original emphasis.) Overall, Mr. Otton poses a "MODERATE TO LOW" risk of violence in the community. (Original emphasis.) The psychologist identified "lack of insight" as one of the clinical factors that contributes to Mr. Otton's elevated risk rating for violent recidivism. Factors that contributed to Otton's elevated risk of general recidivism included his criminal history, record of institutional misconduct, the presence of criminal acquaintances/friends, and his prior substance abuse. The findings in this recent psychological evaluation support my determination that Mr. Otton poses a current unreasonable risk of danger to the community.

I also note that the San Mateo County District Attorney's Office and the City of South San Francisco Police Department oppose Mr. Otton's 2010 parole.

CONCLUSION:

I have reviewed the record carefully and have considered each of the factors for assessing suitability or unsuitability for parole under California Code of Regulations, Title 15, section 2402. I find that the negative factors I have discussed demonstrate why Mr. Otton remains a current risk to public safety. Therefore, I reverse the decision to parole Mr. Otton.

Decision Date: 1/14/11


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

LEWIS BANKSTON, D-29315

Second-degree murder

AFFIRM: _____

MODIFY: _____

REVERSE: _____

 X

STATEMENT OF FACTS AND REASONS:

Crime

According to the Court of Appeal opinion, on the evening of October 8, 1985, Mr. Bankston and his girlfriend, Linda Daly, were alone in his bedroom when Ms. Daly was shot once in the head with Mr. Bankston's revolver. Ms. Daly died almost instantly. After the shooting, Mr. Bankston called the authorities and called for help from a couple staying in a trailer on his property.

In contrast to the facts that the jury found to be true, Mr. Bankston has always maintained that the killing was an accident. He told sheriff's investigators that he had placed his revolver on the headboard of his bed. He claimed the gun fell off the headboard while the couple were maneuvering in bed and discharged. A bullet fired from the gun struck Ms. Daly in the head. He said he thought he had removed all of the bullets from the gun earlier in the evening.

Mr. Bankston was arrested two days later. A jury convicted him of second-degree murder and found that he personally used a firearm during the commission of the crime. The court sentenced him to 15 years to life in prison for the murder, and a consecutive two-year term for the firearm enhancement. The Court of Appeal affirmed the judgment.

GOVERNING LAW:

The question I must answer is whether Mr. Bankston will pose an unreasonable risk of danger to society if released from prison. In considering whether he poses an unreasonable risk of danger, the circumstances of his crime are evidence of his current dangerousness only if the record also establishes that something in his pre-or post-incarceration history, or his current demeanor and mental state, indicate that the implications regarding his dangerousness which stem from his commission of the life offense remain probative of his posing a present threat to public safety within the statutorily-prescribed analysis.¹

¹ *In re Lawrence* (2008) 44 Cal. 4th 1181.

DECISION:

The Board of Parole Hearings found Mr. Bankston suitable for parole based upon his expressions of remorse, acceptance of responsibility for his actions, lack of a previous criminal history, positive institutional behavior, appropriate parole plans, and an enhanced ability to function within the law upon release. The Board also found that his psychological evaluation in 2008 was favorable.

I acknowledge that during his incarceration, Mr. Bankston has received vocational training in mill and cabinetry. He also held institutional job assignments, including various clerk positions, dental attendant, and textile assembler, and various positions in the Prison Industry Authority's furniture factory.

Regardless, several negative factors indicate that Mr. Bankston poses a current, unreasonable risk to public safety. He committed an especially heinous murder. As the 2010 Board noted, this crime was "particularly troubling" insofar as Mr. Bankston shot and killed the woman he presumably loved while she was lying in his bed. Whatever motive he may have had for murdering his girlfriend, it was either inexplicable or very trivial in relation to the magnitude of the offense.

Mr. Bankston also refuses to accept responsibility for murdering Ms. Daly. In his 2010 Life Prisoner Evaluation Report, he maintained that his gun fell off the headboard of his bed and discharged on its own. I find his story entirely implausible, just as the jury that convicted him did. The appellate court found that substantial evidence supported the jury's verdict. As discussed in that appellate court opinion, examination of the crime scene failed to corroborate Mr. Bankston's version of the crime. In particular, a criminologist failed to find any gunshot residue on the bed's headboard or Ms. Daly's clothing despite the fact that, presumably, such residue would exist if the shooting occurred as described by Mr. Bankston. Also, the criminologist concluded that, due to the design of the revolver used in the shooting, the trigger had to be pulled in order for it to fire and that merely falling on the bed would not have caused it to fire. Further, bloodstains found at the scene were inconsistent with Mr. Bankston's story and the evidence tended to indicate that Mr. Bankston had attempted to clean blood off of himself in the bathroom after the shooting. Lastly, the appellate court noted that shortly after being arrested, Mr. Bankston told investigators that he was holding the gun when it went off, which of course conflicts with his story since his arrest.

Mr. Bankston is not required to admit guilt to be found suitable for parole (Cal. Pen. Code § 5011). But I am not obligated to accept his version of the crime as fact, and I do not. Further, Bankston's past and present attitude toward the crime are factors that affect suitability for release. (Cal.Code Regs., tit. 15 § 2402(b).) By refusing to admit that he intentionally shot Ms. Daly, Mr. Bankston is refusing to accept responsibility for his actions. There is no indication in the record that he understands what he did wrong and what he needs to do differently in the future. His failure to accept responsibility for his actions and express genuine remorse offers no assurance that he would not commit a similar act in the future.

Similarly, Mr. Bankston fails to acknowledge his history of violence and examine how this pattern contributed to his actions. Although he does not have a previous criminal record, there is evidence that he acted violently toward Ms. Daly and others on multiple occasions in the past. According to the probation report, Ms. Daly's ex-husband reported fearing for the safety of his two daughters due to statements the girls had made to him regarding Mr. Bankston's violent tendencies. The probation report further notes that "there are reports from the victim's children, relatives, friends, and ex-wife, that the defendant has engaged in violent conduct, involving threats of harm to others and that he has used weapons in a threatening manner [o]n some of these occasions."

Ms. Daly's children and ex-husband appeared at Mr. Bankston's 2010 Board hearing to oppose a parole grant for Mr. Bankston and to discuss instances where Mr. Bankston had acted in a threatening and/or violent manner. One of Ms. Daly's daughters described Mr. Bankston as a "wolf in sheep's clothing." She said she witnessed one incident where Mr. Bankston locked Ms. Daly in the bathroom and another where he threatened her father (Ms. Daly's ex-husband) with a gun when her father arrived to pick-up the children from Ms. Daly's house for a weekend visit. She also said that Mr. Bankston had threatened her life, had stalked her, and that both she and her mother feared him. Ms. Daly's other daughter also expressed fear of Mr. Bankston and discussed witnessing the incident where he pulled a gun on her father and threatened him. Ms. Daly's ex-husband told the Board that his children had been "scared to death" of Mr. Bankston while he was dating Ms. Daly. He also corroborated the story his daughters told of the incident where Mr. Bankston threatened him with a gun. Mr. Bankston's central file contains additional information in the confidential portion indicating a pattern of violent behavior. Despite all of this, Mr. Bankston told the Board in 2010 that he had never been involved in an incident of domestic violence, and he fails to exhibit any recognition of his significant violent tendencies.


Consistent with his unwillingness to recognize his violent tendencies, he has not taken sufficient steps during his incarceration to gain insight into his propensity for violence or ensure that he will avoid violence in the future. The record indicates that, despite the length of his incarceration, he has only taken one course specifically addressing anger management. He has not participated in any self-help or therapeutic programs addressing violence, interpersonal relationships, or the like. In fact, Mr. Bankston has not made any serious or sustained effort in prison to participate in self-help programs that will allow him to gain insight into and address those issues that caused him to murder his girlfriend. Because he has not shown that he has obtained the necessary tools to avoid violence in the future, he remains an unreasonable threat to the safety of those close to him and the community at large.

CONCLUSION:

I have reviewed the record carefully and have considered each of the factors for assessing suitability or unsuitability for parole under California Code of Regulations, Title 15, section 2402. In this decision, I have discussed the specific factors that I consider particularly relevant in determining whether Mr. Bankston is suitable for parole at this time. I find that the negative factors discussed above demonstrate why Mr. Bankston remains a current unreasonable risk to public safety. Therefore, I reverse the decision to parole Mr. Bankston.

Decision Date:

1/21/11


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

BASIL HENNEN, J-26216

Second-degree murder

AFFIRM:

MODIFY:

REVERSE:

 X

STATEMENT OF FACTS

According to the appellate court decision affirming Basil Hennen's conviction, on July 21, 1991 at approximately 11 a.m. police and paramedics arrived at the apartment that Mr. Hennen shared with his wife Margie Hennen. Mrs. Hennen was laying on the floor unconscious with blood on her head. Mr. Hennen said he had left the apartment earlier in the morning to run some errands and returned to find Mrs. Hennen unconscious. Mrs. Hennen was taken to the hospital. She was not breathing when she arrived. She had bruises on her neck, lacerations on her scalp, a skull fracture, and a blood clot overlying her brain. She died as a result of her injuries a few weeks later. Mrs. Hennen was eight months pregnant when she suffered the fatal injuries. Her daughter was delivered by emergency cesarean section. The baby died a few months later in November from severe brain damage caused by lack of oxygen at or near the time of her birth.

Mr. Hennen was arrested on June 23, 1992. A jury convicted him of second-degree murder for killing Mrs. Hennen, and involuntary manslaughter for causing the death of the baby. The court sentenced him to 15 years to life in prison for the second-degree murder and three years in prison for involuntary manslaughter, with the sentences to be served concurrently.

GOVERNING LAW:

The question is whether Mr. Hennen will pose an unreasonable risk of danger to society if released from prison. In considering whether he poses an unreasonable risk of danger, the circumstances of his crime are evidence of his current dangerousness only if the record also establishes that something in his pre-or post-incarceration history, or his current demeanor and mental state, indicate that the implications regarding his dangerousness which stem from his commission of the life offense remain probative of his posing a present threat to public safety within the statutorily-prescribed analysis.¹

¹ *In re Lawrence* (2008) 44 Cal. 4th 1181.

DECISION:

The Board of Parole Hearings found Mr. Hennen suitable for parole based upon the fact that he had no prior criminal record, had a stable social history, had obtained some insight into the life crime, exhibited remorse for his actions, had a record of good conduct while incarcerated, had participated in vocational training and self-help programs, and had realistic parole plans.

Mr. Hennen has made some gains while incarcerated. He completed vocational training in auto body and fender repair and has held skilled institutional assignments, including yard maintenance crew, kitchen crew, shoe factory worker, and laundry worker. He has participated in self-help and therapy programs, including a number of Personal Growth Seminars concerning various topics, as well as a Communication & Interpersonal Relationship course and an Anger Management course. I commend Mr. Hennen for taking these positive steps. But they are outweighed by negative factors that demonstrate he remains unsuitable for parole.

Mr. Hennen's crime was especially atrocious, brutal, and cruel. He told the Board in 2010 that he slammed his wife's head against a dresser three times causing her to bleed from the head and lose consciousness. Marks observed on Mrs. Hennen's neck, as well as the brain injury she suffered as a result of lack of oxygen, indicate that Mr. Hennen may have also choked Mrs. Hennen during the attack, a fact which Mr. Hennen denied during his 2010 Board hearing. After beating his wife unconscious he then, in a show of extreme callous disregard for Mrs. Hennen's suffering, left her in their apartment bleeding and unconscious while he ran errands and tried to come up with an alibi. The fact that Mr. Hennen not only killed his wife but her then-unborn baby makes his actions even more horrific.

Despite his years of incarceration, Mr. Hennen has failed to develop adequate insight into the reasons that caused him to commit such an atrocious crime and he continues to partially blame the victim for the crime. When asked during his 2009 psychological evaluation about his reason for committing the murder, Mr. Hennen responded, "I felt like I was wronged; our marriage wasn't pure. Emotionally it hurt me, she was unfaithful." He said he attacked Mrs. Hennen after she told him that he was not the father of the baby she was carrying. He stated that his violent behavior was essentially "due to the betrayal." The psychologist concluded:

Though the inmate reports that he accepts full responsibility for the life crime, he appears to have accepted limited responsibility by continuing to place a preponderance of provocation on the victim, and he appears to continue to struggle primarily with the intrapersonal aspects of the life crime.

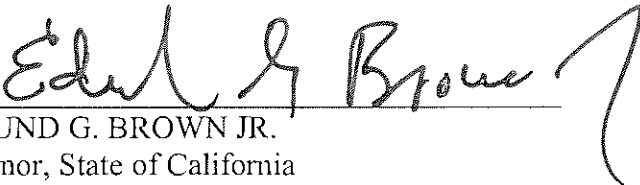
Therefore, it appears at this time that the inmate does not have a thorough or complete understanding of the causes and factors which contributed to his commission of the life crime. Thus, the inmate appears to have not fully explored the commitment offense, and his insight appears to be at a less than optimal level.

Mr. Hennen's belief that his wife was partially to blame for provoking him shows that he has not sufficiently examined himself to determine what caused him to kill two innocent people. Until he accepts full responsibility for his horrific actions, shows that understands why he took those actions, and takes steps to ensure that he will not repeat them, he presents a continuing threat to public safety if released from prison.

CONCLUSION:

I have considered the record the factors for assessing suitability or unsuitability for parole under California Code of Regulations, Title 15, section 2402. I find that the negative factors I have discussed demonstrate why Mr. Hennen currently poses an unreasonably risk of danger to society if released from prison. Therefore, I reverse the decision to parole Mr. Hennen.

Decision Date: January 28, 2011



EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

RICKY PEREZ, C-51533
Second-degree murder

AFFIRM:

MODIFY:

REVERSE:

 X

STATEMENT OF FACTS

According to the probation report, Carolyn Lugo was the mother of Ricky Perez's friend. On May 23, 1982, Ms. Lugo's neighbor heard two people arguing. The neighbor subsequently saw a male striking Ms. Lugo several times and dragging her to the side of the house. When Ms. Lugo's daughter arrived home, she found her mother's body lying next to the driveway. She also saw Mr. Perez leaving the area. Mr. Perez admitted that he killed Ms. Lugo but claimed he was under the combined influence of LSD and alcohol.

Mr. Perez was arrested later the same day. He pled guilty to second-degree murder and admitted that he used a deadly or dangerous weapon during the commission of the murder. Mr. Perez was sentenced to 15 years to life in prison for murder and a consecutive one-year term for the use of a weapon.

GOVERNING LAW:

The question is whether Mr. Perez will pose an unreasonable risk of danger to society if released from prison. In considering whether he poses an unreasonable risk of danger, the circumstances of his crime are evidence of his current dangerousness only if the record also establishes that something in his pre-or post-incarceration history, or his current demeanor and mental state, indicate that the implications regarding his dangerousness which stem from his commission of the life offense remain probative of his posing a present threat to public safety within the statutorily-prescribed analysis.¹

DECISION:

After finding Mr. Perez unsuitable for parole 12 times, most recently on January 4, 2010, the Board of Parole Hearings found Mr. Perez suitable for parole in response to an August 13, 2010 federal court order.

¹ *In re Lawrence* (2008) 44 Cal. 4th 1181.

I acknowledge Mr. Perez has made some laudable gains while incarcerated. He earned a General Equivalency Diploma in prison. Mr. Perez earned certificates in carpentry and machine shop. He was also trained in dry cleaning. Mr. Perez held skilled institutional jobs as a laundry laborer, culinary worker, machine operator, laborer, mechanic assistant, furniture assembler, truck driver for the Prison Industry Authority's laundry department, clothing room worker and porter. He has participated in self-help and therapy programs, including substance abuse treatment, stress management, individual psychotherapy and self-esteem training. Mr. Perez also took several courses through Golden Hills Adult School Literacy Program. I commend Mr. Perez for taking these positive steps. But they are outweighed by negative factors that demonstrate he remains unsuitable for parole.

Mr. Perez's crime was especially heinous and cruel. In a display of extreme callousness, after stabbing the victim, Mr. Perez crushed her head with a large rock. The Coroner's Investigative Report described that Ms. Lugo suffered "extensive trauma to the head with several large gashes appearing in the skin." Mr. Perez's inexplicable motive adds to the egregiousness of the crime.

Despite the length of his incarceration, Mr. Perez has failed to develop adequate insight into the reasons that caused him to commit such a horrific crime. In denying him parole as recently as January 2010, the Presiding Commissioner stated, "What was concerning for me today is when I asked you what was the motive, today you said it was anger. In the last hearing it was drugs. And so it's just, you know, it's hard to get, for the Panel to get an understanding that you really understood the causes of this crime and what was the motive. We just don't know to this day." During his 2009 psychological evaluation, Mr. Perez described his memory of the murder as "sketchy." Nonetheless, he recalled drinking and using drugs with the victim's son before the murder. He went home to retrieve a kitchen knife before going to Ms. Lugo's home. Mr. Perez recalled arguing with Ms. Lugo, and in an effort to "shut her up," he attempted to slash her throat. Mr. Perez further described how he "went crazy" and stabbed Ms. Lugo. At some point, he struck her in the head with a rock. The question is not whether Mr. Perez accepts responsibility for committing the murder, but whether he has gained an adequate understanding of his actions. Based on the findings of his 2009 psychological evaluator, I conclude that he lacks such an understanding. The psychologist wrote:

In [the clinical domain of risk assessment], Mr. Perez continues to display impaired insight into his life offense. He takes full responsibility for committing the crime and has identified substance-use a contributing factor. However, he continues to have great difficulty further exploring why he committed the offense.

The evaluator's findings demonstrate that Mr. Perez has not sufficiently examined himself to determine what caused him to kill an innocent victim. Until he shows that understands why he took those actions, and takes steps to ensure that he will not repeat them, he presents a continuing threat to public safety if released from prison.

Additional findings by the 2009 psychological evaluator cause me to question Mr. Perez's suitability for parole. As noted by previous Board panels, the psychologist noted that "Mr. Perez also displayed some difficulty identifying high risk factors of substance use or potential for

future violence, stating there are no risks of substance use or violence as he is confident he will never abuse substances again.” Mr. Perez may be convinced, but I note that the September 2010 Board expressed doubt, saying, “As he stated, he does not believe there is any chance he would ever use substances again, and such a view is likely a high risk in itself, as believing he is at no risk for relapse. And that belief creates little incentive to identify, avoid, prepare or adaptively cope with any and all triggers for substance abuse once in the community.” Given the significant role that drug and alcohol abuse played in Mr. Perez’s commission of the life offense, his overconfidence that he will not relapse, and his failure to offer anything but simplistic explanations that ignore the possibility that he could relapse indicate to me that he has not developed a sufficient understanding of his substance abuse problem. Until he addresses this concern, he remains a risk to public safety.

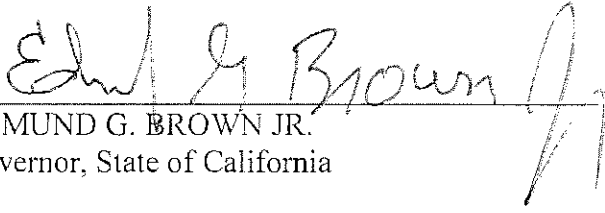
I also note that the Santa Clara County District Attorney’s Office and the victim’s son and daughters oppose Mr. Perez’s parole.

CONCLUSION:

When the parole board granted Mr. Perez parole in September 2010, it was under compulsion to do so by a federal court order. That federal court order improperly restricted the parole board’s authority to assess Mr. Perez’s suitability for parole under California law. Just last month, the United States Supreme Court clarified that federal courts are not permitted to reweigh the evidentiary basis of California parole decisions. (See *Swarthout v. Cooke*, (2011) 562 U.S. ___, 2011 WL 197627). Public safety requires that before Mr. Perez is allowed to rejoin society, our parole board first find him suitable for parole of its own accord, under governing legal principles, and without the improper interference by the federal court.

I have considered the record and the factors for assessing suitability or unsuitability for parole under California Code of Regulations, Title 15, section 2402. I find that the negative factors I have discussed demonstrate why Mr. Perez currently poses an unreasonably risk of danger to society if released from prison. Therefore, I reverse the decision to parole Mr. Perez.

Decision Date: February 14, 2011


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

RAYMOND SARABIA, H-31659
First-Degree Murder

AFFIRM:

MODIFY:

REVERSE:

 X

STATEMENT OF FACTS:

According to the probation report, on February 11, 1991, Raymond Sarabia, a member of the "San Fer" street gang, shot and killed Francisco Gonzalez. On the day of the murder, Mr. Sarabia armed himself with a handgun, and got into a pickup truck with other members of his gang. Mr. Sarabia rode in the back of the truck under the camper shell as they drove into rival gang territory. They spotted Mr. Gonzalez, a rival gang member, and two others walking through the parking lot of a convenience store. Mr. Sarabia jumped out of the truck, walked up to Mr. Gonzalez from the side, grabbed him by the hair pulling his head back, shoved the gun in his face, and pulled the trigger. Mr. Gonzalez fell to the ground, while Mr. Sarabia and his companions fled. Mr. Gonzalez died two days later.

Mr. Sarabia was arrested on March 7, 1991. He pled guilty to second-degree murder and was sentenced to 15 years to life in prison.

GOVERNING LAW:

The question is whether Mr. Sarabia will pose an unreasonable risk of danger to society if released from prison. In considering whether he poses an unreasonable risk of danger, the circumstances of his crime are evidence of his current dangerousness only if the record also establishes that something in his pre- or post-incarceration history, or his current demeanor and mental state, indicate that the implications regarding his dangerousness that stem from his commission of the life offense remain probative of his posing a present threat to public safety within the statutorily-prescribed analysis. (*In re Lawrence* (2008) 44 Cal. 4th 1181.)

DECISION:

The Board of Parole Hearings found Mr. Sarabia suitable for parole based upon his expressions of remorse and insight, his presentation as a stable and hardworking individual, his commendable institutional behavior over the past 11 years, and his realistic parole plans.

I agree with the Board that Mr. Sarabia has taken some positive steps while in prison. He earned his General Equivalency Diploma. He completed vocational training in plumbing. He started but did not complete training in roofing, drywall, and masonry. He held institutional job assignments as a porter and a landscaper. He participated in Alcoholics Anonymous and Narcotics Anonymous from 1988 to 2004. He completed parent education programs, anger management programs, and various religious studies classes. He participated in Criminals and Gang Members Anonymous, Breaking Barriers, and Creative Conflict Resolution. Upon his release, he plans to reside at the San Fernando Recovery Center and has several job offers. These positive factors lend support to a finding of suitability for parole. But I believe they are outweighed by negative factors demonstrating that Mr. Sarabia remains unsuitable for parole.

Mr. Sarabia has a significant history of violence. In 1987, at age 14, he and four other gang members committed battery by punching and kicking a victim. Less than six months later, Mr. Sarabia and two other gang members beat another victim. In 1990, Mr. Sarabia and two other gang members were involved in a high speed police chase. During the chase, he threw a loaded gun from the vehicle that discharged when it hit the ground. Later that same year, Mr. Sarabia stopped a pedestrian and asked him where he was from. When the person answered, "Nowhere," he jumped out of his truck and hit the guy with a baseball bat. In light of these incidents, the life offense appears to be a culmination of several years of violent, and often gang-related, conduct.

The murder Mr. Sarabia committed was especially heinous for several reasons. Mr. Sarabia dispassionately carried out an execution-style murder. He showed an exceptional disregard for human suffering by fleeing the scene while Mr. Gonzalez lay wounded on the ground. The fact that he went armed into rival gang territory indicates premeditation. Also, the motive for the murder is inexplicable or very trivial. After he was arrested, Mr. Sarabia told police that he killed Mr. Gonzalez to avenge a previous gang slaying committed by Mr. Gonzalez's gang. But according to the probation report, the crime to which Mr. Sarabia referred happened more than a year before he murdered Mr. Gonzalez. And other members of Mr. Sarabia's gang said the perpetrator of that crime was no longer alive when Mr. Sarabia committed the murder. As the probation officer determined, it is more likely that Mr. Sarabia committed the murder to gain status and recognition by his fellow gang members.

In addition, Mr. Sarabia continues to minimize his conduct. After he was arrested, he told the probation officer that he didn't mean to kill Mr. Gonzalez but he thought Mr. Gonzalez was going to pull a gun on him. He stated at the time, he "never planned to be in another [gang]'s area; I know better but I made a mistake." Although he now clarifies that he did not see a gun, he continues to indicate that Mr. Gonzalez provoked the attack. He told his 2009 mental-health evaluator:

"Two guys [i.e., the victim] and a girl were walking in the same direction [as me and a friend]. The other guy walked up to my friend and got into words. The victim came towards me. There was nothing said. I was under the influence. He had a smirk on his face. I told him 'what's up' twice. He just kept walking towards me. When I seen was

[sic] he reached into his waist band and I did not see a gun. I pulled out a gun from my pocket and I shot him.”

At his September 2010 parole suitability hearing, Mr. Sarabia stuck to this version of the murder. He told the hearing panel that Mr. Gonzalez smirked at him, then “reached in his waistband, and that’s what caused me to do that.” Mr. Sarabia also told the hearing panel that he shot Mr. Gonzalez from about six feet away. The hearing panel informed him that the autopsy results showed that Mr. Gonzalez had stippling of about an eighth of an inch of soot on his forehead around the bullet wound, and that sort of stippling normally does not happen when someone is shot that far away. Mr. Sarabia then said he might have been as close as two or three feet away when he shot Mr. Gonzalez.

Mr. Sarabia’s version portrays Mr. Gonzalez as having made threatening actions that provoked the attack, and suggests that he believed Mr. Gonzalez was going to pull out a weapon and attack him. But Mr. Sarabia’s version is at odds with the official record, which indicates that he went into rival gang territory armed with a gun and looking to use it on a rival gang member. According to the record, Mr. Gonzalez did not provoke the attack. Rather, Mr. Sarabia was out looking to kill a rival gang member, and when he identified Mr. Gonzalez as a rival gang member, he walked up to him and coldly executed him at point-blank range.

I agree with the mental-health evaluator’s conclusion that Mr. Sarabia “appears to be minimizing his behavior leading to the commitment offense. This appears to limit his insight into his previous pattern of violent behavior including his actions contributing to the victim’s death.” His failure to accept responsibility for his actions offers no assurance that he will not commit a similar act in the future.

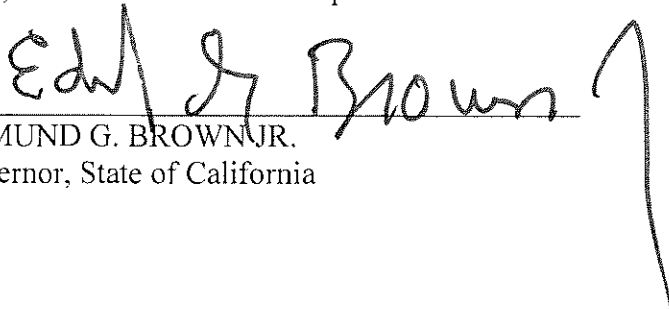
The 2009 mental-health evaluation raises additional concerns. The evaluator found that Mr. Sarabia’s scores indicate a medium to high risk for general recidivism. The evaluator also determined that Mr. Sarabia’s scores placed him in the low to moderate risk range of future violence in the community. Besides the lack of insight, this elevated assessment is based on his “history of previous violence, young age at first violent incident, substance abuse problems, early maladjustment, personality disorder, and prior supervision failure.” These findings and elevated risk assessments support my determination that Mr. Sarabia continues to pose a risk to public safety.

I note that Mr. Sarabia retained a private psychologist who prepared a favorable psychological evaluation in July 2010. But I put little weight in this assessment. Although the private evaluation is somewhat more recent, the 2009 evaluation is by no means out-dated. And unlike the psychologist Mr. Sarabia hired, the parole board psychologist did not have a financial incentive to prepare a favorable report.

CONCLUSION:

I have considered the record and the factors for assessing suitability and unsuitability for parole under California Code of Regulations, Title 15, section 2402. I find that the negative factors I have discussed demonstrate why Mr. Sarabia currently poses an unreasonably risk of danger to society if released from prison. Therefore, I reverse the decision to parole Mr. Sarabia.

Date: February 18, 2011


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

DAVID KURTZMAN, D-35713

Second-degree murder

AFFIRM:

MODIFY:

REVERSE:

_____ X _____

STATEMENT OF FACTS

According to the appellate court decision affirming David Kurtzman's conviction, on August 3, 1985, Mr. Kurtzman stabbed Michael Stephenson to death. Mr. Kurtzman was a student at a preparatory school in Santa Barbara at the time. Two nights before the murder, a group of four students who shared the same dormitory as Mr. Kurtzman were involved in a confrontation with members of a gang called the City Rockers. One of the students involved in the confrontation was James Tramel. After the confrontation, the four students returned to the dormitory and shared what had happened with Mr. Kurtzman and other students.

Mr. Kurtzman, Mr. Tramel, and another student planned to retaliate against the gang. On the night of the murder, the three of them headed into downtown Santa Barbara where the confrontation with the City Rockers had taken place. Mr. Tramel was carrying a six-inch military knife. Mr. Tramel saw a person whom he believed to be a gang member. He and Mr. Kurtzman followed this person but lost him in a city park. While at the park, they happened upon Mr. Stephenson, who had been sleeping in a gazebo in the park. After a brief conversation with Mr. Stephenson, Mr. Kurtzman attacked him. Mr. Kurtzman stabbed Mr. Stephenson seventeen times, then slashed his throat. Mr. Stephenson died from his wounds.

Mr. Kurtzman was arrested the next day. He was a juvenile at the time of the murder, but was tried as an adult. A jury convicted him of second-degree murder and found that he used a deadly or dangerous weapon. Mr. Kurtzman was sentenced to 15 years to life in prison for murder and a consecutive one-year term for the use of a weapon. The judgment was affirmed on appeal.

GOVERNING LAW:

The question is whether Mr. Kurtzman will pose an unreasonable risk of danger to society if released from prison. In considering whether he poses an unreasonable risk of danger, the circumstances of his crime are evidence of his current dangerousness only if the record also establishes that something in his pre-or post-incarceration history, or his current demeanor and mental state, indicate that the implications regarding his dangerousness which stem from his commission of the life offense remain probative of his posing a present threat to public safety within the statutorily-prescribed analysis. (*In re Lawrence* (2008) 44 Cal. 4th 1181.)

DECISION:

The Board of Parole Hearings found Mr. Kurtzman suitable for parole based upon his lack of a prior criminal record, positive institutional behavior, expressions of remorse, an enhanced ability to function within the law upon release, realistic parole plans, and a decreased risk of recidivism.

Mr. Kurtzman has taken some positive steps while incarcerated. He earned an Associate of Arts Degree. He also took courses toward a Bachelor of Science Degree in Business Administration. He earned certificates in landscaping, radiological technology, and sewing machine repair. He became a certified optician and contact lens technician. In addition, he participated in several self-help courses addressing personal development, substance abuse, group and individual therapy, anger management, alternatives to violence, conflict resolution and stress management. I commend Mr. Kurtzman for making these efforts to improve himself. But they are outweighed by negative factors that demonstrate he remains unsuitable for parole.

Mr. Kurtzman's crime was senseless and brutally violent. He stabbed Mr. Stephenson approximately seventeen times and then slashed his throat. The probation report notes that, when his body was located, Mr. Stephenson had a five-inch long wound across the lower portion of his neck, which left the neck organs exposed. The crime involved premeditation. As the appellate record notes, Mr. Tramel told students with whom he shared his dormitory that retaliation required the purchase of dark clothing, knives, climbing ropes, grappling hooks and materials for making sodium bombs. On the evening of the murder, Mr. Kurtzman and his friends dressed in dark clothing and went out looking for local "hot spots" frequented by the members of the gang with whom they had the earlier confrontation. When a fellow student asked Mr. Kurtzman and Mr. Tramel whether they planned to kill someone with the knife, Mr. Kurtzman replied either, "[w]e have to" or "[i]f we have to." His apparent motive of seeking retaliation for a confrontation in which he was not even involved was exceedingly trivial in relation to the magnitude of the offense he committed.

Despite the length of his incarceration, Mr. Kurtzman has failed to develop adequate insight into the reasons that he committed such a horrific crime. Mr. Kurtzman told his 2009 psychological evaluator that he believed Mr. Stephenson, whom he claims was searching through his belongings, was retrieving a weapon. When the victim stood up, Mr. Kurtzman reported that he began attacking him as the result of increasing paranoia and fear. He said he had experienced years of being bullied and had little self-worth. When the evaluator asked him why he continued to stab Mr. Stephenson, even after he slashed his neck, Mr. Kurtzman indicated that the only way to remove the threat was to ensure that the victim stopped moving.

Mr. Kurtzman told the evaluator that he thought 29-year-old Mr. Stephenson was a member of the gang involved in the previous confrontation. But according to Mr. Kurtzman's account of the crime considered by the 2009 hearing panel, before attacking Mr. Stephenson he asked Mr. Tramel if Mr. Stephenson was a member of the gang. Mr. Tramel replied, "I don't know, he could be." The 2009 hearing panel found that it was clear Mr. Stephenson was not a member of the gang because he was much older than the members they were looking for. So Mr.

Kurtzman's statement that he believed Mr. Stephenson was a gang member is undermined by the record, including Mr. Kurtzman's earlier statements.

Likewise, the other reasons Mr. Kurtzman gave to the 2009 psychological evaluator—paranoia, fear, low-self worth, and having been bullied—do not adequately explain why he committed such an excessively violent murder of someone he had never met, and who had not even been involved in the earlier confrontation with his friends.

Mr. Kurtzman exercised his right not to discuss the circumstances of the crime with the 2010 Board. Nonetheless, his current version describes Mr. Stephenson as having made a threatening action that provoked the attack, and suggests that he believed Mr. Stephenson was going to retrieve a weapon and attack him. But Mr. Kurtzman's version is inconsistent with the official record, which indicates that he and his friends went to the same location where the earlier confrontation occurred armed with a knife and intended to use it on one of the gang members. According to the appellate record, Mr. Stephenson did not provoke the attack. To the contrary, Mr. Stephenson had been sleeping in the park and was rolling up his sleeping bag when Mr. Kurtzman coldly stabbed him and slashed his throat.

My concern is heightened by the fact that the 2010 Board expressed reluctance in granting Mr. Kurtzman parole. In so doing, the Board raised concerns about Mr. Kurtzman's lack of insight, but noted that it was under compulsion of a court order, stating:

"In 2004, 2007 and 2009, it was the commitment offense and lack of insight into the causative factors that were brought up as reasons for [the] denial [of parole]. This Panel also had some concerns with the insight, and again, we did take notice that the court order precluded us from using that. We didn't agree with what the court order, in fact, that the lack of insight was something that you couldn't gain and couldn't get into as far as they felt you had sufficient insight, and several of the psychological reports. There's just some uneasiness on the Panel as it was brought up at your previous hearings, the recent ones, as far as why you did what you did and coming to terms with that."

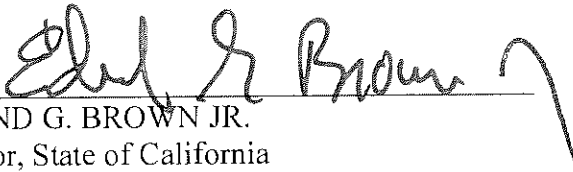
Mr. Kurtzman's belief that his victim provoked him in any way demonstrates that he has not sufficiently examined himself to determine what caused him to kill an innocent individual. Until he accepts full responsibility for his murderous actions, shows that understands why he took those actions, and takes steps to ensure that he will not repeat them, he presents a continuing threat to public safety if released from prison.

I additionally note that the Santa Barbara County District Attorney's Office and the victim's father and stepmother oppose Mr. Kurtzman's parole.

CONCLUSION:

I have considered the record and the factors for assessing suitability or unsuitability for parole under California Code of Regulations, Title 15, section 2402. I find that the negative factors I have discussed demonstrate why Mr. Kurtzman currently poses an unreasonable risk of danger to society if released from prison. Therefore, I reverse the decision to parole Mr. Kurtzman.

Decision Date: February 24, 2011


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

LARRY DUN, B-81995

First-degree murder

AFFIRM:

MODIFY:

REVERSE:

 X

STATEMENT OF FACTS

On February 5, 1976, Larry Dun raped and murdered his neighbor, Maryanne Jacobs. On that day, Mr. Dun went to Mrs. Jacobs's home carrying a knife. He told her that he wanted to obtain some information about a contractor. As they were talking inside her house, he noticed another knife in her kitchen. He picked up that knife, and noticed that she became afraid. He ordered her to sit down and be quiet. He got some rope, tied up her wrists, and raped her. When she tried to sit up, he stabbed her. He then continued to stab her over and over again. He slashed her and brutally battered her head and body with a blunt object. Mrs. Jacobs died from her injuries.

The autopsy disclosed 23 significant wounds, in addition to numerous scratches and bruises. Of the wounds, 18 were stab wounds in the neck, back, chest, and abdomen areas, seven of which entered the chest or abdominal cavity, and penetrated deep organs. Three of the wounds were incised, the most significant of which was a "gaping wound" on the front of her neck that severed all structures except the backbone. Another wound ran across Mrs. Jacobs's eyes and the bridge of her nose, which cut into one of her eyeballs. She suffered two fractured ribs, and a skull fracture from blunt force trauma to the front and back of her head. Her death resulted from a massive hemorrhage. Blood was found splattered throughout the house including the walls, furnishings, and bathroom.

Mr. Dun was arrested the next day. He was convicted of first-degree murder, forcible rape, and first-degree robbery, and sentenced to an indeterminate term of life in prison.

GOVERNING LAW:

The question I must answer is whether Mr. Dun will pose a current danger to the public if released. In answering this question, I must examine the same record that was before the Board of Parole Hearings and adhere to the same legal standards. 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* (2008) 44 Cal. 4th 1181, 1214.) In rare circumstances, the aggravated nature of the crime alone can provide a valid basis for denying parole even when there is strong evidence of rehabilitation and no other evidence of current dangerousness. (*Id.* at pp. 1211, 1214.)

DECISION:

The Board found Mr. Dun suitable for parole based on his lack of an assaultive juvenile history, an enhanced ability to function within the law upon release, positive institutional behavior, realistic parole plans and a reduced risk of recidivism.

I acknowledge Mr. Dun has made efforts to improve himself while incarcerated. He earned an Associate of Arts degree. He earned certificates in landscaping and welding, and was trained in small engine repair. He held skilled institutional jobs as an aide/mentor in the Mental Health Program, Arts in Corrections crew member, custodian, clerk, dental technician and surgery technician. Mr. Dun also participated in self-help and therapy programs, including Alcoholics Anonymous, Narcotics Anonymous, A Framework for Recovery, Advanced Relaxation Training Group, Anger Control Training Group, Arts in Corrections, Asian Pacific Studies Group, Beginning Stress Management and Relaxation Skills Training, Communication Skills Group, Hands of Peace/Friends Outside Creative Conflict Resolution workshop, individual therapy, Lifer Decision Making and Introspective Analysis therapy group, Personal Adjustment Skills Group, pre-release courses, psychotherapy, Rapha 12-Step Program, Rational Behavior Training therapy group, Self-Esteem and Assertiveness Training Group, sex offender treatment, stress management and tolerance, Substance Abuse Group and Victim Awareness Offender's Program. I commend Mr. Dun for taking these positive steps. But they are outweighed by negative factors that demonstrate he remains unsuitable for parole.

Mr. Dun's crime was absolutely horrific. After invading the privacy of Mrs. Jacobs's home, he initiated an unprovoked, vicious attack on a vulnerable, unsuspecting victim. He tied her up, raped her, beat her, and stabbed her repeatedly. Mrs. Jacobs suffered 23 significant wounds, 18 of which were stab wounds to her neck, back, chest and abdomen. Some of the wounds were inflicted with such great force that they penetrated deep organs. The probation report noted "large slicing wounds" on her neck and face. And Mr. Dun's motive for the crime is inexplicable. As our Supreme Court has acknowledged, in rare circumstances, a murder is so heinous that it provides evidence of current dangerous by itself. This is such a case.

But there is more evidence that Mr. Dun remains dangerous. Notably, his history of sexual assaults and his failure to avail himself of adequate therapy to address this behavior weigh heavily against his suitability for parole. Besides the sexual offenses committed during the life crime, in the probation report, Mr. Dun admitted to two prior sexual acts in the past. These actions show anger and violence of a sexual nature toward women.

Although Mr. Dun has taken numerous self help classes, he has not taken any courses on domestic violence or abuse prevention against women. Given his history of sexual assaults, and the severity of the crime, Mr. Dun has not done enough to address the reasons that caused him to perpetrate acts of violence against women. I agree with Mr. Dun's 2005 psychological evaluator, who wrote, "The nature of the crime indicates that Mr. Dun acted in a sadistic and callous manner. This type of act should be weighted heavily as it is a sign of an enduring personality dysfunction."

Mr. Dun identified “feelings of estrangement and abandonment in his family, and . . . feelings of disempowerment in his community” as the causes of his “feelings toward women.” My concern is therefore heightened by the 2008 psychological evaluator’s finding that Mr. Dun “remains somewhat isolated interpersonally.” Until he gains the tools and skills necessary to avoid future acts of violence, I believe he remains an unreasonable risk to public safety.

I recognize that Mr. Dun’s 2008 psychological evaluation rates him as having sufficient insight into the crime, and as presenting a low risk to society if released. But unfortunately, the evaluator’s assessments cannot be relied upon because they were premised on a gross mischaracterization of the nature and gravity of Mr. Dun’s crime. According to the version of the crime the psychologist relied on, after Mr. Dun raped Mrs. Jacobs, “he stabbed her.” That single statement is the only description the psychologist gave of Mr. Dun’s murderous acts. The psychologist failed to recognize the evidence documenting that he stabbed her 18 times in her neck, back, chest, and abdomen areas, that he slashed her face and eyes, that he cut her throat almost to the point of decapitation, and that he bashed in her head and ribs with a blunt object. In addition to inaccurately minimizing the severity of Mr. Dun’s crime, the psychologist relied on self-serving statements from Mr. Dun that he tried to call for help and give Mrs. Jacobs a glass of water, and ultimately ran away in a panic. The description the psychologist relied upon bears little resemblance to what the record shows actually transpired. Rather than assessing Mr. Dun with an accurate understanding of his excessively brutal killing of Mrs. Jacobs, the psychologist relied on a version that made it sound as though Mr. Dun did not mean to kill Mrs. Jacobs at all.

I do not believe that an evaluation premised on a mischaracterization of the crime is reliable. My concern is supported by the 2005 psychological evaluation that deemed Mr. Dun a “Moderate to High” risk for future violence. Given the severity of Mr. Dun’s crime, it would be irresponsible to release him back into society without first having a psychologist conduct a new evaluation of him that is premised on an accurate description of his crime and the other relevant aspects of the record. Until that occurs, I must continue to give weight to the 2005 evaluator’s conclusion that Mr. Dun poses an elevated risk of violence to society if released.

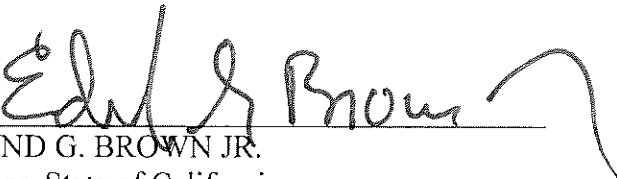
At Mr. Dun’s past several parole hearings, the Board has concluded that he does not fully understand why he committed such an excessively violent crime. At his most recent hearing, Mr. Dun exercised his right not to discuss the factual circumstances of the life offense. But this choice leaves important questions about his insight into this brutal murder unaddressed. Until he shows that understands why he took those actions, and takes steps to ensure that he will not repeat them, he presents a continuing threat to public safety if released from prison.

I also note that several members of Mrs. Jacobs’s family, as well as the San Joaquin County District Attorney’s Office, the San Joaquin County Sheriff-Coroner, the Stockton Chief of Police, and several members of the community oppose Mr. Dun’s parole.

CONCLUSION:

I have considered the record and the factors for assessing suitability or unsuitability for parole under California Code of Regulations, Title 15, section 2402. I find that the negative factors I have discussed demonstrate why Mr. Dun currently poses an unreasonable risk of danger to society if released from prison. Therefore, I reverse the decision to parole Mr. Dun.

Decision Date: February 25, 2011


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

JOSE VALENZUELA, C-68910

Second-degree murder

AFFIRM:

MODIFY:

REVERSE:

 X

STATEMENT OF FACTS

On April 7, 1983, Jose Valenzuela and two friends were drinking beer and playing pool at a bar. While at the bar, Mr. Valenzuela and one of his friends got into an argument with Vicente Mora and another man. Two days later, Mr. Valenzuela returned to the bar with a shotgun, and spotted Mr. Mora. Mr. Valenzuela walked up to Mr. Mora from behind, and shot him in the back. Mr. Mora died instantly. Mr. Valenzuela then fled the scene.

GOVERNING LAW:

The question I must answer is whether Mr. Valenzuela will pose a current danger to the public if released from prison. In answering this question, I must examine the same record that was before the Board of Parole Hearings and adhere to the same legal standards. The circumstances of his crime can provide evidence of his current dangerousness when the record also establishes that something in his pre-or post-incarceration history, or his current demeanor and mental state, indicate that the circumstances of the crime remain probative of current dangerousness. (*In re Lawrence* (2008) 44 Cal. 4th 1181.)

DECISION:

On September 28, 2010, the Board of Parole Hearings found Mr. Valenzuela suitable for parole based on his expression of remorse, earning a General Equivalency Diploma, completion of vocational training, positive institutional employment record, participation in Alcoholics Anonymous and other self-help programs, realistic parole plans, and age.

I acknowledge Mr. Valenzuela has made some laudable gains while incarcerated. He earned a General Equivalency Diploma, obtained three vocational certificates, and held a number of skilled institutional jobs. He has participated in some self-help and therapy programs, including Alcoholics Anonymous and Narcotics Anonymous from 1990-1992, 1996, 1999-2001, 2004, 2006-2010, anger management courses, a domestic violence seminar, Fathers Behind Bars seminars and Seeking Peaceful Solutions substance abuse program seminars. I commend Mr. Valenzuela for taking these positive steps. But they are outweighed by negative factors that demonstrate he poses a current danger to society if released.

The murder of Mr. Mora was a premeditated attack carried out in a calculated and dispassionate manner. Mr. Valenzuela armed himself and went looking for Mr. Mora and, upon finding him, walked up behind him and shot him in the back. Mr. Valenzuela decided to kill Mr. Mora for an exceedingly trivial reason—a desire for revenge over an argument.

In addition to the life offense, Mr. Valenzuela has a long history of violence and failure to comply with societal and institutional rules. Prior to the life offense, Mr. Valenzuela was convicted of carrying a concealed weapon and was arrested on two other occasions for assault with a deadly weapon. While incarcerated, Mr. Valenzuela has received 19 rules violation reports, two of which involved violence and one as recent as 2005 for manufacturing alcohol. He also has been counseled for misconduct on 11 occasions, with the most recent occurring in 2009. While Mr. Valenzuela's behavior has improved recently, this relatively short period of positive behavior pales in comparison to his decades of misconduct, which provide ample evidence that he remains a danger to society if released from prison at this time.

Similarly, Mr. Valenzuela's recent period of sobriety comes after years of substance abuse, both in and out of prison. Mr. Valenzuela was under the influence of alcohol at the time he committed the life offense. Eleven of Mr. Valenzuela's rules violation reports directly involve drugs or alcohol. Mr. Valenzuela told the Board in 2010 that he did not take his substance abuse problem seriously until after receiving his last rules violation report in 2005. But in 2008, Valenzuela's psychological evaluator found that he "did not possess significant insight into the true nature of his substance abuse problem, nor did he demonstrate a meaningful commitment to remaining sober or participating in treatment." Considering the severity and length of Mr. Valenzuela's substance abuse problem, as well as the questions concerning his current commitment to remain sober, Mr. Valenzuela remains significantly susceptible to relapse and therefore more likely to commit further offenses.

I am also troubled by Mr. Valenzuela's refusal to accept responsibility for the murder of Mr. Mora. At his 2010 Board hearing, Mr. Valenzuela reaffirmed his claim that he blacked-out due to alcohol consumption on the night of the murder and did not remember any details from the crime, except that he did not intentionally shoot Mr. Mora. These claims conflict with the findings in the probation report, and defy common sense. By refusing to admit that he intentionally shot Mr. Mora, Mr. Valenzuela is refusing to accept responsibility for his actions. His failure to accept responsibility for his actions offers no assurance that he would not commit a similar act in the future.

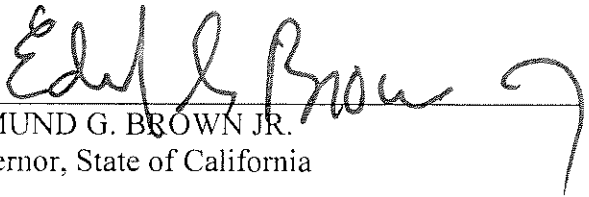
Similarly, Valenzuela's psychological evaluator in 2008 found that his empathy toward the crime and the victim "appeared somewhat disingenuous and superficial, suggesting that he may not fully understand the impact of his actions." The psychologist went on to say that Mr. Valenzuela "continues to avoid internal exploration of some of the underlying causes of his choices and actions." The psychologist further commented that Mr. Valenzuela's expression of remorse regarding the life crime was "unemotional, and self-focused ... rather than an internalized, emotional sense of regret and remorse." Mr. Valenzuela's lack of insight and remorse evidences a failure to appreciate the wrongfulness of his past actions and creates serious concerns regarding his ability to refrain from violent behavior in the future.

Mr. Valenzuela's most recent risk assessment scores bolster the conclusion that he poses an unreasonable risk of danger to society if released from prison. Mr. Valenzuela's 2008 psychological evaluation found that he scored in the "moderate" range for psychopathy, rated in the "moderate" category for both risk of violent recidivism and general recidivism, and that overall he posed a "moderate" risk of violence in the free community. According to the psychologist, Mr. Valenzuela's elevated risk for violent recidivism is based on historical factors such as his prior criminal acts and history of substance abuse, as well as more current and dynamic factors including his lack of insight and negative attitudes regarding his criminality and past behavior. The psychologist's assessment that Valenzuela overall posed a moderate risk of violence was based primarily on his failure to voluntarily recognize his significant substance abuse problem and his lack of commitment to treatment in the free community, as well as his lack of insight into the impact of his actions and lack of empathy for the victim.

CONCLUSION:

I have considered the record and the factors for assessing suitability or unsuitability for parole under California Code of Regulations, Title 15, section 2402. I find that the negative factors I have discussed demonstrate why Mr. Valenzuela currently poses an unreasonable risk of danger to society if released from prison. Therefore, I reverse the decision to parole Mr. Valenzuela.

Decision Date: February 25, 2011


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

SEAN VELAZCO, E-45520
Second-degree murder

AFFIRM: _____

MODIFY: _____

REVERSE: _____ **X** _____

STATEMENT OF FACTS

According to a 1992 appellate court decision, on June 8, 1988, Sean Velazco¹ was watching movies and drinking beer at a friend's house. At about 10:00 p.m., Mr. Velazco and another friend left and went to the home that Mr. Velazco shared with his 81-year-old grandmother, Louise Murata. While at his house, Mr. Velazco and his friend smoked cocaine. A short time later, as Mr. Velazco was leaving to take his friend home, he got in an argument with Ms. Murata, who pled with him not to leave the house.

Early the next morning, Mr. Velazco called emergency personnel to request medical assistance at his house. When paramedics arrived, Mr. Velazco met them at the door. Mr. Velazco told the paramedics that he had killed his grandmother and showed them the cooking pot he had struck her with. When the police arrived, Mr. Velazco stated, "I just lost it...I couldn't stand to see her suffer any longer." Mr. Velazco admitted that he had struck Ms. Murata several times with the pot and then placed his hand over her mouth and nose and suffocated her.

GOVERNING LAW:

The question I must answer is whether Mr. Velazco will pose a current danger to the public if released. In answering this question, I must examine the same record that was before the parole board and adhere to the same legal standards. The circumstances of his crime can provide evidence of his current dangerousness when the record also establishes that something in his pre- or post-incarceration history, or his current demeanor and mental state, indicate that the circumstances of the crime remain probative of current dangerousness. (*In re Lawrence* (2008) 44 Cal. 4th 1181.)

DECISION:

On September 29, 2010, the Board of Parole Hearings found Mr. Velazco suitable for parole based on his lack of a criminal record, lack of serious institutional misconduct, educational and vocational upgrades, demonstration of insight and remorse, participation in Alcoholics Anonymous and other self-help programs, realistic parole plans, and age.

¹ Mr. Velazco's last name is sometimes misspelled in the record as "Velasco." The proper spelling is "Velazco."

I acknowledge Mr. Velazco has made a number of laudable gains while incarcerated. He earned an Associate of Arts degree, completed vocational training, and held skilled institutional jobs. He also has participated in Alcoholics Anonymous/Narcotics Anonymous since 1990, as well as other self-help programming, including anger management courses, Alternative to Violence Project workshops, the Life Skills Program, and the IMPACT victim's awareness workshop. I commend Mr. Velazco for taking these positive steps. But they are outweighed by negative factors that demonstrate he poses a current danger to society if released.

Mr. Velazco carried out the murder of his grandmother in an especially atrocious manner. In beating his elderly and vulnerable victim with a pot and then suffocating her to death, he showed an extreme callous disregard for her suffering. The crime is especially troubling considering Mr. Velazco held a position of trust with Ms. Murata as her caretaker and grandson. Further, Mr. Velazco's motive for killing the woman who had cared for him much of his childhood, while not entirely clear, certainly is very trivial in relation to the offense.

In addition to the horrendous nature of the crime, it is troubling that Mr. Velazco has provided varying accounts of his motivation for killing his grandmother and still maintains that he was motivated, in part, to end her suffering. According to the 1993 appellate court decision, he told police that Ms. Murata was complaining that her head hurt and that he "couldn't stand to see her suffer any longer" so he killed her. Mr. Velazco has changed his story somewhat, telling his psychological evaluator in 2010 that immediately before the murder, Ms. Murata was challenging Mr. Velazco on his behavior and telling him that she could not take it anymore. Mr. Velazco said that upon hearing this from his grandmother he "snapped" and attacked her. But he did not completely abandon his claim that it was a mercy killing, telling the psychologist that he thought at the time that he was "putting her out of her misery" and explaining that the path his life was headed, as a result of his drug use, and the disrespectful nature with which he treated his grandmother, was causing her pain. Mr. Velazco's present claim that he killed his grandmother to ease the emotional pain appears to be a rationalization. By clinging to this belief that he was, in part, motivated to kill Ms. Murata in order to end her suffering, Mr. Velasco fails to accept full responsibility for his actions. His failure to do so and lack of insight into his crime makes it substantially more likely that he would commit a similar act in the future.

CONCLUSION:

I have considered the record and the factors for assessing suitability or unsuitability for parole under California Code of Regulations, Title 15, section 2402. I find that the negative factors I have discussed demonstrate why Mr. Velazco currently poses an unreasonably risk of danger to society if released from prison. Therefore, I reverse the decision to parole Mr. Velazco.

Decision Date: February 25, 2011


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

DOUGLAS DUSTIN, K-06121

First-degree murder

AFFIRM:

MODIFY:

REVERSE:

 X

STATEMENT OF FACTS:

According to the appellate court decision affirming Douglas Dustin's conviction, Mr. Dustin learned that his wife, Heidi Dustin, was having an affair. In March 1985, Mr. and Mrs. Dustin separated. Mrs. Dustin moved into their vacation home in San Diego. In March 1986, Mrs. Dustin filed for divorce. On September 13, 1987, Mr. Dustin drove from Los Angeles to San Diego. At around 7:15 p.m., Mrs. Dustin's neighbors heard gunshots followed by Mrs. Dustin screaming, "help me, help me." Two neighbors saw Mrs. Dustin run into the street, chased by Mr. Dustin. Mr. Dustin fired once and Mrs. Dustin fell into the street. He then put the gun to her head and fired two more times. Mrs. Dustin died from the gunshot wounds.

Mr. Dustin surrendered himself to law enforcement officials on September 14, 1987. A jury convicted him of first-degree murder and found that he used a firearm in the commission of the crime. In the sanity phase, a mistrial was declared when the jury was unable to reach a verdict. A second sanity trial resulted in a mistrial for the same reason. Mr. Dustin filed a petition for a new trial as to his guilt. The Court granted the petition. But before the trial began, the court suspended proceedings based on doubts about Mr. Dustin's mental competence. After Mr. Dustin was found mentally competent to stand trial, he waived his right to a jury trial and stipulated to have the court decide both guilt and sanity. The court found him guilty of first-degree murder with a firearm-use enhancement. The court also found that Mr. Dustin was sane at the time of the crime. He was sentenced to 25 years to life in prison for murder and a two-year consecutive term for the use of a firearm. The judgment was affirmed on appeal.

GOVERNING LAW:

The question is whether Mr. Dustin is currently a danger to the public. In answering this question, I must examine the same record that was before the Board of Parole Hearings and adhere to the same legal standards. 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 remains probative of current dangerousness. (*In re Lawrence* (2008) 44 Cal. 4th 1181, 1214.)

DECISION:

The Board of Parole Hearings found Mr. Dustin suitable for parole based upon his expressions of remorse, a reduced risk of recidivism, positive institutional behavior, an enhanced ability to function within the law upon release, realistic parole plans, and his lack of a prior criminal record. The Board further found that he was under "significant stress" at the time of the murder based, in part, on the fact that he was experiencing a divorce.

Mr. Dustin has made some gains while incarcerated. He entered prison a highly educated endodontist. In prison, he held an institutional job as a porter. He has also participated in some self-help and therapy programs, including Arts in Corrections, Celebrate Recovery Program, a nutrition and diabetes class, 40 Days of Purpose Driven Life and a relationships group. I commend Mr. Dustin for taking these positive steps, but they are outweighed by negative factors that demonstrate he remains unsuitable for parole.

Mr. Dustin's crime was vicious and cruel. As the probation officer noted, in this "carefully planned, premeditated murder, obsessive jealousy appears to have turned into violence and rage." After stalking his wife for nearly a year, Mr. Dustin confronted her at their home in San Diego, in violation of a restraining order. After firing initial shots, he chased Mrs. Dustin and shot her again, causing her to fall to the ground. Then he placed the gun to her head and shot her in an execution-style manner. As the 2010 Board noted, the crime was a terrible and tragic.

I am also concerned by Mr. Dustin's longstanding history of mental illness. Two mental health professionals who evaluated Mr. Dustin after the life offense concluded that he suffered from depression when he murdered Mrs. Dustin. Additionally, according to the Sentencing Statement submitted by Mr. Dustin's trial attorney, Mr. Dustin shot and killed his wife "as a result of his mental illness, psychotic major depression, and his indoctrination in 'Born-Again Marriages,' a cult like group which espouses supposed biblical punishment for adultery and reunification of estranged spouses, either on earth or in heaven." His mental health problems have continued in prison. According to a medical chrono dated June 10, 1996, Mr. Dustin "suffers from severe depression with psychotic features and has had several suicide attempts." His 2010 psychological evaluator diagnosed him with major depression with psychotic features, in partial remission. I find it equally alarming that the evaluator opined that Mr. Dustin:

"continues to demonstrate some symptoms of a dependent nature such that he has exhibited fearfulness of independent freedom, some tendency toward over reliance on others, fear of separation, excessive reliance on others (e.g. group, structured setting) to assume responsibility. As such, he is diagnosed with Personality Disorder Not Otherwise Specified with Obsessive-Compulsive and Dependent traits."

He was reported as having symptoms of psychosis and depression in February 2007. After he was denied parole in October 2007, his participation in mental health programs dropped off. This causes me concern that if released, problems in life may cause him to stop participating in the self-help and mental-health programs he will need. In August 2008, he experienced suicidal

ideation after distress stemming from the decision to place him in a lower level of mental health care. If these types of changes have caused him suicidal thoughts and distress in the prison setting, I am concerned that his mental state could be negatively affected by the changes in his life that would be caused by his release back into society. Given that many of these characteristics undoubtedly contributed to Mr. Dustin's decision to viciously murder his wife, I believe their continued validity remains predictive of his current dangerousness.

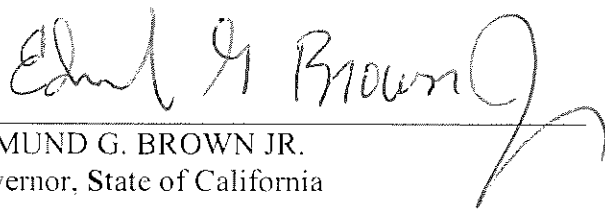
In 2006, he is documented as having felt agitation and resentment because he believed he had been held unlawfully since December 2005, and that the "department is acting against the law. Lifers are being manipulated for the benefit of the guard's union." His failure to understand that his own actions are solely responsible for his incarceration, indicates that he may not refrain from further violent conduct if released.

Given Mr. Dustin's current mental health diagnoses, I also have serious reservations about his limited involvement in self-help and therapy over the years. Mr. Dustin has not participated in any domestic violence prevention or abuse prevention against women. His only relevant participation appears to be his involvement in one relationship group. Self-help and therapy programs will provide Mr. Dustin with knowledge and skills necessary to succeed upon release from prison and will help him avoid violence in the future.

CONCLUSION:

I have considered the record and the criteria for assessing Mr. Dustin's suitability for parole. I find that the negative factors I have discussed demonstrate why Mr. Dustin poses a current danger to society if released from prison. Therefore, I reverse the decision to parole Mr. Dustin.

Decision Date: March 4, 2011


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

GREGORY JONES, H-52005

First-degree murder

AFFIRM:

MODIFY:

REVERSE:

 X

STATEMENT OF FACTS

In the early morning hours of April 27, 1991, Gregory Jones and his uncles, Marty Harris and Patrice Andre Flucker, decided to rob someone. On the street they came across Paula Harris and her boyfriend, Andre Williams. Ms. Harris was the sister of Mr. Harris and Mr. Flucker. Mr. Jones and his uncles discussed their intent to rob someone and Mr. Harris asked "who has the money, who has the dope?" Mr. Williams walked over to a group of people and brought back Larry Porter, a homeless man. Mr. Harris pointed a shotgun at Mr. Porter and demanded drugs or money. Mr. Jones then took the shotgun from Mr. Harris and, at the direction of Mr. Harris, shot and killed Mr. Porter. Mr. Harris went through Mr. Porter's clothes and took eight dollars. Police arrested Mr. Jones three days later. He pled guilty to first-degree murder with a firearm enhancement and was sentenced to 28 years to life in prison.

GOVERNING LAW:

The question I must answer is whether Mr. Jones is currently a danger to the public. In answering this question, I must examine the same record that was before the Board of Parole Hearings and adhere to the same legal standards. 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* (2008) 44 Cal. 4th 1181, 1214.)

DECISION:

On October 14, 2010, the Board of Parole Hearings found Mr. Jones suitable for parole based on his expression of remorse, acceptance of responsibility, insight into the crime, participation in self-help programs and vocational training, positive institutional work record, realistic parole plans, lack of assaultive behavior as a juvenile, and reduced recidivism risk due to age.

I acknowledge Mr. Jones has made laudable gains while incarcerated. He earned a General Equivalency Diploma, completed vocational training, and held a number of institutional jobs. He has attended Alcoholics Anonymous meetings on a fairly regular basis since 2005. He also

participated in other self-help and therapy programs, including various anger management classes, Creative Conflict Resolution, various Project PRIDE workshops, Alternative to Violence Project, Breaking Barriers, the Pathways to Sobriety program, and group therapy. I commend him for taking these positive steps. But they are outweighed by negative factors that demonstrate he remains unsuitable for parole.

Mr. Jones callously executed a man in cold blood. He went out into the streets looking for someone to rob. Upon coming across an unsuspecting man who posed no threat, Mr. Jones shot him to death when he failed to turn over any drugs or money. The motive for the murder was very trivial.

The aggravated nature of the crime when considered with other evidence indicates that Mr. Jones remains dangerous. The psychologist who evaluated him most recently found that his risk of violent recidivism was in the moderate range. The psychologist also found that overall Mr. Jones posed a "low to moderate" risk of recidivism if released to a free community. The psychologist listed Mr. Jones' young age at the time of the offense, the violent nature of the offense, early behavioral issues, and history of drug and alcohol abuse as factors contributing to the elevated risk. Other factors that increased his risk assessment score were his potential employment problems, glibness and superficial charm, lying, parasitic lifestyle, impulsivity, and need for stimulation.

I am also concerned by Mr. Jones' recent misbehavior in prison. In 2007, he received a rules violation report for lewd conduct resulting from inappropriate physical contact with his visiting ex-wife. He was also reprimanded in 2007 for failing to report to his job assignment. Mr. Jones' recent inability to abide by prison rules indicates that he is not yet able to abide by the rules of society. Taken together, his history of violence, his risk of violent recidivism, and his recent prison misconduct provide evidence that he still presents a danger to society.

CONCLUSION:

I have considered the record and the criteria for assessing Mr. Jones' suitability for parole. I find that the negative factors I have discussed demonstrate why Mr. Jones poses a current danger to society if released from prison. Therefore, I reverse the decision to parole Mr. Jones.

Decision Date: March 11, 2011


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

WILLIAM TABB, C-58436

Second-degree murder

AFFIRM:

MODIFY:

REVERSE:

_____ X _____

STATEMENT OF FACTS:

According to the probation report, on July 19, 1980, William Tabb and his wife, Laura, got into an argument during which both threatened divorce. At some point, he struck her in the head with an object, causing a fatal fracture. A medical examiner later concluded that the injury was consistent with being struck by a ball peen hammer, which police officers found at Mr. Tabb's home. Mr. Tabb reported her missing three days after he killed her. He then filed for divorce and carried on with his life.

Over a year later, on November 3, 1981, Laura's remains were found wrapped in plastic in an isolated, brushy area. Investigating officers found by the remains blue "rug remnants" that tested positive for blood. Three matching rug remnants were found around the bed in the master bedroom at the Tabb residence. Other items found near her remains included part of a pajama set and a mattress cover. The remaining part of the pajama set was found in the Tabb home. Officers discovered that one of the beds in the home had a relatively new mattress cover. There was also evidence of bloodstains in the master bedroom.

Mr. Tabb was arrested on November 7, 1981. A jury convicted him of second-degree murder and found that he used a dangerous or deadly weapon during the commission of the crime. The court sentenced him to 15 years to life in prison for second-degree murder plus an additional year for using the weapon.

GOVERNING LAW:

The question is whether Mr. Tabb is currently a danger to the public. In answering this question, I must examine the same record that was before the Board of Parole Hearings and adhere to the same legal standards. 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* (2008) 44 Cal. 4th 1181, 1214.)

DECISION:

The Board of Parole Hearings found Mr. Tabb suitable for parole based upon his expressions of remorse, positive prison behavior, an enhanced ability to function within the law upon release, a stable social history, a reduced risk of recidivism, lack of a criminal record, and his parole plans.

Mr. Tabb has made some gains while incarcerated. He has participated in some self-help and therapy programs, including a parenting program, Project PRIDE facilitator training, and an eight-week emotional maturity program. I commend Mr. Tabb for taking these positive steps. But they are outweighed by negative factors that demonstrate he remains unsuitable for parole.

Mr. Tabb's crime was especially brutal and callous. As the probation report notes, Laura suffered a large fracture to her skull and her head was wrapped with a piece of terry cloth. The probation officer noted that the presence of a hole in the terry cloth suggested that the fatal blow was delivered after Laura was unconscious, or when she was rendered incapable of defending herself. After inflicting the fatal blow, Mr. Tabb wrapped her body in plastic and abandoned it in an isolated area, thus demonstrating an exceptionally callous disregard for her life and suffering.

Despite his years of incarceration, Mr. Tabb has never accepted any responsibility for his crime. Instead, he blames others. According to a November 1981 police report, he told a neighbor that he believed Laura committed suicide. As reflected in his 1988 psychological evaluation, he then began accusing his son and one of his son's friends of the murder stating that they were "motivated by obtaining the inheritance." He blamed his conviction on his lawyer who he says provided him with an inadequate defense. In 1993, Mr. Tabb changed his story again. He told his psychological evaluator that he no longer believed that his son was responsible, but that an unknown assailant killed his wife. In 2000, he partially reverted to blaming his son for Laura's death. He told his psychological evaluator that he did not believe that his son "directly" killed his wife. When the evaluator asked him if his son might have arranged for Laura's murder, he noted that his son received \$125,000 in insurance proceeds and \$78,000 from the sale of their home. More recently, he has again theorized that the murder was committed by an unknown assailant and that maybe somebody was mad at her. And as noted in his most recent evaluation, he focuses "primarily on describing his poor legal representation and the fact that he was 'sold out by the system' in general."

The psychologist who assessed him in 2010 explained that his lack of insight into the reasons he committed the crime indicates that he is no better equipped today to deal with interpersonal conflicts than he was when he killed his wife. As the psychologist explained:

Given his staunch claim of innocence over the last 30 years, it is not expected that he will be suddenly become more candid in the future. He continues to use the defenses of denial and repression to psychologically deal with the emotional repercussions of the intolerable realities of the life crime. Although Mr. Tabb seems to have the cognitive fortitude necessary to gain insights into the antecedents of his behavior, it seems as if he is making the conscious choice not to. Without a willingness to delve deeper into the causative factors of such violent behavior, it cannot be expected that he has developed the skills necessary to deal with interpersonal conflicts in a more constructive manner.

Even the 2010 Board concluded, "Is there credibility concerns [sic], yes. Is there a failure to take responsibility for the crime, yes." Mr. Tabb is not required to admit guilt to be found suitable for parole. But his past and present attitude toward the crime are factors that affect parole suitability. (Cal.Code Regs., tit. 15 § 2402(b).) In refusing to accept responsibility, Mr. Tabb shows no understanding of what he did wrong and what he needs to do differently in the future. Without this understanding, I am concerned that he continues to pose a danger to the public.

The record has also consistently indicated that Mr. Tabb lacks genuine remorse for his wife's death. His 2010 psychological evaluator found his expression of sympathy over his wife's death to be shallow, explaining that "although he stated he was upset after his wife's disappearance, he 'carried on' with his life before the discovery of her body." The psychologist concluded that "Mr. Tabb placed more importance on the loss of his home over the loss of his wife after his conviction." The evaluator also opined, as previous evaluators had, that:

there appears to be a narcissistic component to Mr. Tabb's personality. Although not particularly flagrant, there are more subtle signs of self-centeredness as evidenced by his relishing in past accomplishments, taking pride in his highly moral perception of himself, failure to accept personal responsibility for his actions, failure to display genuine empathy for the victim, as well as the lack of insight and appreciation for how his actions have impacted others.

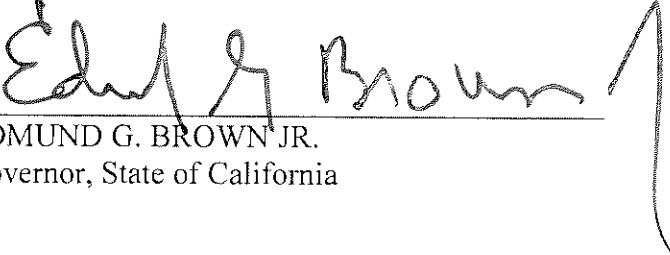
Mr. Tabb's failure to exhibit genuine remorse or empathy for his wife's death shows a callous disregard for human suffering.

CONCLUSION:

In sum, Mr. Tabb is someone who committed a brutal, callous murder for which he has never accepted any responsibility. Neither has he ever displayed any insight into his violent actions, nor any genuine remorse for his victim's fate. When taken together, this evidence indicates that he poses a current threat of further violence if released.

I have considered the record and the criteria for assessing Mr. Tabb's suitability for parole. I find that the negative factors I have discussed demonstrate why Mr. Tabb poses a current danger to society if released from prison. Therefore, I reverse the decision to parole Mr. Tabb.

Decision Date: March 11, 2011


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

RICKY CARPENTER, B-95921

First-degree murder

AFFIRM:

MODIFY:

REVERSE:

 X

STATEMENT OF FACTS

On January 16, 1978, Ricky Carpenter beat, strangled, and stabbed his 57-year-old neighbor Evelyn Bentley. An autopsy revealed Ms. Bentley had been stabbed eight times. She died from a stab wound to the neck. There were also five stab wounds on her left breast. Mr. Carpenter has said that he was angry at Ms. Bentley because he blamed her for his mother's changed attitude toward him. He also felt she had played a role in his mother and stepfather splitting up.

On the day of the murder, he knocked on her door and asked her if he could use her phone because his was out of order. She let him in, and as she brought him a phone, he punched her in the face, knocking her to the floor. He then choked her until she was unconscious. He retrieved a butcher's knife from the kitchen and began stabbing her, which caused her to regain consciousness. She struggled and he attempted to suffocate her with a small area rug, leaving the knife embedded in her chest as he did so. As she continued to struggle, he delivered the fatal stab wound to her neck. After killing her, he took \$42 from her wallet to make it look like a burglary. He went home and washed his bloody clothes. He told police he was drunk and had taken three Valium before committing the murder.

GOVERNING LAW:

The question I must answer is whether Mr. Carpenter will pose a current danger to the public if released. In answering this question, I must examine the same record that was before the Board of Parole Hearings and adhere to the same legal standards. 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* (2008) 44 Cal. 4th 1181, 1214.)

DECISION:

The Board found Mr. Carpenter suitable for parole based on his remorse, insight, completion of vocational training, prison job record, participation in education and self-help programs, realistic parole plans, reduced risk of recidivism due to age, and lack of assaultive history as a juvenile.

I acknowledge Mr. Carpenter has made efforts to improve himself while incarcerated. He earned a General Equivalency Diploma as well as an Associate of Arts degree. He completed a mill and cabinet vocational program and held a number of institutional jobs in the areas of carpentry and furniture construction, amongst others. He also participated in self-help programs including Alcoholics Anonymous and Narcotics Anonymous, Victim Offender Education Group, Addiction Recovery Counseling, Inmates Putting Away Childish Things relationships workshop, Creative Conflict Resolution, Kairos Men's Retreat, Self-Esteem Enhancement Group, Assertiveness/Self-Esteem Group, Substance Abuse Group, Beginning Stress Management and Relaxation Skills Training Group, and individual and group psychotherapy. I commend Mr. Carpenter for taking these positive steps. But the circumstances of the commitment offense, when considered with other relevant evidence, show that Mr. Carpenter remains dangerous.

For inexplicable reasons, Mr. Carpenter committed a premeditated, vicious murder of a vulnerable and unsuspecting neighbor. He savagely attacked Ms. Bentley without provocation, and as she struggled for her life, he stabbed her repeatedly and suffocated her. In planning and carrying out this cold-blooded and brutal murder, Mr. Carpenter showed a callous disregard for Ms. Bentley's life and her suffering.

The nature of Mr. Carpenter's crime, when considered together with other relevant evidence, indicates that he still poses a threat to society. The psychologist who evaluated him in 2009 rated him in the "moderate" range for psychopathy, and in the "moderate" risk range for both violent and general recidivism. Overall, the psychologist found that he poses a "moderate" risk for violence in the free community. The psychologist pointed to Mr. Carpenter's relationship instability, substance abuse, young age at the time of the crime, his present lack of insight, impulsivity, and unresponsiveness to treatment as factors that contributed to his elevated risk of violent recidivism.

The psychologist also noted that Mr. Carpenter remains deficient in his ability to experience empathy for other people. This is particularly troubling because Mr. Carpenter's crime demonstrated a deficient ability to empathize with other people. The fact that he remains deficient in this area indicates that he remains prone to violence against others for trivial reasons.

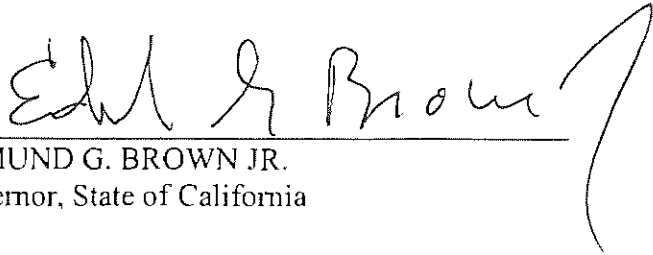
Also, Mr. Carpenter identified his inability to control anger as one of the factors that drove him to commit the crime. But he has done very little over the years to address his anger problem. Mr. Carpenter's only self-help programming aimed at addressing anger management was an 18 to 21 hour workshop entitled "Creative Conflict Resolution" in 2005. In 2009, the Board implored him to participate in self-help programming designed to address anger issues, or, if no such program was available, read self-help books addressing anger management. Despite this instruction from the Board, Mr. Carpenter has not taken steps to address his anger issues.

In sum, Mr. Carpenter committed a disturbingly vicious, callous, and inexplicable crime. The psychologist, who most recently evaluated him, concluded he still presents an elevated risk of violence if released, and that his ability to feel empathy for others is deficient. And while the nature of the murder evidences a severe anger problem, Mr. Carpenter's limited efforts to address this problem indicate he has not yet gained the ability to control his anger. This evidence, when taken together, indicates that Mr. Carpenter remains a danger to society.

CONCLUSION:

I have considered the evidence in the record that is relevant to whether Mr. Carpenter is currently dangerous. When considered as a whole, I find the evidence I have discussed shows why he currently poses a danger to society if released from prison. Therefore, I reverse the decision to parole Mr. Carpenter.

Decision Date: March 18, 2011


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

CALVIN THORNTON, C-07226

First-Degree Murder

AFFIRM:

MODIFY:

REVERSE:

 X

STATEMENT OF FACTS:

In April of 1972, Calvin Thornton, Phillip Ross and Larry Rich were socializing at a friend's house next door to James Dover's home. At some point, Mr. Rich went over to Mr. Dover's house to purchase drugs and have a drink. When Mr. Rich returned, Mr. Thornton told him to go back to Mr. Dover's house and ask for money. Mr. Thornton told him that if Mr. Dover did not give him any money he and Mr. Ross would rob Mr. Dover.

A few minutes later, Mr. Thornton and Mr. Ross appeared at Mr. Dover's house and asked if he had given Mr. Rich money. He replied that he did not have any money. Mr. Ross then threw Mr. Dover to the floor and he and Mr. Thornton beat and kicked him. They then dragged him around the room by his ears and genitals. Mr. Thornton and Mr. Ross took several items out of Mr. Dover's house and placed them in a car. Mr. Dover's body was found lying on the floor in his home. The coroner determined that he died from a blow to the head.

Mr. Thornton was not connected to the crime until several years later. Police arrested him in June of 1978. A jury convicted him of first-degree murder and the court sentenced him to 7 years to life in prison.

GOVERNING LAW:

The question I must answer is whether Mr. Thornton is currently a danger to the public. In answering this question, I must examine the same record that was before the Board of Parole Hearings and adhere to the same legal standards. 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* (2008) 44 Cal. 4th 1181, 1214.)

DECISION:

On October 21, 2010, the Board of Parole Hearings found Mr. Thornton suitable for parole based upon his participation in self-help programs and vocational training, positive institutional work record, realistic parole plans, enhanced ability to function within the law upon release, expressions of remorse, and reduced risk of recidivism due to age. The Board further found that he was under “significant stress” due to family obligations at the time of the murder that contributed to his criminal lifestyle.

Mr. Thornton has made some gains while incarcerated. He completed vocational training in furniture upholstery and held a number of institutional jobs. He also participated in Alcoholics Anonymous and Narcotics Anonymous and acted as a mentor in the Amity Substance Abuse Program. I commend Mr. Thornton for taking these positive steps. But they are outweighed by negative factors that demonstrate he remains unsuitable for parole.

Mr. Thornton murdered Mr. Dover in an especially cruel and heinous manner. He and his crime partner beat and defiled the innocent 63-year-old man and left him to die. They were motivated solely by their desire for money, a very trivial motive in relation to the offense. The two men carried out the attack in an unnecessarily gruesome manner demonstrating an extreme callous disregard for the suffering victim.

The nature of Mr. Thornton’s crime, when considered together with other relevant evidence, indicates that he still poses a threat to society. His 2008 psychological evaluation found that he rates in the “moderate” range for psychopathy, in the “moderate” range for risk of both violent recidivism and general recidivism, and overall poses a “moderate” risk of violence in the free community. The psychologist pointed to Mr. Thornton’s criminal history, young age at the time of the crime, lack of remorse, lack of empathy, impulsivity, and his lack of insight as factors that contributed to his elevated risk of recidivism. The psychologist noted that Mr. Thornton portrayed himself in an overly favorable light and appeared somewhat grandiose, and that he had a Personality Disorder with antisocial traits that further increased his risk of violence.

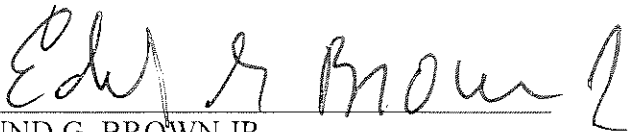
Further, Mr. Thornton maintains, as he has throughout his incarceration, that he was not present when the murder occurred. He told his psychologist in 2008 that “(s)omebody put me at the scene of the crime. A paid informant.” Mr. Thornton’s claims conflict with the testimony of Mr. Ross and two other witnesses. His assertion of innocence also conflicts with the appellate court opinion that found Mr. Thornton was an active participant in the murder.

Mr. Thornton is not required to admit guilt to be found suitable for parole (Pen. Code § 5011). But I am not obligated to accept his version of the crime as fact, and I do not. Mr. Thornton’s past and present attitude toward the crime are factors that affect suitability for release. (Cal.Code Regs., tit. 15 § 2402(b).) By refusing to admit his involvement in the murder, he shows that he has no insight into why he committed the crime, he shows no remorse for the pain his actions caused, and he refuses to accept responsibility for his actions. His current mental state with respect to insight, remorse, and acceptance of responsibility indicates that he is still prone to committing violent acts.

CONCLUSION:

I have considered the evidence in the record that is relevant to whether Mr. Thornton is currently dangerous. When considered as a whole, I find the evidence I have discussed shows why he currently poses a danger to society if released from prison. Therefore, I reverse the decision to parole Mr. Thornton.

Decision Date: March 18, 2011


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

ANDREW BURLESON, D-29913

Second-degree murder

AFFIRM:

MODIFY:

REVERSE:

 X

STATEMENT OF FACTS

On June 28, 1985, Andrew Burleson returned home to find that his wife, Shirley Burleson, had moved out and was planning to seek a divorce. Her 14 year-old daughter said that Mr. Burleson, her step-father, had molested her. Later that day, Mr. Burleson confronted Mrs. Burleson and her brother, David Turriff, about her decision to leave him. After the verbal confrontation, Mr. Burleson left the residence that Mrs. Burleson was staying at.

Later in the evening, Mr. Burleson returned to the residence and another verbal confrontation occurred between Mrs. Burleson and Mr. Burleson. Mrs. Burleson's sister, Linda Jackson, injected herself into the conversation and Mr. Burleson pointed a pistol at Ms. Jackson and threatened to shoot her. Mr. Turriff then challenged Mr. Burleson to a fight. When Mr. Burleson refused, Mr. Turriff slapped him in the face. Mr. Burleson then shot Mr. Turriff. He then shot Cheryl Postula, Mr. Turriff's pregnant girlfriend. Mr. Burleson then fired multiple shots in the direction of a nearby residence before leaving the scene on foot. Mr. Turriff died as a result of the gunshot wound. Ms. Postula suffered serious injury and survived but she lost the baby.

GOVERNING LAW:

The question I must answer is whether Mr. Burleson will pose a current danger to the public if released. In answering this question, I must examine the same record that was before the Board of Parole Hearings and adhere to the same legal standards. 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* (2008) 44 Cal. 4th 1181, 1214.)

DECISION:

The Board found Mr. Burleson suitable for parole based on his remorse, participation in self-help programs, completion of vocational training, prison job record, participation in education, realistic parole plans, lack of institutional misconduct, positive psychological evaluation, and reduced risk of recidivism due to age.

I acknowledge Mr. Burleson has taken some positive steps while incarcerated. He participated in drafting, and mill and cabinet vocational programs and held a number of institutional jobs. He also participated in a few self-help programs including various Corrections Learning Courses concerning topics such as victim's awareness, parenting, anger management, and stress management. He also participated in a Character Development course, the Mind Transformation Self-Help Program, and the Responsibility of Self-Determination Program. I commend Mr. Burleson for taking these positive steps. But the circumstances of the commitment offense, along with other relevant evidence, show that Mr. Burleson remains dangerous.

Mr. Burleson terrorized his wife's family, killing her brother and her brother's unborn child, seriously injuring her brother's girlfriend, and threatening to kill her sister. Fortunately, no one else was injured when Mr. Burleson then inexplicably fired multiple shots in the direction of a neighbor's house. The motive for Mr. Burleson's rampage—his wife leaving him after his step-daughter accused him of molesting her—was very trivial in relation to the offense and evidences an extreme inability to control his anger and manage personal relationships.

Mr. Burleson's ability to manage his anger remains a serious concern. Mr. Burleson's 2008 psychological evaluation indicated that he was agitated and somewhat arrogant and glib. He told the psychologist that he was agitated because he believed the Board was trying to keep him in prison. When asked about his anger problems by the Board in 2010, Mr. Burleson admitted that he "use to have a bad temper" but claimed "I haven't been angry in years." He then steered the discussion to his accomplishments in prison which were unrelated to his anger problem. The fact is he has done little if anything in prison to address his anger management problem other than a single anger management course in 2009. Instead of addressing how he deals with feelings of anger when they inevitably arise, he claims he simply does not experience anger. Mr. Burleson's insight into his anger management problem and efforts to address that problem remain inadequate considering the nature of his crime.

Similarly, he has not participated in sufficient self-help to address his issues with intimate relationships and domestic violence. Addressing these issues is particularly important because Mr. Burleson plans to live with Mrs. Burleson, and it was a heated argument between the two of them that precipitated the murder. Also, a few years prior to the life crime, Mr. Burleson pled guilty to assaulting a woman with whom he was living with at the time. Without some assurances that Mr. Burleson has acquired the skills to maintain an intimate relationship with his wife and others close to him, those same people remain at risk of future violence if he is released from prison.

This conclusion is confirmed by confidential information in his file and more recently received information that I believe will be deemed confidential which indicates that Mr. Burleson has anger issues, is manipulative, and remains dangerous. I cannot describe this information in greater detail without jeopardizing the sources of the information. But the relevance of this information to assessing Mr. Burleson's parole suitability cannot be discounted.

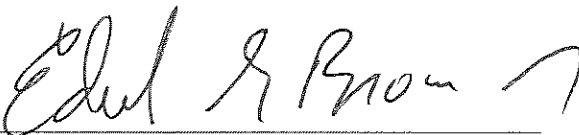
Further, Mr. Burleson refuses to fully accept responsibility for his actions. Despite pleading guilty to attempted murder for shooting Ms. Postula, he told the Board in 2010 that he did not intentionally shoot her but that he shot two warning shots at the ground and one of the bullets hit

her on a ricochet. According to the 1987 appellate court opinion, Mr. Burleson's version of the facts at that time was that after he shot Mr. Turriff, Ms. Postula ran at him and he shot her out of fear. In 2001, he told his psychological evaluator that the reason for his crime was his fearfulness for his own safety and his belief that his life was being ruined. Similarly, as previously mentioned, he recently blamed the Board for the fact that he remained in prison rather than recognizing that he was to blame. Mr. Burleson's failure to accept responsibility for his actions indicates that he does not appreciate the wrongfulness of those actions. This creates great concern that he would commit similar acts of violence in the future.

CONCLUSION:

I have considered the evidence in the record that is relevant to whether Mr. Burleson is currently dangerous. When considered as a whole, I find the evidence I have discussed shows why he currently poses a danger to society if released from prison. Therefore, I reverse the decision to parole Mr. Burleson.

Decision Date: March 18, 2011



EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

DAVID BURGESS, C-26009
Second-degree murder

AFFIRM:

MODIFY:

REVERSE:

 X

STATEMENT OF FACTS

On May 29, 1980, David Burgess¹ was at the apartment of Ray Stoffer, whom he had known for about a month. Mr. Stoffer and Mr. Burgess got into an argument about money Mr. Burgess believed Mr. Stoffer owed him for sexual services Mr. Burgess provided. After arguing for approximately fifteen minutes, Mr. Burgess choked Mr. Stoffer with an extension cord and then stabbed him thirty-one times. He died as a result of his injuries. After the murder, Mr. Burgess stole Mr. Stoffer's car. A couple months later he was arrested in Los Angeles and subsequently convicted of stabbing another man. He admitted to killing Mr. Stoffer while incarcerated for the other offense.

GOVERNING LAW:

The question I must answer is whether Mr. Burgess will pose a current danger to the public if released. In answering this question, I must examine the same record that was before the Board of Parole Hearings and adhere to the same legal standards. 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* (2008) 44 Cal. 4th 1181, 1214.)

DECISION:

The Board found Mr. Burgess suitable for parole based on his remorse, completion of educational programs, participation in self-help programs, vocational training, realistic parole plans, marketable job skills, and reduced risk of recidivism due to age.

I acknowledge Mr. Burgess has taken some positive steps while incarcerated. He obtained a General Equivalency Diploma, an Associate of Arts degree, and a Bachelor of Science degree. He participated in drafting and office machine repair vocational programs and held a number of institutional jobs. He also participated in a number of self-help programs including Alcoholics Anonymous and Narcotics Anonymous, Substance Abuse Therapy Group, Anger Control Group, Partnership for Re-entry group, Lifer Decision Making seminar, Life Skills for Lifers seminar,

¹ Burgess is also known as Daniel Giammarco

Lifer Group, Marriage and Family course, and Interpretive Analysis Therapy Group. He participated in individual psychotherapy and group psychotherapy for a number of years. I commend Mr. Burgess for taking these positive steps. But the circumstances of the commitment offense, along with other relevant evidence, show that Mr. Burgess remains dangerous.

Mr. Burgess killed Mr. Stoffer in a particularly callous manner, choking him to the point of unconsciousness and then mutilating his body by stabbing him 31 times. Mr. Burgess killed Mr. Stoffer for the exceedingly trivial reason that he refused to pay Mr. Burgess for money he believed he was owed for sex.

The murder of Stoffer is not the only instance that Mr. Burgess stabbed a man with whom he had sexual relations. Shortly after the murder, Mr. Burgess stabbed another man in a very similar incident. Again, Mr. Burgess claimed that the victim refused to pay him for sex and that he became angry and attacked the victim with a knife. Fortunately, law enforcement caught Mr. Burgess shortly after the attack and the victim survived. In 1975, Mr. Burgess was convicted of manslaughter in Massachusetts. According to Mr. Burgess' statements at his 2010 parole consideration hearing, he stabbed to death a man he had been living with for approximately six months and with whom he was having sexual relations.

While each of these gruesome attacks occurred many years ago, Mr. Burgess remains a threat to commit violent crimes according to his 2010 psychological evaluation. The psychologist concluded that he scored in the "moderate" range for likelihood of violent recidivism, in the "medium" range for likelihood of general recidivism, and that overall he posed a "moderate" risk for violence in the free community. These findings were based, in part, on his acts of severe violence at a young age, history of unstable relationships, alcohol and drug abuse, and lack of resources for personal support. The psychologist also diagnosed Mr. Burgess with Antisocial Personality Disorder, and found that he scored in the "moderate" range of the clinical construct of psychopathy, both of which increase his likelihood of recidivism.

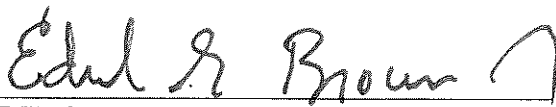
Further, the psychologist identified Mr. Burgess' prison misconduct as evidence of an impulse control problem that increased the likelihood that he would commit a violent crime. His inability to control his impulses has been a prevailing problem for Mr. Burgess. In discussing the murder of Mr. Stoffer with the Board in 2010, he explained that he became angry when Mr. Stoffer refused to pay him so he attacked him. He also discussed how similar fits of anger led to his other violent crimes. While incarcerated, he was disciplined on five occasions for physical altercations with other inmates, most recently in 2000, and was counseled in 2005 for refusing to comply with institutional procedures for counting inmates. Mr. Burgess' inability to control his impulses, both violent and otherwise, provides evidence of his inability to comply with the laws of society if released from prison.

In sum, Mr. Burgess' extensive record of antisocial and extremely violent behavior creates concern regarding his ability to refrain from future violent acts. His recent psychological evaluation and record of institutional misconduct lead me to conclude that he is not yet capable of controlling himself and poses a serious threat of committing future crimes.

CONCLUSION:

I have considered the evidence in the record that is relevant to whether Mr. Burgess is currently dangerous. When considered as a whole, I find the evidence I have discussed shows why he currently poses a danger to society if released from prison. Therefore, I reverse the decision to parole Mr. Burgess.

Decision Date: March 24, 2011


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

VICTOR ZABALA, H-14351

Second-degree murder

AFFIRM:

MODIFY:

REVERSE:

 X

STATEMENT OF FACTS

On September 27, 1989, Victor Zabala and a group of four friends were congregating in the street outside his home. A friend of Zabala began shooting rounds into the air with Zabala's new gun. Oscar Perez (Oscar) and his brothers, Jose Nicholas Perez (Nicholas) and Jose Amilcar Perez (Amilcar), were across the street eating dinner and drinking beer outside of Oscar's apartment along with Oscar's wife and children. Oscar heard the shot and told the man to stop shooting, which led to a physical altercation between the two. After the altercation, Oscar returned to the area outside his apartment to rejoin his family. A few minutes later, Zabala returned and shot Oscar in the right shoulder. Zabala then shot Amilcar, killing him. As Oscar turned around to escape, Zabala shot him in the back, paralyzing him from the waist down. Zabala then shot Nicholas in the right knee. As Nicholas tried to run away, Zabala chased him and shot him on the left side of his chest, causing serious injury. Shortly thereafter, Zabala pointed the gun at Oscar and pulled the trigger twice, but the gun did not fire. Zabala then fled the scene in a car.

GOVERNING LAW:

The question I must answer is whether Mr. Zabala will pose a current danger to the public if released. In answering this question, I must examine the same record that was before the Board of Parole Hearings and adhere to the same legal standards. 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* (2008) 44 Cal. 4th 1181, 1214.)

DECISION:

The Board found Mr. Zabala suitable for parole based on his remorse, lack of a juvenile criminal record, acceptance of responsibility for the crime, participation in self-help programs, completion of vocational training, prison job record, participation in education, realistic parole plans, good recent institutional behavior, positive psychological evaluation, and reduced risk of recidivism due to age.

I acknowledge Mr. Zabala has taken some positive steps while incarcerated. He obtained a General Equivalency Diploma, participated in vocational training, and performed institutional jobs. He also has participated in a number of self-help programs, including Alcoholics Anonymous, Narcotics Anonymous, Criminals and Gang Members Anonymous, and anger management courses, amongst others. I commend Mr. Zabala for taking these positive steps. But the circumstances of the commitment offense, along with other relevant evidence, show that Mr. Zabala remains dangerous.

Mr. Zabala committed an especially senseless and heinous crime. He attacked an entire family, shooting the three victims while other family members helplessly stood by. One brother died, the other was paralyzed, and a third was severely injured due to his actions. Further, his motive was very trivial in relation to the offense.

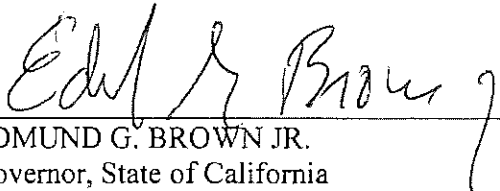
Mr. Zabala was an admitted drug dealer with prior convictions for possession of drugs for sale and possession of a concealed weapon. His violent conduct did not stop when he entered prison. In 1991, he was convicted of possessing a weapon in prison and given an additional prison sentence. Then, in 2001 he was disciplined for committing battery on another inmate.

Mr. Zabala's willingness to repeatedly commit criminal acts despite the serious negative consequences evidences an unwillingness and/or inability to refrain from violent criminal conduct. Considering the atrocious nature of the commitment offense and Mr. Zabala's extensive criminal actions over a period of decades, Mr. Zabala has not yet proven that he can refrain from violent behavior for a long enough period to conclude that he is not a current danger to society.

CONCLUSION:

I have considered the evidence in the record that is relevant to whether Mr. Zabala is currently dangerous. When considered as a whole, I find the evidence I have discussed shows why he currently poses a danger to society if released from prison. Therefore, I reverse the decision to parole Mr. Zabala.

Decision Date: March 25, 2011


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

NELSON GAMEZ, H-36619

First-degree murder

AFFIRM: _____

MODIFY: _____

REVERSE: _____

 X

STATEMENT OF FACTS:

On September 12, 1991, Martha Gamez was reported missing by her parents and her husband Nelson Gamez. Mr. Gamez told investigators that he had dropped Mrs. Gamez off at a shopping mall in Hayward and had not seen her since. Six days later investigators recovered blood stained clothes from Mr. Gamez's car and apartment. Two days later, investigators determined that the body of a woman found on top of a levee near Stockton was Mrs. Gamez. Near Mrs. Gamez's body investigators found an ashtray subsequently linked to Mr. Gamez's car. Mrs. Gamez had been beaten and stabbed 28 times on her neck, arms, hands, and ear.

Mr. Gamez was arrested on September 20, 1991. He admitted knowing his wife had been killed, that her body had been dumped near Stockton, and that the blood stains found in his vehicle would match hers, but denied that he killed her.

GOVERNING LAW:

The question I must answer is whether Mr. Gamez will pose a current danger to the public if released. In answering this question, I must examine the same record that was before the Board of Parole Hearings and adhere to the same legal standards. 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* (2008) 44 Cal. 4th 1181, 1214.)

DECISION:

The Board found Mr. Gamez suitable for parole based on his acceptance of responsibility, remorse, lack of institutional misconduct, participation in education and self-help programs, completion of vocational training, realistic parole plans, positive psychological evaluation, and reduced risk of recidivism due to age.

I acknowledge Mr. Gamez has taken some positive steps while incarcerated. He earned a General Equivalency Diploma and completed vocational training in printing technology. He also participated in self-help programs including Alcoholics Anonymous, Seeking Peaceful Solutions, Cage Your Rage, Balanced Reentry Activity group, Anger Management, and the Impact

Program. I commend him for taking these positive steps. But the circumstances of the murder, along with other relevant evidence, show that Mr. Gamez remains dangerous.

Mr. Gamez killed his wife in a particularly vicious manner. He showed an exceptionally callous disregard for her suffering, stabbing her 28 times and then leaving her to suffer as she clung to life for somewhere between 15 minutes and several hours after the attack, according to the probation report. Meanwhile, Mr. Gamez reported her missing and concocted a story for her parents and police. Further, he held a position of trust with Mrs. Gamez as her husband and the father of her children, who were left without either parent to care for them.

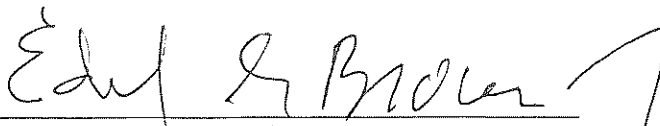
Despite overwhelming evidence and many years of self-help programming in prison, Mr. Gamez has still not acknowledged his role in the crime. Initially he denied any responsibility. In 2007 he told his psychological evaluator that he stabbed Mrs. Gamez three or four times with a small knife and that the stab wounds were not deep. He also claimed that her body was found in a different location than where he had left her and speculated that she must have walked some distance after he left. He said that when Mrs. Gamez turned up missing and her parents became concerned, he assumed she had run off with another man. In his 2010 psychological evaluation, he said that after he stabbed her, she hit him with her purse and then he shoved her out of the car. He said when he drove away she was standing and apologizing to him.

Mr. Gamez's account of the murder conflicts with the evidence of the crime and Mrs. Gamez's wounds. She was stabbed 28 times, but Mr. Gamez only acknowledges stabbing her three or four times. His story implies that someone else came along and stabbed her 24-25 additional times. He even says that after he finished stabbing her, she hit him with her purse, and after he shoved her out of the car, she was standing and apologizing to him. Given the evidence against him, Mr. Gamez's story is utterly unbelievable. He continues to minimize his role in the murder, and fails to accept responsibility for the full extent of his actions. Mr. Gamez is not required to admit guilt to be found suitable for parole (Cal. Pen. Code § 5011). But I am not obligated to accept his version of the crime as fact, and I do not. By minimizing his role in the crime and refusing to accept responsibility, he shows that he lacks insight into why he committed the crime and lacks remorse for his actions. His current mental state therefore indicates that he is still prone to committing further acts of violence.

CONCLUSION:

I have considered the evidence in the record that is relevant to whether Mr. Gamez is currently dangerous. When considered as a whole, I find the evidence I have discussed shows why he currently poses a danger to society if released from prison. Therefore, I reverse the decision to parole Mr. Gamez.

Decision Date: April 1, 2011


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

TUNG NGUYEN, J-32587
First-Degree Murder

AFFIRM:

MODIFY:

_____ **X** _____

REVERSE:

STATEMENT OF FACTS:

Tuan Minh Truong and three other people were staying in a motel room in Garden Grove. In the early morning hours, Tuan Truong had a heated telephone conversation with Khuong Vo about money Tuan Truong owed Khuong Vo. At one point Tuan Truong asked Khuong Vo if he was threatening to come to the motel and hurt him, he then called Khuong Vo a “chicken.”

Khuong Vo drove to the motel with Tung Nguyen, Duc Truong, and Dung Nguyen. At Khuong Vo’s request, Dung Nguyen knocked on Tuan Truong’s door and told the occupants he came to visit them. When the door opened, Khuong Vo, Duc Truong, and Tung Nguyen, each armed with a knife, rushed into the room. Khuong Vo pinned Tuan Truong on a bed and began hitting him. Tung Nguyen held a knife to one of the other victims and remained near the window acting as a lookout. Duc Truong ripped the telephone cord from the wall and turned off the lights. Duc Truong took a jacket, jewelry, and cash from the victims. At one point, Duc Truong approached the bed and stabbed Tuan Truong in his thigh. The stab wound severed Tuan Truong’s femoral artery and he bled to death.

GOVERNING LAW:

The question I must answer is whether Mr. Nguyen is currently a danger to the public. In answering this question, I must examine the same record that was before the Board of Parole Hearings and adhere to the same legal standards. 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* (2008) 44 Cal. 4th 1181, 1214.)

DECISION:

On November 3, 2010, the Board of Parole Hearings found Mr. Nguyen suitable for parole based on his remorse, insight, educational advancement, vocational training, lack of disciplinary infractions, participation in self-help programming, adequate parole plans, and stable social

history. Upon finding Mr. Nguyen suitable for parole, the Board applied Title 15 of the California Code of Regulations section 2403 as it deemed appropriate and determined and concluded that Mr. Nguyen should receiving a future release date of August 12, 2023.

I agree with the Board's determination that Mr. Nguyen no longer presents a threat to society if released on parole. Mr. Nguyen's conduct and rehabilitation has been exceptional. In addition to the factors mentioned above, Mr. Nguyen was commended by a correctional lieutenant in 2009 for his role in escorting a group of approximately 50 civilians to safety when they found themselves on the prison yard during an inmate riot in 2006. The lieutenant made a point of commending Mr. Nguyen for his courage in protecting the civilians in the face of possible retaliation by rioting inmates, and concluded that this incident showed the "authentic change" in his decision making that he had undergone since his incarceration.

While I do not downplay the seriousness of Mr. Nguyen crime, I note that it was Mr. Nguyen's crime partners who initiated the confrontation that resulted in Tuan Truong's murder. Mr. Nguyen did not participate in the assault and stabbing of Tuan Truong, and was not aware that his crime partner intended to stab him. At the time, Mr. Nguyen was just 16 years old and was influenced to participate in the crime by his adult crime partners. In fact Mr. Nguyen had a relatively stable social history and had a minimal history of criminal behavior prior to the life offense.

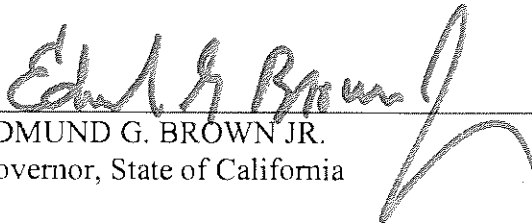
Further, Mr. Nguyen's 2010 psychological evaluation is highly supportive of parole. The psychologist determined that Mr. Nguyen rated in "very low" for psychopathy, and that he posed a "low" risk of violent recidivism, a "very low" risk of general recidivism, and overall he presented a "very low" risk of violence in the free community.

For all of the reasons discussed by the Board and for those additional reasons mentioned above, I agree with the Board's determination that Mr. Nguyen does not currently pose an unreasonable risk of danger to society. In this unique case, I believe Mr. Nguyen's exceptional rehabilitation dictates that he should receive an immediate release on parole.

CONCLUSION:

The Board's decision shall be hereby modified so as to grant Mr. Nguyen an immediate release on parole.

Decision Date: April 1, 2011


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

CHRIS MICHAEL FOWLER, C-96996

Second-degree murder

AFFIRM:

MODIFY:

REVERSE:

 X

STATEMENT OF FACTS

In late 1983, Chris Fowler lived with his girlfriend, Tina Miller, and her two children, Aaron, who was 22 months old, and Christy, who was three years old. On November 1, 1983, Mr. Fowler put both children down for an afternoon nap and fell asleep. About 40 minutes later, Christy woke Mr. Fowler up and told him Aaron was crying. Mr. Fowler went into Aaron's bedroom and screamed at the child, "What is your problem?" He slapped Aaron with his open hand knocking Aaron off the bed. Aaron went limp and his eyes had rolled back into his head. Despite the fact that he had already seriously injured Aaron, Mr. Fowler picked Aaron up and threw him to the floor again, causing Aaron to hit his head on the floor. He then picked Aaron up and placed him in the tub. Mr. Fowler called Tina and told her that Aaron was having an asthmatic seizure. Tina called her mother, a nurse, who lived on the same property. Tina's mother and sister arrived to find Christy crying hysterically and Fowler administering CPR to Aaron. Tina's mother immediately took over giving CPR to Aaron. They then took Aaron to the hospital. Aaron died two days later. The cause of Aaron's death was craniocerebral trauma.

Fowler smoked marijuana the morning of the life crime. He began smoking marijuana at age 14 and smoked on daily basis beginning at the age of 18.

GOVERNING LAW:

The question I must answer is whether Mr. Fowler will pose a current danger to the public if released. In answering this question, I must examine the same record that was before the Board of Parole Hearings and adhere to the same legal standards. 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* (2008) 44 Cal. 4th 1181, 1214.) In rare circumstances, the aggravated nature of the crime alone can provide a valid basis for denying parole even when there is strong evidence of rehabilitation and no other evidence of current dangerousness. (*Id.* at pp. 1211, 1214.)

DECISION:

I acknowledge Mr. Fowler has made efforts to improve himself while incarcerated. In 2010, he earned an Associate of Science Degree in Psychology from Ashworth College. He has received vocational education and has earned state certification in Plant Agriculturist and Forest Technician, a Pest Control License, and a Certificate of Educational Achievement in Radiologic Technology Program. Mr. Fowler has attended Alcoholics Anonymous and Narcotics Anonymous meetings for several years. He has participated in several self-help programs including: On Day At A Time; It Works When You Work It; Victim/Offender Learning Together Program; Self-Reflection/Evaluation; Project Pride-Repent, Reach-out, Restore, and Rebuild phases; Friends Outside Creative Conflict Resolution; Beyond Anger; Parenting; Anger Management; Breaking Barriers; Violence Project-Non-Violence training; Basic and Advanced Alternatives to Violence Project; and the KATARGEO "Going Home" program. Mr. Fowler has volunteered in the Pastoral Care Services for terminally ill patients. He has been a group leader in the Arts in Corrections music program. He has participated in the Protestant Chapel Congregation and was commended for his work as team leader in the Christ-centered ministry Celebrate Recovery. Finally, he has held several institutional jobs. I commend Mr. Fowler for taking these positive steps. But they are outweighed by negative factors that demonstrate he remains unsuitable for parole.

Mr. Fowler's crime was appalling and senseless. When asked to tend to baby Aaron who was crying, Mr. Fowler responded by berating the child, then hitting him so hard he fell to the floor and went limp. Even after seeing that he had seriously injured Aaron, Mr. Fowler kept attacking the baby. He picked the limp baby up then threw him to the floor again, causing Aaron to hit his head. The brutality of Mr. Fowler's assault caused baby Aaron to go into a seizure. He died two days later from trauma to his skull and brain. Mr. Fowler chose to unleash his rage on the most vulnerable and helpless of victims. Baby Aaron could not run from the attack. Nor could he defend himself in any way. And Mr. Fowler attacked baby Aaron for inexplicable reasons.

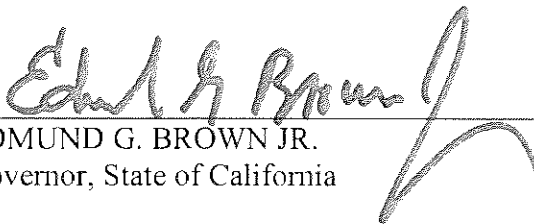
When I look at this killing, I find that Mr. Fowler has offered no credible explanation. He says that he was experiencing stress and anger in his relationship with Aaron's mother, and difficulty in sleeping. So what. Any parent or person who cares for a baby encounters sleep difficulties as a matter of course. And relationship-related stress and anger do not explain and certainly do not justify Mr. Fowler's violation and killing of this defenseless child. The utter inhumanity of Mr. Fowler's crime coupled with his inability or unwillingness to understand, own, or achieve some credible level of insight tells me that there is substantial risk of danger to the public were he to be released from prison.

Finally, in closing I note that several members of Aaron Miller's family, as well as the Yolo County District Attorney's Office, the Yolo County Sheriff, and the Woodland Police Chief share my concern that Mr. Fowler remains dangerous, and oppose his parole.

CONCLUSION:

I have considered the evidence in the record that is relevant to whether Mr. Fowler is currently dangerous. When considered as a whole, I find the evidence I have discussed shows why he currently poses a danger to society if released from prison. Therefore, I reverse the decision to parole Mr. Fowler.

Decision Date: April 7, 2011


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

PAUL GUARDADO, E-36459

Second-degree murder

AFFIRM: _____

MODIFY: _____

REVERSE: _____ X _____

STATEMENT OF FACTS:

On February 24, 1979, Paul Guardado, Gabriel Ramirez, Vincent Orozco, Kim Arganda, Manuel Ybarra, Corina Ribota, and Ralph Ponce gathered in a park. At about 10 p.m., Mr. Ybarra drove Mr. Guardado, Mr. Orozco and Ms. Arganda to a nearby liquor store. On the way back, rear passengers Mr. Guardado and Mr. Orozco asked for their handguns that were under the front seats. Ms. Arganda and Mr. Ybarra passed them their guns. Mr. Guardado then suggested they stop and assault people. Rather than stopping, the group returned to the park.

Later, Steven Buus walked through the park wearing a hat. Ms. Ribota pointed him out to the others, saying, "I want that hat." Some of the youths, including Mr. Guardado, Mr. Orozco and Mr. Ramirez, ran to Buus and beat and kicked him. Then, Mr. Guardado, Mr. Orozco and others encircled Mr. Buus while Mr. Ramirez kicked him some more. As Mr. Buus lay on the ground, Ms. Ribota took Mr. Buus' hat, tried it on and then tossed it away.

After Ms. Ribota turned away from the scene, she heard a gunshot. She looked back and saw Mr. Guardado, Mr. Ramirez and Mr. Orozco standing over Mr. Buus. Mr. Guardado was holding a gun and Mr. Buus was begging for his life. Mr. Ramirez then pulled a sawed-off shotgun from beneath his coat and shot Mr. Buus in the chest.

GOVERNING LAW:

The question I must answer is whether Mr. Guardado is currently a danger to the public. In answering this question, I must examine the same record that was before the Board of Parole Hearings and adhere to the same legal standards. 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* (2008) 44 Cal. 4th 1181, 1214.)

PROCEDURAL BACKGROUND:

On June 23, 2009, the Board granted Mr. Guardado parole because it had been compelled to do so by a federal court order. On July 21, 2009, Governor Schwarzenegger reversed the Board's court-compelled parole grant, and Mr. Guardado challenged the Governor's decision in Orange County Superior Court. On February 9, 2011, the superior court overturned Governor Schwarzenegger's reversal and remanded the case to me for reconsideration.

While the litigation was going on, the Board held another parole consideration hearing on May 25, 2010. This time, the Board was not under the compulsion of a court order to grant Mr. Guardado parole. After a full hearing in which it carefully considered and weighed the evidence, the Board determined that Mr. Guardado remains a threat to society, and denied him parole.

DECISION:

I acknowledge Mr. Guardado has taken some positive steps while incarcerated. He took college courses and earned a paralegal certificate, participated in vocational training, and performed institutional jobs. He also has participated in a number of self-help programs, including Alcoholics Anonymous, Narcotics Anonymous, Friends Outside Parenting Program, IMPACT self-help group, Millati Islami Addiction Recovery Program, Anger Management, Fathers Behind Bars Group, Healing for the Angry Heart, Balanced Reentry Activity Group, Cage Your Rage, Power of Prayer, Alternatives to Violence, Community Workshop, Stereotyping and Racism, Coastline Community College Incarcerated Student Education Program, Hands of Peace, Creative Conflict Resolution, and Kairos Prison Ministry. I commend him for taking these positive steps. But I agree with the Board that Mr. Guardado remains dangerous.

Mr. Guardado's committed the murder in a vicious and cruel manner. He and his crime partners chased down Mr. Buus, beat and kicked him, and then shot him multiple times. After shooting him twice, they made him beg for his life as he lay paralyzed on the ground before ultimately firing the fatal third shot. Mr. Guardado's despicable actions evidence an exceptionally callous disregard for the suffering of others. Further, his motive was inexplicable as neither he nor his crime partners knew Mr. Buus, and they had no reason whatsoever to attack him.

Mr. Guardado still does not acknowledge his role in the crime. In his most recent version of the facts as stated in his 2009 Life Prisoner Evaluation Report, Mr. Guardado claimed he did not participate in the beating of Mr. Buus, that he was merely watching, and that it was Mr. Ponce who shot Mr. Buus twice before Mr. Ramirez fired the fatal shotgun blast. But Mr. Guardado's version is inconsistent with the official record. Both the 1991 and 1997 Court of Appeal opinions indicate that Mr. Guardado beat Mr. Buus prior to the shooting. Additionally, an eyewitness to the crime said she heard a gunshot and saw Guardado standing over Buus holding a gun. Also, two different juries found Guardado guilty of murder and determined that he personally used a firearm during the offense.

Mr. Guardado is not required to admit guilt to be found suitable for parole (Cal. Pen. Code § 5011). But I am not obligated to accept his version of the crime as fact, and I do not. The

overwhelming evidence in the record indicates that Mr. Guardado actively participated in the beating of Mr. Buus and that he shot him. By minimizing his role in the crime and refusing to accept responsibility, he shows that he lacks insight into why he committed the crime.

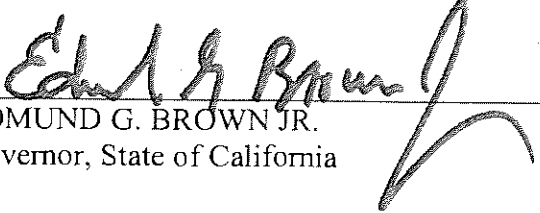
Further, at his May 2010 parole consideration hearing, the Board found Mr. Guardado's claims of remorse not credible. The Board determined that he was saying what he thought the Board wanted to hear and not speaking "from the heart." The Board described Mr. Guardado's demeanor while discussing his remorse for the crime as "sterile." I cannot discount the Board's credibility determination, and I agree with its conclusion that Mr. Guardado lacks remorse and insight, and minimizes his role in the crime.

Mr. Guardado's failure to understand the reasons for his violent conduct or to show genuine remorse for his victims indicates that he is still prone to committing further acts of violence.

CONCLUSION:

I have considered the evidence in the record that is relevant to whether Mr. Guardado is currently dangerous. When considered as a whole, I find the evidence I have discussed shows why he currently poses a danger to society if released from prison. Therefore, I reverse the decision to parole Mr. Guardado.

Decision Date: April 15, 2011


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

WILLIAM GRAY, D-61651

Second-degree murder

AFFIRM:

MODIFY:

REVERSE:

_____ X _____

STATEMENT OF FACTS

On June 29, 1985, William Gray hosted a barbeque at his ranch. In attendance were a number of friends and their families, as well as his girlfriend Michelle Martino, and his 13-year-old son Matthew. Alcoholic beverages were served throughout the day. Shortly before dinner, Mr. Gray and Ms. Martino had an argument over her refusal to allow Matthew to drive her father's Jeep to go target shooting. During the argument, Mr. Gray pushed Ms. Martino and she bit him. Ms. Martino told Mr. Gray to pack his bags and leave. He left the group and went into the house and the group proceeded to eat dinner without him.

At around 8:00 p.m., Ms. Martino went inside the house. The sound of shattering glass could be heard inside the house and Ms. Martino came back outside with Mr. Gray behind her carrying a semi-automatic rifle. Mr. Gray shot Ms. Martino multiple times in the back. He then stood over her as she lay on the stairs of the house and shot her two more times. He then proceeded to shoot in the direction of the other guests. One bullet struck his friend Shawna Shannon. Another struck his son Matthew. A third grazed another friend, Clifford Sartor. Immediately after the shooting, Mr. Gray drove away with the rifle.

Ms. Martino died as a result of the shooting. Ms. Shannon and Mathew sustained serious injuries but survived. Mr. Sartor suffered minor injuries. At around 9:30 p.m., Mr. Gray turned himself in to authorities. Shortly after midnight, a blood sample was drawn and Mr. Gray's blood alcohol content was determined to be 0.12%.

GOVERNING LAW:

The question I must answer is whether Mr. Gray will pose a current danger to the public if released. In answering this question, I must examine the same record that was before the Board of Parole Hearings and adhere to the same legal standards. 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* (2008) 44 Cal. 4th 1181, 1214.)

DECISION:

The Board found Mr. Gray suitable for parole based on his acceptance of responsibility, expression of remorse, insight into the causes of the crime, job performance, participation in self-help, favorable psychological evaluations, realistic parole plans, lack of assaultive behavior or significant criminal history, and reduced risk of recidivism due to age.

Mr. Gray has taken some positive steps while incarcerated. He held a number of institutional jobs for which he received positive job performance ratings. His participation in self-help programs has been limited. He attended Alcoholics Anonymous meetings from 1990 until 1995. In 1992, he participated in the Rational-Emotive Therapy video program, where he watched videos regarding topics such as shame, anger, perfectionism, understanding, anxiety, and depression. He also participated in a 10-hour Ethics Workshop in 1991. I commend Mr. Gray for taking some positive steps. But these positive steps are fairly minor considering the circumstances of the commitment offense, as well as other factors, which indicate that Mr. Gray remains dangerous.

Mr. Gray shot multiple loved-ones for exceedingly trivial reasons. He then callously fled while his girlfriend lay dead and his son and friends suffered from bullet wounds inflicted by his military-style rifle. The horror that all of those in attendance at the barbeque suffered is very troubling. Only a severely disturbed and dangerous person could commit such a crime.

Mr. Gray identified rage and alcohol abuse as the factors that caused him to commit the crime. But his efforts to address these issues through self-help programs have been extremely limited. In 2005, the Board implored him to participate in substance abuse and anger management self-help programs. He has stubbornly refused to do any self-help, telling the Board in 2010 "I've done those before.... And I feel comfortable those don't plague me anymore." A Board psychologist disagreed, stating in Mr. Gray's 2008 psychological evaluation that his refusal to participate in a substance abuse program increases his risk of violence in the community and noting that the Mr. Gray "does not recognize that these programs [Alcoholics Anonymous and Narcotics Anonymous] should be a lifetime commitment." Mr. Gray's inadequate efforts to address his alcohol and anger problems and his resistance towards treatment create great concern that he is still capable of horrific violence.

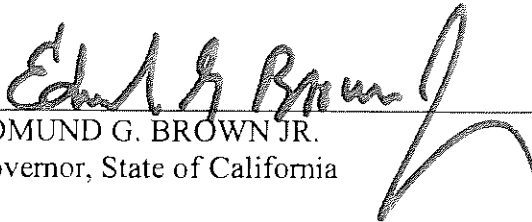
Further, Mr. Gray's 2008 psychological evaluation contains alarming information. The psychologist noted that Mr. Gray presented as glib and showed a lack of remorse for his crime. The psychologist noted that Mr. Gray smiled as he discussed the crime. When asked why he was smiling, he responded "[b]ecause I feel ridiculous." The psychologist noted that Mr. Gray's "affect did not seem appropriate to the discussion of the crime or to any embarrassment." Mr. Gray's demeanor left an impression on the psychologist who noted that in all his years of evaluating inmates he had never observed an inmate smiling when describing his crime. The psychologist concluded that Mr. Gray's attitude toward the crime increased his risk factor for violence in the free community.

In sum, Mr. Gray's inability or unwillingness to convincingly explain what led to his shooting spree that caused death and so much suffering indicates to me that he remains dangerous.

CONCLUSION:

I have considered the evidence in the record that is relevant to whether Mr. Gray is currently dangerous. When considered as a whole, I find the evidence I have discussed shows why he currently poses a danger to society if released from prison. Therefore, I reverse the decision to parole Mr. Gray.

Decision Date: April 15, 2011


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

EDWARD ESTRADA, H-73454

Second-degree murder

AFFIRM:

MODIFY:

REVERSE:

 X

STATEMENT OF FACTS

Edward Estrada attended a house party with a number of fellow gang members. At about 10:15 p.m., he left the party with his brother Roman and David Soliz in a car driven by Roman's girlfriend, Pamela Casey. Shortly after leaving the party, Ms. Casey pulled up next to Richard Gill at a traffic light. Mr. Gill, who was driving a pick-up truck, had gone to the house party to pick-up his friend, Robert Guzman. But Mr. Gill's father, Solomon Gill, had arrived at the house just before Mr. Gill and had picked up Mr. Guzman in his car. While stopped at the traffic light, Mr. Estrada, Roman Estrada and Mr. Soliz flashed gang signs at Mr. Gill. Mr. Estrada claims that Mr. Gill responded by sticking up his middle finger.

As the light turned green, the three men instructed Ms. Casey to chase after Mr. Gill. Mr. Estrada sat in the back seat of a car. They chased Mr. Gill's truck on the freeway. Ms. Casey pulled her car alongside the truck and Mr. Estrada fired a shotgun at Mr. Gill. Mr. Gill ducked his head down. When he came back up, Mr. Estrada fired a second shot at him which hit him in the head and caused the truck to crash. Solomon Gill, who was driving behind him, took Mr. Gill to hospital but he died the next day.

GOVERNING LAW:

The question I must answer is whether Mr. Estrada will pose a current danger to the public if released. In answering this question, I must examine the same record that was before the Board of Parole Hearings and adhere to the same legal standards. 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* (2008) 44 Cal. 4th 1181, 1214.)

DECISION:

In September 2010, the California Court of Appeal overturned the Board's 2009 decision that Mr. Estrada was not suitable for parole. The court directed the Board to conduct a new hearing in accordance with its order. In compliance with the court's order, the Board conducted another hearing in November 2010, and found Mr. Estrada suitable for parole based on his vocational and educational upgrades, job performance, participation in self-help, favorable psychological evaluations, and parole plans.

Mr. Estrada has taken some positive steps while incarcerated. He completed vocational training in Machine Shop and Office Services and Related Technologies, and held a number of institutional jobs for which he received positive job performance ratings. He also participated in a number of self-help programs including Alcoholics Anonymous, Personal Growth Seminars, Alternative to Violence Project, Anger Management, Dependency Counseling, Victim Awareness course, Criminals and Gang members Anonymous, Victim Offender Education Group, Cage Your Rage, Self Discipline and Emotional Control, Principle Centered Living, Stress Management, Nonviolent Communication training, and psychiatric group therapy. I commend Mr. Estrada for taking these positive steps. But the circumstances of the commitment offense, along with other relevant evidence, show that Mr. Estrada remains dangerous.

Mr. Estrada committed a completely senseless murder. He and his fellow gang members antagonized Mr. Gill, who they did not know, and chased him down. When they caught up with him, Mr. Estrada shot him in the head with a shotgun. Mr. Estrada's motive for committing such a vicious crime is inexplicable.

Yet, Mr. Estrada claims that he shot and killed Mr. Gill out of concern for his safety and the safety of the other passengers in his car. He said in 2009 that he fired at Mr. Gill because he believed Mr. Gill had a gun and "was going to fire at us." This is essentially the same story he gave at his trial. According to the 1998 appellate court decision, Mr. Estrada testified at trial that he saw Mr. Gill point what looked like a pistol at the car he was riding in and that he then shot at Mr. Gill because he felt they were in danger. But the evidence shows that Mr. Gill did not have a gun. During her testimony at trial, Ms. Casey did not indicate that Mr. Gill pointed a gun at her car or that anyone in her car expressed concern that Mr. Gill might fire at them. She testified that after the confrontation at the stop light, the three men instructed her to catch up with Mr. Gill and that when she did, she heard a gunshot fired from the seat behind her where Mr. Estrada was sitting. She was instructed to keep up with Mr. Gill's truck and then she heard another shot fired by Mr. Estrada. Mr. Gill's father told police that he saw Ms. Casey's car chase after Mr. Gill's truck and fire a shot at the truck. He saw his son duck down after the first shot. He then saw his son stick his head up at which time he saw the flash of a second shot being fired from Ms. Casey's car.

The record does not support Mr. Estrada's version of the crime and I do not accept his version as fact. While Mr. Estrada claims to accept responsibility for murdering Mr. Gill, he clings to his story that he thought Mr. Gill had a gun and that he shot him out of fear and in self-defense. In sticking to his story, Mr. Estrada places blame on the victim and minimizes his own conduct. Until he accepts responsibility for his actions, and confronts and deals with the reasons he committed such a senseless, unprovoked, and vicious murder, Mr. Estrada remains a threat to public safety if released from prison.

I also give credence to the statements of Mr. Gill's family members at Mr. Estrada's 2010 parole hearing. Mr. Gill's father, Solomon Gill, described his horror in witnessing the murder of his son. He stated that unlike Mr. Estrada, his son was not a gang member, and did not point a gun at Mr. Estrada or egg Mr. Estrada on. Mr. Gill stated that Mr. Estrada dishonors his son by

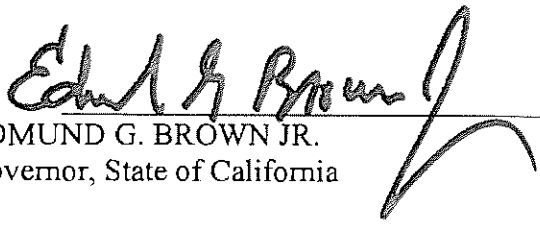
continuing to claim that his son provoked the attack. He indicated that he would continue to oppose parole as long as Mr. Estrada refuses to tell the truth about what happened.

Mr. Gill's mother, Yolanda Bella, also gave a statement. She expressed fear of having Mr. Estrada return to the community where they live, saying "I do not want to live with the fear of him getting out, looking over our shoulder ... stopping at a stop light and wondering, is that him?" She also stated her belief that Mr. Estrada was not truly remorseful for killing her son.

CONCLUSION:

I have considered the evidence in the record that is relevant to whether Mr. Estrada is currently dangerous. When considered as a whole, I find the evidence I have discussed shows why he currently poses a danger to society if released from prison. Therefore, I reverse the decision to parole Mr. Estrada.

Decision Date: April 28, 2011


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

BERTWANE COLE, E-22785

First-degree murder

AFFIRM:

MODIFY:

REVERSE:

 X

STATEMENT OF FACTS

Bertwane Cole and Marcus Brown were members of the Graveyard Crips street gang. On the evening of the murder, Mr. Brown was driving his car with Mr. Cole in the front passenger seat and Brown's girlfriend, Elizabeth Periman Brown, in the back seat. Mr. Brown spotted Robert Williams, James Scott and Cain Davis near an apartment building, and identified them as associates of the Venice Shoreline Crips, a rival street gang. He stopped the car and Mr. Cole questioned the men about their gang affiliation. Mr. Scott indicated that he was not interested in a confrontation. Mr. Cole and Mr. Brown began insulting the three men. Mr. Cole then told Mr. Davis, who he had known during their childhood, to move out of the way. Mr. Williams and Mr. Scott started to run away. Mr. Cole pulled out a gun and fired about five shots at Mr. Williams and Mr. Scott. One bullet hit Mr. Williams in the head and killed him. Luckily, Mr. Scott was not hit.

A jury convicted Mr. Cole of one count of first degree murder and one count of attempted murder, and sentenced him to an indeterminate term of 30 years to life in prison.

GOVERNING LAW:

The question I must answer is whether Mr. Cole is currently a danger to the public. In answering this question, I must examine the same record that was before the Board of Parole Hearings and adhere to the same legal standards. 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* (2008) 44 Cal. 4th 1181, 1214.)

DECISION:

The Board of Parole Hearings found Mr. Cole suitable for parole based on his expression of remorse, insight into the crime, acceptance of responsibility, participation in self-help programs and vocational training, positive institutional work record, and realistic parole plans.

I acknowledge Mr. Cole has made laudable gains while incarcerated. He completed vocational training in multiple disciplines and held a number of institutional jobs for which he received positive job performance ratings. He also participated in a number of self-help programs including Narcotics Anonymous, Seeking Peaceful Solutions, Cage Your Rage, Alternatives to Violence Project, Anger Management, the Inside Out Dad parenting course, Balanced Re-entry Awareness Group, Post-traumatic Stress Disorder seminar, and Criminal and Gang Members Anonymous. I commend him for taking these positive steps. But they are outweighed by negative factors that demonstrate he remains unsuitable for parole.

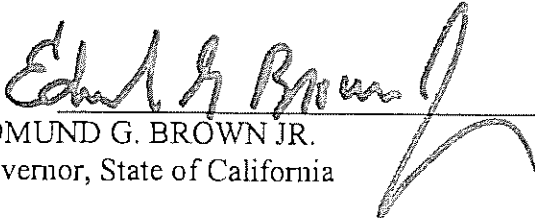
The murder of Mr. Williams and attempted murder of Mr. Scott were vicious and senseless. Mr. Cole attacked these two men, recklessly firing five rounds at them in the middle of an urban area as they attempted to run away. He shot and killed Mr. Williams because of his perceived affiliation with a rival gang, a very trivial motive in light of the offense.

Mr. Cole's most recent psychological evaluation indicates that he is not yet ready to return to the free community. In 2010 a psychologist determined that Mr. Cole scored in the "moderate" range for psychopathy, in the "moderate" range for likelihood of violent recidivism, in the "medium" range for risk of general recidivism, and that overall he posed a "moderate" risk of committing violence in the community. Mr. Cole's elevated risk assessment scores were in large part the result of his past gang affiliation and extensive criminal background, unstable social history, and present lack of insight. In discussing Mr. Cole's lack of insight, the psychologist noted that he displayed limited insight into his motive for firing his weapon, showed minimal insight into his need to impress or prove himself to his fellow gang members, and displayed minimal insight into his failure to develop empathy for others as a youth. Until Mr. Cole gains a better understanding of what caused him to commit these vicious crimes, he will remain a threat to public safety if released from prison.

CONCLUSION:

I have considered the record and the criteria for assessing Mr. Cole's suitability for parole. I find that the negative factors I have discussed demonstrate why he poses a current danger to society if released from prison. Therefore, I reverse the decision to parole Mr. Cole.

Decision Date: April 29, 2011


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

DEMETRIUS DUCKSWORTH, J-68425

Second-degree murder

AFFIRM:

MODIFY:

REVERSE:

 X

STATEMENT OF FACTS

Demetrius Ducksworth and his crime partner, Tina Johnson, decided to rob William Lathen. Mr. Lathen had sold Ms. Johnson drugs in the past so she knew he kept money and drugs at his residence. At approximately 2:00 a.m., Ms. Johnson went to Mr. Lathen's apartment under the guise of purchasing drugs. When Mr. Lathen opened the door, Mr. Ducksworth rushed in brandishing a hand gun. Mr. Ducksworth tried to grab a pouch Mr. Lathen wore around his waist which contained money and drugs. Mr. Lathen grabbed Mr. Ducksworth's arm and they struggled. Mr. Ducksworth fired his gun several times. One bullet hit Mr. Lathen in the head and killed him.

GOVERNING LAW:

The question I must answer is whether Mr. Ducksworth will pose a current danger to the public if released. In answering this question, I must examine the same record that was before the Board of Parole Hearings and adhere to the same legal standards. 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* (2008) 44 Cal. 4th 1181, 1214.)

DECISION:

The Board of Parole Hearings found Mr. Ducksworth suitable for parole based on his expression of remorse, educational achievements, acceptance of responsibility, insight into the crime, vocational training, parole plans, and participation in self-help programs.

Mr. Ducksworth has taken some positive steps while incarcerated. He earned a General Equivalency Diploma and has taken a number of college courses. He obtained vocational training in welding and upholstery, and held a number of institutional jobs. He also participated in some self-help programs including Anger Management, Friends on the Outside Parenting course, the Passport to Purpose Program, Project PRIDE's Managing Conflict and Dealing with Difficult People course, a stress management program, and Life Plan for Recovery. I commend Mr. Ducksworth for taking these positive steps. But the circumstances of the commitment offense, along with other relevant evidence, show that he remains dangerous.

Mr. Ducksworth committed a heinous murder. He conspired to rob Mr. Lathen and when Mr. Lathen resisted he shot and killed him. His sole motive for committing the crime was greed. In 2004, the judge who presided over Mr. Ducksworth trial submitted a letter opposing parole noting that "the victim was unarmed and vulnerable. He was chased throughout the residence and shot one time in the head."

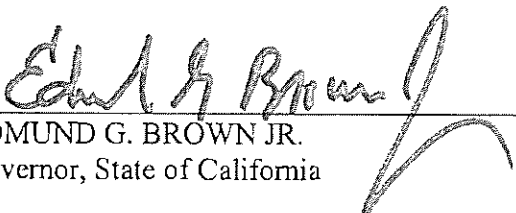
Mr. Ducksworth also has not availed himself sufficiently of self-help programs to address his alcohol and drug abuse problems. He has only participated in Alcoholics and Narcotics Anonymous sporadically, and for short periods of time (1998 and 2006 only). Given his history of substance abuse, his participation in programming to address this issue has not been sufficient to ensure that he will not fall back into abusing drugs and alcohol if released from prison.

Mr. Ducksworth's most recent risk assessment scores also indicate that he remains dangerous. Mr. Ducksworth scored in the "moderate" range for psychopathy, rated in the "moderate" category for a risk of violent recidivism and overall he posed a "moderate" risk of violence in the free community. According to the psychologist, Mr. Ducksworth's elevated risk for violent recidivism is based on factors such as his history of violent behavior, relationship instability, lack of lawful employment, lack of feasible parole plans, and history of substance abuse. The psychologist also noted that Mr. Ducksworth possesses a narcissistic thought pattern and a grandiose sense of self-worth. He psychologist concluded Mr. Ducksworth could achieve greater insight through additional self-help activities.

CONCLUSION:

I have considered the evidence in the record that is relevant to whether Mr. Ducksworth is currently dangerous. When considered as a whole, I find the evidence I have discussed shows why he currently poses a danger to society if released from prison. Therefore, I reverse the decision to parole Mr. Ducksworth.

Decision Date: April 29, 2011


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

DANIEL GONZALES, J-67167
Second-degree murder

AFFIRM: _____

MODIFY: _____

REVERSE: _____

 X

STATEMENT OF FACTS

On May 13, 1994, Daniel Gonzales went to a liquor store with his younger brother, David, and fellow gang members Dallas McCoy, Desmond Ned, and Yesenia Soto. When exiting the store, David Gonzales, McCoy and Ned exchanged glances with a group of four men, which included Mario Gonzalez.

When they returned to the car, David Gonzales made a gang sign with his hands in the direction of Mario Gonzalez. A confrontation ensued between the two men. While this was going on, Mr. Gonzales grabbed a handgun and started to get out of the car. Mario Gonzalez stepped toward the door and a struggle ensued between Mr. Gonzales and Mario over the gun. During the struggle, Mr. Gonzales fired two shots at Mario. As the struggle continued, Mr. McCoy got out of the car with a gun and began firing at Mario. Mario fell to the ground and Mr. Gonzales was able to regain control of his gun. He then fired three shots at Mario as he lay on the ground. Mario died as a result of the shooting. Gonzales and the others got into the car and drove away.

GOVERNING LAW:

The question I must answer is whether Mr. Gonzales will pose a current danger to the public if released. In answering this question, I must examine the same record that was before the Board of Parole Hearings and adhere to the same legal standards. 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* (2008) 44 Cal. 4th 1181, 1214.)

DECISION:

The Board of Parole Hearings found Mr. Gonzales suitable for parole based on his insight, expression of remorse, positive mental state, participation in self-help programs, educational and vocational training, and solid parole plans.

I acknowledge Mr. Gonzales has made laudable gains while incarcerated. He earned a General Equivalency Diploma and completed vocational training. He also participated in a number of self-help programs including Alcoholics Anonymous, Impulse Control Workshop, Alternatives to Violence Project, Nonviolent Conflict Resolution, Bible Principles for Former/Inactive Gang

Members, and Anger Management, amongst others. I commend him for taking these positive steps. But they are outweighed by negative factors that demonstrate he remains unsuitable for parole.

Mr. Gonzales brutally attacked the victim, shooting him multiple times as he lay on the ground. The motive for the murder was very trivial and was the result of a senseless confrontation.

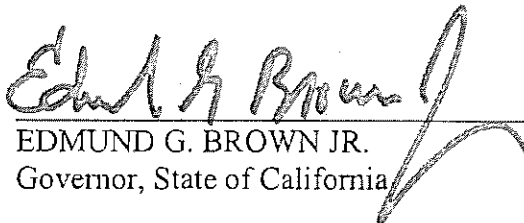
Despite the gains Mr. Gonzales has made while incarcerated, his most recent psychological evaluation indicates that he remains a threat to the community. The risk assessments from Mr. Gonzales 2009 psychological evaluation indicated that he posed a "moderate" risk of violent recidivism and a "medium" risk of general recidivism. Factors that contributed to Mr. Gonzales' elevated risk assessment ratings included his history of substance abuse, extensive criminal record, and current impulsivity. The psychologist cited Mr. Gonzales four Rules Violation Reports, all of which occurred between May of 2003 and June of 2004, as evidence of Mr. Gonzales' impulsivity. Mr. Gonzales also was counseled as recently as 2008 for arguing with staff and acting in a hostile and threatening manner. The psychologist also diagnosed Mr. Gonzales with Antisocial Personality Disorder, which increases his risk of violent recidivism.

Further, confidential information in Mr. Gonzales' prison file indicates that as recently as 2006 he has been involved in prison gang activity and drug smuggling operations. This evidence provides further support for my conclusion that Mr. Gonzales remains a threat to society if released from prison.

CONCLUSION:

I have considered the evidence in the record that is relevant to whether Mr. Gonzales is currently dangerous. When considered as a whole, I find the evidence I have discussed shows why he currently poses a danger to society if released from prison. Therefore, I reverse the decision to parole Mr. Gonzales.

Decision Date: April 29, 2011


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

SAMUEL DELOZIER, C-65012
Second-degree murder

AFFIRM:

MODIFY:

REVERSE:

_____ X _____

STATEMENT OF FACTS

On the evening of December 5, 1981, Samuel DeLozier went to the home of Harold Carstens to collect money he owed him. When Mr. Carstens refused to pay, Mr. DeLozier took Mr. Carstens guns out of his closet. He told Mr. Carstens he intended to pawn the guns and that he would return them when Mr. Carstens paid him the money he owed him. When Mr. Carstens attempted to stop him from leaving with the guns, Mr. DeLozier punched him twice, knocking him down. Mr. DeLozier then grabbed a pistol and shot Mr. Carstens twice in the back of the head and once in the back of the neck. Mr. Carstens died as a result of the shooting. Mr. DeLozier dumped Mr. Carstens' body down a nearby well. He then loaded up Mr. Carstens car with a number of Mr. Carstens belongings and left.

A jury convicted Mr. DeLozier of second-degree murder with an enhancement for use of a firearm. The court sentenced him to 17 years to life in prison. The appellate court upheld the conviction.

GOVERNING LAW:

The question I must answer is whether Mr. DeLozier is currently a danger to the public. In answering this question, I must examine the same record that was before the Board of Parole Hearings and adhere to the same legal standards. 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* (2008) 44 Cal. 4th 1181, 1214.)

DECISION:

The Board of Parole Hearings found Mr. DeLozier suitable for parole based on his expression of remorse, insight into the crime, lack of institutional misconduct, participation in self-help programs, completion of vocational training, positive institutional work record, realistic parole plans, and reduced risk of recidivism due to age.

I acknowledge Mr. DeLozier has made laudable gains while incarcerated. He completed vocational training and held a number of institutional jobs for which he received positive job performance ratings. He also participated in a number of self-help programs including Alcoholics Anonymous, the RAPHA and PRIDE substance abuse treatment programs, Cage Your Rage, Personal Growth Seminars, Self-Esteem and Assertiveness Training, Stress Management and Relaxation Skills Training, Rational Behavior Training, Anger Control Group, individual and group therapy, Prevention and Relationship Enhancement Program, and Men's Accountability Group, amongst others. I commend him for taking these positive steps. But they are outweighed by negative factors that demonstrate he remains unsuitable for parole.

Mr. DeLozier murdered the victim in a cold and brutal manner. He beat the 64-year old man and then shot him three times as he lay face down on the ground. He then callously dumped his body down a well and took Mr. Carsten's possessions. Further, Mr. DeLozier's motive—obtaining money from Mr. Carstens—was very trivial in relation to the offense.

Despite many years of incarceration and numerous self-help courses, Mr. DeLozier still exhibits a lack of insight by not accepting responsibility for his actions. He told the Board in 2010 that Mr. Carstens initiated the physical confrontation by knocking him down and claimed that Mr. Carstens had a gun in his hand. He told the Board that when he saw Mr. Carstens with the gun "I rushed him ... I hit him with the gun and I shot him in the process." But during his 2010 psychological evaluation, Mr. DeLozier said that Mr. Carstens knocked him down and that he then got up and knocked Mr. Carstens down and came back with a gun and "I started to hit him upside the head with the gun and this is when I shot him." He maintained that he did not intend to kill the victim and that he shot him two more times because "I saw he was suffering."

Mr. DeLozier's story conflicts with the appellate court opinion, which indicates the Mr. DeLozier attacked Mr. Carstens and not the other way around. The official record shows that Mr. Carstens was shot in the back of the head while lying on his stomach, not during the course of a struggle. Mr. DeLozier's claim that he mercifully fired the last two shots because Mr. Carstens was suffering is also inconsistent with the court's opinion. Further, Mr. DeLozier's contradicts himself as to whether Mr. Carstens had the gun at any point during the crime. In sum, the record does not support Mr. DeLozier's version of the crime and I do not accept his versions of what transpired. Until he accepts responsibility for his actions, and obtains greater insight into the reasons he committed this senseless and brutal murder, Mr. DeLozier remains a threat to public safety if released from prison.

My concern that Mr. DeLozier remains dangerous is supported by the risk assessment scores in his 2010 psychological evaluation. The psychologist determined that he scored in the "moderate" range for likelihood of violent recidivism, in the "medium" range for risk of general recidivism, and that overall he posed a "moderate" risk of committing violence in the community. Mr. DeLozier's elevated risk assessment scores were mainly the result of his extensive criminal record, which included a prior conviction for manslaughter, unstable social history, past substance abuse, present lack of insight, and inadequate parole plans. The psychologist concluded that Mr. DeLozier could reduce his risk of violent recidivism by

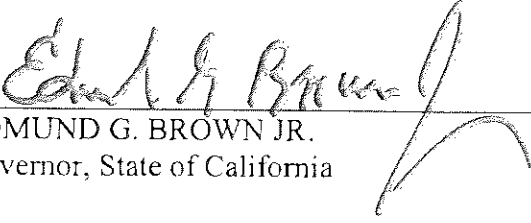
Samuel DeLozier, C-65012
Second-Degree Murder
Page 3

accepting full responsibility for his crimes without justifying or minimizing his behavior, and examining his impact on the surviving victims of his crimes.

CONCLUSION:

I have considered the record and the criteria for assessing Mr. DeLozier's suitability for parole. I find that the negative factors I have discussed demonstrate why he poses a current danger to society if released from prison. Therefore, I reverse the decision to parole Mr. DeLozier.

Decision Date: May 5, 2011


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

ROBERT BERTOLA, D-26869

First-degree murder

AFFIRM:

MODIFY:

REVERSE:

 X

STATEMENT OF FACTS

Angel Marin approached Robert Bertola outside a liquor store and asked him to buy him alcohol. Mr. Bertola refused and a confrontation ensued. Mr. Marin punched Mr. Bertola above his eye, causing a wound. The confrontation then ended when Mr. Bertola produced a knife and Mr. Marin declined to fight. Mr. Marin and his group of friends, and Mr. Bertola and his group of friends remained in the area, walking up and down the street in downtown San Jose for about an hour. During this time, the two groups encountered each other again and traded insults. Mr. Marin and his friends ended up sitting on the stairs of a hotel and drinking alcohol. Meanwhile, Mr. Bertola called an unidentified person who brought him a gun. Mr. Bertola then sought out Mr. Marin, found him outside the hotel, and shot him five times. Mr. Marin died as a result of the shooting.

GOVERNING LAW:

The question I must answer is whether Mr. Bertola will pose a current danger to the public if released from prison. In answering this question, I must examine the same record that was before the Board of Parole Hearings and adhere to the same legal standards. 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* (2008) 44 Cal. 4th 1181, 1214.)

DECISION:

The Board of Parole Hearing found Mr. Bertola suitable for parole based on his expression of remorse, acceptance of responsibility, participation in Alcoholics Anonymous, educational and vocational upgrades, insight, positive behavioral record in recent years, realistic parole plans, and reduced likelihood of recidivism due to age.

I acknowledge Mr. Bertola has made some efforts to improve himself while incarcerated. He earned a General Equivalency Diploma, completed multiple vocational training programs, and held a number of work assignments. He also has participated in Alcoholics Anonymous consistently since 2007 and in the Victim Recognition program. I commend Mr. Bertola for

taking these positive steps. But they are outweighed by negative factors that demonstrate he remains unsuitable for parole.

Mr. Bertola committed a calculated, premeditated murder for an exceedingly trivial reason. While Mr. Marin may have been the initial aggressor, the prior conflict had ended by the time Mr. Bertola went to the extreme measure of calling someone to bring him a gun. Mr. Bertola then sought out Mr. Marin and callously shot him several times and left him for dead.

To this day, Mr. Bertola insists that he does not remember most of the events on the night of the murder, including obtaining the gun, the identity of his accomplice, seeking out Mr. Marin, shooting Mr. Marin, and what happened to the murder weapon after the shooting. He claims that he was under the influence of PCP and alcohol, and that he suffered a drug and alcohol induced black out. But a blood sample taken on the night of the murder after he was arrested revealed a blood alcohol level of 0.05% and less than 0.01 parts per million of PCP. Further, as pointed out in the probation report, "[h]is state of intoxication and level of consciousness is questionable... Even assuming his intoxication, he was able to purposely call 'back up,' obtain a gun, seek out the victim, then shoot him at close range."

Mr. Bertola's alleged lack of memory is highly suspect. He avoids admitting the true nature of his offense and accepting complete responsibility for his actions by claiming lack of memory, essentially absolving his conscious self of wrongdoing.

He also fails to accept responsibility for his actions by blaming Mr. Marin, in large part, for the murder. During his 2008 evaluation he told the psychologist that they both were to blame for the murder and that "(h)is death is my fault, but it would have never happened if he had not approached me." What Mr. Bertola apparently fails to recognize is that the murder also would not have happened if he had not obtained a gun, sought out Mr. Marin, and shot him.

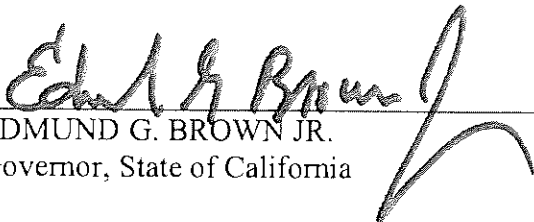
Highly relevant to Mr. Bertola's lack of insight and failure to accept responsibility is his inadequate participation in self-help and therapeutic programming during his 26-plus years of incarceration despite being instructed by the Board during previous hearings to participate in self-help programs. During his most recent psychological evaluation in 2008, Mr. Bertola focused exclusively on his drug and alcohol problem in discussing the causative factors that led to the crime. While undoubtedly alcohol and drugs played a role in the crime, certainly other factors contributed to him committing a premeditated murder of a stranger as the result of a relatively minor confrontation. Through self-help programs, Mr. Bertola would obtain much greater understanding of himself and what led him to commit the crime so that he could avoid a similar incident in the future.

In sum, Mr. Bertola has made insufficient efforts to understand and address the reasons that caused him to commit murder. This is apparent from the statements he makes and his unwillingness to discuss the crime in any detail. His lack of insight leads me to conclude that he is susceptible to committing similar acts of violence in the future and would pose an unreasonable danger to society if released from prison.

CONCLUSION:

I have considered the evidence in the record that is relevant to whether Mr. Bertola is currently dangerous. When considered as a whole, I find the evidence I have discussed shows why he currently poses a danger to society if released from prison. Therefore, I reverse the decision to parole Mr. Bertola.

Decision Date: June 3, 2011


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

JAMES MARVIN, C-39344

First-degree murder

AFFIRM: _____

MODIFY: _____

REVERSE: _____

 X

STATEMENT OF FACTS

On July 19, 1980, James Marvin, Joe Aguirre, Laurie Aguirre, Brian Miller, James Garwood, Michael Pert, and Stephen Ciccone were at the Aguirres' home drinking alcohol and ingesting Quaaludes. Mr. Ciccone slapped a teenage girl who was visiting the Aguirre home. Mr. Marvin claimed that Mr. Ciccone was also pointing a gun at people in the home. He added that, when he told Mr. Ciccone to "calm down," Mr. Ciccone punched him. Mr. Marvin later told the others that Mr. Ciccone had "gone crazy" and stated "Steve has got to die." Mr. Aguirre, Mr. Marvin and the others decided to take Mr. Ciccone out rabbit hunting and kill him.

Around midnight, Mr. Aguirre loaded up his truck with hunting bows and told Mrs. Aguirre to bring her gun. The group drove to a nearby open area. Mr. Aguirre had Mrs. Aguirre walk with Mr. Ciccone while he and the others walked off in another direction. Mr. Ciccone was too intoxicated to walk any great distance and sat down. After a few seconds, Mr. Aguirre walked up and shot Mr. Ciccone with his crossbow. Mr. Marvin then shot Mr. Ciccone in the back with an arrow. They then dragged Mr. Ciccone into the bushes. Mr. Aguirre handed the crossbow to Mr. Miller, but Mr. Miller hesitated to shoot. Mr. Miller told police that when Mr. Aguirre handed him the crossbow Mr. Marvin told him, "You don't have any choice; you can either die or do what you're told." Mr. Miller then shot Mr. Ciccone with an arrow, noting that Mr. Ciccone was begging for his life as he shot him. Mr. Aguirre then handed Mr. Garwood a knife with which he stabbed Mr. Ciccone multiple times. Mr. Ciccone died as a result of the attack.

GOVERNING LAW:

The question I must answer is whether Mr. Marvin will pose a current danger to the public if released from prison. In answering this question, I must examine the same record that was before the Board of Parole Hearings and adhere to the same legal standards. 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* (2008) 44 Cal. 4th 1181, 1214.)

DECISION:

In 2010, the Board of Parole Hearings found Mr. Marvin suitable for parole based on his improved insight, good institutional disciplinary record, participation in self-help programming, positive work record, realistic parole plans, lack of criminal history or assaultive behavior, and reduced risk of recidivism due to age. Subsequently, Governor Schwarzenegger reversed the Board's 2010 decision to grant parole. Mr. Marvin filed a petition for writ of habeas corpus with the Orange County Superior Court, challenging Governor Schwarzenegger's reverse decision. On May 13, 2011 the court issued an order granting the petition, vacating the reverse decision, and remanding the matter to the Governor to consider the Board's 2010 grant of parole. Prior to the issuance of the court's order, the Board held another parole consideration hearing for Mr. Marvin on April 5, 2011, and determined that he was not suitable for parole.

I acknowledge Mr. Marvin has made some efforts to improve himself while incarcerated. He earned a General Equivalency Diploma, held a number of job assignments, and participated in an array of self-help programs. I commend Mr. Marvin for taking these positive steps. But considering all of the relevant information, and giving due weight to the Board's recent finding of unsuitability, I conclude that Mr. Marvin is unsuitable for parole.

Mr. Marvin and his crime partners killed Mr. Ciccone in an exceedingly cruel manner that demonstrated an exceptional callous disregard for his suffering. They took turns shooting him with arrows while he begged for his life and then finished him off by stabbing him repeatedly. Further, they carried out the murder in a calculated manner, loading up with weapons and taking Mr. Ciccone out to an open area under the guise of a hunting expedition, and then attacking him.

Despite clear indications in the record to the contrary, Mr. Marvin told the Board in 2010 that he did not consider himself a leader of the group that killed Mr. Ciccone. He claimed that he was "peer dependent" and that he never considered himself a leader of anything. On prior occasions, he claimed that he got swept up in a "mob mentality" that resulting in the murder. Mr. Marvin's actions leading up to the murder and during the murder contradict his recent characterization of his role in the murder. He told the others "Steve has got to die." He also fired the second arrow that struck Mr. Ciccone, and he threatened to kill Mr. Miller if he did not participate in the murder. Mr. Marvin continues, as he has done in various ways since the time of his arrest, to minimize his responsibility for the crime. His statements to the 2010 Board indicate that he does not recognize the prominent role he played in causing the death of Mr. Ciccone, in which case he necessarily lacks a sufficient understanding of the reasons that led him, and the others, to commit the murder. Until he understands and accepts responsibility for his pivotal role in the horrific murder, there is insufficient assurance that he appreciates the wrongfulness of his actions and will not commit similar violence again.

Mr. Marvin's most recent version of the circumstances leading up to the murder includes a number of factual discrepancies that also indicate a failure to accept responsibility for the crime and undermine his credibility. For instance, he claims Mr. Aguirre was merely a customer of the wrecking yard where he worked and that it was a spontaneous party at the Aguirres' house that brought the group together for the first time on the day of the murder. There is conflicting

evidence in the probation report that Mr. Ciccone and Mr. Marvin had been staying at the Aguirres' house prior to the murder and that Mr. Ciccone was interested in Mr. Aguirres' criminal enterprises, which apparently included selling teenage girls as sex slaves in Mexico. The probation report also indicates that Mr. Marvin had designs to take over Mr. Ciccone's drug sales as Mr. Ciccone believed he was going to be moving up in an organized crime enterprise. Mr. Marvin now claims that he was not involved in the drug trade at all except that he had acted as a bodyguard for Mr. Ciccone on a few occasions and denies that he had designs to become a drug dealer.

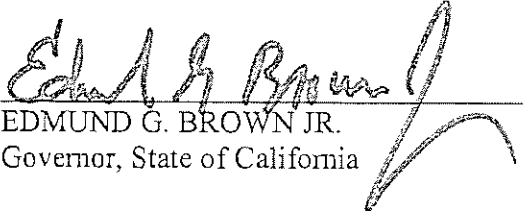
Similarly, during his 2010 parole consideration hearing, Mr. Marvin was quick to claim that all of the events surrounding the murder occurred in a single day. But during the hearing he indicated that Mr. Ciccone's mistreatment of the girls at the Aguirres' house began the previous evening. He also indicated that he had brought one of the girls that Mr. Ciccone allegedly mistreated to the Aguirres' house on the day of the murder. This claim appears to conflict with Mr. Marvin's claims at other times during the hearing that he did not know who the girls were. It also undermines his claim that the gathering was simply an impromptu party at the home of the Aguirres, whom he claimed he only knew as customers of the wrecking yard.

These discrepancies, amongst others in the record, lead me to conclude that Mr. Marvin is not being truthful regarding the facts of the murder and his motive for committing the crime. It is apparent that there was more to the story than Mr. Marvin is willing to admit and that he is attempting to present himself in a deceptively favorable light, presumably in order to obtain a parole grant. This evidences a failure to accept responsibility that causes me concern that Mr. Marvin has not come to grips with, and learned from, his actions that resulted in the gruesome murder of a person he claimed was his friend.

CONCLUSION:

I have considered the evidence in the record that is relevant to whether Mr. Marvin is currently dangerous. When considered as a whole, I find the evidence I have discussed shows why he currently poses a danger to society if released from prison. Therefore, I reverse the decision to parole Mr. Marvin.

Decision Date: June 10, 2011


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

ROBERT ROGERS, C-53884

First-degree murder

AFFIRM:

MODIFY:

REVERSE:

 X

STATEMENT OF FACTS

In the early morning of June 26, 1981, Robert Rogers and Raynique Le Duff rented a motel room. While in the room, Mr. Rogers shot Ms. Le Duff in the head, killing her. The next day a hotel employee found her dead on the hotel bed, nude, with a bullet wound in her left temple. According to police investigators, Ms. Le Duff, who sold drugs for Mr. Rogers, had been arrested for possession of drugs for sale and was preparing to testify that Mr. Rogers supplied the drugs. Ms. Le Duff also had failed to pay Mr. Rogers for drugs she had sold for him.

GOVERNING LAW:

The question I must answer is whether Mr. Rogers will pose a current danger to the public if released from prison. In answering this question, I must examine the record that was before the Board of Parole Hearings and adhere to the same legal standards. 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* (2008) 44 Cal. 4th 1181, 1214.)

DECISION:

The Board of Parole Hearings found Mr. Rogers suitable for parole based on his participation in self-help programs, completion of educational and vocational training, positive institutional job record, expression of remorse, insight into his criminal behavior, low risk assessment scores, and solid parole plans.

I acknowledge Mr. Rogers has made efforts to improve himself while incarcerated. He earned a bachelor's degree in business administration, received vocational training, and held a number of institutional job assignments. He also participated in a number of self-help programs, including 12-step substance abuse programs, Criminon workshops, and anger and conflict management courses, amongst many others. I commend Mr. Rogers for taking these positive steps. But they are outweighed by negative factors that demonstrate he remains unsuitable for parole.

In a dispassionate and calculated manner, Mr. Rogers executed Ms. Le Duff because he feared she would implicate him as a drug dealer or because she owed him money from a drug sale. It was a cold-blooded murder motivated by his desire to protect his interests as a drug dealer. Prior to the murder, Mr. Rogers had a long history of violent and criminal behavior. While incarcerated, he continued to act out violently and deal drugs. In fact, there is confidential information in Mr. Rogers file indicating that he was selling drugs in prison as recently as 2002, and that as recently as this year he was selling tobacco, in violation of institutional rules.

Mr. Rogers recent participation in selling tobacco and drugs within the prison indicates that he remains dangerous. If Mr. Rogers, an inmate serving a life sentence and eligible for parole, is selling unauthorized substances within the confines of the institution, there is a strong likelihood that he will return to selling drugs in the free community. The murder of Ms. Le Duff resulted directly from Mr. Rogers' drug enterprise. The risk of him committing a similar crime in the future is unacceptably high considering his past and present penchant for selling drugs.

Further, information in the record indicates that Mr. Rogers lacks remorse for killing Ms. Le Duff. In 2009, his psychological evaluator found that his statements of remorse "lack sincere emotional expression." The psychologist based this conclusion on the fact that Mr. Rogers' affect did not change while discussing the murder, that he did not identify the victim by her name, and referred to her murder as "this case."

He also refuses to accept responsibility for the premeditated murder. He admits that he shot Ms. Le Duff but claims self-defense, saying that she planted the gun under the pillow in the motel room and that when she went for it, he took it away from her and shot her. Mr. Rogers also asserts that Ms. Le Duff participated in the planning of an attempt to rob him and that he went to see her on the night of the murder to discuss that with her. Mr. Rogers story conflicts with the jury's finding of guilt for first-degree murder, as well as the official record, and reason. For instance, the probation report indicates that a search of Mr. Rogers' apartment after the murder turned up bullets that matched the bullet that killed Ms. Le Duff, thereby refuting his assertion that Ms. Le Duff was responsible for the gun's presence in the hotel room. Also, Mr. Rogers admitted to the probation officer that he was concerned that Ms. Le Duff was planning to testify against him and that was the reason he met with her on the night of the murder. Lastly, Mr. Rogers' claim that he intended only to talk to Ms. Le Duff seems unbelievable considering the apparent threat she posed to him and his criminal enterprise.

Mr. Rogers is not required to admit guilt to be found suitable for parole (Pen. Code § 5011). But I am not obligated to accept his version of the crime as fact, and I do not. Mr. Rogers' past and present attitude toward the crime are factors that affect suitability for release. (Cal.Code Regs., tit. 15 § 2402(b).) He has shown a lack of remorse and failure to truly accept responsibility for the murder, indicating that he has yet to recognize the wrongfulness of his actions. This, combined with his ongoing willingness to participate in the sale of illegal substances, leads me to conclude that he is likely to commit further violent acts.

CONCLUSION:

I have considered the evidence in the record that is relevant to whether Mr. Rogers is currently dangerous. When considered as a whole, I find the evidence I have discussed shows why he currently poses a danger to society if released from prison. Therefore, I reverse the decision to parole Mr. Rogers.

Decision Date: June 30, 2011

A handwritten signature in black ink, reading "Edmund G. Brown Jr.", written in a cursive style.

EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

DENNIS NELSON, D-72724

Second-degree murder

AFFIRM:

MODIFY:

REVERSE:

_____ X _____

STATEMENT OF FACTS:

On the morning of March 21, 1987, Dennis Nelson shot to death his estranged wife, Robben Nelson, and her boyfriend, Johnnie Cox, at Mr. Cox' residence. After the shooting, Mr. Nelson returned to his home and asked a neighbor to call the Sheriff and report the murders. He was arrested later that day. He pled guilty to two counts of second-degree murder. The court sentenced him to two consecutive terms of 15 years to life in prison.

GOVERNING LAW:

The question I must answer is whether Mr. Nelson will pose a current danger to the public if released from prison. In answering this question, I must examine the same record that was before the Board of Parole Hearings and adhere to the same legal standards. 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* (2008) 44 Cal. 4th 1181, 1214.)

DECISION:

At his parole consideration hearing in 2009, the Board of Parole Hearings denied Mr. Nelson parole for a period of five years. The Board based its denial on his failure to engage in self-help as a way to gain insight into the reasons he committed the crime. Mr. Nelson filed a petition for a writ of habeas corpus with the San Diego County Superior Court challenging the Board's parole denial. On November 5, 2010, the court issued an order granting the petition and remanding the case to the Board for further hearing. At the 2011 hearing, the Board granted Mr. Nelson parole but indicated that it felt compelled by the court order to grant parole even though it had serious concerns regarding Mr. Nelson's suitability for parole.

I acknowledge that Mr. Nelson has made some efforts to improve himself while incarcerated. He completed electrical vocational training and has worked for many years as an electrician. He also has not committed any serious misconduct while in prison and has developed a support network of other war veterans outside the prison who have experience with Post Traumatic

Stress Disorder. I commend Mr. Nelson for taking these positive steps. But they are outweighed by negative factors that demonstrate that he remains unsuitable for parole.

Mr. Nelson committed an atrocious crime that involved killing two people unmercifully; one of them was his wife and mother of his two children. The other victim was his friend. Any motives he had for killing them were certainly trivial in relation to the magnitude of his crime.

Mr. Nelson admits that he murdered his wife and Mr. Cox but maintains that the murders were the result of a Viet Nam flashback brought on by Post Traumatic Stress Disorder. Shortly after the murders, he told police that upon entering Mr. Cox's bedroom, the sight of Mr. Cox wearing camouflage and of Ms. Nelson dressed in red triggered his Post Traumatic Stress Disorder. He said that because of his military training, in his mind red "meant danger." He also said that seeing the camouflage and the color red made him feel that he was "back in the bush" in Viet Nam. He claimed these triggers caused him to instinctively shoot both victims.

I find this explanation implausible and disingenuous. Mr. Nelson drove to Mr. Cox's house after learning that Mr. Cox and Ms. Nelson were having an affair. He armed himself with a loaded gun and initiated the confrontation. Even if Mr. Nelson had some sort of flashback, his actions leading up to the murders indicate that they were premeditated. In fact, Mr. Nelson told his psychologist eighteen days before the murders that he "came very close to taking a gun and shooting one of his wife's lovers this past Sunday." By blaming the murders on a flashback, Mr. Nelson has essentially absolved himself of responsibility.

Mr. Nelson's failure to accept responsibility for the murders also indicates a lack of remorse. His psychological evaluator in 2009 indicated that he was remorseful for the murders. But when discussing his remorse for the murders, Mr. Nelson focuses on external circumstances, such as his inability to reach his therapist on the morning of the murders, that combined to result in the murder occurring. In this way, Mr. Nelson expresses remorse that something did not stop him from killing two people, rather than for his own actions and the impact they had on the victims and their families. Mr. Cox's family appeared at Mr. Nelson's most recent parole hearing to oppose parole. They also expressed concern that Mr. Nelson lacks remorse. Mr. Cox's sister, niece, and mother each stated that he had not apologized or shown remorse for the murders.

Mr. Nelson's past and present attitude toward the crime are factors that affect suitability for release. (Cal. Code Regs., tit. 15 § 2402(b).) His failure to accept responsibility for his actions and express genuine remorse offers no assurance that he would not commit a similar act again.

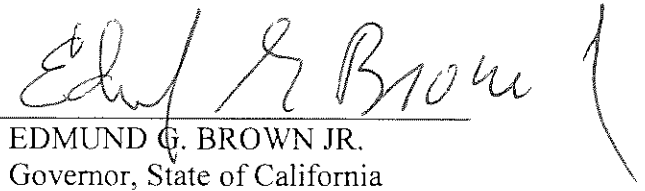
Mr. Nelson's refusal to accept responsibility for his actions and lack of genuine understanding of the reasons he committed the crime appear related to his refusal to participate in self-help programs in prison. He contends that he has sought self-help for his Post Traumatic Stress Disorder by developing a network of connections with various veterans groups and periodically receiving visitors from such organizations. While that is certainly positive, he has made no effort to understand or address the other issues that contributed to him committing the murders and has rejected suggestions from the Board that he participate in other forms of self-help.

Without broader participation in self-help programs, Mr. Nelson is unlikely to gain insight into his propensity for violence or ensure that he will avoid it in the future. The record indicates that, despite the length of his incarceration, he has not taken any courses to address anger management, interpersonal relationships or the like. Because he has not shown that he has obtained the necessary tools to avoid future violence, he remains an unreasonable threat to the safety to those close to him and the community at large.

CONCLUSION:

I have considered the evidence in the record that is relevant to whether Mr. Nelson is currently dangerous. When considered as a whole, I find the evidence I have discussed shows why he currently poses a danger to society if released from prison. Therefore, I reverse the decision to parole Mr. Nelson.

Decision Date: July 1, 2011



EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

RALPH CLARK, C-45216
Second-degree murder

AFFIRM:

MODIFY:

REVERSE:

 X

STATEMENT OF FACTS

Around two o'clock in the morning on May 3, 1981, Ralph Clark and fellow gang members Albert Clark, Raul Baca, and Abel Romero, walked past the Cardenas family's house. As they did, two car loads of people pulled up in front of the house. That evening, the Cardenas family had celebrated the 25th wedding anniversary of Gavino and Vera Cardenas. Mr. Clark and his fellow gang members approached one of the cars containing a number of women heading to the house. Mr. Clark and the others said they wanted to come to the party. Thomas Cardenas, the son of Gavino and Vera, told them it was a family party and they could not attend. A confrontation ensued. Gavino Cardenas came out of the house to help his son. During the confrontation, Mr. Romero hit both Thomas and Gavino in the head with a metal pipe. Mr. Clark then pulled out a .357 magnum pistol and shot Gavino between the eyes, killing him. Mr. Clark then shot Thomas twice in the chest. Thomas suffered serious injuries but survived the shooting.

GOVERNING LAW:

The question I must answer is whether Mr. Clark will pose a current danger to the public if released. In answering this question, I must examine the same record that was before the Board of Parole Hearings and adhere to the same legal standards. 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* (2008) 44 Cal. 4th 1181, 1214.)

DECISION:

The Board of Parole Hearings found Mr. Clark suitable for parole based on his remorse, insight into the crime, completion of vocational training, positive job assignment record, participation in self-help programming, lack of serious disciplinary problems, solid parole plans, and reduced risk of recidivism due to his age.

I acknowledge Mr. Clark has made gains while incarcerated. He completed multiple vocational training programs and held a number of institutional job assignments. He also participated in self-help programs that addressed such issues as substance abuse, anger management, and the gang and criminal mindset. I commend him for taking these positive steps. But they are outweighed by negative factors that demonstrate he remains unsuitable for parole.

Mr. Clark committed an atrocious murder. He killed Gavino Cardenas and badly injured his son, Thomas, on what had been a day of celebration for the Cardenas family. The motive for the murder was very trivial, resulting from a confrontation instigated by Mr. Clark and his associates.

The murder was one of many crimes Mr. Clark committed in his youth. Along with his brothers, he was heavily entrenched in the street gang lifestyle. Prior to the murder, he committed multiple property crimes and weapon offenses and, at the time of the murder, had recently paroled from the California Youth Authority after serving time for robbery.

The psychological evaluation performed on Mr. Clark in 2009 indicates that he remains a threat to society if released from prison. The risk assessments in his 2009 psychological evaluation indicate that he poses a "moderate" risk of violent recidivism, a "moderate" risk of general recidivism, and an overall "moderate" risk of violence in the community. The psychologist identified Mr. Clark's early criminal record, history of substance abuse, Antisocial Personality Disorder, psychopathic traits, and limited insight into the causes of the crime as factors that increased his risk of committing another violent crime. The psychologist found that Mr. Clark had "limited insight into [the] origin of his aggressive/violent antisocial behavior." He opined that Mr. Clark's lack of insight "would be expected to cause difficulties with the inmate's ability to identify and change his poor decision making" and concluded that Mr. Clark "appears to have not spent sufficient time exploring his thought process leading up to the controlling offense, as well as completely identifying his errors in judgment that led to the victims' death."

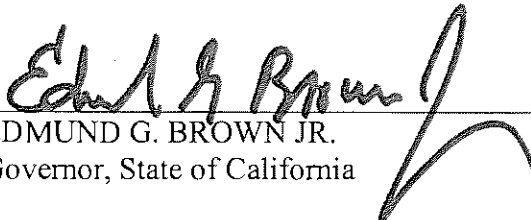
Mr. Clark also minimizes his culpability for the crime by denying that he shot Thomas and Gavino Cardenas. He claims that he tripped and dropped the gun and that his brother, Albert, picked it up and shot the victims. But the August 16, 1983 appellate opinion in this case states that at trial four eyewitnesses, including Thomas Cardenas, identified Mr. Clark as the only person who wielded the gun and fired the shots. The psychologist, who "did not find [Mr. Clark] to be a completely reliable historian," sites this factual discrepancy as further evidence that Mr. Clark has not fully explored the internal causes and factors that led to the crime.

Mr. Clark has really not explained why he saw fit to shoot a .357 magnum and kill Gavino Cardenas and severely wound Thomas Cardenas. Unless he can show deeper insight and explain why he is different now, there is little assurance that he is not prone to further violence.

CONCLUSION:

I have considered the evidence in the record that is relevant to whether Mr. Clark is currently dangerous. When considered as a whole, I find the evidence I have discussed shows why he currently poses a danger to society if released from prison. Therefore, I reverse the decision to parole Mr. Clark.

Decision Date: July 8, 2011


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

DAVID AVILA, D-40735

First-degree murder

AFFIRM:

MODIFY:

REVERSE:

_____ X _____

STATEMENT OF FACTS

On February 5, 1986, David Avila and Arthur Samrano went to a convenience store. While standing outside the store, they encountered Michael Bergman. Mr. Samrano approached Mr. Bergman and demanded Mr. Bergman's wallet. Mr. Bergman resisted. Mr. Samrano and Mr. Bergman began to struggle. Mr. Avila then stepped forward and stabbed Mr. Bergman in the chest with a knife. Mr. Bergman released his wallet and Mr. Samrano and Mr. Avila walked away with it laughing. Mr. Bergman drove to a friend's home where he died from the stabbing.

GOVERNING LAW

The question I must answer is whether Mr. Avila will pose a current danger to the public if released from prison. In answering this question, I must examine the same record that was before the Board of Parole Hearings and adhere to the same legal standards. 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* (2008) 44 Cal. 4th 1181, 1214.)

DECISION

The Board of Parole Hearings found Mr. Avila suitable for parole based on his insight, self-help programming, positive mental state, educational and vocational upgrading, realistic parole plans, and maturity.

I acknowledge that Mr. Avila has made efforts to improve himself while incarcerated. He has participated in various forms of self-help such as substance-abuse therapy, anger management, stress management, and victims awareness. He has also successfully completed vocational training programs for furniture refinishing and small-engine repair. I commend Mr. Avila for taking these positive steps. But they are outweighed by negative factors that demonstrate he remains unsuitable for parole.

Mr. Avila conspired to rob Mr. Bergman, who was alone and unarmed. When his victim resisted, Mr. Avila stabbed him in the chest, exhibiting utter disregard for human life.

Mr. Avila continues to minimize his culpability for the crime. During his 2011 parole hearing, he told the Board that he asked Mr. Bergman for money to make a telephone call as he was leaving the store and that Mr. Bergman pushed him and told him to get away. He claims they then became involved in a fight and that he pulled out the knife because Mr. Bergman was beating him up. He says he merely intended to hit Mr. Bergman in the stomach with his knife to get Mr. Bergman off him. He also claimed that when he swung his knife at Mr. Bergman's stomach, Mr. Bergman dodged in such a way that the knife penetrated his chest. In other words, Mr. Avila claims he was only acting to defend himself.

But the facts suggest otherwise. The probation report discloses that an eyewitness told police that he saw Mr. Avila and Mr. Samrano standing outside the convenience store for some time before Mr. Bergman arrived. The witness heard either Mr. Avila or his crime partner say "okay" to the other when Mr. Bergman exited the store. Mr. Samrano then approached Mr. Bergman and demanded his wallet. Mr. Bergman refused and a fight ensued. At this point, Mr. Avila approached Mr. Bergman and stabbed him in the chest. He then took Mr. Bergman's wallet and left.

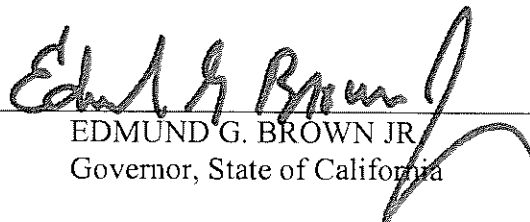
I find the disinterested witness' statement, which is quite different from Mr. Avila's account, to be very plausible. I believe Mr. Avila is not being honest when he claims that he did not intend to rob Mr. Bergman and that he only stabbed him to protect himself. By minimizing his role in the crime and blaming the victim, Mr. Avila shows that he fails to accept responsibility and does not exhibit insight, much less remorse, for his actions. This leads me to believe that he presents a current risk of committing further acts of violence.

The risk-assessment scores in his 2010 psychological evaluation show that he poses a "moderate" risk of violent recidivism, rates in the "medium" range for likelihood of general recidivism, and that overall he is "moderate" risk of violence in the free community.

CONCLUSION

I have considered the evidence in the record that is relevant to whether Mr. Avila is currently dangerous. When considered as a whole, I find the evidence I have discussed shows why he currently poses a danger to society if released from prison. Therefore, I reverse the decision to parole Mr. Avila.

Decision Date: July 14, 2011


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

CHRISTOPHER SMITH, C-65807

Second-degree murder

AFFIRM:

MODIFY:

REVERSE:

_____ **X** _____

STATEMENT OF FACTS

On September 2, 1982, Christopher Smith and three friends got into a fight with another group of young men, one of whom threw a beer bottle that struck Mr. Smith in the face, cutting him. Mr. Smith ran home and returned to the scene of the fight with a loaded shotgun. He then shot Antonio Lopez in the back from a nearby alley because he believed Mr. Lopez had thrown the beer bottle at him. Mr. Lopez later died from the bullet wound.

GOVERNING LAW

The question I must answer is whether Mr. Smith will pose a current danger to the public if released from prison. In answering this question, I must examine the same record that was before the Board of Parole Hearings and adhere to the same legal standards. 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* (2008) 44 Cal. 4th 1181, 1214.)

DECISION

The Board of Parole Hearings found Mr. Smith suitable for parole based on his expression of remorse, participation in self-help programs, educational training, positive mental state, acceptance of responsibility, insight, and solid parole plans.

I acknowledge Mr. Smith has made efforts to improve himself while incarcerated. He earned a General Equivalency Diploma and completed 15 units of community college study. He has participated in self-help programs including Denial Management, Social Skills Training, Alternatives to Violence, Breaking Barriers, and several anger-management classes. I commend Mr. Smith for taking these positive steps. But they are outweighed by negative factors that demonstrate he remains unsuitable for parole.

Mr. Smith killed his victim in a dispassionate and calculated manner. He shot Mr. Lopez in the back from a nearby alley. The motive for the murder was trivial, a completely disproportionate response to a relatively minor confrontation.

Though Mr. Smith has made gains while incarcerated, his most recent psychological evaluation indicates that he remains a threat to the community. The risk assessments from Mr. Smith's 2010 psychological evaluation indicated that he posed a "moderate" risk of violent recidivism, a "medium" risk of general recidivism, and that overall he posed a "moderate" risk of violence in the free community. Factors that contributed to Mr. Smith's elevated risk assessment ratings included his criminal history, antisocial personality traits, long history of failing to take responsibility for his behavior, continued attitude of rule-defiance, limited insight, current impulsivity, and history of substance abuse.

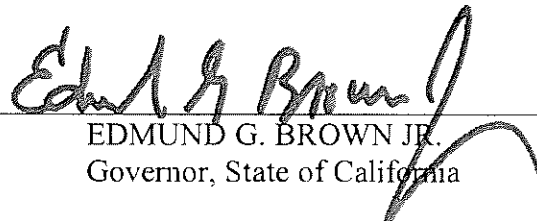
While Mr. Smith now admits to committing the murder and has begun to participate in self-help programs after many years of resisting, he still lacks an understanding of the causes that led him to murder Mr. Lopez. The psychologist found that Mr. Smith has "limited insight into the functions of his past violent impulses" and that he "may benefit from taking a more honest look into the true motives of the crime, as well as a probative look into the function of his retaliatory impulses." The psychologist also found that Mr. Smith "appears to have an unrealistic appraisal of his past addiction issues, as evidenced by [his] continued abuse of alcohol in prison." The psychologist further observed that Mr. Smith has "failed to fully appreciate the benefit of substance abuse treatment." The psychologist concluded that Mr. Smith could increase his level of insight and decrease his risk of future violence by continuing to participate in self-help therapies. Until Mr. Smith obtains a better understanding of the factors that led him to commit the murder, he remains an unreasonable risk to reoffend.

I am also alarmed by Mr. Smith's relatively recent misconduct in prison. He has a hard time following the rules. He was disciplined in 2009 for possessing contraband. He was also disciplined in 2006 for disobeying orders and counseled in 2009 for failing to follow orders. These recent offenses are part of a pattern of misconduct by Mr. Smith occurring throughout his incarceration. His ongoing inability to follow rules in a controlled environment causes me concern about his willingness to comply with the conditions of his parole and follow the laws of free society.

CONCLUSION

I have considered the evidence in the record that is relevant to whether Mr. Smith is currently dangerous. When considered as a whole, I find the evidence I have discussed shows why he currently poses a danger to society if released from prison. Therefore, I reverse the decision to parole Mr. Smith.

Decision Date: July 14, 2011


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

BRUCE CHASE, B-50292

First-degree murder

AFFIRM:

MODIFY:

REVERSE:

_____ **X** _____

STATEMENT OF FACTS

On May 15, 1973, Bruce Chase and Michael Rosales entered a store where Elsie Cabatic worked as a clerk. Mr. Chase or Mr. Rosales struck Ms. Cabatic over the head with a heavy object, rendering her semi-conscious. Next, they strangled Ms. Cabatic with an electrical cord, doused her with a flammable liquid, and set her on fire. Mr. Chase and Mr. Rosales took money from the cash register and left Ms. Cabatic in the store to burn. Ms. Cabatic died from injuries caused by the fire.

GOVERNING LAW

The question I must answer is whether Mr. Chase will pose a current danger to the public if released from prison. In answering this question, I must examine the same record that was before the Board of Parole Hearings and adhere to the same legal standards. 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* (2008) 44 Cal. 4th 1181, 1214.)

DECISION

The Board of Parole Hearings found Mr. Chase suitable for parole based on his serious medical condition, advanced age, self-help programming, institutional disciplinary history, parole plans, and remorse.

Mr. Chase has made limited efforts to improve himself while incarcerated. He participated in Alcoholics Anonymous, an Asian Culture Study course, and a self-instructional computer literacy program. He also held a number of institutional jobs until his medical conditions prevented him from working. I commend Mr. Chase for taking these positive steps. But they are outweighed by negative factors that demonstrate he remains unsuitable for parole.

Mr. Chase murdered Ms. Cabatic in an especially cruel manner. He and his crime partner beat, strangled, and then burned an innocent 52 year-old woman and left her to die. Their motivation was simply a desire for money to buy drugs, a very trivial motive in relation to the offense. The gruesome manner in which Mr. Chase and his crime partner attacked Ms. Cabatic demonstrated an exceptionally callous disregard for human suffering.

Despite the passage of time and the gains that Mr. Chase has made while incarcerated, his most recent psychological report indicates that he does not accept full responsibility for his role in the murder. The psychologist noted that Mr. Chase "insisted he was accepting 'full responsibility' for the crime." Yet Mr. Chase also attempted to shift blame by telling the psychologist that his codefendant proposed the crime and induced him participate by giving him LSD. Mr. Chase now claims amnesia regarding the circumstances of the crime, but has previously provided a number of facts regarding the murder. Mr. Chase cannot meaningfully accept responsibility for the crime while simultaneously blaming his codefendant and claiming that he no longer remembers the murder. The psychologist pointed out that acceptance of responsibility is essential to gaining insight:

Facing the truth about this crime, may indeed be emotionally difficult, nonetheless it is critical if he wants to understand his criminal behaviors in order to prevent such behaviors from happening in the future... Unless he knows what he did and why he did it, there is a strong possibility that he will repeat such behavior again.

Mr. Chase remains a threat to society because his inconsistent approach to the murder demonstrates that he has not gained insight into his actions.

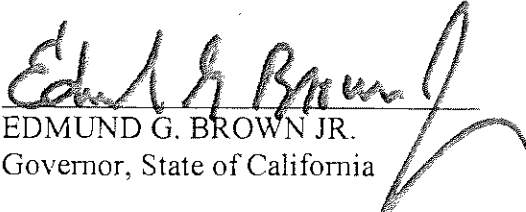
My concern that Mr. Chase remains dangerous is also supported by the risk assessment scores in his 2010 psychological evaluation. The psychological evaluation states that he poses a "moderate" risk of violent recidivism and a "medium" risk of general recidivism. The psychologist attributed Mr. Chase's moderate risk assessment for violent recidivism to several factors including limited insight into the reasons for his crime, blaming his codefendant, and his claimed loss of memory for the committed criminal acts. The psychologist also cited Mr. Chase's minimal recognition of the personality characteristics that led to his previous crimes and use of intoxicants.

Until he accepts responsibility for his actions, and obtains greater insight into the reasons he committed this senseless and brutal murder, Mr. Chase remains a threat to public safety. The psychologist concluded that Mr. Chase could decrease his risk of future violent behavior in several ways. He could come to terms with the reasons for the murder without blaming his codefendant, accept full responsibility for the crime, and express his contrition.

CONCLUSION

I have considered the evidence in the record that is relevant to whether Mr. Chase is currently dangerous. When considered as a whole, I find the evidence I have discussed shows why he currently poses a danger to society if released from prison. Therefore, I reverse the decision to parole Mr. Chase.

Decision Date: July 29, 2011


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

MANUEL DUNN, K-77333
Second-degree murder

AFFIRM: _____

MODIFY: _____

REVERSE: _____

X

STATEMENT OF FACTS

Manuel Dunn and Luis Mota were members of the Westside Drifters street gang. On August 29, 1996, one of their fellow gang members was shot and killed. The Drifters believed that a rival street gang, known as SSK, was responsible and Mr. Dunn decided to seek revenge. While driving with Mr. Mota the next day in SSK territory, Mr. Dunn spotted a car that belonged to a member of SSK. Mr. Dunn stopped his car and Mr. Mota got out, approached the other car, and fired a pistol about six times at the car. SSK members Marvin Garcia, Omar Pacheco, and Juan Alvarado were in the car. A bullet hit Mr. Garcia in the neck and killed him. Mr. Pacheco and Mr. Alvarado were not injured.

GOVERNING LAW:

The question I must answer is whether Mr. Dunn will pose a current danger to the public if released from prison. In answering this question, I must examine the same record that was before the Board of Parole Hearings and adhere to the same legal standards. 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* (2008) 44 Cal. 4th 1181, 1214.)

DECISION:

The Board of Parole Hearings found Mr. Dunn suitable for parole based on his acceptance of responsibility for the crime, participation in self-help programs, ability to remain discipline-free for over eight years, preparation of a relapse-prevention plan, and increased maturity. The Board set Mr. Dunn's parole date for November 2016.

I acknowledge Mr. Dunn has made efforts to improve himself while incarcerated. He completed vocational training in janitorial services. He also has participated in the following self-help programs: Narcotics Anonymous (2010-2011), Anger Management course, Alternatives to Domestic Violence group, Relapse Prevention Plan workshop, Victim Awareness workshop, and Job Re-entry workshop. I commend Mr. Dunn for taking these positive steps. But they are outweighed by negative factors that demonstrate he remains unsuitable for parole.

Mr. Dunn has a lengthy history of violent crime. He joined a gang at the age of 16 and had a criminal record that included juvenile offenses of burglary, robbery, and drug possession. Mr. Dunn was the driver as well as the instigator in the murder of Mr. Garcia. After his incarceration, he continued his criminal behavior, receiving Rules Violation Reports twice for participating in race-based fights and once for battering another inmate.

While Mr. Dunn's behavior in prison has improved in recent years, his 2010 psychological evaluation indicates that he poses a "medium" risk of violent recidivism. This elevated score is based on a number of historical factors, as well as his lack of insight into his criminal behavior, and the causes that led him to commit the life crime, and his lack of preparation for life in the community. The psychologist found that he did not have adequate insight into his motivations for joining a gang and involving himself in criminal activities, and that he did not take responsibility for his choices but instead blamed other people and his circumstances. The psychologist also stated that Mr. Dunn did not express an appropriate understanding of the seriousness of taking a life, nor did he express discernable remorse or empathy for his victims. The other risk assessments in the psychological evaluation placed Mr. Dunn in the "high" category for risk of general recidivism, rated him in the "moderate" range for psychopathy, and he concluded that he posed a "moderate" risk for violence in the free community.

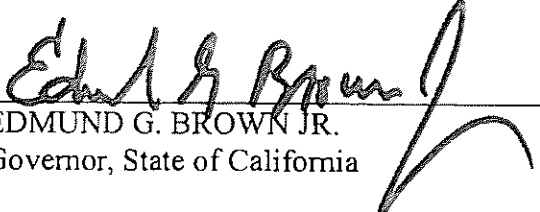
I am also concerned by Mr. Dunn's limited participation in self-help programs. Mr. Dunn essentially started participating in self-help programming in 2010. According to the psychological evaluation, Mr. Dunn has more work to do in gaining insight into the causes of his criminal behavior as well as his impulsivity and behavioral control problems. The psychologist also found that Mr. Dunn's thinking remained "steeped" in the customs of the gang lifestyle and that he had not yet learned to think independently and choose appropriate responses in difficult situations. The psychologist concluded that Mr. Dunn was "capable of benefitting from self-help groups if he will apply himself" and that it is "important that he get a different perspective if he is to increase his insight to more appropriate levels."

Mr. Dunn's elevated risk assessment scores, along with the other findings in his psychological evaluation, and his insufficient participation in self-help programming, indicate that he has yet to show sufficient changes in his way of thinking to ensure that he will not return to a criminal lifestyle if released into the community.

CONCLUSION:

I have considered the evidence in the record that is relevant to whether Mr. Dunn is currently dangerous. When considered as a whole, I find the evidence I have discussed shows why he currently poses a danger to society if released from prison. Therefore, I reverse the decision to parole Mr. Dunn.

Decision Date: July 29, 2011


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

WALTER ROMINE, K-78735

Second-degree murder

AFFIRM:

MODIFY:

REVERSE:

_____ X _____

STATEMENT OF FACTS

Walter Romine was driving approximately 60 miles per hour down a city street with a posted speed limit of 30 miles per hour. He ran a red light and crashed into a car driven by Jose Limas. Mr. Limas's wife, Martha, and their four-year-old son and two-year-old daughter were also in the car. Mrs. Limas suffered a fractured skull in the crash and died. Mr. Limas and his son both suffered head injuries but survived. Police administered a blood alcohol test on Mr. Romine shortly after the crash. The test showed he had a blood-alcohol content of 0.23 percent. Mr. Romine had been convicted of driving under the influence of alcohol six times prior to the life crime.

GOVERNING LAW

The question I must answer is whether Mr. Romine will pose a current danger to the public if released from prison. In answering this question, I must examine the same record that was before the Board of Parole Hearings and adhere to the same legal standards. 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* (2008) 44 Cal. 4th 1181, 1214.)

DECISION

The Board of Parole Hearings found Mr. Romine suitable for parole based on his acceptance of responsibility and remorse for the murder, lack of misconduct in prison, participation in self-help programs, completion of vocational training, and positive institutional work record. The Board gave him a future parole date of July 28, 2014.

I acknowledge Mr. Romine has made efforts to improve himself while incarcerated. He completed vocational training programs, held a number of job assignments, and has not been disciplined for any misconduct. He has also participated in self-help programs, including Alcoholics Anonymous, Partnership for Re-entry Program courses in life skills and self-development, Anger Management program workshop, Parenting program workshop, Substance Abuse program workshop, Creative Conflict Resolutions training, an Alternatives to Violence Project course, and a Breaking Barriers workshop. I commend Mr. Romine for taking these positive steps. But they are outweighed by negative factors that demonstrate he remains unsuitable for parole.

Mr. Romine's decision to get drunk and drive his truck down a city street at a rate twice the speed limit shows a complete disregard for the safety of others. Tragically, it resulted in the death of a young wife and mother, and injuries to her four-year-old son and her husband. At Mr. Romine's recent parole hearing, Mrs. Limas's sister spoke about the heartache and pain her entire family suffered as a result of Mrs. Limas' death. On behalf of her family, she expressed their opposition to a grant of parole for Mr. Romine.

Mr. Romine had six convictions for driving under the influence of alcohol prior to the day he killed Mrs. Limas. He told the psychologist during his 2010 evaluation that he quit drinking alcohol for a sustained period on two occasions prior to the murder, once for nine years, and a second time for five years. But both times he went back to abusing alcohol and would invariably drive drunk. He attended a number of court-ordered alcohol treatment programs as a result of his prior convictions, but none of those programs changed his behavior. He told the psychologist that he never attended any sort of alcohol treatment unless ordered by the court.

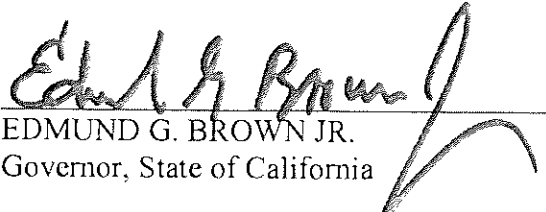
Despite his severe alcohol addiction, Mr. Romine's dedication to alcohol treatment while in prison has been underwhelming. He participated in Alcoholics Anonymous in 1997 through 1998, and then again beginning in December of 2008 to the present, leaving a gap of almost 11 years where he was not involved in treatment. In the past he only attended substance abuse treatment when ordered by the court and in each instance he did not remain sober. This makes me question whether his more recent participation in Alcoholics Anonymous has been the result of a true commitment to treatment, or to satisfy the Board. At his recent parole hearing, he told the Board that he had not secured a sponsor in the community, did not have a relapse prevention plan, and could not identify potential triggers in the free community that would challenge his sobriety. The psychologist found that Mr. Romine had little insight into the preparation he needed to do to deal with problematic issues that would arise in the community. The psychologist also noted that his risk of relapse in the community was uncertain due to his history of problematic alcohol use, which increased his likelihood of committing another crime.

Given Mr. Romine's pattern of behavior throughout his adult life, I am very concerned that if he is paroled he will drink and drive. He must show a sincere and sustained commitment to treatment. He also must recognize the issues he will face upon being released on parole and have plans in place to address those issues. Until he does, he remains an unreasonable risk of harm to others.

CONCLUSION

I have considered the evidence in the record that is relevant to whether Mr. Romine is currently dangerous. When considered as a whole, I find the evidence I have discussed above demonstrates why he currently poses a danger to society if released from prison. Therefore, I reverse the decision to parole Mr. Romine.

Decision Date: July 29, 2011


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

MELVIN BLAKE, B-76340

First-degree murder

AFFIRM:

MODIFY:

REVERSE:

 X

STATEMENT OF FACTS

On March 25, 1976, Melvin Blake, accompanied by a friend, went to a liquor store armed with a handgun intending to rob the store. Before entering the store they saw Mark Doud walking by. Mr. Blake shot Mr. Doud in the head and back in an attempt to rob him. Mr. Doud died at the scene from the shooting. Mr. Blake and his friend fled. Mr. Blake surrendered to the police several weeks later.

GOVERNING LAW

The question I must answer is whether Mr. Blake will pose a current danger to the public if released from prison. In answering this question, I must examine the same record that was before the Board of Parole Hearings and adhere to the same legal standards. 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* (2008) 44 Cal. 4th 1181, 1214.)

DECISION

The Board of Parole Hearings found Mr. Blake suitable for parole based on his remorse, parole plans, disciplinary record while incarcerated, the self-help programming he has completed, insight, and the educational courses completed in prison.

I acknowledge that Mr. Blake has made some efforts to improve himself while incarcerated. He earned a General Equivalency Diploma in 2010. He has participated in some self-help programs including Alcoholics and Narcotics Anonymous in 2010 and 2011, Relapse Prevention Planning workshop, Partnership for Re-Entry Program, Anger Management program, Victims Awareness program, and Alternatives to Violence. I commend Mr. Blake for taking these positive steps. But they are outweighed by negative factors that demonstrate he remains unsuitable for parole.

Mr. Blake callously shot Mr. Doud even though he was unarmed and posed no threat to Mr. Blake. The shooting was completely unprovoked and senseless. Whatever motive Mr. Blake

had for murdering Mr. Doud, it was either inexplicable or very trivial in relation to the magnitude of the offense.

Mr. Blake's account of the crime is not only contrary to the evidence, but so implausible that I cannot believe it. He told his psychological evaluator in September 2010 that while he and his crime partner were walking to the liquor store on the day of the crime, his brother walked up to them, hugged Mr. Blake and noticed that Mr. Blake was carrying a pistol. According to Mr. Blake, his brother became concerned that they were going to rob the store, and told them to "do good" and get rid of the gun. Mr. Blake denied that they were going to rob the store and, in an attempt to get rid of his brother, pointed to Mr. Doud who was near the store and told his brother that Mr. Doud owed him money from a drug deal. Then, according to Mr. Blake, his brother took the gun from him, and went after Mr. Doud and shot him twice. It strains credulity to think that in one moment, Mr. Blake's brother would be admonishing him to stay out of trouble and get rid of his gun, then in the next moment, would take that gun and use it to kill a perfect stranger on the belief he owed a drug debt to Mr. Blake.

Mr. Blake also changes his story on two other points: whether he talked to his brother after the crime and who was holding the gun.

He told the probation officer shortly after he was convicted that he spoke with his brother again after the crime, and they planned the story he would tell police. But he told his 2010 evaluator that he never spoke to his brother after the crime. Then, six months later at his parole hearing, he reverted to his original story that he did speak to his brother after the crime.

He also told his 2010 evaluator that his brother "hugged me and noticed that I had a pistol." But at his parole hearing, he told the board that it was *his crime partner* who was the one carrying the gun. I find it hard to believe Mr. Blake's ever-changing story. Until he offers a credible account of his crime, there can be no assurance that he understands why he killed Mr. Doud or that he has taken the steps necessary to ensure that he will not commit other violent acts.

The conclusions of the psychologist who evaluated him in 2010 confirm my concerns. The psychologist assessed him as posing a "moderate" risk of violent recidivism, a "high" risk of general recidivism, and an overall "moderate/high" risk of violence in the free community. The psychologist also concluded that he "meets the full criteria for Antisocial Personality Disorder," an essential feature of which "is a pervasive pattern of disregard for, and violation of, the rights of others that begins in childhood and continues into adulthood." The psychologist identified his history of violence, substance-use problems, early maladjustment, prior supervision failure, Antisocial Personality Disorder, moderate traits of psychopathy, limited participation in self-help, and lack of insight all as factors that increase his likelihood of future violence.

The psychologist found that Mr. Blake lacks insight regarding the murder and the "personality dynamics that may have contributed to his behaviors." The psychologist also found that he lacks genuine empathy for the victim and stated that "Mr. Blake was unable to state, beyond a superficial explanation, how he has grown and what he had learned in prison that would prevent him from making the same mistakes in the future." The psychologist concluded that Mr. Blake

could decrease his risk of violence by gaining insight into himself and his role in the crime. Until Mr. Blake gains a greater understanding of why he committed the crime, there is no assurance that he has learned from his mistakes.

I also share the psychologist's concern that Mr. Blake's participation in self-help programs has been insufficient. Mr. Blake admitted being under the influence of alcohol and marijuana at the time of the murder, and that he was "an inhalant freak" who would inhale gasoline, fingernail polish, spot remover, and spray paint. But he only began participating in Alcoholics and Narcotics Anonymous last year. The psychologist found that "Mr. Blake appeared to have limited insight and awareness regarding the role that alcohol and drugs have played in the circumstances of his life." At the time of his 2010 psychological evaluation, he could not recite the 12 steps, or explain how he incorporates those tenets into his life. Noting this lack of insight into his substance abuse problem and limited self-help participation, the psychologist described Mr. Blake's prognosis for abstinence in the free community as "guarded." Given that drugs and alcohol contributed to Mr. Blake's prior criminal activity, he needs to demonstrate a meaningful and sustained commitment to address his addiction issues through self-help programming, to help ensure that he will be able to cope with these issues when he is released from the controlled prison environment.

Finally, Mr. Blake does not appear to have well-considered parole plans. He told his 2010 psychological evaluator that he planned to parole to San Diego County where he grew up and was going to reside in a PREP program. But at his parole hearing, he informed the board that he was instead going to parole to Los Angeles County where he would enter the Bible Tabernacle New Life Institute. He told the board that he made the change because he was concerned that he would not be able to afford the cost of the PREP program. But the hearing commissioner informed him that the PREP program puts its residents to work so that they can earn money to cover the cost of the program. I find it concerning that Mr. Blake had a limited and incorrect understanding of his original parole plan, and that his selection of a different program in a county to which he apparently has no connection may also not be sufficiently thought through. Until Mr. Blake demonstrates that he has viable, well-conceived parole plans, I believe he will present an unacceptable risk to society if released.

CONCLUSION:

I have considered the evidence in the record that is relevant to whether Mr. Blake is currently dangerous. When considered as a whole, I find the evidence I have discussed shows why he currently poses a danger to society if released from prison. Therefore, I reverse the decision to parole Mr. Blake.

Decision Date: August 1, 2011


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

FRANCISCO BAUTISTA, C-45656

Second-degree murder

AFFIRM:

MODIFY:

REVERSE:

_____ X _____

STATEMENT OF FACTS

On October 14, 1981, Francisco Bautista stabbed to death 17 year-old Ricardo Rodriguez in a restaurant parking lot. Before the murder, Bautista had told several witnesses that he wanted to fight Rodriguez because he was a "snitch." Bautista approached Rodriguez with a knife. Rodriguez was unarmed and refused to fight but Bautista stabbed him anyway. Rodriguez fell to the ground and Bautista stabbed him twice more. Standing over Rodriguez, Bautista then told witnesses the he had to kill Rodriguez to prevent reprisals. He stabbed Rodriguez twice more then fled the scene. Bautista stabbed Rodriguez a total of seven times. Rodriguez died of his stab wounds.

GOVERNING LAW

The question I must answer is whether Mr. Bautista will pose a current danger to the public if released from prison. In answering this question, I must examine the same record that was before the Board of Parole Hearings and adhere to the same legal standards. 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* (2008) 44 Cal. 4th 1181, 1214.)

DECISION

The Board of Parole Hearings found Mr. Bautista suitable for parole based on his insight into the crime, acceptance of full responsibility, remorse, parole plans, his completion of vocational training, positive institutional behavior, and participation in self help.

I acknowledge that Mr. Bautista has made some efforts to improve himself while incarcerated. He obtained his General Equivalency Diploma, participated extensively in substance-abuse therapy and various anger-management programs. Mr. Bautista has also completed vocational drafting and received commendations from institutional staff for his positive behavior and job performance. I commend Mr. Bautista for taking these positive steps. But they are outweighed by negative factors that demonstrate he remains dangerous.

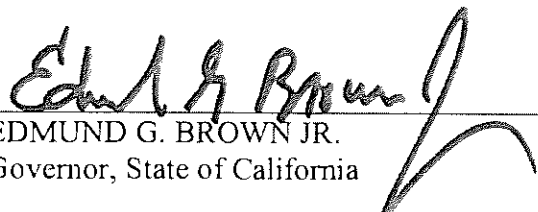
Mr. Bautista repeatedly stabbed an unarmed teenage boy to death in public in front of several people. He acted without provocation and interrupted himself only to tell onlookers that he had to finish the job to avoid reprisals. The motive for Mr. Bautista's brutal violence—his belief that Mr. Rodriguez had somehow been a snitch—was trivial in relation to the offense and evidences an inability to control his rage.

Mr. Bautista has a history of gang involvement, and I am concerned that he remains involved in dangerous activities. As recently as 2005, several sources of confidential information indicate that he was involved in manufacturing and smuggling weapons in prison. This information did not result in any disciplinary action against Mr. Bautista but, if true, it certainly causes me concern that he remains dangerous. Therefore, I cannot allow Mr. Bautista to be released from prison until prison authorities have investigated these allegations and determined whether they are true and whether Mr. Bautista remains involved in these activities. The Board should consider the results of this investigation at Mr. Bautista's next parole hearing.

CONCLUSION

I have considered the evidence in the record that is relevant to whether Mr. Bautista is currently dangerous. When considered as a whole, I find the evidence I have discussed shows why he currently poses a danger to society if released from prison. Therefore, I reverse the decision to parole Mr. Bautista.

Decision Date: August 5, 2011


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

BYRON MILLS, C-32019
Second-degree murder

AFFIRM:

MODIFY:

REVERSE:

 X

STATEMENT OF FACTS

On July 13, 1980, Byron Mills killed his wife, Rosemary Mills. On that evening, Ms. Mills told him that she had been having an affair with another man. Mr. Mills became angry, grabbed her by the neck, and choked her to death.

GOVERNING LAW

The question I must answer is whether Mr. Mills will pose a current danger to the public if released from prison. In answering this question, I must examine the same record that was before the Board of Parole Hearings and adhere to the same legal standards. 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* (2008) 44 Cal. 4th 1181, 1214.)

DECISION

The Board of Parole Hearings found Mr. Mills suitable for parole based on his vocational training while incarcerated, parole plans, disciplinary record while incarcerated, the self-help programs that he has completed, age, and remorse.

I acknowledge that Mr. Mills has made some efforts to improve himself while incarcerated. He earned a General Equivalency Diploma in 1991. He has acquired marketable skills in masonry and dry cleaning. He has also participated in Narcotics Anonymous, Victim Offender Education Group, Alternatives to Violence, Anger Management, Rational Behavior Training Group, and Beginning Stress Management. I commend him for taking these positive steps. But they are outweighed by negative factors that demonstrate he remains dangerous.

Mr. Mills brutally and unmercifully choked to death Ms. Mills, his wife and the mother of his two children. Mr. Mills held a position of trust as Ms. Mills's husband and the father of her children, who were left without either parent to care for them.

Despite many years of self-help programming in prison, Mr. Mills still appears to lack insight into his crime. He fails to take responsibility for murdering his wife and has not shown genuine

remorse or understanding of the reasons that led him to do it. These deficiencies in Mr. Mills's insight were apparent to his psychological evaluator as recently as March 2010. The evaluator explained that Mr. Mills "appears to have accepted limited responsibility by continuing to place a preponderance of provocation on the victim. Therefore, he presents as making efforts to rationalize and minimize his role, and appears to lack a full understanding of the factors that contributed to his commission of the life crime."

The psychological evaluator also doubted the sincerity of Mr. Mills's remorse and regret, explaining that "his affect appeared superficial and his demonstrated empathy and remorse appeared detached and unemotional rather than internal and emotional. His reported remorse appears to be more focused on how the life crime has impacted his life, rather than an internal sense of empathy for the loss of life he took from the victim."

Other aspects of Mr. Mills's behavior similarly call his sincerity into question. The psychological evaluator described him as glib and superficial, and stated that he presented himself with "some deceitfulness." The evaluator noted that he has an "ongoing pattern of minimizing or denying the seriousness of his past relational violence" and has "not taken full responsibility for his behaviors[.]"

My concerns about Mr. Mills are further supported by his inability to recall significant aspects about his history of violence. He admitted to grabbing and hitting Ms. Mills but then said "No, I never beat Rosemarie." The psychological evaluator noted that Mr. Mills's denial when answering questions about statements contained in the probation officer's report. Mr. Mills also stated that he did not recall kicking in the door to his residence, being served with a restraining order, being described as a bully, or admitting to another psychological evaluator that he slapped Ms. Mills with an open hand on approximately 10 occasions. Mr. Mills has a selective memory that conveniently minimizes his history of violent behavior.

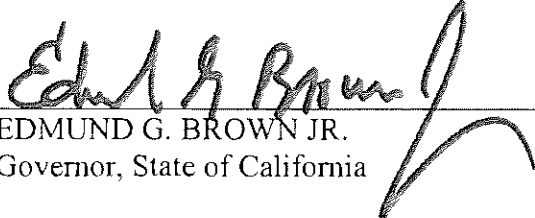
Mr. Mills was evaluated again in January 2011. The more recent psychological evaluation states that Mr. Mills acknowledged that he was verbally, emotionally and physically abusive to his wife. The evaluation also states that Mr. Mills has displayed insight into his feelings of hurt and jealousy. But this subsequent report is less in-depth than the more comprehensive evaluation performed only 10 months earlier. And it does not address all the previously raised concerns about his sincerity or understanding of his life crime. For these reasons, I am giving it less weight, and do not find that it adequately addresses the concerns raised in the March 2010 evaluation.

Finally, Mr. Mills's own children oppose his release from prison. His daughter testified at his parole hearing that he lacks genuine remorse and she expressed concerns for her safety and the safety of her family members if he is released. She explained that he does not appreciate that his crime caused her and her brother to grow up not only without a mother, but also without a father. She also read a letter from Mr. Mills's son in which he expressed his view that Mr. Mills is deceitful, unremorseful, and has not acknowledged the full extent of how abusive he was.

CONCLUSION

I have considered the evidence in the record that is relevant to whether Mr. Mills is currently dangerous. When considered as a whole, I find the evidence I have discussed shows why he currently poses a danger to society if released from prison. Therefore, I reverse the decision to parole Mr. Mills.

Decision Date: August 5, 2011


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

THOMAS REESE, K-28608

Second-degree murder

AFFIRM:

MODIFY:

REVERSE:

_____ **X** _____

STATEMENT OF FACTS

On March 9, 1995, Thomas Reese shot and killed Christopher Lewis, a boy he had known since elementary school. Mr. Reese, then 16 years old, erroneously believed that Christopher had shot a friend of his, paralyzing him from the waist down. The day of the murder, Mr. Reese and a companion walked up to Christopher at a bus stop where he was waiting for the bus to take him to school. They exchanged words and began to argue. During the exchange, Mr. Reese took out a handgun and shot Christopher in the face, killing him

GOVERNING LAW

The question I must answer is whether Mr. Reese will pose a current danger to the public if released from prison. In answering this question, I must examine the same record that was before the Board of Parole Hearings and adhere to the same legal standards. 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* (2008) 44 Cal. 4th 1181, 1214.)

DECISION

The Board of Parole Hearings found Mr. Reese suitable for parole based on his participation in self-help, substance-abuse therapy, his demonstration of remorse, completed vocational training, educational achievements, positive institutional behavior, and favorable psychological evaluation. The Board set Mr. Reese's parole date for June 2016.

I acknowledge that Mr. Reese has taken steps to improve himself while incarcerated. He earned a high school diploma and he completed vocational programs for machine shop and welding. He has successfully held a number of jobs within the prison for which received favorable job-performance reviews. He participated in Alcoholics and Narcotics Anonymous and numerous self-help programs such as Anger Management, Nonviolent Communication, Getting Out by Going In, Individuals Making Peace and Change Together, Transforming Lives Network, and Victims Awareness. I commend him for taking these positive steps. But they are outweighed by negative factors that indicate he remains unsuitable for parole.

Mr. Reese committed a completely senseless and unprovoked murder. For entirely unfounded and unjustifiable reasons, Mr. Reese shot and killed Christopher Lewis merely because he suspected Christopher was responsible for paralyzing another boy. Mr. Reese showed a no disregard for Christopher's life.

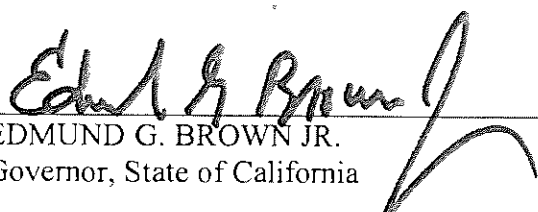
I remain concerned that Mr. Reese has not fully accepted responsibility for killing Mr. Lewis. Mr. Reese told the psychological evaluator in January 2009 that shooting Mr. Lewis was "a tragic event that happened." By characterizing his crime as simply an event that "happened," rather than something that he consciously perpetrated, Mr. Reese fails to take adequate responsibility for his actions. Until he does so, I will remain concerned that he continues to pose a threat to public safety.

Although I still have public safety concerns at this point, it appears to me that with continued participation in self-help programming, Mr. Reese will be able to demonstrate sufficient insight and eliminate this concern at his parole hearing next year.

CONCLUSION

I have considered the evidence in the record that is relevant to whether Mr. Reese is currently dangerous. When considered as a whole, I find the evidence I have discussed shows why he currently poses a danger to society if released from prison. Therefore, I reverse the decision to parole Mr. Reese.

Decision Date: August 5, 2011


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

LAKENDALL SMITH, H-64209

Second-degree murder

AFFIRM:

MODIFY:

REVERSE:

 X

STATEMENT OF FACTS

On October 20, 1991, LaKendall Smith rode in a car with James Turner, Justin Alcorn, and Kenya Bishop to Mawson Bridge to shoot Mr. Smith's gun. As they drove over the bridge they saw Phillip Hancock fishing with two other men. Mr. Hancock was a 32-year old man with autism who required assistance.

After passing the bridge, Mr. Smith and his companions pulled over and started drinking beer and brandy until it began to get dark. They talked about how they could shoot someone and get away with it. They then drove back over the bridge. Mr. Smith told the driver to stop the car, and he and Mr. Turner got out and walked down a trail. Mr. Smith said he had something to do. As they walked, Mr. Smith said, "I'm about to cap" and "I'm gonna do 'em." After a bit, they stopped and Mr. Smith fired his gun several times towards the bridge. One of the bullets struck Mr. Hancock. Mr. Smith and Mr. Turner ran back to the car where their companions were waiting. They told them that "We shot and busted a dude." Mr. Smith added, "I busted." The group then drove away. Mr. Hancock was taken to a hospital where he died from his wound.

GOVERNING LAW

The question I must answer is whether Mr. Smith will pose a current danger to the public if released from prison. In answering this question, I must examine the same record that was before the Board of Parole Hearings and adhere to the same legal standards. 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* (2008) 44 Cal. 4th 1181, 1214.)

DECISION

The Board of Parole Hearings found Mr. Smith suitable for parole based on his educational upgrades, age, acceptance of responsibility, insight, parole plans, remorse, and the absence of any gang affiliation.

I acknowledge that Mr. Smith has made some efforts to improve himself while incarcerated. He has participated in Alcoholics Anonymous since 1996, volunteered as a literacy tutor, and taken many self-help courses. Some of his self-help courses include Victim's Reflection, Criminal & Addictive Thinking, Cage Your Rage, Identifying Violence in My Life, and Beyond Anger. Mr. Smith has also received an associate of science degree and completed vocational training in silk screening, culinary arts, and barber/cosmetology science. I commend him for taking these positive steps. But they are outweighed by negative factors that demonstrate he remains unsuitable for parole.

Mr. Smith callously shot Mr. Hancock, an unarmed, 32-year old man who posed no threat to him. The shooting was entirely unprovoked and senseless. Whatever motive Mr. Smith may have had for murdering Mr. Hancock is inexplicable.

Despite his years of incarceration, Mr. Smith still exhibits a lack of insight by minimizing his culpability for the murder. He told the Board at his 2011 parole hearing that he did not intend to shoot Mr. Hancock and that it was an accident. But Mr. Smith's account of the crime is inconsistent with both his guilty plea to murder and the official record.

According to the probation officer's report, two of Mr. Smith's three companions told the investigating officers that before the murder, Mr. Smith said he intended to shoot at the men fishing on the bridge. According to Mr. Alcorn, Mr. Smith said the best way to shoot people was to go on foot and that Mr. Smith's statement referred to the men on the bridge. The second companion, James Turner, stated that Mr. Smith told him, "I'm gonna do him, do him," as they were walking down the trail. Mr. Alcorn and Mr. Turner made these statements independently of each other.

The board psychologist who evaluated him in May 2009 found Mr. Smith's claimed remorse to be disingenuous and his statements to appear "shallow, well-rehearsed, and designed to present him in a positive light." The psychologist added that "Despite his claims of remorse and insight, he continues to present this event as an accident, in stark contrast to information contained in official documents (including statements from his companions). His description of his behavior during this crime suggested attempts to minimize or rationalize his actions." Until Mr. Smith accepts and addresses the reasons why he killed a stranger in cold blood, there is no assurance that he will not commit further violent acts if released from prison.


The elevated risk assessments the psychologist gave him confirm my concerns. The psychologist assessed him as posing a medium risk of violent recidivism and general recidivism, and an overall moderate risk of violence in the free community. The psychologist also concluded that Mr. Smith meets the criteria for Antisocial Personality Disorder, an essential feature of which "is a pattern of disregard for, and violation of the rights of others, beginning in adolescence and continuing into adulthood." The psychologist identified Mr. Smith's past arrests and disposition, punishment for institutional misconduct, failure while on supervised release, suspension from school, and diagnosis of Antisocial Personality Disorder, all as factors that increase his likelihood of future violence.

LaKendall Smith, H-64209
Second-Degree Murder
Page 3

CONCLUSION

I have considered the evidence in the record that is relevant to whether Mr. Smith is currently dangerous. When considered as a whole, I find the evidence I have discussed shows why he currently poses a danger to society if released from prison. Therefore, I reverse the decision to parole Mr. Smith.

Decision Date: August 12, 2011


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

RANDY CARTER, C-59675

First-degree murder

AFFIRM:

MODIFY:

REVERSE:

 X

STATEMENT OF FACTS

On July 22, 1982, Randy Carter shot and killed 19-year-old Eddie Parker. Mr. Carter had sold Mr. Parker a car that Mr. Parker failed to fully pay him for. Mr. Carter repossessed the car but after doing so, someone set the car on fire and destroyed it. Mr. Carter heard that Mr. Parker was the culprit. Mr. Carter made statements indicating that he intended to kill Mr. Parker.

A few days after his car was burned, Mr. Carter went to an apartment building to visit friends and had a chance encounter with Mr. Parker. They began to argue and then fight. A friend of Mr. Carter's observed the situation and gave Mr. Carter a gun. Seeing the gun, Mr. Parker began to flee. Mr. Carter shot Mr. Parker in the back of the head at a distance of five feet, killing him. Mr. Carter left the scene on foot and was arrested two weeks later.

GOVERNING LAW

The question I must answer is whether Mr. Carter will pose a current danger to the public if released from prison. In answering this question, I must examine the same record that was before the Board of Parole Hearings and adhere to the same legal standards. 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* (2008) 44 Cal. 4th 1181, 1214.)

DECISION

The Board found Mr. Carter suitable for parole based on his remorse, his insight into the reasons he committed the murder, his self-help programming in prison, and his parole plans.

I acknowledge that Mr. Carter has made efforts to improve himself while incarcerated. He earned a high school diploma in 2001, and vocational certificates in the areas of Alcohol & Drug Counseling, Painting, and Electronics. He has also participated in numerous self-help programs, including: Alcoholics and Narcotics Anonymous for many years; Men's Violence Prevention Program; Parenting Skills; the Grey Stone Chapel programs; Faith Based Life Skills and the 12 Weeks Personal Health & Self Enhancement System; Alternatives to Violence Programs; Crisis

Intervention Counseling; Cognitive Behavior Therapy; Relapse Prevention; Cognitive Restructuring for Sobriety & Responsibility; Denial Management Counseling; Anger Management; 8-weeks of Pathways to Sobriety; 4 Project Pride courses; Celebrate Recovery—40 Days of Purpose; an 8-week Facilitator Training course through Project Pride; and a 13-session course on KATARGEO Going Home. Mr. Carter has also facilitated a domestic-violence program. I commend Mr. Carter for taking these positive strides to improve himself. But I find they are still currently outweighed by negative factors that indicate he remains a risk to society if released from prison.

I am troubled by the senseless and cruel murder Mr. Carter committed. Mr. Carter shot an unarmed man in the back of the head as he was running away. The two had once been friends yet Mr. Carter still decided to kill him over nothing more than a trivial dispute over a car.

My concerns are increased by the fact that the murder was by no means Mr. Carter's only criminal or violent act. His criminal behavior began when he was just nine years old, and included burglaries, thefts, weapons charges, batteries, and a robbery. And his misbehavior continued into his prison term where he incurred 11 serious rules violations between 1983 and 1987.

I am also concerned by the elevated risk assessments that Mr. Carter received in his 2009 psychological evaluation. The psychologist who evaluated him rated him in the high range for psychopathy, as a moderate risk of violent recidivism and general recidivism, and a moderate overall risk for violence in the free community. In assigning Mr. Carter these elevated scores, the psychologist took into account Mr. Carter's extensive juvenile record, the murder, and his early misbehavior in prison. The psychologist also increased his recidivism risk due to his "impulsivity based on his history."

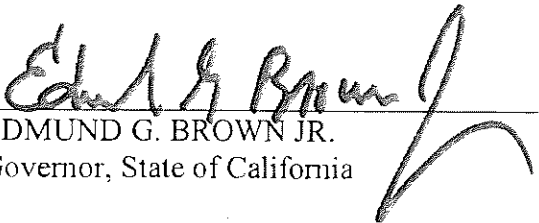
In December 2010, an update to the 2009 evaluation was performed. The psychologist who conducted the update noted the positive steps Mr. Carter has taken, and found him to have good insight into the reasons he committed the murder. Nonetheless, the psychologist expressed no disagreement with the elevated risk assessments from the 2009 report. The psychologist further opined that "Mr. Carter should benefit from continuing to explore the origins of his thinking, inability to manage his anger and retaliatory impulses at the time of the murder."

Although Mr. Carter has made genuine efforts to improve himself while in prison, I remain troubled by the egregious circumstances of the murder, Mr. Carter's extensive criminal history, and the recent elevated risk assessments. For these reasons, I believe the interests of public safety require a longer period of incarceration for Mr. Carter to continue his efforts to address the anger and impulsivity issues that contributed to the murder. I would also like to see another full psychological evaluation performed that assesses his current risk to society after taking into account his self-help efforts since the 2009 evaluation. With a new evaluation and continued efforts to address the issues that caused his criminal and violent behavior, I believe Mr. Carter will likely soon be able to demonstrate that he is no longer a risk to society.

CONCLUSION

I have considered the evidence in the record that is relevant to whether Mr. Carter is currently dangerous. When considered as a whole, I find the evidence I have discussed shows why he currently poses a danger to society if released from prison. Therefore, I reverse the decision to parole Mr. Carter.

Decision Date: August 15, 2011


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

GERALD RICHIE, B-88103
First-degree murder

AFFIRM:

MODIFY:

REVERSE:

_____ X _____

STATEMENT OF FACTS

On May 17, 1977, Gerald Richie murdered Curtis Lawson. Mr. Richie and Carol Hinkle, both of whom were heroin addicts, went to Mr. Lawson's furniture store to rob him. Ms. Hinkle threatened Mr. Lawson with a hunting knife and demanded money. Mr. Lawson gave her the \$30 he had in his wallet. They then ordered Mr. Lawson to go with them into his office where Mr. Lawson sat on a couch. Mr. Lawson told them he had some money in a drawer. They searched the office and found some change and one dollar bills in the drawer.

Mr. Lawson tried to run out of the office, but Mr. Richie hit him and knocked him to his hands and knees. Mr. Richie got on top of him and wrestled with him on the floor. He ordered Ms. Hinkle to kill him, but when she refused, he said, "[g]ive me the knife, I'm going to cut his fuckin' jugular vein out." Ms. Hinkle gave him the knife, and Mr. Richie stabbed and slashed Mr. Lawson's throat then stabbed Mr. Lawson twice in his back.

Mr. Richie fled from the store while Ms. Hinkle put the money into an envelope. As she ran out of the store, Mr. Lawson stood up clutching his throat, and followed her. Ms. Hinkle dropped the money, got into Mr. Richie's car and the two drove away. Once outside, Mr. Lawson fell to his knees, and called for help. He was able to crawl back inside the store, but succumbed from his wounds a short time later. The two stab wounds in his back had punctured his lungs and his left jugular vein was completely severed. Mr. Richie and Ms. Hinkle were arrested the next day.

GOVERNING LAW

The question I must answer is whether Mr. Richie will pose a current danger to the public if released from prison. In answering this question, I must examine the same record that was before the Board of Parole Hearings and adhere to the same legal standards. 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* (2008) 44 Cal. 4th 1181, 1214.)

DECISION

The Board of Parole Hearings found Mr. Richie suitable for parole based on the passage of time, his institutional disciplinary history, remorse, acceptance of responsibility, insight, advanced age, and medical condition.

Mr. Richie has made limited efforts to improve himself while incarcerated. He participated in Alcoholics Anonymous for five years but stopped in 2007. He participated in a welding program. He also held several institutional jobs until his medical condition prevented him from working. The few positive steps he has taken are outweighed by negative factors that show he remains dangerous if released from prison.

The murder Mr. Richie committed was brutal and senseless. He attacked Mr. Lawson, who was unarmed, stabbed him repeatedly, and then left him to die. Mr. Richie and his crime partner were motivated by their desire for money to buy drugs, a trivial motive especially given the small amount of money at stake.

I am troubled by the fact that Mr. Richie minimizes his culpability in killing Mr. Lawson. He told the parole board at his most recent hearing that he did not intend to rob Mr. Lawson's store but rather he went there because Ms. Hinkle "was going to get money from him . . . [a]nd it turned into something else." But he had admitted to the psychologist who evaluated him less than six months earlier that he and Ms. Hinkle "mutually agreed to rob" the store.

He told the psychologist that he attacked Mr. Lawson because he was trying to stop him from beating up Ms. Hinkle. According to Mr. Richie, when he walked into the store, Mr. Lawson was wrestling with Ms. Hinkle, had her down, and had gotten hold of the knife. Mr. Richie claims he grabbed the knife and stabbed him on both sides of his body. As Mr. Lawson came up, Mr. Richie says he stabbed him in the neck "and when he fell forward, the knife cut his throat." Mr. Richie's story is in conflict with the record and is not credible. It shows that he does not accept responsibility for the murder or fully understand the wrongfulness of his actions.

The psychologist concluded that Mr. Richie "has not meaningfully examined all of the factors at play during the life crime" and that he lacks adequate insight into the reasons he murdered Mr. Lawson, his potential for violence, or his substance abuse. The psychologist found that his lack of insight "suggests some unresponsiveness to treatment designed to ameliorate such problems." Mr. Richie admitted that he tries to avoid thinking about the crime, and the only explanation he could offer for the murder was that he was "[b]eing an idiot." I agree with the psychologist that "it is likely that there are some deeper reasons for his violent reaction."

Mr. Richie's stated remorse for the victim and his family also seems shallow. Although he acknowledged that he harmed the victim's family, he "was unable to specifically identify or imagine the ways in which the family has been impacted." And he admitted that he has never cried about the crime or anything else in his life.

I am also concerned that Mr. Richie's limited participation in self-help programming to address his history of substance abuse problems has not been sufficient, especially given the severity of his prior drug problems and the fact that he committed the murder while addicted to heroin.

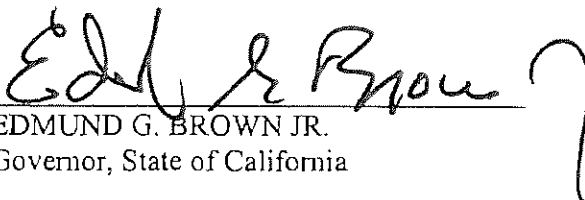
Finally, my concern that Mr. Richie remains dangerous is supported by the elevated risk assessment scores the psychologist assigned to him during his 2010 evaluation. The psychologist rated him as being in the moderate range for psychopathy, as posing a moderate risk of violent recidivism, a high risk of general recidivism, and an overall moderate risk for violence in the free community.

Until Mr. Richie confronts and deals with the problems that caused him to brutally murder Mr. Lawson, he will remain a threat to public safety. I encourage him to resume participation in substance-abuse treatment, and to seek out programs and other ways to examine and address the reasons for his violent and criminal behavior.

CONCLUSION

I have considered the evidence in the record that is relevant to whether Mr. Richie is currently dangerous. When considered as a whole, I find the evidence I have discussed shows why he currently poses a danger to society if released from prison. Therefore, I reverse the decision to parole Mr. Richie.

Decision Date: August 18, 2011


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

EPITACINO CORTINA, H-26475
Second-degree murder

AFFIRM:

MODIFY:

REVERSE:

 X

STATEMENT OF FACTS

On November 15, 1991, Epitacino Cortina murdered Juan Bravo. Mr. Cortina, Mr. Bravo, Timothy Nunez, and two others had planned to rob Cortina's step-brother's house. After staking out the house, Mr. Bravo decided he did not want to participate in the robbery. Mr. Cortina beat him with a baseball bat and then stabbed him with a knife 31 times for refusing to participate in the robbery. Mr. Bravo died as a result of the attack. Mr. Cortina put his body in the trunk of a car and drove with Mr. Nunez to a vacant lot. Mr. Cortina dumped Mr. Bravo's body in the lot, then drove over his body with the car.

GOVERNING LAW

The question I must answer is whether Mr. Cortina will pose a current danger to the public if released from prison. In answering this question, I must examine the same record that was before the Board of Parole Hearings and adhere to the same legal standards. 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* (2008) 44 Cal. 4th 1181, 1214.)

DECISION

I acknowledge that Mr. Cortina has made some efforts to improve himself while incarcerated. He earned a General Equivalency Diploma in 2001. He participated in Alcoholics Anonymous (2003 and 2005); Narcotics Anonymous in 2003; Life Development Skills classes; Transition Housing Mentoring Program; Conflict/Anger Management CALM Program (as a facilitator); and Friends Outside Parenting Program. He has also held several institutional jobs. I commend Mr. Cortina for taking these positive steps. But they are outweighed by negative factors that demonstrate he remains unsuitable for parole.

The brutal and vicious nature of the murder Mr. Cortina committed is shocking. He beat Mr. Bravo 10-12 times with a baseball bat, stabbed him 31 times, then ran over his body with his car. Whatever motive Mr. Cortina had for murdering Mr. Bravo was either inexplicable or very trivial in relation to the magnitude of the offense.

Mr. Cortina's account of the crime shows that he does not accept full responsibility for the murder he committed. Contrary to the official record and the accounts of several witnesses, he denies that he stabbed Mr. Bravo. By failing to acknowledge perhaps the most vicious and lethal aspect of the crime, Mr. Cortina's account tends to minimize his culpability for the murder. In addition, in a letter to the victim's family Mr. Cortina wrote in 2006, he stated, "I'm writing this letter to you for having played a part in the death of your loved one." He didn't "play a part," he killed the victim. This minimization of his role undermines his expression of remorse.

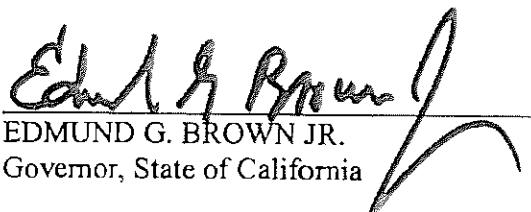
The conclusions of the psychologist who evaluated him in 2009 support my concerns. The psychologist assessed him as posing a "moderate" risk of violent recidivism, a "moderate" risk of general recidivism, and an overall "low-moderate" risk of violence in the free community. The psychologist also concluded that he meets the criteria for Antisocial Personality Disorder, which is defined as "a pervasive pattern of disregard for, and violation of, the rights of others that begins in childhood or adolescence and continues into adulthood." These elevated risk assessment scores coupled with Mr. Cortina's minimization of his role in the murder cause me concern that he would still pose a risk to society if released from prison.

Mr. Cortina's participation in self-help programs has been insufficient. Mr. Cortina has a history of substance abuse problems. Despite his prior drug and alcohol abuse, he is not currently enrolled in programming to address these issues. And in his nearly twenty years in prison, he only participated in alcohol or substance abuse counseling programs in 2003 and 2005. Given that Mr. Cortina was under the influence of alcohol and cocaine when he committed the murder, he needs to demonstrate a meaningful commitment to address his prior substance abuse through self-help programming, to help ensure that he will be able to cope with these issues when he is released from the controlled prison environment.

CONCLUSION:

I have considered the evidence in the record that is relevant to whether Mr. Cortina is currently dangerous. When considered as a whole, I find the evidence I have discussed shows why he currently poses a danger to society if released from prison. Therefore, I reverse the decision to parole Mr. Cortina.

Decision Date: August 19, 2011


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

RODRIGO AVILA, H-77930

Second-degree murder

AFFIRM:

MODIFY:

REVERSE:

_____ X _____

STATEMENT OF FACTS

On April 20, 1991, Rodrigo Avila was riding in a car with a group of fellow gang members, including Marco Rodriguez. Mr. Avila, who was riding in the back seat, handed a rifle to Mr. Rodriguez in the front passenger seat. The group came across Vincent Gomez, Jose Martinez and a few other men standing on the side of a street. They believed the men were rival gang members. Mr. Rodriguez pointed the rifle out the car window and opened fire on the men. A bullet struck Mr. Gomez in the head and killed him. Mr. Martinez was also shot but survived.

Later that same day, Lawrence Washington, Alejandro Moreno, Jessie Ledesma, and Derrick Thornhill were standing on the side of a street when Mr. Avila and his fellow gang members drove by. Believing these men were also rival gang members, Mr. Rodriguez fired multiple rounds from the rifle at them. A bullet hit Mr. Washington in the head and killed him. Mr. Moreno, Mr. Thornhill, and Mr. Ledesma were also shot but survived.

GOVERNING LAW

The question I must answer is whether Mr. Avila will pose a current danger to the public if released from prison. In answering this question, I must examine the same record that was before the Board of Parole Hearings and adhere to the same legal standards. 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* (2008) 44 Cal. 4th 1181, 1214.)

DECISION

The Board of Parole Hearings found Mr. Avila suitable for parole based on his insight into the causes of his criminal behavior, remorse, viable parole plans, vocational training, institutional work record, and participation in self-help programs.

I acknowledge Mr. Avila has made efforts to improve himself while incarcerated. He completed vocational training in carpentry, held institutional jobs, and participated in self-help programs such as Alcoholics and Narcotics Anonymous, Cage Your Rage, a Life Skill course, Anger Management, Life Without a Crutch seminar, Wellness Program, Inter-Faith Relationship Workshop, Educational Recovery, a Success After Prison course, a Moyers on Addiction course, an Importance of Fatherhood course, Beat the Streets substance abuse prevention course and Making Anger Work For You. I commend Mr. Avila for taking these positive steps. But they are outweighed by negative factors that demonstrate he remains unsuitable for parole.

Mr. Avila participated in two drive-by shootings that resulted in the death of two people and serious injury to four others. He belonged to a street gang and was on probation at the time of the murders after serving time in a juvenile facility for armed robbery. In prison, he stabbed an inmate in 1995 and participated in a riot in 2001.

In recent years, Mr. Avila has shown signs of improvement. But he still has some work to do in gaining insight into the crime and his past criminal behavior. The psychologist who performed his 2010 psychological evaluation found that he attempted to minimize his role in the life crime and justify his actions with regard to the murders and his disciplinary record. The psychologist found that Mr. Avila's statements regarding the murders and criminal past did not reflect significant levels of introspection, that he had yet to examine the internal factors that led him to make the choices that he made, and that he "had much work ahead of him" in order to face, discuss, and come to terms with the factors that led to the life crime.

Similarly, in discussing the crime with Mr. Avila, the psychologist found his statements of remorse for the murders appeared superficial and limited in scope. He could only identify the two men who were murdered and appeared to have given little thought to the four other victims who were injured in the shootings. The psychologist concluded that Mr. Avila had little insight and had been largely unresponsive to self-help treatment.

Based in large part on Mr. Avila's history of violence and limited insight, his recent risk assessment scores indicate he poses a "moderate" risk of violent recidivism, a "medium-high" risk of general recidivism, and overall is "moderate" risk for violence in the free community. Further, the psychologist diagnosed him with Antisocial Personality Disorder and found that he rated in the "moderate" range for psychopathy, both of which increase his risk of future violence.

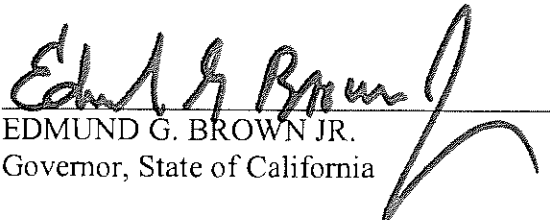
Mr. Avila's most recent Rules Violation Reports in 2004 and 2005 for obstructing correctional officers in their duties also are cause for concern. In both instances, Mr. Avila refused to exit his cell for count as part of a mass protest. When asked about the 2005 incident during his psychological evaluation, Mr. Avila justified his behavior saying he did not agree with the protest but that he had to do what other inmate said. This susceptibility to peer pressure is troubling in light of his history of gang-related violence.

Mr. Avila's history of violence, his inadequate insight and remorse, his elevated risk assessments, and his most recent misconduct in prison indicates that he continues to pose an unacceptable risk if released to the community.

CONCLUSION

I have considered the evidence in the record that is relevant to whether Mr. Avila is currently dangerous. When considered as a whole, I find the evidence I have discussed shows why he currently poses a danger to society if released from prison. Therefore, I reverse the decision to parole Mr. Avila.

Decision Date: August 26, 2011


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

CLAYTON LEFEVRE, D-20982

First-degree murder

AFFIRM:

MODIFY:

REVERSE:

_____ **X** _____

STATEMENT OF FACTS

On August 20, 1984, Clayton LeFevre and Dennis Rollins decided to rob Gary Schulman, who lived next door to Mr. LeFevre's mother. They wanted to take his car. Mr. LeFevre and Mr. Rollins went to Mr. Schulman's apartment and knocked on the door. When Mr. Schulman answered, they bound Mr. Schulman's hands and forced him into his car. Mr. LeFevre then drove Mr. Rollins and Mr. Schulman to a remote area. Once there, Mr. Rollins forced Mr. Schulman out of the car while Mr. LeFevre remained in the car. Mr. Schulman was barefoot and wearing only a pair of shorts. After walking some distance, Mr. Rollins shot Mr. Schulman four times, killing him. Mr. Rollins and Mr. LeFevre fled to Utah where they burned Mr. Schulman's car. The police found Mr. Schulman's body several days later.

GOVERNING LAW

The question I must answer is whether Mr. LeFevre will pose a current danger to the public if released from prison. In answering this question, I must examine the same record that was before the Board of Parole Hearings and adhere to the same legal standards. 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* (2008) 44 Cal. 4th 1181, 1214.)

DECISION

The Board of Parole Hearings found Mr. LeFevre suitable for parole based on his conduct in prison, his remorse, insight, age, vocational training, and self help.

I acknowledge that Mr. LeFevre has made efforts to improve himself in prison. He graduated from high school, completed vocational training in mill and cabinetry, and gained marketable skills in welding and plumbing. He has also held several institutional jobs and participated in self-help programs including Alcoholics and Narcotics Anonymous, and Breaking Barriers. I commend Mr. LeFevre for taking these positive steps. But they are outweighed by negative factors that demonstrate he remains unsuitable for parole.

Mr. LeFevre and his crime partner killed Mr. Schulman in a cruel manner that showed no regard for his life. They kidnapped him from his home, took him to a remote area, marched him barefoot into the woods, and executed him. Their motive of stealing his car is trivial in relation to the murder they committed.

Mr. LeFevre still fails to accept full responsibility for his actions. He told the parole board at his 2011 parole hearing that he did not intend for Mr. Schulman to be killed and that he did not know Mr. Rollins had killed him until Mr. Rollins confessed to him when they reached Utah. He also told the panel that he heard only two gunshots and believed Mr. Rollins initial story that he tied Mr. Schulman to a tree and he shot twice just to stop Mr. Schulman from running away. Mr. LeFevre also told the panel that he could not believe that Mr. Rollins had actually killed Mr. Schulman because "I didn't think he was that type of a person."

Mr. LeFevre's story not only attempts to shift blame for the murder on his crime partner, but is not credible. It defies reason that Mr. LeFevre would have heard two of the shots Mr. Rollins fired, but not the other two as well. It is also disingenuous for Mr. LeFevre to claim that he had no idea that they were going to kill Mr. Schulman. Even if they had actually only tied Mr. Schulman to a tree (as Mr. LeFevre claims was the plan), Mr. Schulman would have almost certainly still died from starvation or nature given the remoteness of the area.

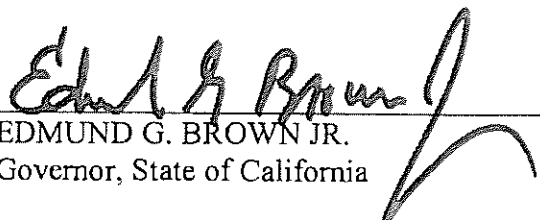
Mr. LeFevre is not required to admit guilt to be found suitable for parole. But the record does not support his version of the crime and I do not find it to be plausible or to reflect an understanding of the true reasons he and his crime partner decided to murder Mr. Schulman. Until Mr. LeFevre understands the reasons he participated in the murder, and takes steps to address those issues, there is no assurance that he no longer presents a threat to society.

My concern that Mr. LeFevre remains dangerous is supported by his most recent risk assessment scores. The psychologist assessed him in the "moderate" level of psychopathy, as posing a "moderate" risk of violent recidivism, a "moderate" risk of general recidivism, and an overall "moderate" risk of violence in the free community. The psychologist also concluded that he meets the criteria for Personality Disorder, an essential feature of which is "an enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual's culture, is pervasive and inflexible, has an onset in adolescence or early adulthood, is stable over time, and leads to distress or impairment."

CONCLUSION

I have considered the evidence relevant to whether Mr. LeFevre remains dangerous. Mr. LeFevre's elevated risk assessment scores coupled with his inadequate insight indicate that he still poses a risk to society if released from prison. Therefore, I reverse the decision to parole Mr. LeFevre.

Decision Date: August 26, 2011


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

JAVIER NUNEZ C-19157

First-degree murder

AFFIRM:

MODIFY:

REVERSE:

_____ X _____

STATEMENT OF FACTS

On August 28, 1979, Javier Nunez and George Zavala murdered Joseph Trendt. Mr. Zavala and Mr. Nunez were drinking beer with three other friends at Mr. Zavala's house. They ran out of beer and wanted more but did not have money to buy it. Mr. Zavala suggested stealing beer from Buster's Café by threatening the owner, Mr. Trendt. They chose Mr. Trendt, who was 63 years old, because they believed he would not put up much resistance. Mr. Zavala and Mr. Nunez armed themselves with knives and arrived at the café just as Mr. Trendt was closing. Upon entering the café, they attacked and repeatedly stabbed him. They then took about \$65 from the cash register and left Mr. Trendt to bleed to death. Mr. Trendt had 65 stab wounds in his arm, head, neck, back, chest and stomach.

GOVERNING LAW

The question I must answer is whether Mr. Nunez will pose a current danger to the public if released from prison. In answering this question, I must examine the same record that was before the Board of Parole Hearings and adhere to the same legal standards. 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* (2008) 44 Cal. 4th 1181, 1214.)

DECISION

The Board of Parole Hearings found Mr. Nunez suitable for parole based on his remorse, the passage of time, his institutional disciplinary history, vocational training, and parole plans.

I acknowledge that Mr. Nunez has made efforts to improve himself while incarcerated. He earned a high school diploma in 1986. He has participated in Alcoholics Anonymous, Narcotics Anonymous, the Crime Impact Program, Alternatives to Violence, Breaking Barriers, Impulse Control Group, Violence Potential Group, and Creative Options Anger Management. He also completed vocational training in furniture upholstery, mill and cabinetry, roofing and carpentry, and graduated from the air engine program. I commend Mr. Nunez for taking these positive steps. But they are outweighed by negative factors that show he remains unsuitable for parole.

The savage nature of the murder Mr. Nunez committed is troubling. He and Mr. Zavala mercilessly stabbed an innocent, unarmed man an unconscionable number of times and then left him to die. And it was all motivated by their trivial desire to get money to buy more beer.

Mr. Nunez has not shown that he adequately understands the reasons he committed such a violent murder. During his 2010 psychological evaluation, he told the psychologist that he felt peer pressure from his older friends. He expressed anger and disappointment in his friends for putting him in that situation. He also said that he felt that he needed “give back” to his friends because he had no money to pitch in for the beer. Peer pressure and feeling obliged to contribute for beer he drank might account for why he agreed to participate in the robbery, but do not begin to explain why he murdered Mr. Trendt in such a violent manner. By placing blame on his friends and peer pressure, he minimizes his culpability for the murder.

At his recent parole hearing, Mr. Nunez offered a different explanation. He told the Board that he killed Mr. Trendt because he wanted to protect his crime partner’s identity and because he was angry with his family members, his girlfriend, and people who called him names. He said he had not mentioned this anger earlier because he has forgiven everyone. Mr. Nunez’s changing explanations appear superficial and do not provide a genuine explanation of why Mr. Nunez decided to take Mr. Trendt’s life.

It also appears that Mr. Nunez is not being honest about the crime. He claims that “it happened so fast” he had no idea of how many times he stabbed Mr. Trendt, except to say that he stabbed him “one too many times.” Mr. Nunez’s claimed lack of memory appears disingenuous because as the deputy commissioner pointed out at the hearing, “it takes a long time to stab someone” 65 times. Mr. Nunez also told the psychologist who evaluated him in 2010 that alcohol made him feel relaxed on the night of the murder. But the psychologist observed that, “[t]he details of the crime ... suggested the opposite of a relaxed state.” She opined that Mr. Nunez is not acknowledging his true state of mind during the murder: “[t]here was a level of rage that Mr. Nunez has yet to explain as indicated by 65 stab wounds to the victim.”

The tone and manner of Mr. Nunez’s responses to the psychologist also indicate that he lacks adequate insight or genuine remorse. The psychologist remarked that “[t]here were no observable emotions as Mr. Nunez spoke of the victim or of his actions that resulted in the loss of life.” She concluded that he has “yet to divulge his understanding of” the reasons he participated in stabbing the victim so many times, and his explanation of what it meant to have insight into the murder, “seemed rote and lacked significant details.” The psychologist further observed that “he did not discuss ways in which he discovered the roots of his anger, why he projected that degree of rage onto the victim (multiple stab wounds), and how he has reconciled those feelings with strategies for appropriate expression of anger and its management.”

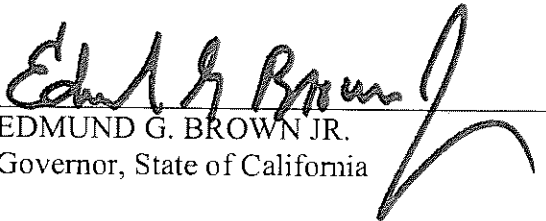
Mr. Nunez’s recent elevated risk assessments confirm my concerns. He was assessed to be in the moderate range for psychopathy, as a low-moderate risk of violent recidivism, a medium risk of general recidivism, and an overall low-moderate risk for violence in the free community.

Ultimately, I agree with the psychologist's assessment that "Mr. Nunez had some more work ahead of him in order to honestly face, confront, and discuss the causative factors of the life crime beyond a superficial explanation that continues to reflect primarily external factors (e.g. older peers pressured him). It did not appear that he was particularly cognizant of that need." Because he has not yet done this work, I am concerned that he remains prone to committing further acts of violence if he were to be released from prison.

CONCLUSION

I have considered the evidence in the record that is relevant to whether Mr. Nunez is currently dangerous. When considered as a whole, I find the evidence I have discussed shows why he currently poses a danger to society if released from prison. Therefore, I reverse the decision to parole Mr. Nunez.

Decision Date: August 26, 2011


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

CORBY SARGENT, H-16868
Second-degree murder

AFFIRM:

MODIFY:

REVERSE:

_____ X _____

STATEMENT OF FACTS

On April 21, 1991, Corby Sargent and three friends were at a party where Mr. Corby consumed beer, LSD, and methamphetamines. Mr. Corby and his friends were gang members. The group left the party and started traveling to a nearby town in a car driven by Mr. Sargent. On the way, they drove by a telephone booth that Joe Salgado and his 15 year-old brother were using. Mr. Sargent pulled over and yelled something at Mr. Salgado. The two exchanged words, and Mr. Salgado walked toward Mr. Sargent's car. When Mr. Salgado got within three or four feet of the car, he bent over to see who was in it. Mr. Sargent took a 12-gauge sawed-off shotgun and shot Mr. Salgado in the face and chest and then laughed as he and his friends drove away from the scene. Mr. Salgado died seven hours later.

GOVERNING LAW

The question I must answer is whether Mr. Sargent will pose a current danger to the public if released from prison. In answering this question, I must examine the same record that was before the Board of Parole Hearings and adhere to the same legal standards. 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* (2008) 44 Cal. 4th 1181, 1214.)

DECISION

The Board of Parole Hearings found Mr. Sargent suitable for parole based on his remorse, insight, self-help programming, and parole plans.

I acknowledge that Mr. Sargent has made some efforts to improve himself while incarcerated. He earned a General Equivalency Diploma in 1997. He participated in some self-help programs such as Alcoholics Anonymous, Victims Awareness Offenders Program, a Lifestyle and Addiction workshop, an Anger Management workshop, and Criminal & Gangmembers Anonymous. He has also completed vocational training in welding and cabinetmaking and held several institutional jobs. I commend Mr. Sargent for taking these positive steps. But they are outweighed by negative factors that demonstrate he remains unsuitable for parole.

The murder Mr. Sargent committed was senseless and cruel. Mr. Sargent targeted an innocent stranger, yelled at him, then callously shot him at pointblank range in front of his teenage brother. Whatever motive Mr. Sargent had for murdering Mr. Salgado is inexplicable.

Mr. Sargent still minimizes his culpability for the murder. He told the parole board at his most recent hearing that after he pulled over and Mr. Salgado approached the car, his car would not move. He said when he pulled out his shotgun and fired it, he did not intend to shoot Mr. Salgado, but only intended to shoot into the air. He also suggested to both the parole board and his recent psychological evaluator that he thought Mr. Salgado was armed with a weapon. Mr. Sargent's story attempts to shift blame to Mr. Salgado, and suggests that Mr. Sargent was only intending to scare Mr. Salgado away. Also, his suggestion that the killing was accidental is not believable in light of the facts that Mr. Sargent targeted Mr. Salgado, pulled off the road to harass him, and then laughed about fatally shooting him. Mr. Sargent's claim that his car would not move when Mr. Salgado approached is also not believable given the fact that he had just pulled over and as soon as he shot Mr. Salgado, he sped away. Further undermining his credibility is the flippancy he displayed at his parole hearing. When the commissioner asked Mr. Sargent if he was claiming that he was going to shoot in the air, Mr. Sargent replied, "I guess."

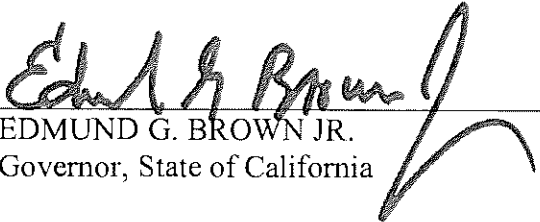
The only other explanation Mr. Sargent has offered for the murder is that he was "wasted" on drugs and alcohol. But being intoxicated by drugs and alcohol does not explain why he would target, harass, then ruthlessly kill a perfect stranger. Until Mr. Sargent confronts and deals with the true reasons he murdered Mr. Salgado, there is no assurance that he is no longer prone to violence if released from prison.

The elevated risk assessments he received during his most recent psychological evaluation support my concerns. The psychologist assessed him as posing a "moderate" risk of violent recidivism, a "medium" risk of general recidivism, and an overall "low-moderate" risk of violence in the free community. The psychologist diagnosed him with Antisocial Personal Disorder, an essential feature of which is "a pattern of disregard for and violation of the rights of others since age 15 as indicated by his failure to conform to social norms, impulsivity, aggressive behavior, and actions that have implied a reckless disregard for the safety of himself and others."

CONCLUSION

I have considered the evidence relevant to whether Mr. Sargent is currently dangerous. Mr. Sargent's elevated risk assessment scores, his minimization of culpability, and his inadequate insight when considered together with the circumstances of the murder indicate that he would still pose a danger to society if released from prison. Therefore, I reverse the decision to parole Mr. Sargent.

Decision Date: August 26, 2011


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

TODD FERGUSON, C-75013

Second-degree murder, Attempted Murder

AFFIRM:

MODIFY:

REVERSE:

_____ X _____

STATEMENT OF FACTS

On December 30, 1981, Todd Ferguson, Burl Biyeu, and Shane Quinell went to rob a liquor store where Mr. Ferguson had previously worked. Mr. Ferguson had recently been fired from his job at the store. According to the record, Mr. Biyeu and Mr. Quinell went into the store with rifles that Mr. Ferguson had stolen from his father. They were both wearing ski masks. Mr. Ferguson, who was the getaway driver, remained in the car. Richard Philbert and Michael Clark were working at the store at the time. Upon entering the store, Mr. Biyeu and Mr. Quinell ordered them to lock the front doors, then herded them into the cold storage box in the rear of the store. Once there, Mr. Biyeu and Mr. Quinell took their wallets and ordered them to kneel on the floor and place their coats over their heads. Mr. Biyeu and Mr. Quinell then shot both men repeatedly. Mr. Philbert was killed and fell limp onto Mr. Clark. Mr. Clark was hit with bullets all over his body, but was not killed.

After the shooting stopped for a few minutes, Mr. Clark opened his eyes and saw one of the assailants standing over him. The assailant asked if he was going to remember anything. Mr. Clark replied "no." The assailant said, "you're right," then shot him at point blank range in the chest and the face. The assailants fled the store and Mr. Ferguson drove them away.

Although Mr. Clark was shot 13 times, he somehow survived, and was able to make his way to the front of the store. He was able to summon help by dialing the telephone with his nose because his hands had been incapacitated from the shooting. Mr. Clark lives with pain, numbness, scarring on his hands and arms, and bullets that remain in his body.

GOVERNING LAW

The question I must answer is whether Mr. Ferguson is currently a danger to the public. In answering this question, I must examine the same record that was before the Board of Parole Hearings and adhere to the same legal standards. 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* (2008) 44 Cal. 4th 1181, 1214.) In rare circumstances, the aggravated nature of the crime alone can provide a valid basis for denying parole even when there is strong evidence of rehabilitation and no other evidence of current dangerousness. (*Id.* at pp. 1211, 1214.)

DECISION

I acknowledge that Mr. Ferguson has made efforts to improve himself while incarcerated. He earned a General Equivalency Degree and an Associate of Arts Degree in Business Administration. He has participated in programming to improve himself including Alcoholics Anonymous, a 12-Week addiction recovery program, anger management, Cage Your Rage, and several others. He has also taken and completed several vocational training programs. I commend Mr. Ferguson for taking these positive steps. But they are outweighed by negative factors that demonstrate he remains unsuitable for parole.

The murder in which Mr. Ferguson participated was senseless and shockingly violent. The perpetrators marched Mr. Philbert and Mr. Clark into the cold storage box, ordered them to kneel, covered their heads, and then without hesitation began unloading their bullets into them. Mr. Philbert was executed. Although Mr. Clark somehow survived, he has severely suffered from the injuries he sustained throughout the remainder of his life. I believe the aggravated nature of this murder and attempted murder is of such an extreme nature that it should warrant his continued incarceration in prison.

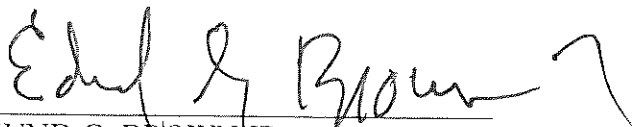
But I also do not find Mr. Ferguson's explanation for these murders to be plausible. He and his crime partners had committed other robberies during this same time frame yet none of the other robbery victims were harmed. Mr. Ferguson targeted this particular liquor store because he worked there but had been fired. The assailants were wearing ski masks so they had no reason to execute the two store clerks to protect their identities. And it appears that there was no hesitation in their decision to immediately march the two victims into the cold storage box and execute them. I do not find it plausible that Mr. Ferguson claims to have no knowledge of why the assailants executed one victim and attempted to execute the other. I find that his explanation of the crime minimizes his culpability for the murders. Until he gives an honest and plausible account of his role in this horrific crime, I believe he remains a threat to society.

I also acknowledge that Mr. Clark and the Mr. Philbert's wife, children, and sister opposed Mr. Ferguson's parole and expressed fear for the safety of their family if he is released. Given the vicious nature of Mr. Ferguson's crime, I cannot discount their concerns.

CONCLUSION

I have considered the evidence in the record that is relevant to whether Mr. Ferguson is currently dangerous. When considered as a whole, I find the evidence I have discussed shows why he currently poses a danger to society if released from prison. Therefore, I reverse the decision to parole Mr. Ferguson.

Decision Date: September 2, 2011


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

HAMPTON FINNEY, D-70607

First-degree murder

AFFIRM:

MODIFY:

REVERSE:

 X

STATEMENT OF FACTS

On December 5, 1981, Hampton Finney, James Ree, and Mr. Ree's 15-year-old son, Tim, planned to rob the Arastoozad family home and steal their oriental rugs. Armed with automatic rifles, they drove together in a large orange van to the Arastoozad's residence and pretended to deliver a Christmas tree. When they were refused entry, they waited outside the house for other members of the Arastoozad family to return home. A friend of the Arastoozads drove up the driveway. One of Mr. Finney's crime partners ordered the friend and the other passengers in the car at gunpoint to get out and go inside the house. As they approached the front door, Shahram Arastoozad's mother opened it and started screaming. Mr. Finney pushed her back and hit her on the head with his rifle, knocking her down, and forced his way into the house. Hearing his mother's scream, Shahram Arastoozad ran in the direction of the scream, from the back of the house, toward Mr. Finney. Mr. Finney shot Mr. Arastoozad in the head, killing him.

Mr. Finney and his crime partners fled the scene. He was not arrested until three years later.

GOVERNING LAW

The question I must answer is whether Mr. Finney will pose a current danger to the public if released from prison. In answering this question, I must examine the same record that was before the Board of Parole Hearings and adhere to the same legal standards. 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* (2008) 44 Cal. 4th 1181, 1214.)

DECISION

The Board of Parole Hearings found Mr. Finney suitable for parole based on his good behavior in prison, his insight, participation in self-help courses, age, education, and vocational training.

I acknowledge that Mr. Finney has made some efforts to improve himself while incarcerated. He obtained three Associate of Arts degrees, and completed vocational training in graphic arts. Mr. Finney also participated in self-help programs such as Life Skills Group, IMPACT Program,

Alternatives to Violence Project, Anger Workshop, Victim Offender Reeducation Program, Prison Fellowship Program, and 40 Days of Purpose. I commend him for taking these positive steps, but they are outweighed by negative factors that show he remains unsuitable for parole.

The murder Mr. Finney committed was horrific and senseless. He brutally hit Mrs. Arastoozad with his rifle, then mercilessly shot her unarmed son in the head in front of his family and friends. Mr. Finney and his crime partners' motive—stealing oriental carpets—was very trivial in relation to the offense.

Despite many years of incarceration and numerous self-help courses, Mr. Finney still minimizes his culpability for the murder. He opted not to discuss the murder at his most recent parole hearing and psychological evaluation. The last time he spoke about it was during his 2008 psychological evaluation and 2008 parole hearing. During that evaluation, he claimed to have been misled by his crime partners into thinking that they were simply going to burglarize the home when no one was there. He said he agreed to participate because he was trying to help his friend out. He claimed he did not know guns would be involved. I do not find this self-serving account plausible. But even if true, when he arrived at the home he clearly saw that the Arastoozads were home. He then says that he only reluctantly took the gun when his crime partner insisted that he take it because he was fearful his crime partner would kill him. Then rather than admit that he brutally struck Mrs. Arastoozad on the head with his rifle, knocking her to the floor and causing her to scream, Mr. Finney told the psychologist that, "I inadvertently hit one of them with the gun."

Continuing his narrative, he said, "then I saw one of them coming down the hallway. And I was scared and I turned and I shot. I was scared of the person running towards me. I was scared through the whole thing. If you lay guns on the table, I wouldn't even know which was which." When Mr. Finney spoke about the shooting at his 2008 parole hearing, he said "I was in the wrong place doing the wrong thing when someone ran toward me. I just pulled the trigger."

I find Mr. Finney's account entirely implausible and disingenuous. He characterizes himself as a scared, unwitting, and reluctant participant in a robbery. He claims that he was simply trying to perform an act of kindness by helping Mr. Ree commit a burglary. Next he claims that he did not anticipate that his crime partner would have a gun or expect him to use one to commit the crime. Then he says that he hit Mr. Arastoozad's mother simply by accident (when, in fact, she was hit on the head and knocked down). And last, Mr. Finney claims that he shot Mr. Arastoozad out of fear and that he did not know anything about guns. It is utterly unbelievable that Mr. Finney was scared of an unarmed man who was responding to his mother's scream, when Mr. Finney and his crime partners were holding everyone at gunpoint. His statements strain credulity and are all clearly calculated to minimize his culpability for the heartless murder he committed.

I also do not find Mr. Finney to be genuinely remorseful. For three years after the murder before he was arrested, Mr. Finney went about his life as if nothing had happened. I find it telling that when he was finally apprehended, Mr. Finney not only proclaimed his innocence, he fabricated an alibi about having spent the evening of the murder at a family party with his minister. And he

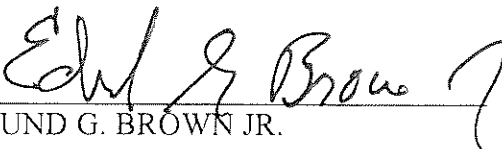
claimed that he was being wrongfully investigated and threatened to go to the news media to bring publicity to his case. These actions displayed no remorse for his actions and a total disregard for the suffering he caused. They are consistent with the characteristics that the 2008 psychological evaluator found he still possessed when he rated Mr. Finney as having elevated findings for glibness/superficial charm, a grandiose sense of self worth, lack of remorse or guilt, irresponsibility, shallow affect, and a callous lack of empathy. Although the psychologist described these elevated findings as "mild," I find them consistent with the statements and actions that I have described, and probative of a still dangerous frame of mind.

Until Mr. Finney accepts full responsibility for his decision to senselessly murder Mr. Arastoozad, and shows genuine remorse for the pain he caused, I find he is still prone to committing further acts of violence.

CONCLUSION

I have considered the evidence in the record that is relevant to whether Mr. Finney is currently dangerous. When considered as a whole, I find the evidence I have discussed shows why he currently poses a danger to society if released from prison. Therefore, I reverse the decision to parole Mr. Finney.

Decision Date: September 2, 2011


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

DARIUS VANLANDINGHAM, J-49411

Second-degree murder

AFFIRM:

MODIFY:

REVERSE:

 X

STATEMENT OF FACTS

On May 3, 1994, Darius Vanlandingham was drinking at a bar with his brother and a friend. Edel Lizarraga, 23 years old, was at the same bar with his friends. Mr. Lizarraga had consumed several beers that evening and went to use the men's room. As Mr. Lizarraga walked by Mr. Vanlandingham, who was playing pool at an adjacent table, Mr. Lizarraga made antagonistic comments. At one point, one of Mr. Lizarraga's friends tried to dissolve some of the tension by apologizing to Mr. Vanlandingham for Mr. Lizarraga's behavior. Mr. Lizarraga and Mr. Vanlandingham left the bar at the same time. Once outside the bar, Mr. Vanlandingham walked up to Mr. Lizarraga with a .38 caliber automatic pistol in his hand and pointed it at the ground. Mr. Lizarraga told Mr. Vanlandingham that he was not afraid of him and punched him in the face. They both fell to the ground and started wrestling over the gun. The gun fired twice, hitting Mr. Lizarraga in the upper right leg and severing his femur. Mr. Vanlandingham's brother and friend pulled Mr. Lizarraga off Mr. Vanlandingham. As they restrained Mr. Lizarraga, Mr. Vanlandingham told them to stand aside. Mr. Vanlandingham stood next to Mr. Lizarraga, as he was kneeling on the ground, and shot Mr. Lizarraga at very close range in the upper-left chest and shoulder. The bullet perforated Mr. Lizarraga's heart and killed him.

GOVERNING LAW

The question I must answer is whether Mr. Vanlandingham will pose a current danger to the public if released from prison. In answering this question, I must examine the same record that was before the Board of Parole Hearings and adhere to the same legal standards. 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* (2008) 44 Cal. 4th 1181, 1214.)

DECISION

The Board of Parole Hearings found Mr. Vanlandingham suitable for parole based on his remorse, acceptance of responsibility, participation in self-help, vocational training, and parole plans.

I acknowledge that Mr. Vanlandingham has made efforts to improve himself while incarcerated. He completed several vocational-training courses and participated in various self-help programs. Some of them include Wellness Program, Cage Your Rage, Effective Decision Making, and Alcoholics Anonymous. I commend Mr. Vanlandingham for taking these positive steps. But they are outweighed by negative factors that demonstrate he remains unsuitable for parole.

For inexplicable reasons, Mr. Vanlandingham committed a cowardly and vicious murder of a vulnerable young man. His violent act of aggression was completely disproportionate to a relatively minor confrontation.

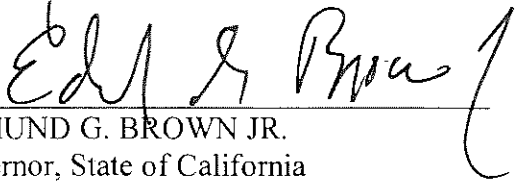
Despite many years of self-help programming in prison and irrefutable evidence, Mr. Vanlandingham has still not fully acknowledged responsibility for the crime. During his most recent psychological evaluation, Mr. Vanlandingham told the psychologist that at no time he had any intention to kill Mr. Lizarraga. Instead, he claims that he only intended to shoot him. Mr. Vanlandingham's claim is so preposterous that to accept his statement as true would require me to totally ignore the facts of the case. The autopsy report for Mr. Lizarraga revealed that he was shot at very close range. At the very least, Mr. Vanlandingham had to know that shooting him in the upper shoulder and chest would be fatal. And I believe that Mr. Vanlandingham intended that it be so.

Mr. Vanlandingham continues to minimize his role in the murder and fails to accept responsibility for the full extent of his actions. Mr. Vanlandingham is not required to admit guilt to be found suitable for parole (Cal. Pen. Code § 5011). But I am not obligated to accept his version of the crime as fact, and I do not. By minimizing his role in the crime and refusing to accept responsibility, he shows that he lacks insight into why he committed the crime and lacks remorse for his actions. His current mental state therefore indicates that he is still prone to committing further acts of violence.

CONCLUSION

I have considered the evidence in the record that is relevant to whether Mr. Vanlandingham is currently dangerous. When considered as a whole, I find the evidence I have discussed shows why he currently poses a danger to society if released from prison. Therefore, I reverse the decision to parole Mr. Vanlandingham.

Decision Date: September 2, 2011


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

BRICE GLASGOW C-26529

First-degree murder

AFFIRM:

MODIFY:

REVERSE:

 X

STATEMENT OF FACTS

On March 1, 1980, Brice Glasgow shot his niece, Patricia Watts, and shot and killed her boyfriend, Ralph Collins. Ms. Watts was eight-months pregnant at the time. On the day of the murder, Mr. Glasgow armed himself with a gun and went to Ms. Watts' apartment. Mr. Collins was asleep in a bedroom. A short time after arriving, Mr. Glasgow's friend, Edmund Duhart, knocked on the backdoor. Mr. Glasgow let him in and together they walked toward the bedroom where Mr. Collins was sleeping. Ms. Watts saw Mr. Glasgow holding the gun and ran to the bedroom, attempting to wake Mr. Collins up and protect him. Mr. Glasgow forced his way into the bedroom and began to shoot at Mr. Collins. Mr. Duhart tried to pull Ms. Watts off Mr. Collins, but she was in the line of fire and a bullet struck her back. Mr. Glasgow shot Mr. Collins in the back, head, and abdomen. Ms. Watts and her unborn child survived the gunshot, but Mr. Collins died at the scene. Mr. Glasgow was arrested later that day.

A year before the murder, Mr. Collins had gotten into a fight with Mr. Glasgow and beaten him up. Since his arrest, Mr. Glasgow has maintained that he was trying to protect Ms. Watts because Mr. Collins was abusing her.

GOVERNING LAW

The question I must answer is whether Mr. Glasgow will pose a current danger to the public if released from prison. In answering this question, I must examine the same record that was before the Board of Parole Hearings and adhere to the same legal standards. 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* (2008) 44 Cal. 4th 1181, 1214.)

DECISION

The Board of Parole Hearings found Mr. Glasgow suitable for parole based on his participation in self-help, positive institutional behavior, the passage of time, remorse, and acceptance of responsibility for the murder.

I acknowledge that Mr. Glasgow has made efforts to improve himself while incarcerated. He earned a General Equivalency Diploma in 1990. He has participated in Narcotics Anonymous and Alcoholics Anonymous. He also participated in self-help programs such as Life Skills, Alternatives to Violence, IMPACT, Relapse Prevention, Inmate Employability Program, Anger Management, and Balanced Re-entry Activity Group. Mr. Glasgow has also held several institutional jobs as a textile worker, auto repair worker, yard worker, wing porter, and dining-hall worker. I commend Mr. Glasgow for taking these positive steps. But they are outweighed by negative factors that demonstrate he remains unsuitable for parole.

In committing the life crime, Mr. Glasgow displayed a reckless disregard for human life. He not only murdered Mr. Collins who had been asleep in bed, he also shot his pregnant niece who he claims he was trying to protect. Whatever Mr. Glasgow's motive for murdering Mr. Collins, it was exceedingly trivial in magnitude to the offense.

Since the time of his arrest and throughout his incarceration, Mr. Glasgow has not displayed an understanding of the reasons he committed the murder. Mr. Glasgow initially claimed self defense. Upon his arrest, Mr. Glasgow told authorities that Mr. Collins had attacked him with a gun in the hallway outside the bedroom. He claimed that the gun went off as they struggled and that the bullets struck Mr. Collins and Ms. Watts. This version is contradicted by the evidence. Mr. Collins' body was found lying on the floor of the bedroom where he had slept, not the hallway where Mr. Glasgow claimed that the gun discharged.

Mr. Glasgow gave a different account in 2008. He claimed that he had a gun and that he drew it when he saw Mr. Collins in the hallway brandishing a gun as well. Mr. Glasgow said that he did not intend to kill Mr. Collins, only to whip and beat him with the pistol, but that "things got beyond my control." Three years later Mr. Glasgow changed his story yet again. During his psychological evaluation in 2011 he told the psychologist that he agreed with the account in the Probation Officer's Report, which is set forth in the Statement of Facts.

But at Mr. Glasgow's hearing in April 2011, he reverted to claiming that he killed Mr. Collins in self defense. By claiming self defense, Mr. Glasgow minimizes his culpability for the premeditated murder he committed. His changing explanations and his failure to take full responsibility indicate that he does not understand the reasons he committed the murder. Until he confronts and deals with the reasons he murdered Mr. Collins, he will remain a risk of committing further violence if released from prison.

In addition, Mr. Glasgow's confidential file indicates that he was trafficking in prescription drugs as recently as 2008. I find this especially troubling given Mr. Glasgow's history of heroin addiction. Mr. Glasgow's continued involvement with drugs indicates that he remains susceptible to begin abusing drugs again if released from prison.

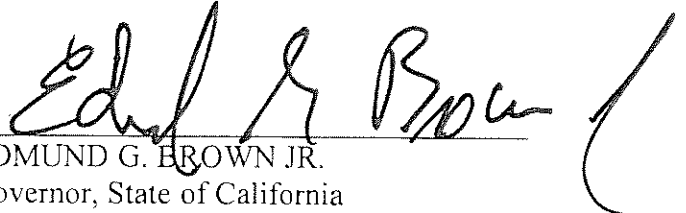
The conclusions of the psychologist who most recently evaluated Mr. Glasgow support my concerns. The psychologist assessed him as posing a "moderate" risk of violent recidivism, a "medium" risk of general recidivism, and an overall "low-moderate" risk of violence in the free community. The psychologist also concluded that Mr. Glasgow shows anti-personality traits and

found that he lacked insight into the reasons he committed the life crime. These elevated risk assessment scores coupled with Mr. Glasgow's minimization of his role in the murder cause me concern that he would still pose a risk to society if released from prison. His inability or unwillingness to honestly explain what led him to murder Mr. Collins and shoot Ms. Watts indicates that he remains dangerous.

CONCLUSION

I have considered the evidence in the record that is relevant to whether Mr. Glasgow is currently dangerous. When considered as a whole, I find the evidence I have discussed shows why he currently poses a danger to society if released from prison. Therefore, I reverse the decision to parole Mr. Glasgow.

Decision Date: September 9, 2011


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

EDWARD ORTEGA, B-78522
First-degree murder

AFFIRM:

MODIFY:

REVERSE:

 X

STATEMENT OF FACTS

Edward Ortega was incarcerated for selling heroin. In prison, Mr. Ortega and inmate Manuel Torres attacked inmate Rodney Hollingsworth, stabbing him 37 times and killing him. Mr. Ortega and Mr. Torres were members of a prison gang. Leaders of the gang apparently ordered Mr. Ortega and Mr. Torres to murder Mr. Hollingsworth because he was believed to have provided information to a rival gang.

GOVERNING LAW

The question I must answer is whether Mr. Ortega will pose a current danger to the public if released from prison. In answering this question, I must examine the same record that was before the Board of Parole Hearings and adhere to the same legal standards. 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* (2008) 44 Cal. 4th 1181, 1214.)

DECISION

The Board of Parole Hearings found Mr. Ortega suitable for parole based on his lack of assaultive history as a juvenile, prison work experience, participation in self-help programs, reduced risk of recidivism due to age, realistic parole plans, good behavior in recent years, remorse and acceptance of responsibility for the crime, and his continued positive attitude after the Governor reversed his parole grant in 2010.

I acknowledge Mr. Ortega has made efforts to improve himself while incarcerated. He earned a high school diploma, completed vocational training programs, and held a number of institutional job assignments. He also participated in a number of self-help programs, including Alcoholics Anonymous from 1998 to 2002 and beginning again in January of 2011, Narcotics Anonymous from 1998 to 2002, Empathy and Effective Communication workshop, anger management programs, Breaking Barriers program, and individual and group therapy. I commend Mr. Ortega for taking these positive steps. But they are outweighed by negative factors that demonstrate he remains unsuitable for parole.

Mr. Ortega's long criminal history involves a number of drug-related charges, including two convictions for being under the influence of opiates and one conviction for selling heroin. His 2010 psychological evaluation indicates he identifies his substance abuse as the primary cause of the crimes he committed and his other poor choices. Mr. Ortega admits that, before he went to prison, he used heroin regularly and abused alcohol, marijuana, and barbiturates. In prison, he has been disciplined three times for substance-related offenses. As recently as September 2010 he was taking morphine to treat lower back pain despite his history of heroin addiction.

Despite his problems with addiction, Mr. Ortega's participation in substance abuse treatment has been limited. He told the Board at his 2011 parole hearing that in the past he participated in Alcoholics Anonymous "off and on" for about a year and half but that he only started attending on a consistent basis in January of 2011. The psychologist in his 2010 psychological evaluation noted he had been "allowed a maximum dose of morphine" to control back pain and expressed serious concern about a heroin addict taking morphine, a highly addictive substance from which heroin is synthesized, to treat pain. To his credit, Mr. Ortega recently stopped taking morphine according to the addendum to the 2010 psychological evaluation. But given the lifelong nature of his drug problems, and his limited substance abuse programming, serious concerns remain that he does not yet have the tools needed to remain drug free if released back into society.

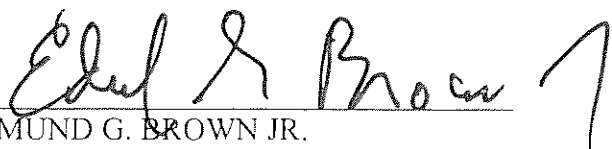
Mr. Ortega's risk assessments scores indicate that he rates in the "moderate" range of the clinic construct of psychopathy, "low-moderate" for risk of violent recidivism, "high" for risk of general recidivism, and that overall he poses a "moderate" risk of violence in the free community. These elevated scores were due in significant part to his substance abuse problems. The psychologist noted that his risk of violence in the community would increase if he returned to the use of intoxicating substances.

I am not convinced Mr. Ortega is far enough along in his substance abuse recovery to conclude that he is unlikely to relapse in the free community. Because of the substantial risk that he will return to his criminal ways if he does go back to using substances in the community, he is not yet ready for parole.

CONCLUSION

I have considered the evidence in the record that is relevant to whether Mr. Ortega is currently dangerous. When considered as a whole, I find the evidence I have discussed shows why he currently poses a danger to society if released from prison. Therefore, I reverse the decision to parole Mr. Ortega.

Decision Date: September 9, 2011


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

KEVIN TAYLOR, D-03165
First-degree murder

AFFIRM:

MODIFY:

REVERSE:

 X

STATEMENT OF FACTS

On the morning of May 29, 1984, Kevin Taylor entered a donut shop armed with a handgun. He demanded money from the cashier, Soon Hur. Ms. Hur refused and attempted to escape. Mr. Taylor shot her in the chest, killing her. He then fled.

GOVERNING LAW

The question I must answer is whether Mr. Taylor will pose a current danger to the public if released from prison. In answering this question, I must examine the same record that was before the Board of Parole Hearings and adhere to the same legal standards. 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* (2008) 44 Cal. 4th 1181, 1214.)

DECISION

The Board of Parole Hearings found Mr. Taylor suitable for parole based on his insight, lack of recent misconduct, vocational training, completion of a paralegal studies program, participation in Alcoholics Anonymous and religious organizations, solid parole plans, and reduced risk of recidivism due to age.

Mr. Taylor has made efforts to improve himself while incarcerated. He completed a paralegal correspondence course. He also has participated in Alcoholics Anonymous since December, 2009, involves himself in a number of religious activities, and has been commended by a number of correctional staff for his positive attitude and good behavior. I commend Mr. Taylor for taking these positive steps. But they are outweighed by other relevant considerations that demonstrate he remains unsuitable for parole.

Mr. Taylor callously murdered an innocent victim who was just going about her job operating a donut shop. His initial motive was greed but he became concerned that the victim might identify him so he killed her. Both motives for his decision to end the victim's life are very trivial.

The murder was the most serious of Mr. Taylor's many violent and criminal actions. He was a member of the Crips street gang with a criminal record that included vehicle theft, battery on another child, assaulting a teacher and fellow student, vandalism, battering his cousin with a hammer, as well as multiple instances of escaping juvenile detention facilities. His misconduct continued in prison where he has received a total of 14 Rules Violation Reports for such offenses as stabbing another inmate, fighting with another inmate, and possession of weapons (twice), amongst others. His most recent Rules Violation Report came in December 2002 for conspiracy to escape from prison.

Mr. Taylor's rehabilitative efforts are underwhelming. At his 2011 Board hearing he indicated that anger, exposure to violence, and control issues were the main factors that led to his criminal activity. But he has not participated in self-help programs designed to address those issues. He also attributed his behavior to his gang involvement. He has not participated in any gang-related self-help programs. His participation in Alcoholics Anonymous since December 2009, various religious programs, and a parenting course, while commendable, do not directly address the central problems that contributed to his murder of Ms. Hur.

Considering his limited participation in self-help programs, it is not surprising that Mr. Taylor lacks an adequate understanding of the reasons that contributed to his past violent behavior. When asked during his 2010 psychological evaluation to describe what led him to commit the murder he responded only that he "lacked self-control at that time." The psychologist found that he tended to minimize or omit aspects of his history related to events that may be construed in a negative manner and that he lacked insight regarding the variables which played a role in his criminal and aggressive behavior. At his 2011 Board hearing Mr. Taylor identified exposure to violence and anger brought on by his need to control situations and lack of impulse control as the main factors that contributed to his criminal behavior. While this shows some improvement in his insight, he did not discuss these issues in any greater detail and did not display a sufficiently in depth understanding of himself and his violent behavior to offset the findings of his psychological evaluation that he lacked adequate insight. Until Mr. Taylor demonstrates a greater understanding and acceptance of the factors that led to his violent criminal behavior, I remain concerned that he has yet to develop the skills necessary to avoid violent actions in the future.

Mr. Taylor also has made little effort to develop skills that will enable him to support himself in the community. He does not have a job offer, has not completed any vocational training, and has not obtained a high school diploma or general equivalency diploma. He did complete a correspondence course in paralegal training but there is no indication he has made any effort to secure employment in that area. Mr. Taylor has a history of theft and robbery and there is a substantial possibility he would again victimize others if he is unable to provide for himself by legitimate means.

Mr. Taylor's most recent risk assessments confirm that his lack of rehabilitative efforts make him a greater risk to reoffend. He scored in the "moderate" range for likelihood of violent recidivism. The psychologist identified Mr. Taylor's insufficient insight and unresponsiveness to treatment as factors that increased his likelihood of violent recidivism, along with his

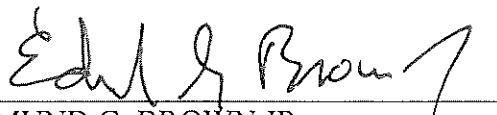
substantial history of violent and criminal behavior. The psychologist found Mr. Taylor posed a "high" risk of general recidivism based on his criminal history, institutional misconduct, failure to upgrade educationally or vocationally while incarcerated, and his diagnosis for Antisocial Personality Disorder, among other factors. Overall, the psychologist found he posed a "moderate" risk of future violence and that he could reduce his risk of recidivism by participating in self-help programs, developing further insight into his criminal lifestyle and life crime, and upgrading his education and vocational skills.

Mr. Taylor perpetrated violent criminal behavior for many years, beginning in his early teens. In recent years his behavior has improved and it appears he has begun to explore the reasons behind his violent behavior. But he still has work to do on his rehabilitation before he no longer poses an unreasonable threat to the community.

CONCLUSION

I have considered the evidence in the record that is relevant to whether Mr. Taylor is currently dangerous. When considered as a whole, I find the evidence I have discussed shows why he currently poses a danger to society if released from prison. Therefore, I reverse the decision to parole Mr. Taylor.

Decision Date: October 7, 2011


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

RICKY PEREZ, C-51533
Second-degree murder

AFFIRM:

MODIFY:

REVERSE:

 X

STATEMENT OF FACTS

On May 23, 1982, Ricky Perez brutally murdered Carolyn Lugo, the mother of one of his friends. Ms. Lugo had recently told Mr. Perez that she did not want him to associate with her son any longer because of Mr. Perez's drug use. On the day of the murder, Mr. Perez had been partying at Ms. Lugo's house with her son and some other friends. Mr. Perez consumed eight or nine beers, methamphetamine, PCP, and LSD. In the evening, the group of friends went to a drive-in movie. But Mr. Perez left early and went home to pick up a kitchen knife. He then went back to Ms. Lugo's house by himself. He falsely told Ms. Lugo that her son was "loaded" around the corner and unable to drive home. When Ms. Lugo went outside to find her son, Mr. Perez began to attack her. A struggle ensued during which Mr. Perez repeatedly stabbed her with the knife and struck her head with a large rock, killing her. Ms. Lugo's daughter found her body lying near the driveway.

GOVERNING LAW

The question I must answer is whether Mr. Perez will pose a current danger to the public if released from prison. In answering this question, I must examine the same record that was before the Board of Parole Hearings and adhere to the same legal standards. 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* (2008) 44 Cal. 4th 1181, 1214.)

DECISION

Mr. Perez was released from prison in September 2010 after the Board granted him parole. At that time the Board had been compelled to grant him parole by a federal court order. I reversed that parole grant this February based on Mr. Perez's inadequate insight into the reasons he committed the murder. Following my reversal, Mr. Perez was returned to prison. The Board has now granted him parole again; this time based on his remorse, participation in self-help, family support, and his low risk assessments.

I acknowledge that Mr. Perez has made efforts to improve himself while in prison. He earned a General Equivalency Diploma, as well as vocational training certificates in carpentry and machine shop. He has held several skilled institutional jobs, and has participated in self-help programs, including substance abuse treatment, stress management, and self-esteem training. He has also taken adult-literacy courses. I commend Mr. Perez for taking these positive steps, and I acknowledge that he did not reoffend while he was released from prison. But the negative considerations that I will discuss indicate that he still poses a risk to public safety.

The murder Mr. Perez committed is especially troubling because of its brutal and inexplicable nature. He not only stabbed Ms. Lugo several times, but also crushed her head with a large rock. Mr. Perez's inexplicable motive adds to the egregiousness of the crime.

I am concerned that Mr. Perez still does not understand why he murdered Ms. Lugo. When asked for his reasons at his most recent parole hearing, Mr. Perez replied, "I have no answer for that. I really don't." When asked the same question by his psychological evaluator in March 2011, he replied: "I was high; I don't remember why I wanted to harm her." The evaluator observed that "Mr. Perez cannot be seen as having adequate insight regarding his role in the life crime, given his current report of being unaware of why he wanted to harm the victim."

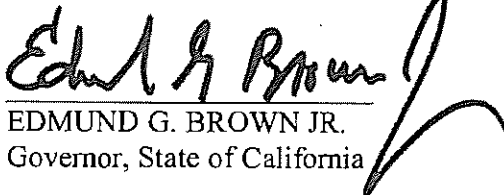
I do not doubt that Mr. Perez's drugged and intoxicated mental state played a role in the murder, but drugs and alcohol do not fully explain why he so viciously attacked his friend's mother. There were deeper issues that contributed to his decision to commit this murder. Until he shows that he understands what those issues were, and that he has taken steps to address them, there is inadequate assurance that he will not act violently if released from prison.

I am also concerned that Mr. Perez is not taking his alcohol and substance abuse problems seriously enough. Mr. Perez stated in his most recent psychological exam, when asked what motivated him to commit the crime, that it was "the drugs and alcohol; It was the biggest issue because I lost all control of what was right and wrong and I wasn't thinking clearly." However, during the five months that he was recently back in society, he failed to participate in any alcohol or substance abuse program, nor did he obtain a sponsor as he reported he would during his previous psychological evaluation. He told recent psychological evaluators that he does not need to attend a relapse prevention program because he does not believe there is any chance that he would ever use substances again. Mr. Perez does not appear to have a realistic understanding of the heightened risk of relapse he would face if released from prison. This raises legitimate public safety concerns given the severity of his substance abuse problems and the role they played in the brutal murder he committed.

CONCLUSION

I have considered the evidence that is relevant to whether Mr. Perez is currently dangerous. When considered as a whole, I find the reasons I have discussed show why he still poses a danger to society if released from prison. Therefore, I reverse the decision to parole Mr. Perez.

Decision Date: October 14, 2011


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

ARBIE HODGE, C-06325
Second-Degree murder

AFFIRM:

MODIFY:

REVERSE:

 X

STATEMENT OF FACTS

On January 14, 1979, Arbie Hodge saw his girlfriend fighting with another woman in the street in front of his house. Another man, Thurman Allen, attempted to intervene in the fight. Mr. Allen was armed with a picture frame. Mr. Hodge grabbed a baseball bat, went outside, and struck Mr. Allen in the head twice. Mr. Allen fell to the ground and died several days later from his wounds. For nearly 10 years afterward, Mr. Hodge denied striking Mr. Allen with the bat.

GOVERNING LAW

The question I must answer is whether Mr. Hodge will pose a current danger to the public if released from prison. In answering this question, I must examine the same record that was before the Board of Parole Hearings and adhere to the same legal standards. 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* (2008) 44 Cal. 4th 1181, 1214.)

DECISION

The Board of Parole Hearings found Mr. Hodge suitable for parole based on his remorse, insight, lack of institutional misconduct, participation in self-help programs, vocational training, realistic parole plans, marketable job skills, and age.

Mr. Hodge has made some efforts to improve himself while incarcerated. He obtained a General Equivalency Diploma, completed vocational training in dry cleaning and tailoring, and held a number of institutional jobs. He also participated in some self-help groups including Alcoholics Anonymous, Narcotics Anonymous, Roadsiders, a 12-step fellowship group, a psychiatric department self-help group, and an effective communication course. I commend Mr. Hodge for taking these positive steps. But they are outweighed by negative factors that demonstrate he remains unsuitable for parole.

Mr. Hodge committed a brutal and senseless murder. He beat Mr. Allen in the head with a baseball bat. Mr. Allen was armed with nothing more than a picture frame. At his most recent parole hearing, Mr. Hodge told the Board that he hit Mr. Allen with the bat to prevent Mr. Allen from hitting one of the women with the picture frame. Mr. Hodge's response to Mr. Allen's intervention was entirely disproportionate to the relatively minor confrontation.

I am troubled by the fact that Mr. Hodge has not fully accepted responsibility for killing Mr. Allen. During Mr. Hodge's most recent psychological evaluation, the psychologist concluded that Mr. Hodge attributes culpability to his victim rather than to himself: "Mr. Hodge's insistence that he was trying to protect himself and his girlfriend from Mr. Allen's aggression, certainly appears to partially blame the victim for his own murder." The psychologist further concluded that Mr. Hodge was more concerned about the impact his crime had on his own life rather than Mr. Allen's: "although he claims to feel remorse for his actions, Mr. Hodge remains more focused on the consequences of his crime on his own life rather than that of the victim." The psychologist concluded that Mr. Hodge is not "particularly insightful or introspective" and that "[a]s such, he has been unable to identify the reasons behind his past criminal behaviors, including the controlling offense."

I am also concerned that Mr. Hodge has not acknowledged the considerable extent of his substance-abuse problems or attempted to address them adequately. During his 2011 Board hearing, he indicated has not pursued any self-help to try to understand the link between his substance abuse and his criminal history. He told the psychologist that he stopped participating in Alcoholics Anonymous in 2005 after he was denied parole. The psychologist opined that "Mr. Hodge demonstrates very little insight into his substance abuse, but insisted that he would never use drugs again." Given the lifelong nature of his drug problems and his limited substance abuse programming, I have serious concerns that he will remain drug-free if released back into society.

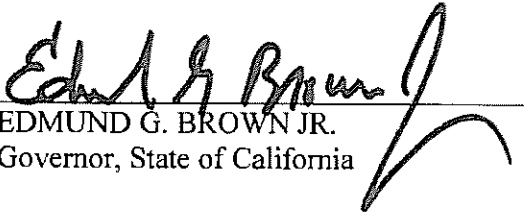
My concern that Mr. Hodge remains dangerous is further supported by the elevated risk assessment scores assigned to him in his 2010 psychological evaluation. The psychologist determined that he was in the "moderate" range for likelihood of violent recidivism, in the "medium" range for risk of general recidivism, and that overall he posed a "moderate-high" risk of committing violence in the community. The psychologist also found Mr. Hodge to be in the "high" range for psychopathy.

Until Mr. Hodge confronts and deals with the problems that caused him to brutally murder Mr. Allen, he will remain a threat to public safety. I encourage him to resume participation in substance-abuse treatment, and to seek out programs and other ways to examine and address the reasons for his violent and criminal behavior.

CONCLUSION

I have considered the evidence in the record that is relevant to whether Mr. Hodge is currently dangerous. When considered as a whole, I find the evidence that I have discussed shows why he currently poses a danger to society if released from prison. Therefore, I reverse the decision to parole Mr. Hodge.

Decision Date: October 21, 2011


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

JAMES MEINECKE, E-67329

Second-degree murder

AFFIRM:

MODIFY:

REVERSE:

X

STATEMENT OF FACTS

On September 24, 1989, James Meinecke drank beers while cutting wood with friends. He then went to a bar and drank more. In the process of leaving the bar, he hit a parked car. He then went to a restaurant. When leaving the restaurant, he hit a planter box and fence. He then proceeded onto the two-lane highway. While driving on the highway, he crossed the center line into oncoming traffic. He collided head-on with a car driven by Paul Higgins. Karla Takahashi was the passenger in Mr. Higgins' car. Mr. Higgins suffered life-threatening injuries and was in a coma for some time after the collision. He survived and eventually came out of the coma but, since the crash, has been unable to care for himself due to injuries suffered during the collision. Ms. Takahashi died as a result of injuries suffered during the collision. Mr. Meinecke was hospitalized with lacerations to his left knee, face, and internal injuries. His blood-alcohol level taken two hours after the collision was 0.23%.

GOVERNING LAW

The question I must answer is whether Mr. Meinecke will pose a current danger to the public if released from prison. In answering this question, I must examine the same record that was before the Board of Parole Hearings and adhere to the same legal standards. 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* (2008) 44 Cal. 4th 1181, 1214.)

DECISION

The Board of Parole Hearings found Mr. Meinecke suitable for parole based on his remorse, participation in self-help programs, lack of misconduct, adequate parole plans, lack of assaultive behavior as a juvenile, and reduced risk of recidivism due to age.

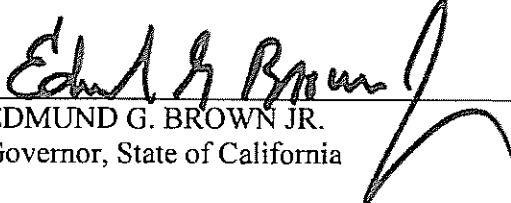
I acknowledge Mr. Meinecke has made efforts to improve himself while incarcerated. I commend Mr. Meinecke for taking these positive steps. But they are outweighed by other relevant considerations that demonstrate he remains unsuitable for parole.

Mr. Meinecke was convicted of driving under the influence and/or driving on a revoked license eight times prior to the night he got in his car drunk yet again and ended up killing Ms. Takahashi and permanently injuring Mr. Higgins. These convictions occurred over a period of fourteen years. Despite all of these warnings and legal interventions, Mr. Meinecke continued to drive drunk. Given the severity of his history of drunk driving and his repeated failures to stop his dangerous behavior, I am not satisfied that Mr. Meinecke has done enough to ensure he will not drink again, or if he drinks, that he will not drive and hurt more innocent people. Despite his record in prison, he simply poses too great of a risk to the public to allow him back out on the street.

CONCLUSION

I have considered the evidence in the record that is relevant to whether Mr. Meinecke is currently dangerous. When considered as a whole, I find the evidence I have discussed shows why he currently poses a danger to society if released from prison. Therefore, I reverse the decision to parole Mr. Meinecke.

Decision Date: October 21, 2011


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

TENG VANG, J-72450

Second-degree murder

AFFIRM:

MODIFY:

REVERSE:

 X

STATEMENT OF FACTS

On June 18, 1994, Teng Vang, Touly Vang, Vang Lao and Sou Thao, all fellow members of the same street gang, decided to retaliate against a rival gang for threats made earlier in the day. Sou Thao and Touly Vang went home and retrieved guns. Sou Thao got a shotgun and Touly Vang retrieved a bag of guns. Meanwhile, some of their fellow gang members and affiliates stole a minivan and brought it back. Teng Vang armed himself with a shotgun. Sou Thao drove. They spotted members of the rival gang outside a house. When the rival gang members got into their cars, Sou Thao pulled up next to them and Teng Vang, Vang Lao, and Sou Thao opened fire. Bi Yang, Khao Hue, and Khao Heu were shot. Bi Yang and Khao Hue were injured but survived. Khao Heu was killed.

GOVERNING LAW

The question I must answer is whether Mr. Vang will pose a current danger to the public if released from prison. In answering this question, I must examine the same record that was before the Board of Parole Hearings and adhere to the same legal standards. 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* (2008) 44 Cal. 4th 1181, 1214.)

DECISION

The Board of Parole Hearings found Mr. Vang suitable for parole based on his remorse, acceptance of responsibility, insight, vocational work, self-help efforts, and realistic parole plans.

I acknowledge that Mr. Vang has made efforts to improve himself while incarcerated. He obtained a high school diploma, and completed vocational training in mill and cabinetry, building maintenance, and masonry. Mr. Vang also participated in a number of self-help courses such as Anger Management, Substance Abuse Program, Alternatives to Violence, Criminal Gangs and Violence Prevention Program, and Sexual Abuse/Assault Prevention and Intervention. I commend Mr. Vang for taking these positive steps. But they are outweighed by negative factors that demonstrate he remains unsuitable for parole.

Mr. Vang committed a completely senseless murder. He and his fellow gang members stole a minivan, armed themselves with firearms, sought out rival gang members, and then indiscriminately fired on them at close range. Mr. Vang's motive for committing this vicious crime is inexplicable.

Despite the gains he has made while incarcerated, his most recent psychological evaluation indicates that he remains a threat to the community. The psychologist opined that Mr. Vang does not understand what compelled him to kill Mr. Heu, finding that he lacked "greater recognition of his emotions, motivation, and how it impacted his behaviors and allowed him to join the gang, and eventually to take active part in this murder."

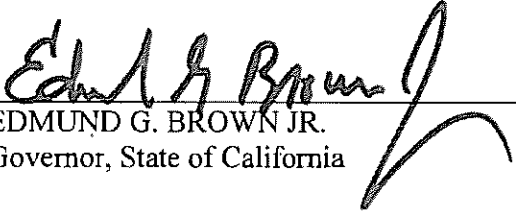
The psychologist also observed that Mr. Vang lacks empathy for his victims: "During this interview, this individual's lack of empathy for the victims ... was significant." The psychologist concluded that Mr. Vang's insight was "insufficient" and that he was "unable to identify any of the internal factors of his crime." The psychologist also diagnosed Mr. Vang with Adult Antisocial Personality Disorder, which increases his risk for violent recidivism.

I am also concerned about Mr. Vang's recent and lengthy record of disciplinary violations. He had two serious disciplinary reports within the last four years. In 2008, he received a Rule Violation Report for possession of a slingshot with a rock. And in 2007, he received a Rule Violation Report for possession of a cell phone. And these are only his two most recent rule violations in what is a long record of fairly frequent violations; he had other rule violations in 2003, 2002, 1999, 1998, and 1996. This pattern indicates that he has not yet demonstrated that he can abide by the rules for a sustained period of time.

CONCLUSION

I have considered the evidence in the record that is relevant to whether Mr. Vang is currently dangerous. When considered as a whole, I find the evidence I have discussed shows why he currently poses a danger to society if released from prison. Therefore, I reverse the decision to parole Mr. Vang.

Decision Date: October 21, 2011


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

KENNY EVANS, H-83601

Second-degree murder

AFFIRM:

MODIFY:

REVERSE:

_____ X _____

STATEMENT OF FACTS

On June 19, 1992, Kenny Evans was at his apartment with some friends, including Eric Edmunds. Mr. Edmunds' car had recently been stolen from him at gunpoint. Mr. Edmunds told Mr. Evans that he saw the men responsible for the theft outside. Mr. Edmunds, Mr. Evans, and two other men went looking for them. Mr. Edmunds was carrying a semiautomatic handgun, but Mr. Evans took it from him. They spotted Tyrone Williams and Alexander Cade standing outside Mr. Williams' apartment talking and drinking. Mr. Evans came up behind them and immediately began shooting at them. He shot at them 12 times. Mr. Cade managed to run away without getting hit, but Mr. Williams was shot several times and died at the scene.

GOVERNING LAW

The question I must answer is whether Mr. Evans will pose a current danger to the public if released from prison. In answering this question, I must examine the same record that was before the Board of Parole Hearings and adhere to the same legal standards. 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* (2008) 44 Cal. 4th 1181, 1214.)

DECISION

The Board of Parole Hearings found Mr. Evans suitable for parole based on his stable social system, vocational training, positive work record while incarcerated, educational upgrading, participation in self help, low risk assessments, insight, and parole plans.

I acknowledge that Mr. Evans has made efforts to improve himself while incarcerated. He completed vocational training in auto mechanics and is working toward an associate of science degree. He has participated in self-help programs such as Alcoholics Anonymous, Narcotics Anonymous, Alternatives to Violence, Victims Awareness, Creative Conflict Resolution, KAIROS, and parenting courses. I commend Mr. Evans for taking these positive steps. But they are outweighed by negative factors that demonstrate he remains unsuitable for parole.

Mr. Evans senselessly murdered an innocent man just because his friend mistakenly suspected him of having stolen his friend's car. The severity and spontaneity of Mr. Evan's violence is troubling. As soon as he saw the two men, he fired twelve bullets at them without warning. Mr. Williams was unarmed and had no opportunity to defend himself. Mr. Evans' actions were a completely disproportionate response to his friend's car being stolen. Whatever motive he may have had for committing this murder is inexplicable.

Mr. Evans refused to accept responsibility for the murder until 2004. Although he now admits that he killed Mr. Williams, he still does not appear to have anything more than a shallow understanding of why he reacted so explosively to an issue that really did not concern him. He told the Board at his most recent hearing that he was trying to show his friends how tough he was. But this explanation does not show an understanding of the volatile rage he exhibited by unleashing a barrage of bullets on the two unsuspecting people he had snuck up on. He remarked to the psychologist who evaluated him in 2010 found that the situation "could have been handled better." What an understatement. Although he now accepts responsibility for his actions, he has not shown that he adequately understands the reasons he reacted so violently in this situation. The psychologist found that he has "some understanding of his actions in the crime," but noted "some lack of substance or depth" in his articulation. Until Mr. Evans shows a deeper understanding of why he committed this senseless murder, I am concerned that he may react violently to other situations that arise if he is released from prison.

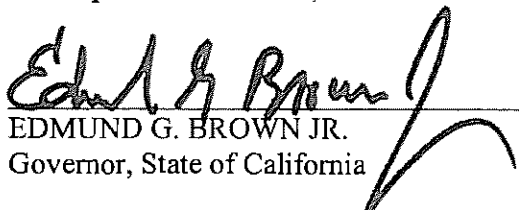
Mr. Evans' misbehavior in prison also causes me concern that he will not be able to abide by the laws of our society. He has received numerous rule violations in prison, the most recent of which was in 2007 for possessing a cell phone. Mr. Evans told the parole board at his most recent hearing that understands the wrongfulness of this rule violation. The psychologist in 2010 observed, though, that this recent rule violation "suggests some antisocial attitude in failing to follow prison rules, and he has tended to deny and minimize his responsibility" for his other rule violations. The psychologist found that he "demonstrated some difficulty in accepting responsibility for his actions and often seems to have defended himself with lies or obfuscation."

Mr. Evans current elevated risk assessments also indicate that he remains a threat to society if released from prison. The psychologist who evaluated him in 2010 determined that he was in the "moderate" range for likelihood of violent recidivism, and a "low/moderate risk for violence in the free community."

CONCLUSION

I have considered the evidence in the record that is relevant to whether Mr. Evans is currently dangerous. When considered as a whole, I find the evidence I have discussed shows why he currently poses a danger to society if released from prison. Therefore, I reverse the decision to parole Mr. Evans.

Decision Date: October 28, 2011


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

MICHAEL HUNTER, H-40401
Second degree murder

AFFIRM:

MODIFY:

REVERSE:

X

STATEMENT OF FACTS

On July 26, 1991, Michael Hunter stabbed Patrick Corbin in the neck with a knife while he slept. Mr. Hunter and Mr. Corbin lived in a transient camp. Mr. Hunter had recently received a threatening note and he mistakenly believed it had come from Mr. Corbin. Mr. Hunter later told a probation officer that, after receiving the note, he felt threatened and, "I was going to eliminate the threat." He admitted that he went to Mr. Corbin's camp with the intention of stabbing him. At the time of the murder, Mr. Hunter had been a drug abuser for several years.

GOVERNING LAW

The question I must answer is whether Mr. Hunter will pose a current danger to the public if released from prison. In answering this question, I must examine the same record that was before the Board of Parole Hearings and adhere to the same legal standards. 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* (2008) 44 Cal. 4th 1181, 1214.)

DECISION

The Board of Parole Hearings found Mr. Hunter suitable for parole based on his work record, parole plans, participation in self help, conduct in prison, remorse, and psychological evaluation.

I acknowledge that Mr. Hunter has made some efforts to improve himself while incarcerated. He obtained a GED, and completed vocational training in office and janitorial services. He participated in self help programs including Alcoholics and Narcotics Anonymous between 1995 and 1997, a victim awareness program, and stress and anger management programs. I commend Mr. Hunter for taking these positive steps. But they are outweighed by negative factors that demonstrate that he remains unsuitable for parole.

Mr. Hunter committed a senseless and cowardly murder of a completely defenseless man. Mr. Hunter snuck up on Mr. Corbin while he was sleeping, stabbed him in the throat with a hunting

knife, and then ran away. Even if Mr. Hunter's claim that Mr. Corbin left him the threatening note were true, Mr. Hunter's response to it was completely disproportionate.

Mr. Hunter abused drugs for several years before he murdered Mr. Corbin. He reported that he snorted methamphetamine on a daily basis, in addition to abusing marijuana and cocaine. Yet in all of his years in prison, he only participated in Narcotics Anonymous for 14 months. Given his limited efforts to address his drug abuse problems, I am concerned that he does not yet have the tools to prevent a relapse if he is released from prison.

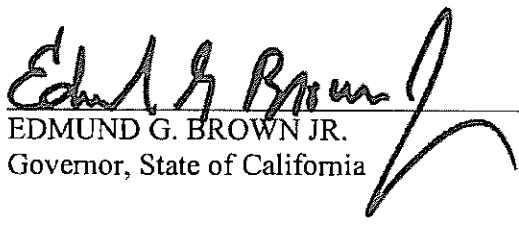
The psychologist who evaluated him this year shares my concerns. The psychologist opined that Mr. Hunter's drug abuse exacerbated the suspicious and paranoid thought process that contributed to the murder. The psychologist observed that Mr. Hunter displayed only a limited understanding "into his changing pattern of abuse, his triggers, warning signs and its impact upon his life and those around him. Mr. Hunter indicated that use of intoxicants never caused him any problems. He failed to identify his triggers and warning signs. Similarly, he communicated no viable relapse prevention plan, which he would be willing to follow in [the] community." The psychologist concluded that Mr. Hunter "needs to develop greater grasp of the changing pattern of abuse of intoxicants, and become familiar with his triggers (i.e. circumstances and internal affective states) and warning signs in order to be prepared to address such eventuality in the future."

Because Mr. Hunter was abusing drugs at the time of the murder, I am concerned that if he were to fall back into using drugs when released from prison, he may engage in further violent behavior. My safety concerns are further supported by the elevated risk assessment scores Mr. Hunter received in his 2011 psychological evaluation. The psychologist assessed Mr. Hunter's risk for general recidivism as "medium" and his risk of violent recidivism as "moderate." The psychologist stated that his risk of reoffending would increase should he begin using drugs again. In light of Mr. Hunter's limited efforts to address his drug abuse problems, releasing him from prison at this time is a gamble that I am not prepared to make.

CONCLUSION

I have considered the evidence in the record that is relevant to whether Mr. Hunter is currently dangerous. When considered as a whole, I find the evidence I have discussed shows why he currently poses a danger to society if released from prison. Therefore, I reverse the decision to parole Mr. Hunter.

Decision Date: October 28, 2011


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

JOHN KOHLER, K-96254

Second-degree murder

AFFIRM:

MODIFY:

REVERSE:

 X

STATEMENT OF FACTS

On July 13, 1996, John Kohler and his live-in girlfriend, Gerilyn Tuzon, beat and tortured her four year-old son Jarren to death after he got some juice from the refrigerator without his mother's permission. The day after the beating, police came to their home, and found Jarren unconscious. He was taken to hospital where doctors determined that he was brain dead. Jarren was taken off life support and allowed to die.

Mr. Kohler and Ms. Tuzon initially told authorities that Jarren had fallen down the stairs and hurt his head. Later, upon further questioning, they gave conflicting reports of who beat Jarren. Each blamed the other. What is known is that over several hours, together or individually, they repeatedly slapped Jarren, causing him to fall down. Next, Mr. Kohler or Ms. Tuzon pulled Jarren up by his hair to a standing position, got a belt, and spanked him with it 25 to 30 times, and then slapped his face again. Jarren was then taken to a bedroom and whipped repeatedly with an electrical cord, leaving welt marks on his legs. Then Jarren was hit with a plastic hanger. Next, he was repeatedly pushed against his chest with such force that he fell backwards against the wall, hitting his head.

Jarren was then ordered to stand at the foot of the bed for about an hour until he could answer why he was being punished. Afterward, Jarren was told to go to bed. But his ordeal did not end there. Instead, he was pulled from the top bunk of his bed and thrown to the floor, landing on his head. He was picked up by his shirt and either dropped or fell to the floor face first. He began bleeding from his mouth and became unresponsive.

GOVERNING LAW

The question I must answer is whether Mr. Kohler will pose a current danger to the public if released from prison. In answering this question, I must examine the same record that was before the Board of Parole Hearings and adhere to the same legal standards. 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* (2008) 44 Cal. 4th 1181, 1214.)

DECISION

The parole board found Mr. Kohler suitable for parole based on his participation in self help, his prison conduct and job performance, his family support, remorse, and psychological report.

I acknowledge that Mr. Kohler has made some efforts to improve himself while incarcerated. He participated in substance abuse therapy and other self-help courses such as Creative Conflict Resolution, Victim Awareness, Breaking Barriers, anger and stress management programs, Alternatives to Violence, Life Skills Men's Violence Prevention Group, and Victim/Offender Reconciliation. Mr. Kohler also completed vocational training and obtained an associate degree in paralegal studies. I commend him for taking these positive steps. But they are outweighed by negative factors that demonstrate he remains unsuitable for parole.

Mr. Kohler committed an unconscionable and heinous murder of a defenseless child. For hours he and his girlfriend viciously abused and beat to death a helpless four year-old boy. A post-mortem medical examination revealed that Jarren had a subdural hematoma to the skull, which caused his brain death. Jarren's trust and confidence was betrayed by the two adults most responsible for his care.


In this case, the heinousness of Mr. Kohler's crime raises sufficient public safety concerns to warrant denying him parole. But I am also concerned that Mr. Kohler fails to accept full responsibility for his role in Jarren's murder. He blames Ms. Tuzon for inflicting the most severe abuse on Jarren that night, and says that he hit the boy to a much lesser extent. He portrays his main crime as not intervening to stop Ms. Tuzon from beating Jarren to death. He claims that he did not stop Ms. Tuzon from beating Jarren because confronting her might have jeopardized their relationship.

Although Mr. Kohler claims to take "a lot" of the responsibility for the murder, by shifting primary responsibility to Ms. Tuzon and portraying himself as someone who was afraid to intervene, Mr. Kohler fails to genuinely accept responsibility for his own violent actions that caused Jarren's murder. Mr. Kohler is not required to admit guilt to be found suitable for parole (Penal Code §5011). But by minimizing his culpability and shifting primary responsibility to his crime partner, he shows that he lacks insight into why he committed the crime and offers no assurance that he will not be violent with other children if released from prison.

CONCLUSION

I have considered the evidence relevant to whether Mr. Kohler is currently dangerous. When considered as a whole, I find the evidence I have discussed shows why he currently poses a danger to society if released from prison. Therefore, I reverse the decision to parole Mr. Kohler.

Decision Date: October 28, 2011


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

JOANNE MARCHETTI, W-36662

Second-degree murder

AFFIRM:

MODIFY:

REVERSE:

 X

STATEMENT OF FACTS

On July 12, 1988, Joanne Marchetti beat her five-year-old son, Randy, because he wet the bed and urinated on the wall. She hit him with a broom, a baseball bat, punched him, and kicked him. Ms. Marchetti's boyfriend, Ricky Higginbotham, also hit Randy, kicked him with steel-toed boots, and threw him against a toy box. The next day she bathed her son's dead body in the bath tub while her six-year old daughter and two-year old son took their bath. She and Mr. Higginbotham then took Randy's body to the hospital where the doctors pronounced him dead on arrival. Randy's body already had signs of rigor mortis on arrival. An autopsy showed that Randy's head was almost entirely red and swollen, and that he had trauma on his face, his right arm, both legs, and the tops of his feet. There were about 90 separate areas of trauma on his body. He was also malnourished, weighing only 34 ½ pounds.

Ms. Marchetti has maintained for many years that Mr. Higginbotham was the one who severely and fatally beat Randy and that her main crime was that she failed to intervene. But, her daughter, who was 6 years old at the time, witnessed the murder and testified that Ms. Marchetti did, in fact, severely beat Randy that day, just as she had done on a regular basis in the past.

GOVERNING LAW

The question I must answer is whether Ms. Marchetti will pose a current danger to the public if released from prison. In answering this question, I must examine the same record that was before the Board of Parole Hearings and adhere to the same legal standards. 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* (2008) 44 Cal. 4th 1181, 1214.)

DECISION

The Board of Parole Hearings found Ms. Marchetti suitable for parole based on her good behavior in prison and her insight. I acknowledge that she has made efforts to improve herself while incarcerated. She has participated in Alcoholics and Narcotics Anonymous since 1992. She participated in self help programs including Pathways to Wholeness, Life Plan for Recovery,

Women's Ethic groups, Christian Fellowship 12-step program, and stress management and drug counseling programs. She also obtained a veterinary assistant diploma and has been a volunteer dog trainer. I commend Ms. Marchetti for taking these positive steps. But they are outweighed by negative factors that demonstrate that she remains unsuitable for parole.

Ms. Marchetti committed a horrific crime of almost unfathomable cruelty against her own son. As Randy's mother, she held a position of trust and she betrayed it in the worst possible way. She and Mr. Higginbotham mercilessly beat five year-old Randy to death. Detectives inspected Ms. Marchetti's home after the murder and found blood on her bedroom wall, the bathroom door, the doorknob, in the bathtub, on a wall in the dining area, and in the kitchen.

Ms. Marchetti has never admitted that the full extent of the physical abuse she inflicted on her son. Instead, she maintains that Mr. Higginbotham beat Randy to death and that she simply failed to intervene. But Ms. Marchetti's daughter, Brandy Marchetti Cambron, witnessed the murder when she was six years old, and she has a very different account of what transpired that day. She reported to the parole board last year that on the day of the murder, Ms. Marchetti gave Randy a severe beating for wetting the bed. The beating was so bad that the neighbors reported it, and social workers came to the home to investigate. When the social workers arrived, Randy was in the bedroom, moaning in pain on the floor. But as her mother had trained her to do, six-year-old Brandy told the social workers that everything was fine, and Ms. Marchetti said Randy was simply taking a nap. The social workers left without examining Randy, and after they left, Ms. Marchetti began beating him with a baseball bat to punish him for the social workers' visit. She then started removing the pictures from the wall that Randy was in.

Ms. Cambron further reported to the Board that when Mr. Higginbotham arrived a short while later, Ms. Marchetti told him that he needed to punish Randy too. He began to beat Randy as the little boy lay unconscious on the bedroom floor. When he was done beating him, he rolled him up in a carpet, put him in the toy box, and left. Several hours later, Ms. Marchetti moved Randy from the toy box to the couch where he lied perfectly still with a glazed look in his eyes. Ms. Marchetti sent Brandy and her two-year old brother Mark to bed, and left Randy on the couch to die. When they woke up the next morning, Ms. Marchetti made Brandy and Mark take a bath, then put Randy's dead body in the bathtub with them. After the bath, Ms. Marchetti and Mr. Higginbotham drove them all to the hospital. Brandy recalls Randy's cold, stiff body laying against her the whole drive there. She then witnessed her mother and Mr. Higginbotham lie to the doctors about what had happened to Randy.

Ms. Marchetti's daughter told the Board that the abuse Randy received the day of the murder was not a one-time occurrence. She explained that on a daily basis for a period of months, Ms. Marchetti had starved and abused Randy. Ms. Marchetti and Mr. Higginbotham would frequently throw Randy in a dumpster and then bang on the closed lid. They would make him bang his head against the wall doing jumping jacks. Ms. Marchetti would tie clothes he had urinated in over his face and mouth, and make him sit like that for hours.

I commend Ms. Cambron for her courage in recounting the horrific abuse that her mother inflicted on her little brother. I find her account of what happened to be more reliable than the versions given by either Ms. Marchetti or Mr. Higginbotham.

Unfortunately, it appears the full extent of Ms. Marchetti's physical abuse of her son has not been considered in recent assessments of her parole suitability. For example, the last time Ms. Marchetti agreed to be interviewed about the crime by a psychologist was in 2007. That psychologist gave a favorable review of Ms. Marchetti, but it was premised on the view that Ms. Marchetti was not the principal perpetrator of her son's injuries, and that her conviction resulted from her failure to protect her son. The 2007 psychologist noted that Ms. Marchetti did not attempt to minimize the cruelty of *the crime* or her failure to protect her child. But by placing primary blame on her boyfriend, and casting her own crime as merely failing to protect Randy, Ms. Marchetti minimizes her culpability in severely abusing her son herself.

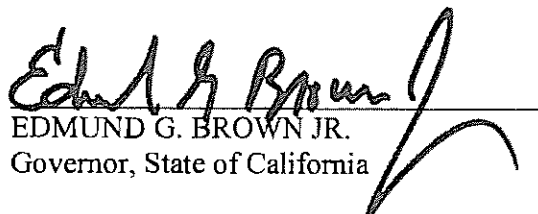
Similarly, the Board's recent parole grant to Ms. Marchetti came in response to a court order that found no evidence indicating that Ms. Marchetti remains dangerous. But the court premised its ruling on a misunderstanding of the facts. The court said that Ms. Marchetti "was not the one inflicting the fatal blows, nor was she even present. This is a case of a mother who was not fit to be a mother. It is a case of a mother who did not protect her child." To the contrary, Ms. Cambron recalls that Ms. Marchetti was indeed present and she inflicted a very brutal beating on little Randy the night of the murder, just as she had done over the course of the previous months.

Any accurate assessment of Ms. Marchetti's suitability for parole must start with an understanding of the most reliable account of her participation in the murder. When I assess her suitability for parole in light of this account, I find that Ms. Marchetti continues to minimize her culpability and conveniently shifts the bulk of the blame to her boyfriend. By doing so, she has not displayed an adequate understanding of why she so severely and brutally beat her young son. Until she accepts responsibility for the severe abuse she herself inflicted on her child, and shows that she understands and has dealt with her reasons for doing so, the public has no assurance that she has learned how to control her violent behavior if released back into society.

CONCLUSION

I have considered the evidence in the record that is relevant to whether Ms. Marchetti is currently dangerous. When considered as a whole, I find the evidence I have discussed shows why she currently poses a danger to society if released from prison. Therefore, I reverse the decision to parole Ms. Marchetti.

Decision Date: October 28, 2011


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

PAUL CROWDER, H-19902

Second-degree murder

AFFIRM:

MODIFY:

REVERSE:

 X

STATEMENT OF FACTS

On June 1, 1991, Paul Crowder attended a party at a hotel after a high school prom. He brought a gun to the party. He was nineteen years old at the time and was no longer in high school but had been invited to the party by his friend Kenneth Schaffer. Mr. Schaffer, who was in high school at the time, was at the hotel with his girlfriend, seventeen-year old Berlyn Cosman, and a number of other fellow high school students who had attended the prom that evening. The group had rented three hotel rooms for the party.

Mr. Crowder drank alcohol and played with the gun throughout the night. At one point, he was asked if the gun was loaded. In response, he loaded it and then announced "now it is." At another point, he aimed the gun at young man at the party. Someone took the gun away from Mr. Crowder, and warned him not to point it at people. But Mr. Crowder soon retrieved the gun, and later poked another young man with the gun and asked him, "[d]o you want your butt blown off? It's only loaded." Mr. Crowder also "dry-fired" the weapon when it was unloaded and jokingly cocked it and pointed it at his own head. He also pointed the gun around the room while it was loaded with the hammer cocked back.

Later, Mr. Crowder went to the adjacent hotel room where Ms. Cosman was staying. A young lady at the party told him, "Kenny and Berlyn are going to sleep here. You guys are going to sleep in the car." Mr. Crowder began arguing with Ms. Cosman and the young lady. Mr. McClintock, who had been asleep in the other room, heard Mr. Crowder yell "then where am I going to sleep? Fuck you. I want to stay in here and party." Mr. Crowder then said, "[o]kay, then give me my gun and bullets." The door slammed behind him as he left the room. When he returned to the other room he said, "I hate them. Fuck them. They are just dissing me I hate them. I want to kill them." Mr. Crowder repeatedly slammed the table with his hands and said, "[t]hose fucking bitches, I hate those bitches. I just want to kill them all."

Shortly before dawn, after reloading the pistol, Mr. Crowder returned to the room where Ms. Cosman was sleeping on a sofa bed. Mr. Crowder stood in the doorway with the gun in his hand. He fired a shot. The bullet hit Ms. Cosman in the head and killed her. Mr. Crowder immediately ran from the hotel and dumped the gun in a bush. He called home for a ride and hid until his ride arrived. He went home and went to sleep. Police arrested him later that day. Mr. Crowder has claimed since the time of his trial that he tripped walking into the hotel room causing the gun to fire accidentally.

GOVERNING LAW

The question I must answer is whether Mr. Crowder will pose a current danger to the public if released from prison. In answering this question, I must adhere to the same legal standards as the Board of Parole Hearings. 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* (2008) 44 Cal. 4th 1181, 1214.)

DECISION

In June 2010, the Board of Parole Hearings granted Mr. Crowder parole in response to a superior court order that restricted the information the Board could consider. Governor Schwarzenegger reversed that parole grant. But last month, the superior court overturned the former Governor's decision, and remanded the matter to the Governor for reconsideration.

I acknowledge Mr. Crowder has made efforts to improve himself while incarcerated. He earned a General Equivalency Diploma, completed vocational training, and held a number of prison jobs. He also has participated in 12-step substance abuse programs, attended 20 hours of anger management classes, and participated in 21 hours of self-help workshops offered through the Breaking Barriers program. I commend Mr. Crowder for taking these positive steps. But they are outweighed by negative factors that demonstrate he remains unsuitable for parole.

The murder was horrific and utterly senseless. Mr. Crowder killed a promising young woman after her senior prom, taking her away from her loving family and friends. His actions devastated the lives of her loved ones and had a long-lasting negative impact on the community.

The circumstances of the murder make Mr. Crowder's claim that the shooting was accidental unbelievable. He told his 2010 mental-health evaluator that he tripped and the gun went off. He said he initially thought the bullet had gone into the ceiling. The probation report indicates Mr. Crowder said the gun went off while he was on the floor. Yet the bullet hit the sleeping Ms. Cosman, whom he had angrily said he had wanted to kill earlier that night, in the temple, entering her head from a downward trajectory and going through the pillow and the mattress. If the shooting was really accidental, it seems he would have attempted to administer aid or call for help, rather than running and hiding.

Mr. Crowder's claim that the shooting was accidental is not his only claim that is belied by the record. He also claims not to have threatened to kill Ms. Cosman or to have even been angry with her. But that is not what other witnesses at the party observed. Witnesses at the party observed Mr. Crowder arguing with Ms. Cosman, and heard him make threatening statements about hating her and wanting to kill her.

I cannot ignore the evidence that Mr. Crowder engaged in threatening behavior with his gun throughout the night, or that he was angry with Ms. Cosman, or that he said he wanted to kill her, or that after shooting her in the head, he immediately ran away and hid. And unless I ignore this evidence, the only conclusion I can draw is that Mr. Crowder claims that he was *not* angry with

Ms. Cosman, and that he did *not* threaten to kill her, and that the gun discharged accidentally when he tripped, and the bullet just happened to hit Ms. Cosman in the head, are simply unbelievable. Mr. Crowder's dishonesty about the murder and his behavior leading up to it shows that he has thus far either been unwilling or unable to confront and deal with his true reasons for killing Ms. Cosman. His failure to accept responsibility by minimizing his culpability for the murder casts doubt over his claims of remorse and indicates that he has not truly learned from his mistakes.

My conclusions about Mr. Crowder's current mental state are confirmed by his statement during a recent psychological evaluation in which he characterized the threatening gestures he made throughout the night when he pointed his gun at people as having been done in a "playful manner." Pointing a gun at someone is never "playful," and I am sure that the high school kids he threatened with his gun that night felt scared and uneasy. This statement is yet another sign that Mr. Crowder does not genuinely understand or accept responsibility for the wrongfulness of his actions. Until he does, there is no assurance that he does not remain prone to violence if released back into society.

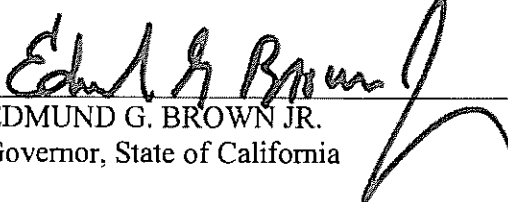
Evidence of recent illegal activity by Mr. Crowder in prison also indicates that he has not been rehabilitated. His file contains a confidential memorandum from September of this year that indicates he is involved in transporting drugs and gang communications within the prison. A similar confidential memorandum from 2010 also indicates he was responsible for delivering gang communications in the prison. Prison officials deemed the sources of the information in these memorandums reliable. The file contains a number of other confidential memorandums from 1996 through 2008 that indicate Mr. Crowder was involved in gang activity and drug sales in prison. Mr. Crowder's participation in these illegal acts shows his propensity for criminal behavior has not changed. It also indicates that his claims of remorse, insight, and personal growth are contrived and insincere.

Lastly, while Mr. Crowder's emotional issues, particularly his inability to control his anger, played a significant role in the crime, he has participated in very little self-help activity to address those issues. His participation in anger management programs is limited to 20 hours of classes back in 2002. This is insufficient to address his problem and causes concern that he has not developed the necessary skills to avoid acting violently in the future. The lack of focus on self-help also provides evidence that Mr. Crowder is not truly committed to addressing the issues that led him to murder Ms. Cosgrove.

CONCLUSION

I have considered the evidence relevant to whether Mr. Crowder remains dangerous. When considered as a whole, the evidence I have discussed shows why he currently poses a danger to society if released from prison. Therefore, I reverse the decision to parole Mr. Crowder.

Decision Date: November 4, 2011


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

MICHAEL HARRIS, B-60183

First-degree murder and second-degree murder

AFFIRM:

MODIFY:

REVERSE:

_____ **X** _____

STATEMENT OF FACTS

On April 15, 1974, Michael Harris got into an argument with someone at a bowling alley. He went home and got a shotgun and a rifle. When he returned to the bowling alley, Mr. Harris saw a group of people standing outside and started shooting at them. He shot 18-year-old James Murray in the chest, back, buttocks, arm, and leg, and he shot Norman Hill in the foot. Mr. Murray died at the hospital the next day.

Two weeks later, Mr. Harris argued with 16-year-old Silas Knowles apparently because Mr. Knowles had driven Mr. Harris' car and damaged the tires. After the argument, Mr. Harris left but returned a short time later to find Mr. Knowles sitting in a parked car. Mr. Harris took his rifle, walked up to the car, and shot Mr. Knowles in the forehead, killing him.

GOVERNING LAW

The question I must answer is whether Mr. Harris will pose a current danger to the public if released from prison. In answering this question, I must adhere to the same legal standards as the Board of Parole Hearings. 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* (2008) 44 Cal. 4th 1181, 1214.)

DECISION

The Board of Parole Hearings found Mr. Harris suitable for parole based on its findings that he shows remorse, understands the nature and magnitude of his crimes, and has received some positive psychological evaluations.

I acknowledge Mr. Harris has made some efforts in prison to address the issues that lead to his repeated acts of violence. He attended Alcoholics Anonymous meetings between 2000 and 2004. He completed a Creative Conflict Resolution course, a Personal Development and Life Management Program, Category X, T, and D programs, Vital Issues project, individual and group therapy, and Behavior Modification. These efforts were a step in the right direction, but they do not overcome the other factors showing that he remains dangerous.

Mr. Harris committed two senseless murders of teenagers just two weeks apart. He killed both people after he lost control of his anger following arguments over trivial matters. He committed the first murder because he was angry with someone at a bowling alley. He was so angry over this minor incident that he retrieved a gun and started shooting into a crowd of people. He killed one young man, injured another, and put the lives of all the other people nearby at risk. Two weeks later, Mr. Harris murdered a 16-year-old in anger because he believed the young man had damaged the tires on Mr. Harris' car. These murders show that Mr. Harris had no ability to control his anger, and had a total disregard of the lives and safety of other people. In addition, at the time of these murders, Mr. Harris had severe and longstanding problems with alcohol and drugs, including cocaine, marijuana, heroin, and crystal methamphetamine. There is no question that his abuse of these substances played a role in his violent behavior.

Mr. Harris has not shown that he adequately understands or has dealt with the reasons he reacted so violently to the two arguments that precipitated the murders. The psychologist who evaluated him in 2009 noted that Mr. Harris takes responsibility for the murders and that he understands he could have harmed more people than he did. But accepting responsibility and acknowledging that others could have been harmed as well, while important, are not the same as understanding the reasons he committed these two murders. Unfortunately, the 2009 report did not delve into Mr. Harris' understanding of the reasons he committed the murders.

A subsequent evaluation completed earlier this year, however, did explore Mr. Harris's understanding of the reasons he committed the murders, and found his understanding to be inadequate. During this more recent evaluation, when asked about his state of mind following the first murder, Mr. Harris became defensive and challenged the psychologist by asking if she had ever done anything wrong. He also "appeared to avoid acknowledging information which might portray him in a negative light." When asked about his self-help efforts, he avoided the issue by talking instead about his employment activities and his religious beliefs. When asked about the murders, Mr. Harris said that he had anger issues that stemmed from childhood when his sister started garnering more attention than he did, and he said he was under the influence of alcohol. The psychologist concluded that "this explanation alone does not appear sufficient to explain Mr. Harris' overtly violent and reckless behavior both prior to and during the early years of his incarceration." I agree. When considering whether the safety of the public will be jeopardized by a man who indiscriminately gunned down two people on separate occasions over minor disputes, I don't think it is too much to ask that the person show that he has a sufficient understanding of why he committed these murders.

Mr. Harris has also made inadequate efforts to address the anger and substance abuse problems that contributed to the murders. He attended Alcoholics Anonymous for just four years, and quit the program in 2004. Despite the severity of his drug abuse, he has never attended Narcotics Anonymous. Likewise, his efforts to address his anger problems have been limited and inadequate. I understand that Mr. Harris' religious beliefs have helped him maintain sobriety in prison. But I am concerned that his sobriety will be jeopardized if released back into society, where he will have much greater access to drugs and alcohol, unless he has the benefit of relapse prevention tools that can be acquired through participation in substance abuse prevention programs. The psychologist who evaluated him this year observed that it remains concerning that Mr. Harris has a "somewhat unrealistic view of the challenges he will face in the community" and that he would benefit from participating in substance abuse treatment. But

given Mr. Harris' refusal to participate in these programs in prison, I have no reason to believe that he would be committed to these programs in the community.

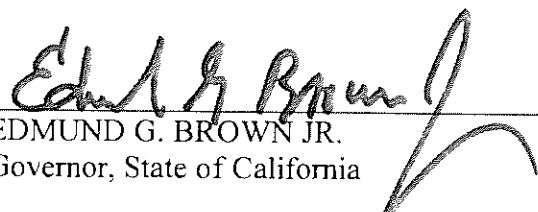
Mr. Harris' most recent risk assessment indicates that he poses a moderate risk of violent recidivism and medium risk of general recidivism. In combination with the concerns identified in the 2011 subsequent evaluation, and his limited self help efforts, I find these elevated risk assessments remain accurate and should not be discounted.

Until Mr. Harris shows that he understands and has dealt with the reasons he committed these murders, including his substance abuse and anger problems, there is inadequate assurance that he would not react violently if faced with conflict or other stressful situations in society.

CONCLUSION

I have considered the evidence in the record relevant to whether Mr. Harris remains dangerous. When considered as a whole, I find the evidence I have discussed shows why he currently poses a danger to society if released from prison. Therefore, I reverse the decision to parole Mr. Harris.

Decision Date: November 18, 2011


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

STEVEN HOWELL, P-47024
Second-Degree murder

AFFIRM:

MODIFY:

REVERSE:

 X

STATEMENT OF FACTS

On September 2, 1995, Mr. Howell severely abused and killed his one-year-old daughter Bethany. That day, Mr. Howell drank several beers, smoked marijuana, and had been awake for several days using methamphetamines. After returning home from a barbecue with Bethany, he became angry when she spilled her juice and threw up on the couch. Mr. Howell then began to physically abuse Bethany. Unfortunately, the specific nature of the abuse he inflicted on the baby is unclear because he has never given a credible account of what happened. Instead he claims that he did not mean to hurt his baby.

Mr. Howell has said in the past that he spanked Bethany a few times. He has also said that he pushed on her stomach to try to dislodge food she was choking on. He says that when he took her to the kitchen sink to wash her off, he put her down hard. After initially claiming that she had fallen out of her crib, he now claims that she fell out of the sink when he was distracted. He says that he left her alone in her crib while he picked up his girlfriend. When he returned home, he claims he kept checking on Bethany, and when he realized something was wrong, he unsuccessfully tried to resuscitate her. After his girlfriend called 911, emergency responders took the baby to the hospital where she was pronounced dead.

The severity of Bethany's injuries undermine Mr. Howell's version of events. The autopsy report revealed that Bethany died from shock and blunt force trauma to her head and abdomen. Her skull had been fractured, and she had sustained extensive lacerations to her liver as well as contusions and bruises to her head, abdomen, back, genital area, ankle, and knees.

GOVERNING LAW

The question I must answer is whether Mr. Howell will pose a current danger to the public if released from prison. In answering this question, I must adhere to the same legal standards as the Board of Parole Hearings. 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* (2008) 44 Cal.4th 1181, 1214.)

DECISION

The Board of Parole Hearings found Mr. Howell suitable for parole based on its findings that he was under stress at the time of the murder, and is remorseful and accepts responsibility for the crime, as well as on his participation in institutional programming.

I acknowledge Mr. Howell has made some efforts to improve himself while incarcerated. He participated in Alcoholics Anonymous in 2001 and Narcotics Anonymous from 2001 to 2006. And through the Correctional Clinical Case Management System, he has attended Stress Management Classes, Substance Abuse Program, Family Issues Group, and Lifers Psychotherapy Process Group. He has also participated in the Lifers Support Group and completed a parenting course. I commend Mr. Howell for taking these steps but they are outweighed by negative factors that show he remains unsuitable for parole.

Mr. Howell brutally murdered his young daughter in a fit of rage and inflicted extensive internal and external injuries on her. Baby Bethany had a fractured skull and lacerated liver, as well as bruises on her abdomen, ankle, back, genital area, and knees. Her abdomen and head injuries were severe enough to cause fatal hemorrhaging. And Bethany was the most helpless of victims. She could not fight back against her father or summon help. Moreover, Mr. Howell ignored several signs that Bethany required medical attention, including anal bleeding, bruising, and vomiting. Instead of stopping his abuse of her and summoning help, Mr. Howell left her alone while he picked up his girlfriend and then later refused to let his girlfriend touch Bethany when she looked to be in pain.

Bethany's extensive injuries and Mr. Howell's 2011 statements to his psychologist and the Board panel belie his purported acceptance of responsibility for the crime. Rather than acknowledging his violent abuse of his baby daughter, Mr. Howell minimizes his culpability by depicting himself as a well intentioned father. Mr. Howell told the psychologist, for example, that he pushed on Bethany's stomach to try to remove pizza she was choking on. He said he then put her in the kitchen sink to clean her up, but the baby fell out on her own when he was distracted. He then says he put her down and kept checking on her. His depiction of the events is not consistent with the extensive and severe injuries the baby suffered.

Mr. Howell's attempt to depict himself as a well-meaning father who tried unsuccessfully to care for his child is further undermined by his statement to the Board that he was "in a rage." Being in a rage implies that Mr. Howell was physically abusive towards his daughter, which of course he must have been given the extent and severity of her injuries. But while he purports to accept responsibility for her death, he does not acknowledge that he severely physically abused her. It is clear in light of the forensic evidence and Mr. Howell's conflicting statements that the account he has given leaves out important facts. I am troubled that he continues to minimize his culpability and has not offered a credible explanation of his conduct on the day he murdered Bethany. Until he does, Mr. Howell has given no reason to believe that he adequately understands the reasons he murdered his daughter.

Furthermore, while I am aware that Mr. Howell's 2011 psychologist assessed him as presenting a low risk on all tested instruments, I do not find these assessments to be persuasive. The psychologist accepted without question Mr. Howell's claim that falling out of the sink caused Bethany's extensive injuries to her ankle, back, head, and knees.

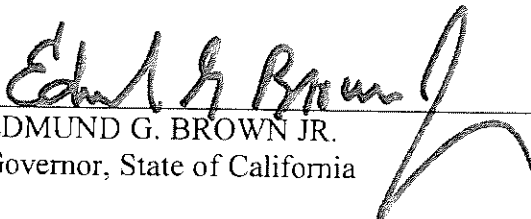
Although the murder was directly related to Mr. Howell's anger problems and severe drug and alcohol abuse, he has not sufficiently addressed those issues while in prison. His participation in substance-abuse treatment programs has been limited, and he stopped participating altogether in 2006. Mr. Howell has also not taken an anger management class. Mr. Howell's failure to make legitimate efforts to address the underlying causes for his violent behavior causes me concern that he will continue to present a threat to society if released from prison.

I am also concerned that Mr. Howell has not been able to abide by the rules in prison. He received five counseling chronos between 2005 and 2010. While Mr. Howell has not received a serious disciplinary report for violent conduct, these incidents have occurred recently and regularly—almost annually since 2005. If Mr. Howell cannot abide by prison rules, I am concerned that he will also not be able to following society's laws if released.

CONCLUSION

I have considered the evidence in the record that is relevant to whether Mr. Howell is currently dangerous. When considered as a whole, I find the evidence I have discussed shows why he currently poses a danger to society if released from prison. Therefore, I reverse the decision to parole Mr. Howell.

Decision Date: November 18, 2011


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

ANTONIO ALVARADO, C-09142

First-degree murder

AFFIRM:

MODIFY:

REVERSE:

 X

STATEMENT OF FACTS

On January 6, 1979, Mr. Alvarado's sister-in-law was staying with him and his common-law wife because she had been beaten the night before by her husband, Billy Romo. Mr. Alvarado and Mr. Romo had both been members of the Nuestra Familia gang. Mr. Alvarado was drinking that day, and as he became intoxicated, he said he planned to kill Mr. Romo. He displayed a loaded handgun and went to Mr. Romo's home where he shot Mr. Romo eight times, killing him. Police arrested Alvarado the next day. Family members and witnesses said it was known that Mr. Alvarado and Mr. Romo disliked each other and they may have previously argued over drugs. They also said that Mr. Alvarado may have been trying to re-gain good status with the Nuestra Familia by killing Mr. Romo, who had wanted to disassociate from the group.

Billy Romo is not the first person Mr. Alvarado killed. At the time of Mr. Romo's murder, Mr. Alvarado had voluntary manslaughter charges pending against him. On June 23, 1977, Mr. Alvarado fatally stabbed an unarmed man 19 times with a butcher knife. The victim, Steven Romero, had kicked through Mr. Alvarado's front door because Mr. Alvarado owed him \$200 for amphetamines. Police arrested Mr. Alvarado the next day, but released him on the theory the homicide was justifiable. Mr. Alvarado was later charged with voluntary manslaughter.

GOVERNING LAW

The question I must answer is whether Mr. Alvarado will pose a current danger to the public if released from prison. In answering this question, I must adhere to the same legal standards as the Board of Parole Hearings. 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* (2008) 44 Cal. 4th 1181, 1214.)

DECISION

The Board of Parole Hearings found Mr. Alvarado suitable for parole based on his institutional programming, lack of recent discipline, and realistic parole plans.

I acknowledge Mr. Alvarado has made efforts to improve himself while incarcerated. He earned a GED in 1982 and completed vocational training in screenprinting. He has also participated in self-help programs, including Alcoholics and Narcotics Anonymous, Big Four AA Fellowship, Alternative to Violence Project workshops, Anger Management, Fathers Behind Bars group, Literacy Council, Inmate Employability Program, and Prison Ministry and Salvation Army classes. I commend Mr. Alvarado for taking these positive steps. But they are outweighed by negative factors that demonstrate he remains unsuitable for parole.

Mr. Alvarado brutally murdered Mr. Romo in his own home. Mr. Alvarado told his 2011 psychologist that Mr. Romo pulled a knife on him before he shot him. Even if that is true, it does not justify Mr. Alvarado shooting Mr. Romo eight times because Mr. Alvarado created a situation where Mr. Romo would need to defend himself.


I am concerned that Mr. Alvarado minimizes this crime. Mr. Alvarado told his 2011 psychologist that he went to Mr. Romo's house to talk to Mr. Romo and tell him to stop being violent with his wife. Similarly, he told the 2011 Board that he went to Mr. Romo's house to talk to him because everyone else in the family was scared of Mr. Romo. Mr. Alvarado also told the Board that the situation "went bad" because he and Mr. Romo "were antisocial persons." But the record belies his depiction of the crime as an event where his and the victim's violent tendencies derailed his helpful intentions. Mr. Alvarado told his wife's family members that he was going over to Mr. Romo's home to kill him. And he displayed a loaded gun before leaving. These actions are not consistent with Mr. Alvarado merely going to Mr. Romo's house to talk. That Mr. Alvarado did not mention this on two recent occasions he discussed the crime is troubling. Until Mr. Alvarado shows that he understands what happened on the day of the murder, I cannot be assured that he will not react violently to other situations upon his release.

Mr. Alvarado's extensive pattern of misconduct also leads me to conclude that he has not been rehabilitated. Mr. Alvarado had three juvenile convictions and nearly four dozen adult convictions. The bulk of these convictions were alcohol-related and a few involved violence. Mr. Alvarado's bad behavior continued for much of his time in prison. Between 1979 and 1993, he was disciplined 21 times for serious rules violations (many of which involved inmate-manufactured alcohol). He has also been counseled for minor misconduct nine times, most recently in 2005 for refusing to report to his work assignment and in 2003 for disobeying a direct order from prison staff. Mr. Alvarado's inability to abide by prison rules causes me concern that he will be unable to live a law abiding life if released from prison.

CONCLUSION

I have considered the evidence in the record that is relevant to whether Mr. Alvarado is currently dangerous. When considered as a whole, I find the evidence I have discussed shows why he currently poses a danger to society if released from prison. Therefore, I reverse the decision to parole Mr. Alvarado.

Decision Date: December 9, 2011


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

DANNY ROSALES, C-22367
Second-degree murder

AFFIRM:

MODIFY:

REVERSE:

 X

STATEMENT OF FACTS

On January 14, 1979, Danny Rosales was spotted standing near a car parked in front of a house with the car door open. The car's owner, Lilia Vasquez, went outside to check the vehicle. Seeing nothing missing, she closed the car door and went back inside. When Alice De La Rosa arrived at the house a few minutes later, Mr. Rosales was still in the area. Ms. Vasquez, Barbara Romero, Olivia De La Rosa, and Alice De La Rosa went outside, confronted Mr. Rosales, and found a gear shift knob belonging to Ms. Vasquez' vehicle in his pocket. One of the girls called out to call the police. Mr. Rosales opened a knife he had in his waistband and stabbed all four women. He stabbed Ms. Romero in the chest, killing her. The other three women survived. Olivia was stabbed in the abdomen and left arm, Ms. Vasquez in the chest, and Alice in the chest and abdomen.

GOVERNING LAW

The question I must answer is whether Mr. Rosales will pose a current danger to the public if released from prison. In answering this question, I must adhere to the same legal standards as the Board of Parole Hearings. 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* (2008) 44 Cal. 4th 1181, 1214.)

DECISION

The Board of Parole Hearings granted Mr. Rosales parole in response to two court orders.

I acknowledge Mr. Rosales has made efforts to improve himself while incarcerated. He has participated in Alcoholics Anonymous and the Substance Abuse Program and has completed a variety of self-help courses and seminars on topics including conflict resolution, stress management, and emotional awareness. I commend Mr. Rosales for taking these positive steps. But they are outweighed by negative factors that demonstrate he remains unsuitable for parole.

Mr. Rosales' crime is vicious and disturbing. Mr. Rosales was an active Marine who senselessly stabbed and slashed four women because he thought he might not look like "a man" when the

women detained him because they suspected him of breaking into one of their cars. In response, he pulled out a knife and not only threatened the women with it, but brutally attacked them, killing one and seriously injuring the others. His actions were an egregiously disproportionate response to the situation and resulted in tragedy.

Although the psychologist who evaluated Mr. Rosales in 2009 commented that he "appears to have gained insight into his personality, his emotional life, his thinking patterns, and his substance abuse," he has not shown that he adequately understands why he snapped that day, except to say that his substance abuse played a factor, as well as being accosted by the four victims. But this explanation does not explain why he viciously attacked the four women with his knife. Until Mr. Rosales confronts and deals with the true reasons he reacted so violently to the situation, I am concerned that the issues underlying violent behavior remain unresolved.

I also find it concerning that Mr. Rosales did not appear to have genuine insight or remorse at his most recent parole hearing. In this hearing, the Deputy Commissioner made it clear that he would not have granted parole but for the court orders:

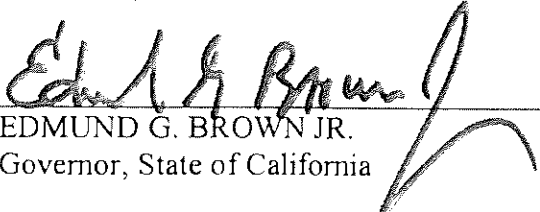
You have, in my opinion, an extreme lack of credibility. Your use of the victims' names was nothing more, in my opinion, than a rehearsal because it was suggested to you at the last hearing that you know the names of your victims. The fact that you are still, even today, blaming the victims is abhorrent to me. You're still contending with statements that you made to us that you were simply cornered and defending yourself, when the fact of the matter was you took out a 13-inch knife and brutally slashed a group of women as thoughtless and cowardly as I have seen in quite some time. In looking at you during the course of the hearing, you were as far removed from participating in this hearing, again, in my view, as anyone could be. I find no remorse. I find a virtual total lack of insight, and I find you to be a continued danger to the community.

The panel members are in the best position to assess the demeanor and credibility of the inmate, which are critical factors that play into the decision of whether to grant parole. They were concerned about Mr. Rosales' credibility based on behavioral clues they picked up at the hearing. Based on this, I conclude that he still presents a threat to public safety if released from prison.

CONCLUSION

I have considered the evidence in the record relevant to whether Mr. Rosales is currently dangerous, and find the evidence I have discussed shows why he currently poses a danger to society if released from prison. Therefore, I reverse the decision to parole Mr. Rosales.

Decision Date: December 16, 2011


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

KIRN KIM, J-40983

First-degree murder

AFFIRM:

MODIFY:

REVERSE:

_____ X _____

STATEMENT OF FACTS

In 1992, Kim Kim, Robert Chan, Mun Kang, Charles Choe, and Abraham Acosta attended the same high school. Along with Stuart Tay they were planning to rob the home of a computer parts supplier who Mr. Tay knew. After Mr. Chan became suspicious that Mr. Tay would reveal the robbery plan, he devised a plan to kill Mr. Tay. The plan required the participation of Mr. Kim, as well as Mr. Choe, Mr. Kang, and Mr. Acosta.

The day before the murder, Mr. Kim, Mr. Acosta, and Mr. Chan dug a hole in Mr. Acosta's backyard to be used as Mr. Tay's grave. The next day, December 31, 1992, the entire group rehearsed the murder. Mr. Chan then asked Mr. Tay to come over to Mr. Acosta's house. Mr. Kim followed Mr. Tay to make sure he was alone. Mr. Kim remained outside the house as a lookout. Once Mr. Tay went inside the garage, Mr. Acosta hit him from behind with a baseball bat. Mr. Chan also struck Mr. Tay with a baseball bat, and then a few seconds later hit Mr. Tay with a sledgehammer. Mr. Tay begged for his life during the beating that lasted for at least 10 minutes. Mr. Chan poured rubbing alcohol down Mr. Tay's mouth, checked Mr. Tay's pulse, and because Mr. Tay was still alive, wrapped Mr. Tay's face with duct tape. He stayed alive for about five minutes and then died of asphyxiation. Mr. Tay's body was buried in the hole in the backyard. After the murder, Mr. Kim drove Mr. Tay's car to Compton and abandoned it.

GOVERNING LAW

The question I must answer is whether Mr. Kim will pose a current danger to the public if released from prison. In answering this question, I must adhere to the same legal standards as the Board of Parole Hearings. 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* (2008) 44 Cal.4th 1181, 1214.)

DECISION

The Board of Parole Hearings found Mr. Kim suitable for parole based on his maturity, improved decision-making skills, and insight.

I acknowledge Mr. Kim has made efforts to improve himself while incarcerated. He has earned three college degrees, remained discipline-free, and completed three vocations. He has also participated in self-help programming, including Alcoholics and Narcotics Anonymous, Rapha 12-Step Program, Relapse Prevention Counseling, Convicts Reaching Out to People program, Kairos Program, Nonviolent Conflict Resolution course, Power of Positive Thinking, Creative Conflict Resolution workshops, and Inmate Work Training Incentive Program. He has held prison jobs almost continuously since 1997. I commend Mr. Kim for taking these positive steps. But they are outweighed by negative factors showing that he remains unsuitable for parole.

Mr. Tay's murder was senseless and extremely heinous. He was ambushed by people he thought were friends, beaten with a sledgehammer and baseball bat for several minutes, and then forced to ingest rubbing alcohol. The reason for this brutal attack was Mr. Chan's mere suspicion that Mr. Tay might reveal a robbery plan. Mr. Kim participated in the murder plot, served as a lookout, and disposed of Mr. Tay's car afterward. Despite knowing about the murder beforehand and having attended grammar school with Mr. Tay, Mr. Kim callously failed to make any attempt to contact authorities or warn Mr. Tay he was in danger as he entered the garage.

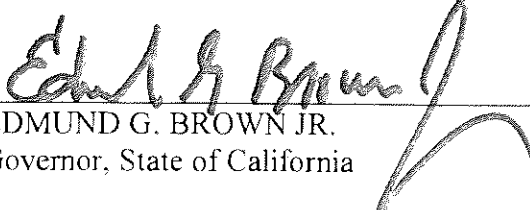
The evidence clearly establishes Mr. Kim's knowledge of and participation in the plot to kill Mr. Tay. After being arrested, in a written statement to police, Mr. Kim admitted that he had heard Mr. Chan plan to kill Mr. Tay. Days before the crime Mr. Kim's friend Greg Temesvari heard Mr. Chan ask Mr. Kim if he wanted to help dispose of a dead body. The day before the murder Mr. Kim helped dig a grave in Mr. Acosta's backyard. On the day of the murder, Mr. Kim attended a rehearsal of the murder that lasted 45 minutes according to Mr. Choe.

Despite all of this evidence of Mr. Kim's knowing participation in the murder plot, Mr. Kim still tries to minimize his culpability. He told the 2011 Board only that he "knew ahead of time that they were planning on *hurting* Mr. Tay," rather than murdering him. He told the 2008 Board that the rehearsal only lasted five or ten minutes and that he "zoned out" because he was playing a handheld video game. He told the same hearing panel that he was able to fall asleep while he was supposed to be a lookout because he did not take Mr. Chan seriously. But after he was arrested, he told police that while waiting outside Mr. Acosta's house he heard what sounded like hitting sounds coming from the backyard. In light of the evidence in the record, Mr. Kim's attempts to minimize his knowledge of and complicity in the murder plot are disingenuous and show that he has not truly taken full responsibility for his role in Mr. Tay's murder. Until Mr. Kim shows that he understands what happened before and during the murder, I find that he remains a threat to participate in further acts of violence if released from prison.

CONCLUSION

I have considered the evidence that is relevant to whether Mr. Kim is currently dangerous. When considered as a whole, I find the evidence I have discussed shows why he currently poses a danger to society if released from prison. Therefore, I reverse the decision to parole Mr. Kim.

Decision Date: December 22, 2011


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

BERNARD HOUSTON, C-94974

First-degree murder

AFFIRM:

MODIFY:

REVERSE:

_____ **X** _____

STATEMENT OF FACTS

In 1983, Mr. Houston was allegedly beaten up by Constantino Jimenez. A few months later, on August 21, 1983, Mr. Houston had taken PCP and drank beer, and was going to buy drugs with his friend James McDonald. Mr. Houston claims that he found his fiancé with her clothes half off, and she told him that Mr. Jimenez had tried to rape her. Mr. Houston found Mr. Jimenez passed out drunk on the hood of a car. He stabbed Mr. Jimenez about a dozen times with a knife, killing him. Police arrested Mr. Houston the next day.

GOVERNING LAW

The question I must answer is whether Mr. Houston will pose a current danger to the public if released from prison. In answering this question, I must adhere to the same legal standards as the Board of Parole Hearings. 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* (2008) 44 Cal.4th 1181, 1214.)

DECISION

The Board of Parole Hearings found Mr. Houston suitable for parole based on his remorse and insight, recent lack of discipline, parole plans, current age, and lack of juvenile history.

I acknowledge Mr. Houston has made efforts to improve himself while incarcerated. He has participated in self-help programming, including Alcoholics Anonymous, the Path to Peace Addiction Recovery Program, Alternatives to Violence Programs, Anger Management, Balanced Reentry Activity Group, Nonviolent Conflict Resolution Workshops, Islamic Education and Human Development Course, Owning Your Own Business course, the Success Tools of the Masters course, M.B.A. and Religious Ethics Course, and several parenting courses. He has also held several prison jobs and completed vocational training in real estate and print technology. I commend Mr. Houston for taking these positive steps. But they are outweighed by negative factors that demonstrate he remains unsuitable for parole.

Mr. Houston viciously stabbed Mr. Jimenez to death when Mr. Jimenez was completely defenseless because he was drunk and asleep. Mr. Jimenez was not a threat to Mr. Houston at the time, and the murder was an irrational and disproportionate response to whatever motivations Mr. Houston had for the crime.

The psychologist who evaluated Mr. Houston in 2010 found that Mr. Houston still has an inadequate level of understanding into the factors that contributed to his decision to murder Mr. Jimenez, including his deficient anger and impulse control, need for retribution, substance abuse, and poor decision-making. The psychologist noted that Mr. Houston was unable to find any character weaknesses in himself at all. Instead, the psychologist observed that Mr. Houston appears to blame external factors for the crime, and in doing so, accepts limited responsibility and appears to rationalize and minimize his attack of Mr. Jimenez. The psychologist also observed that Mr. Houston exhibited signs of grandiosity and deceitfulness, and appeared to lack some remorse and guilt. These findings contributed to the psychologist rating Mr. Houston as a moderate risk for violent recidivism, a medium risk of general recidivism, and an overall low-moderate risk for violence in the free community.

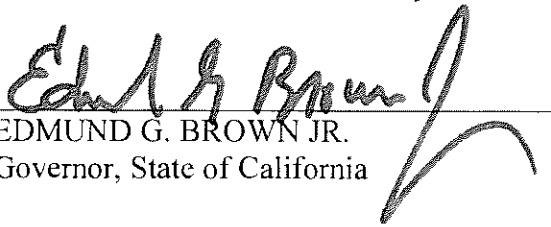
Mr. Houston also does not seem to understand the extent of his drug and alcohol abuse problems. He has a documented history of problems with alcohol, heroin, LSD, PCP, barbiturates, and cocaine use. In fact, at the time of the murder, he was under the influence of PCP and on his way to buy more drugs. Yet he told the psychologist that he did not have a substance abuse problem and was never addicted. He says he has attended Alcoholics Anonymous because the parole board had recommended that he attend. Mr. Houston's statements indicate that he does not understand the seriousness of his substance abuse issues, and undermine any confidence that he is truly committed to sobriety or continued participation in relapse prevention programs. Given the relationship that his alcohol and drug use had to the murder, I am concerned that if released from prison he would relapse and become violent.

Until Mr. Houston shows that he adequately understands the factors that contributed to his decision to commit murder, has taken adequate measures to address them, and shows a genuine commitment to remaining sober, I find that he remains dangerous if released back into society.

CONCLUSION

I have considered the evidence relevant to whether Mr. Houston remains dangerous. When considered as a whole, I find the evidence I have discussed shows that he currently poses a danger to society if released from prison. Therefore, I reverse the decision to parole Mr. Houston.

Decision Date: December 22, 2011


EDMUND G. BROWN JR.
Governor, State of California

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW
(Penal Code Section 3041.2)

RAFAEL GONZALEZ, K-32981

Second-degree murder

AFFIRM:

MODIFY:

REVERSE:

_____ **X** _____

STATEMENT OF FACTS

Mr. Gonzalez was a member of a tagging crew and an associate of the El Sereno gang, as were Danny Guitierrez and Jose Espinoza. On the night of January 7, 1996, the three men robbed Paul Mulder, who had just finished using an ATM inside a convenience store. Mr. Gonzalez asked Mr. Mulder for \$5, and Mr. Mulder refused. Mr. Guitierrez then broke a beer bottle over Mr. Mulder's head while Mr. Gonzalez took Mr. Mulder's pager and punched him in the face numerous times. Mr. Gonzalez, Mr. Guitierrez, and Mr. Espinoza then fled. Mr. Mulder survived but had vision problems in one eye for a few months after the robbery.

About three hours later, Larry Peters was using the ATM in the same convenience store. Mr. Guitierrez and Fabian Larrea were walking with Mr. Gonzalez to a nearby bus stop. Mr. Gutierrez went into the store and may have gotten into an argument with Mr. Peters. Mr. Gonzalez, Mr. Guitierrez, and Mr. Larrea waited for Mr. Peters to leave the store. Once Mr. Peters exited, Mr. Gonzalez hit him in the face a few times and knocked him to the ground. Mr. Gonzalez then grabbed Mr. Peters's bag of purchases and left. Mr. Guitierrez and Mr. Fabian continued to physically assault Mr. Peters and then stabbed and killed him.

GOVERNING LAW

The question I must answer is whether Mr. Gonzalez will pose a current danger to the public if released from prison. In answering this question, I must adhere to the same legal standards as the Board of Parole Hearings. 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* (2008) 44 Cal. 4th 1181, 1214.)

DECISION

The Board of Parole Hearings found Mr. Gonzalez suitable for parole based on his insight, lack of criminal history, and positive institutional behavior and self-help programming.

I acknowledge Mr. Gonzalez has made efforts to improve himself in prison. He has only received one disciplinary report and he has completed three vocations. He has participated in self-help programming, including Alcoholics and Narcotics Anonymous, Substance Abuse Program, Life Plan for Recovery, Alternatives to Violence Project, Anger Management, Criminal Gang Members Anonymous, Behavior Modification program, and Breaking Barriers. He has also held several prison jobs. I commend Mr. Gonzalez for taking these positive steps. But they are outweighed by negative factors that demonstrate he remains unsuitable for parole.

The robbery and the murder Mr. Gonzalez committed were callous, premeditated, brutal attacks on unsuspecting victims. According to the autopsy report, Mr. Peters was stabbed five times on the right side of his face, once in the chin, and once in his chest. The chest wound penetrated his heart and caused his death.

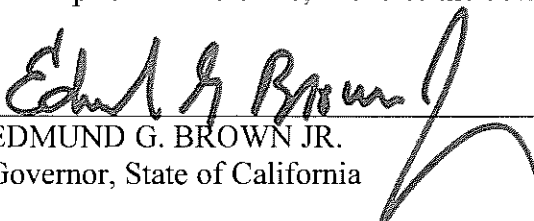
Mr. Gonzalez tries to minimize his role in the murder. He told the psychologist who evaluated him in 2008 that when Mr. Peters came out of the store, "I robbed him of his groceries. I looked at his stuff, I left with his stuff and I was gone. . . . After a couple days, I heard someone had passed away." Mr. Gonzalez made no mention of the fact that he was the one who initiated the physical attack on Mr. Peters by hitting him repeatedly in the face and knocking him to the ground. The psychologist found that Mr. Gonzalez fails to accept responsibility for his own actions in the crime and has some difficulty understanding that the robbery he committed was a major contributing factor to the victim's death. The psychologist noted that there is significant evidence that Mr. Gonzalez continues to lack the skills and insight necessary to decrease his violence risk.

Similarly, when asked to describe the commitment offense at his 2011 hearing, Mr. Gonzalez simply offered that when Mr. Peters came out of the store, "we confronted him, and I ended up taking Mr. Peters' stuff from him and running away." It was only when specifically asked later in the hearing if he had hit Mr. Peters that Mr. Gonzalez acknowledged that he did in fact hit Mr. Peters in the face a couple times and knocked him to the ground. The physical assault that Mr. Gonzalez committed put Mr. Peters in a vulnerable position that made it easier for Mr. Guitierrez and Mr. Larrea to continue to attack him and then stab him to death. Until Mr. Gonzalez accepts full responsibility for his violent role in the murder, and shows that he understands and has addressed the factors that led him to engage in this violent behavior, I find that he continues to present a threat of engaging in further violent behavior if he is released from prison.

CONCLUSION

I have considered the evidence in the record that is relevant to whether Mr. Gonzalez is currently dangerous. When considered as a whole, I find the evidence I have discussed shows why he currently poses a danger to society if released from prison. Therefore, I reverse the decision to parole Mr. Gonzalez.

Decision Date: December 30, 2011


EDMUND G. BROWN JR.
Governor, State of California