



A TRIO OF RECENT LIFER COURT DECISIONS

Those lifers who receive California Lifer Newsletter, LSA's other publication, have had the opportunity over the last couple of issues to be brought up to date on 3 recent court decisions relevant to parole suitability. Because these decisions potentially affect many lifers, we here provide a brief (very brief) summary of those decisions and their potential impact on the lifer population. A nod and thanks here to former lifer, CLN contributor and now repatriated citizen John Dannenberg, for his insight (ahem) into these cases.

IN RE: TREJO: In April, the First Appellate District of the California Court of appeals held that a youthful offender, found suitable for parole, but facing additional incarceration time for a separate sentence resulting from a crime committed in prison (Thompson term), when he was still under the YOPH umbrella. The California court's decision is founded on recent US Supreme Court decision noting the "children are constitutionally different from adults for purposes of sentencing," and noted the California legislature, via SB 260 and 261, had made changes in state laws to bring them in line with the high court.

The court agreed with Trejo's argument (presented by his attorney, Tracy Lum) that the legislature's wording of Section 3051, demonstrates the Legislature intended a youth offender to be released from prison if granted parole after serving the term specified in section 3051 for the controlling offense, notwithstanding any other sentence. The Court also found that Trejo's young age both at the time of his life crime and his subsequent in-prison offense spared him further incarceration time.

Trejo's petition further asked for relief in the form of credit against his parole tail for the time he had served on the Thompson term since his finding of suitability, and the court agreed he was entitled to that credit. The court ordered Trejo's release and credit applied to his parole length.

It is important to note that this decision comports in applicability to the exclusions of various classes of inmates under the guidelines of YOPH laws. Those exclusions include exclusions individuals sentenced for specified serious/violent Three Strike offenders, LWOPs, and those whose additional crime [requiring malice aforethought] was committed after attaining age 23. The state failed to file a petition for review, meaning this published case is now final.

IN RE: PALMER: In July the Fifth Appellate District of the California Court of Appeals ordered a new hearing for an inmate given a 5 year denial when the court felt the prisoner, a YOPH qualified inmate, had not received sufficient consideration and the board failed to set a base term, as required by the Butler decision. Palmer's hearing occurred during a roughly year long period in which the Board declined to set base terms for YOPH or elderly parole inmates, holding those two programs effectively set a base term for those who qualified. Several months after that decision the BPH began setting terms for everyone, and retroactively set base terms for those for whom they had previously not done so via a miscellaneous decision rendered by the BPH legal division, with prisoners notified of that term via memo.

Because the court felt the 5 year denial handed down was excessive, given his base term, it ordered the new hearing on that basis but did not address the 'some evidence' issue. The justices did, however, express considerable skepticism regarding the conclusions expressed in the CRA and noted by the parole panel as supportive of their decision to deny.

But even more interesting, though not citable for future cases, was the concurring and dissenting opinion authored by Presiding Justice Anthony Kline, who expressed his dissatisfaction with YOPH "consideration" being applied only to reduction of time to earlier hearings, and not to reduction of time served. Kline called out what he felt was glaring problem when comparing the regulatory language allowing denial of parole indefinitely "for reasons of public safety," and the Cal Supremes' concerns expressed in *In re Dannenberg* on lifers being held for 'grossly disproportionate' terms.

And while this is a tantalizing and arguable point, and one much debated, most especially by those currently well past their MEPD, the remaining two justice, (the majority) declined to join Justice Kline's dissenting opinion, as the question of proportionality had not been raised in the original petition. Thus, currently, Kline's dissent, is a minority opinion, and therefore not citable as authority even though this case is published. It does, however, merit a read by those interested in both this issue and the dependability of CRAs.

Lastly, IN RE LONDON exhibits the importance of comportment during hearings, no matter the outcome and/or comments. The aforementioned *Dannenberg* often speaks to the need for parole candidates to establish a 'warm and fuzzy' interaction with the panel. The wisdom of doing so, thus providing the panel members with additional assurance that those they release are demonstrably able to refrain from anti-social actions, is exhibited in the London case. The First Appellate Court upheld London's 2014 denial, wherein the paroled panel found London did in fact pose risk to public safety based on his performance at his hearing.

Specifically, the commissioner noted "Your behavior was 100 percent inappropriate for a parole hearing. I don't think I've ever, and I've been doing this for a long time, ever seen anybody decompress like that." The panel noted the inmate's obvious anger, manifested by "[y]our arms were moving around. Your face was red. Your voice was elevated. You were leaning forward. You were angry. [Y]ou attack those that you consider a threat, and that makes you dangerous. " Similar behavior noted in London's recent CRA also helped substantiate the court's decision that the "Board highlighted petitioner's lack of insight and credibility throughout the hearing, as well as his anger, during the hearing as probative on the issue of current dangerousness. This is some evidence sufficient to support the denial of parole."

Thus it is incumbent on all lifers not only to participate in self-help and other rehabilitative programs and classes, but to actually internalize and apply those programs. The London decision once again exhibits that it isn't how much time you do, but what you do with the time.



Robert Barton



Rosalio Castro

NEW BPH APPOINTMENTS

In early August, Governor Brown announced appointments to fill two vacant slots on the Board of Parole Hearings, as well as reappointments of several current commissioners. The latter move is something of a mixed bag, and the former may be as well, but at least one of the new appointees is something of a surprise.

Reappointed were John Peck, Terri Turner, Brian Roberts, Kevin Chappell and Marisela Montes. Montes and Roberts were first appointed to the BPH in 2012, Chappell is a relative newbie first appointed in 2015. Turner has been a commissioner since 2011 while Peck is the most senior of this group, serving since 2009. Brief bios appear below.

Of the two newly appointed commissioners, neither are strangers to CDCR and parole issues. Rosalio Castro, 51, appointed to fill seat 14 of the 15 member board, has been a deputy commissioner at the Board of Parole Hearings since 2015. Prior to coming to the BPH he was an attorney at California Rural Legal Assistance Inc. and served as a deputy public defender at the San Bernardino County Public Defender's Office from 2001 to 2002.

The appointment to fill the last vacant seat on the BPH is also a familiar name, and something of a surprise pick; Robert, Barton, currently serving as the Inspector General of California. As the IG, Barton has overseen independent oversight study of the CDCR, including allegations of unnecessary force, compliance with medical policy and review of policy and practices within CDCR. Barton's office has frequently been critical of CDCR's practices and is also responsible for the California Rehabilitation Oversight Board. Prior to joining the IG's office, where he was senior assistant inspector general in 2005, Barton was supervising deputy district attorney at the Kern County District and a deputy district attorney. He was appointed Inspector General in 2011.

Chappell, first appointed as a Commissioner in 2015, was a retired annuitant correctional administrator at California Correctional Health Care Services and warden at San Quentin State Prison from 2012 to 2014. He served in several positions and institutions within CDCR. Montes, 63, previously served as a consultant at the California Prison Industry Authority and served in several positions at the California Department of Corrections and Rehabilitation.

Peck was a deputy commissioner from 2007 to 2009 and prior to that served in several positions at the California Department of Corrections and Rehabilitation including correctional captain and conservation camp liaison, correctional captain at Ironwood State Prison from 2000 to 2001 and numerous positions at various institutions since 1983. Roberts was a deputy commissioner from and served in several positions at the San Diego County Sheriff's Department. Turner was a deputy commissioner and served in several positions at the California Department of Corrections including assistant regional parole administrator, adult parole supervisor, and youth counselor at the California Youth Authority from 1983 to 1987.

Of the two newly-appointed commissioners, Castro began his duties on the board immediately, appearing at the August business meeting. It was announced at that time that Barton would segway for the OIG office to the BPH in September. Both will undergo a several week training period before striking out on to preside at hearings on their own.

All these individuals, including the reappointments, must appear before the Senate Rules Committee within one year to begin their confirmation process. LSA will be there.



THE LONGEST OF LONG-TIMERS

A few years ago, as part of research to understand the characteristics of lifer in California prisons, we discovered there were, at that time some 34 inmates who had been in prison for nearly, or in a few cases, more than half a century. All "A" numbers, they began their prison time between 1955 and 1965. It was and is a staggering concept; men (and all were male inmates) incarcerated since the middle of the last century.

Recently our research has led us to revisit that previous data, and the current results are just as staggering. Of the 34 longest of the long servers identified in 2012, 26 are still incarcerated. But more troubling is that of the remaining 13, we know the fate of only 2. The rest have simply disappeared from data bases, at least those accessible to the public.

And the known fate of those two is equally troubling. One, who we'll call Inmate A, was granted parole in 2012. This lifer, who started his sentence in 1964, was, at the time of his parole, a double amputee, due to complications from medical conditions, and suffered from a host of other health issues, including kidney failure and developing dementia. When granting parole, the parole panel instructed DAPO agents to find an appropriate facility for Inmate A, one that could provide adequate security as well as address his medical needs.

This was an important and far-sighted provision of the panel, as Inmate A had previously been granted medical parole and been housed in a skilled nursing facility (SNF). However, his physical condition worsened, the SNF could not accommodate those needs and so Inmate A was returned off parole to the tender mercies of CDCR medical care. Until his next parole hearing, when the panel was prescient enough to see that the man was not a danger to society, but in fact needed assistance himself.

The other long-timer whose fate is known is Hugo Pinell, part of the infamous San Quentin 6, reputed ranking member of the BGF and a prisoner in California from 1964 until his murder, at CSP-SAC in 2013. The remainder of those 'missing' from our "A" list have simply disappeared from CDCR rolls, and review of parole hearing results from 2013 forward failed to find mention of them.

Of those A numbers remaining, the eldest is 85, while the youngster of the group is a mere 70 years old. The elder of the group is also the longest serving California inmate, having been incarcerated since 1955, some 62 years. He was 23 at the time of his crime. All currently qualify for elder---for those who qualify for parole---and 13 also fall under the age brackets of YOPH (the youngest was 16), and a few more who would be considered YOPH if pending legislation passes, pushing that age cutoff to 26 years old. Their incarceration lengths, to date, range from 62 to 52 years and all were sentenced in the decade between 1965 and 1975.

Currently most of the A numbers are housed at CHCF---not surprising, given their age and likely physical ailments. A few are at CMC, San Quentin and MCSP, and a smattering elsewhere. And a very few are still at higher security locations such as Lancaster, Corcoran and CSP-Sac.

There is no real end to this story, just a glimpse into prisons and incarceration in California.

AND ON THE ELDERLY PAROLE FRONT

As we've been reporting for some months now, there are some potential changes in the elderly parole process. Elderly parole, implemented in 2014 as part of the Three Judge Panel order, requires the BPH to give special consideration (though not the 'great weight' standard of youth hearings) to those inmates who are 60 years of age and have served 25 or more years in prison. And it's a case of meeting both bench marks, both age and incarceration time, to be eligible for elderly consideration. Currently, SB 1448 remains in play, with prospects for both passage and implementation good, if the bill itself is flawed by amendments. Those amendments would preclude third strikers from elderly parole consideration under SB 1448.

Now, however, comes the new development of a potential ballot initiative for the November, 2018 elections that would put yet another layer of elderly parole on the books. The potential initiative, backed by a Pasadena attorney, would create the Elderly Parole Program for inmates 80 years and older, who have served at least 10 years. Additional qualifications are that they were not sentenced to death or life without possibility of parole, or are excluded from parole by other prohibitions.

Whether or not elderly consideration makes an appreciable difference in the grant rate is subject to debate. But for those inmates for whom elderly consideration has worked in their favor, it's been a boon.

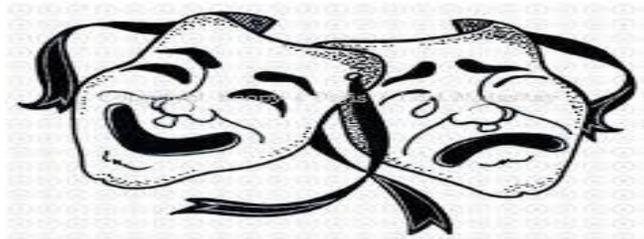
One of the uncertainties of the elderly parole is that the process is part of the agreement between the federal judges and the CDCR. The potential being if the judges relinquish oversight of the prison system the state could opt not to continue elderly parole consideration, as it is currently not an actual law.

SB 1448's progress in this legislative session follows previous attempts to codify elderly parole, which were defeated, largely because those proposals sought to expand the criteria for elderly consideration, to as much as 50 years or older and 15 years or more in prison, which was simply too much for many legislators to accept.

While the passage of SB 1448 has become more controversial, with the amendment excluding third strikers, the codification of elderly parole remains an important, if incomplete step. The plan in that instance would be to protect elderly parole for those 60 and older from evaporating with the end of federal supervision, and then build on that base to include others, including third strikers.

The new proposed initiative, which, on early reports, would appear to include third strikers, would also set the age bar much higher. Indeed, early reports from the Legislative Analysts' office say less than 100 inmates not currently eligible for elderly parole consideration would be affected by the initiative; however, those 100 inmates could result in annual savings of hundreds of thousands of dollars.

The new proposal must first collect nearly 366,000 signatures of registered voters to make it onto the 2018 ballot, and then mount an aggressive, state-wide campaign to pass the measure. The backers have until the end of January, 2018 to reach that goal. And in the meantime, SB 1448 continues through the legislative process.



(A)MUSEMENTS FROM OUR MAIL

Sometimes, in dire and stressful situations, a little dark humor actually helps to relieve the stress, and makes us all understand we're not in this alone. We enjoy a slightly warped sense of humor, as witness the below comments, from some of the letters we've received.

"All the rest of my crimes were normal."

"My parole officer failed to explain to me the serious consequences of committing a crime while on parole," (from a former lifer now back in jail).

"My crime wasn't serious or violent; I shot a guy, but he didn't die."

Oy vey.