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CALIFORNIA LIFER NEWSLETTER

State and Federal Court Cases

by John E. Dannenberg

Editor's Note: The commentary and opinion noted in these decisions is not legal advice.

THOMPSON TERM NEED NOT BE SERVED AFTER YOUTHFUL OFFENDER GRANTED PAROLE

In re Ronald Jenson

---Cal.App.5th ---; CA2(3); No. B286056
June 6, 2018

The Court of Appeal ruled that when a youthful offender lifer is granted parole, he cannot then be ordered to serve additional time for a determinate sentence he received for a conviction obtained while he was in prison ("*Thompson* term").

In 1979, when Ronald Jenson was 19 years old, he committed first degree felony murder, for which he was convicted and sentenced to 25 years to life, plus two years. During his first nine years of incarceration, Jenson committed three additional in-prison crimes, for which he was convicted and sentenced. But, for the last almost 30 years, he has remained crime-free.

In 2016, the Board of Parole Hearings (the Board) found Jenson suitable for release on parole at a youth offender parole hearing conducted under Penal Code section 3051. However, the California Department of Corrections and Rehabilitation (CDCR) did not release Jenson, and instead ordered him to serve an additional sentence for his in-prison offenses.

He petitioned the Court for habeas relief claiming he was being illegally held. The Court agreed and ordered him released.

While he was incarcerated, Jenson was convicted of three in-prison felonies: prison escape and possession of a weapon, in 1980 when Jenson was 21 years old (§§ 4530, 4502); and assault with a deadly weapon on a peace

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officer, in 1989 when he was 29 years old (§ 245, subd. (b)). Pursuant to section 1170.1, subdivision (c) (hereafter, section 1170.1(c)), Jenson was sentenced to three additional consecutive prison terms, known as "*Thompson* terms," for the in-prison offenses: sixteen months for the escape, one year for the weapon possession, and five years for the assault with a deadly weapon.

The legal issue involved was the meaning of the youthful offender law, which gave such lifers a more sympathetic parole consideration based on their age at the time of their life offense.

> In 2013, the Legislature passed Senate Bill No. 260, which, among other things, added section 3051 to the Penal Code. Section 3051 entitles certain prisoners who committed "controlling offenses" under the specified age of eligibility to youth offender parole hearings and to a "meaningful opportunity for release."

Jenson had an atrocious criminal record.

> [He] had been convicted of three additional in-prison offenses; had "amassed some 48 115s [CDCR disciplinary reports]," some of which were "serious and violent, stabbing people, spitting on staff, fighting with inmates, attempting to stab staff, possession of weapons;" and had never admitted participating in the commitment offense.

But based on his clean more recent history, and giving him the benefit of the doubt based on his youth at the time of the life offense, the Board granted parole. However, he was not released.

> Despite the Board's suitability finding, the CDCR did not release Jenson, but instead required him to serve his Thompson term. The CDCR has calculated that his earliest possible release date is December 11, 2018, and his maximum release date is September 9, 2021.

Jenson argued that the controlling laws were inconsistent, and that having been found to be currently not an unreasonable risk of danger to society if released, he should have been cut loose. The Court framed the legal question.

> The dispute over Jenson's release date implicates two different provisions of the Penal Code: (1) section 1170.1

PUBLISHER'S NOTE

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California Lifer Newsletter (CLN) is a collection of informational and opinion articles on issues of interest and use to California inmates serving indeterminate prison terms (lifers) and their families.

CLN is published by Life Support Alliance Education Fund (LSAEF), a nonprofit, tax-exempt organization located in Sacramento, California. We are not attorneys and nothing in CLN is offered as or should be construed as legal advice.

All articles in CLN are the opinion of the staff, based on the most accurate, credible information available, corroborated by our own research and information supplied by our readers and associates. CLN and LSAEF are nonpolitical but not nonpartisan. Our interest and commitment is the plight of lifers and our mission is to assist them in their fight for release through fair parole hearings and to improve their conditions of commitment.

We welcome questions, comments and other correspondence to the address below, but cannot guarantee an immediate or in depth response, due to quantity of correspondence. For subscription rates and information, please see forms elsewhere in this issue.

EDITORIAL

LIFE SUPPORT ALLIANCE

Public Safety and Fiscal Responsibility

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THE EASY WAY OUT

There isn't one.

Lifers tell us they like clear, real, direct communication. This is about as clear, real and direct as we can be. If you're looking for the easy way out, get out of jail (nearly) free card or shortcuts, don't look to us.

There are no shortcuts out of an indeterminate sentence. It isn't easy to rehabilitate yourself, and despite CDCR's improved efforts and programs the reality is that every lifer is creating his own rehabilitation program for him, or her, self. But that's what is required to become, in that infamous phrase, 'no longer an unreasonable risk of danger to society.'

It's a hard process, and it's meant to be. Lifers, by in large, have committed, or participated in, some of the most violent and damaging crimes possible. Yes, certainly there are individuals who are incarcerated for crimes of which they are actually innocent. We understand that, we know that, believe that, even know some of those individuals, and our hearts hurt for them more than for the average prisoner. And there are hundreds more who were overly prosecuted, a favorite tactic of the DAs and the justice system. But the real is that most prisoners were involved in their accused crime and even more were living an anti-social lifestyle and committing harmful acts at the time of their case.

As one lifer says, "the only one who was surprised that I was on trial for murder, was me." Most prisoners, lifers or otherwise, were not exactly pillars of their community when they were on the streets. And yet, lifers are the pillars of their community, their prison community, now; it's the lifers who keep prisons stable and calm, who are the first responders to tension and strife on the yard, who are the mentors of those who want to turn their lives around and become the pillars of larger society that they can be.

It's the lifers who have done the introspection, self-examination and personal inventories to understand their former lifestyles were not prosocial, not sustainable and not positive and who can and do change. They understand the path to rehabilitation, and thus to freedom, is difficult and is meant to be. Such fundamental change takes effort and commitment.

So, when we encounter prisoners, either in person or by correspondence, who want to know how to cut their time short, how to work the process, find the loop-holes and scam the system, well, we're sorta over you. If you're really innocent, we can and will direct you to those organizations who can evaluate your case and offer help, but that's not us. We're working with the thousands of other lifers and long-term determinant inmates who want to understand and change their past missteps.

If you think you've been too harshly punished, we might agree with you, but the system is what it is. And don't ask us to buy into kind the self-righteous plea of one third striker, who claimed that he hadn't committed a violent crime. "I shot someone, but he didn't die." Yeah. Miss us with that. Still fighting your case after 20 or so years? Ok, but put as much time into your rehabilitation as you do into that writ, and you might find the parole process produces results faster than the courts, for those who are truly interested in rehabilitation.

We're not particularly interested in the nature, gravity, violence, or in the board's words, 'heinousness' of your crime. None of that will get you a cold shoulder from us. We're interested in who you are now, what you've come to understand about yourself and the world and how we can help you increase that understanding and articulation. How can we help you not scam, but understand the system? How can we convey that change to the parole board, not provide you with catch phrases that sound learned, but that you don't understand or really care about? How can we help you become suitable?

If you're interested, we'll come along side you and help. But if you're looking for a short cut, the way to get over on the system, the easy road, sorry. We only know the straightforward road, the one that takes you not only to suitability, but to productive citizenry as well.

(c), which governs sentences for in-prison felonies; and (2) section 3051, which gives individuals sentenced for certain crimes committed under the age of 26 a "meaningful opportunity for release" from prison after serving 15, 20, or 25 years.

Jenson contends that the two statutory provisions are fundamentally inconsistent as they apply to him. He therefore urges that section 3051—as the later-enacted and more specific statute—necessarily supersedes section 1170.1(c). The Attorney General disagrees, contending that the two statutes are not fundamentally inconsistent, and so both must be given effect.

The Court agreed with Jenson.

As we now discuss, we conclude that sections 3051 and 1170.1(c) are irreconcilable as they apply to a youth offender who commits an additional crime in prison after the age of 26, because section 3051, which specifically addresses youth offenders, dictates that the youth offender be immediately released upon being found suitable for parole. In contrast, section 1170.1(c) would require the same youth offender to serve any applicable *Thompson* term even after being found suitable for release. Because section 3051 is both later-enacted and more specific, we conclude that section 3051 supersedes section 1170.1 (c). Therefore, Jenson need not serve his *Thompson* term and is entitled to be released from prison.

After reflecting on its duty to "harmonize" the interpretation of statutes, the Court proceeded to examine each of PC § 3051 and 1170.1(c).

Section 1170.1, enacted in 1976, governs consecutive terms of imprisonment. As is relevant here, subdivision (c) provides that when a prisoner is sentenced to a consecutive term for a felony committed in state prison, "the term of imprisonment for all the convictions that the person is required to serve consecutively shall commence from the time the person would otherwise have been released from prison." For prisoners serving indeterminate terms, the consecutive sentence for in-prison offenses begins on the date the prisoner is found suitable for parole, not the date he or she completes his base term. (*In re Coleman* (2015) 236 Cal.App.4th 1013, 1016–1022.)

But examination of the more recent statute, PC § 3051, it found that the latter could not be reconciled with PC § 1170.1 (c).

Section 1170.1, enacted in 1976, governs consecutive terms of imprisonment. As is relevant here, subdivision (c) provides that when a prisoner is sentenced to a consecutive term for a felony committed in state prison, "the term of imprisonment for all the convictions that the person is required to serve consecutively shall commence from the time the person would otherwise have been released from prison." For prisoners serving indeterminate terms, the consecutive sentence for in-prison offenses begins on the date the prisoner is found suitable for parole, not the date he or she completes his base term. (*In re Coleman* (2015) 236 Cal.App.4th 1013, 1016–1022.)

The Court first recalled recent US Supreme Court and California case law finding for lenience for juvenile offenders.

In a series of cases, our high courts have recognized that "children are constitutionally different from adults for purposes of sentencing" because of their diminished culpability and greater prospects for reform. (*Miller v. Alabama* (2012) 567 U.S. 460, 471

[132 S.Ct. 2455].) Hence, the Eighth Amendment's prohibition on cruel and unusual punishment has been held to prohibit imposition of the death penalty on juveniles (*Roper v. Simmons* (2005) 543 U.S. 551); life without possibility of parole (LWOP) on juveniles who commit nonhomicide offenses (*Graham v. Florida* (2010) 560 U.S. 48); mandatory LWOP on juveniles (*Miller, supra*, 567 U.S. 460); de facto LWOP on juvenile nonhomicide offenders (*People v. Caballero* (2012) 55 Cal.4th 262); and a sentence of 50 years to life for juvenile nonhomicide offenders (*People v. Contreras* (2018) 4 Cal.5th 349, 356).

The Court reflected on the California Legislature's intent in enacting SB 260, and in subsequently expanding such youth offender consideration to those up to age 25.

In line with this evolution in how we think about and treat youth offenders, our Legislature enacted Senate Bill No. 260 in 2013 to implement the limitations on juvenile sentencing articulated in these cases. In adopting Senate Bill No. 260, which added section 3051 and amended sections 3041, 3046, and 4801, the Legislature explained that "youthfulness both lessens a juvenile's moral culpability and enhances the prospect that, as a youth matures into an adult and neurological development occurs, these individuals can become contributing members of society." (Stats. 2013, ch. 312, § 1.) Thus, the bill's purpose was "to establish a parole eligibility mechanism that provides a person serving a sentence for crimes that he or she committed as a juvenile the opportunity to obtain release when he or she has shown that he or she has been rehabilitated and gained maturity." (*Ibid*.)

To this end, section 3051 provides that an offender who committed a "controlling offense" as a youth is entitled to a "youth

offender parole hearing" after a fixed period of years set by statute. The "controlling offense" is "the offense or enhancement for which any sentencing court imposed the longest term of imprisonment." (§ 3051, subd. (a)(2)(B).)

As originally enacted, section 3051 applied only to non-LWOP offenses committed before the offender was 18 years old. (Stats. 2013, ch. 312 (S.B. 260), § 4.) An amendment effective January 1, 2016 raised the age of eligibility to 23 years; and an amendment effective January 1, 2018 raised the age of eligibility to 25 years and included LWOP offenses committed before age 18. (Stats. 2015, ch. 471 (S.B. 261), § 1; Stats. 2017, ch. 675 (A.B. 1308), § 1; Stats. 2017, ch. 684 (S.B. 394), § 1.5.) Thus, section 3051 now provides that an offender who committed a "controlling offense" under the age of 26 is entitled to a "youth offender parole hearing" during his 15th year of incarceration if he received a determinate sentence; during his 20th year of incarceration if he received a life term of less than 25 years to life; and during his 25th year of incarceration if he received a term of 25 years to life. (§ 3051, subd. (b)(1)–(3).) An offender convicted of a controlling offense committed before the age of 18 for which he was sentenced to LWOP is entitled to a youth offender parole hearing during his 25th year of incarceration. (§ 3051, subd. (b)(4).)

The Court then focused on the statutory language, "meaningful opportunity for release".

The statute defines a youth offender parole hearing as "a hearing by the Board of Parole Hearings for the purpose of reviewing the parole suitability of" youth offenders. (§ 3051, subd. (a)(1).) At the hearing, the Board is required to afford the youth offender "a meaningful opportunity to obtain release," taking into consideration "the diminished culpability of youth as compared to that of adults, the hallmark features of youth, and any subsequent growth and increased maturity of the individual." In an appropriate case, the Board "shall release the individual on parole as provided in Section 3041." (§ 3051, subds. (d), (e), (f)(1).)

Looking to legal precedent, the Court found the case of *In re Trejo* instructive.

Only one published case, *In re Trejo* (2017) 10 Cal.App.5th 972 (*Trejo*), has considered the interaction between sections 1170.1(c) and 3051 as they apply to youth offenders who commit crimes in prison. In that case, defendant Trejo committed second degree murder at age 17, for which he was convicted and sentenced to a prison term of 15 years to life. At age 20, he committed an assault with a deadly weapon on a peace officer while incarcerated. He was sentenced to an additional term of four years, to be served consecutively to his life sentence. (*Id*. at pp. 975–976.)

After 35 years in prison, the Board found Trejo suitable for parole under section 3051. However, it determined that under section 1170.1(c), Trejo could not be released until he served his four-year Thompson term for the in-prison assault. (*Trejo, supra*, 10 Cal.App.5th at pp. 975–976.) Trejo filed a petition for writ of habeas corpus, challenging the legality of his continued confinement. The trial court denied the petition; Trejo then filed a petition with the Court of Appeal, which granted relief. (*Id*. at pp. 976, 991–992.)

Importantly, the Court concluded that § 3051 did *not* supersede § 1170.1(c).

The court also agreed with *Trejo* that the Legislature's intent to exempt youth offenders from application of section 1170.1 is inherent in section 3051. It explained that section 1170.1, subdivision (a), "requires that an inmate serve the requisite term for each consecutively sentenced offense and enhancement. Under section 3051, subdivision (b)(1), however, a youth offender sentenced to a determinate term becomes eligible for release in the 15th year of incarceration even if he or she has not yet

served the aggregate determinate term. Where a youth offender is sentenced to a lengthy determinate term, then, section 3051 necessarily overrides the requirement of section 1170.1 that an inmate sentenced to consecutive terms not be released on parole before completing all the terms of imprisonment imposed.

"Similarly, section 3051 supersedes section 1170.1 when a youth offender is consecutively sentenced to a life term and a determinate term. Section 1170.1, subdivision (a), incorporates section 669, which provides that when a person is sentenced to a life term and a consecutive determinate term, 'the determinate term of imprisonment shall be served first and no part thereof shall be credited toward the person's eligibility for parole as calculated pursuant to Section 3046 or pursuant to any other section of law that establishes a minimum period of confinement under the life sentence before eligibility for parole.' Under section 3051, however, a person sentenced to a life term and a determinate term becomes eligible for parole after the time specified in section 3051, subdivision (b)(2) or (3), based on the life term, without regard to the determinate term. [Citation.]

"We see no basis for inferring that the Legislature intended section 3051 to override the otherwise applicable provisions section 1170.1 as described above but to have no effect on the application of section 1170.1, subdivision (c)." (*Trejo, supra*, 10 Cal.App.5th at p. 986.)

The Court concluded that the two statutes were irreconcilable, and that the more recent – and more specific – controlled.

Sections 1170.1(c) and 3051 also result in entirely different parole hearing dates for some youth offenders who commit crimes in prison. Consider a hypothetical youth offender who, at the age of 18, commits a crime for which he is sentenced to five years in state prison. During his first year of his incarceration, he commits an additional crime and receives a consecutive sentence of 25 years to life. Because the in-prison crime is a Thompson offense, the two terms must be served consecutively under section 1170.1(c), and thus the prisoner will not become parole eligible until he has been incarcerated for 30 years (5 years plus 25 years, without considering credits). Because the in-prison crime is also the controlling offense, however, under section 3051, the prisoner would be parole eligible during his 25th year of incarceration. (§ 3051, subd. (b)(3) ["A person who was convicted of a controlling offense that was committed when the person was 25 years of age or younger and for which the sentence is a life term of 25 years to life shall be eligible for release on parole by the board during his or her 25th year of incarceration at a youth offender parole hearing, unless previously released or entitled to an earlier parole consideration hearing pursuant to other statutory provisions."].)

As we have said, where two statutes cannot be reconciled, " 'later enactments supersede earlier ones [citation], and more specific provisions take precedence over' the more general." (*People v. Adelmann, supra*, 4 Cal.5th at p. 1079.) Here, section 3051 was adopted in 2013 and specifically addresses parole eligibility for youth offenders. Section 1170.1 was adopted many decades earlier and generally concerns punishment for in-prison crimes, without distinguishing between youth and adult offenders. Because section 3051 thus is both later-enacted and more specific, it supersedes section 1170.1 (c) with regard to youth offenders.

The dissenting opinion argued that the majority ruling gave prisoners a "free pass" to commit crimes while in prison. The majority opinion disagreed.

Our interpretation of section 3051 does not give defendants a "free pass" to commit crimes in prison without consequence, as the dissent suggests. Because "serious miscon-

duct in prison" is a parole suitability factor, parole will likely be denied or significantly delayed for a defendant who has committed an in-prison crime. (See Cal. Code Regs., tit. 15, § 2402, subd. (c)(6) ["serious misconduct in prison" is a factor tending to indicate "unsuitability for release"].) Adding an additional Thompson term to a defendant's sentence thus punishes a youth offender sentenced to an indeterminate term *twice* for in-prison offenses, because it can repeatedly delay a grant of parole and then add an additional prison term after parole is granted.

NOTE: Although neither party petitioned the CA Supreme Court for review, this case is not yet final. On June 26, the California Supreme Court ordered: "The time for granting review on the court's own motion is hereby extended to and including September 4, 2018. (Cal. Rules of Court, rule 8.512(c).)"

THOMPSON TERM NEED NOT BE SERVED AFTER YOUTHFUL OFFENDER GRANTED PAROLE; EXCESS INCARCERATION CREDIT AGAINST PAROLE PERIOD ORDERED

In re Antuan Williams

---Cal.App.5th ---; CA2(7); No. B286056
June 20, 2018

Two weeks after *Jenson* was decided, another division of the Second District Court of Appeal reached the same conclusion. This case differs from *Jenson* in that Williams had been ordered by the Board to remain and serve his eight year determinate sentence after they found him suitable for parole on his life term. Here, the court ordered retrospective relief from overincarceration, including credit against the (now) former lifer's parole tail.

The facts surrounding William's case are chronicled below.

In 1991, Williams, then age 21, was convicted of first degree murder under Penal Code section 187 and sentenced to an indeterminate prison term of 28 years to life. In 1996, while serving his sentence, Williams pleaded guilty to battery on a non-prisoner (§ 4501.5), for which he was sentenced to an eight year consecutive term to be served after the completion of his life term. (§ 1170.1, subd. (c); *In re Thompson* (1985) 172 Cal.App.3d 256 (*Thompson*).)

On December 29, 2016, Williams became eligible for a youth offender parole hearing. (§§ 3051 and 4801, subd. (c).) The Board found him suitable for parole, concluding that "Mr. Williams does not pose an unreasonable risk of danger to society or a threat to public safety." The panel observed that Williams was still required to serve a consecutive eight year term for his 1996 in-prison offense, the so-called *Thompson* term. On May 1, 2017, the Board sent Williams a notice that his release date had been updated to August 25, 2022.

Williams filed a petition for writ of habeas corpus in Los Angeles County Superior Court, arguing that he was in custody unlawfully and should be released because he had been granted youth offender parole. The trial court denied the petition on October 3, 2017, holding that because Williams was 26 years old when he pleaded guilty to the in-prison battery offense, he was required under section 1170.1, subdivision (c) and *Thompson* to serve the consecutive term.

Williams filed a petition for writ of habeas corpus in this court on November 13, 2017, asserting that, under the terms of the youth offender parole statute, he was entitled to release on April 24, 2017.

Unlike Jenson, Williams committed *all* of his in-prison crimes after age 25. The Court framed its legal inquiry accordingly.

> The legal question presented by this petition is whether a youth offender granted parole under section 3051 is required to serve a consecutive sentence for an in-prison offense committed after age 25.

The Court, following *Trejo* as in *Jenson* above, found that the law favored Williams. It went on to review that the law did not provide release for *all* such *Thompson* terms, but followed specific exceptions provided by statute.

> The exceptions set out in subdivision (h) of section 3051 also address the application of the statute to in-prison convictions. Section 3051 excludes five categories of juvenile offenders. It excludes persons sentenced under section 1170.12, section 667, subdivisions (b) through (i), and section 666.61. It further excludes persons sentenced to life without the possibility of parole for controlling offenses committed after age 18. Finally, it excludes a person who would otherwise qualify, "but who, subsequent to attaining 26 years of age, commits an additional crime for which malice aforethought is a necessary element of the crime or for which the individual is sentenced to life in prison. (§ 3051, subd. (h).)

The Court noted that if Williams' in-prison crimes had involved malice aforethought, he would not be eligible for relief. Thus, more benign crimes typical of in-prison offenses (e.g., drug possession/sales) would *not* fall afoul of this exclusion, and a consecutive *Thompson* term would not survive past the life term parole suitability finding.

> Significantly, the Legislature failed to include sentences imposed under 1170.1, subdivision (c) in the list of enumerated exceptions contained in subsection (h), either in the initial enactment or in any of the subsequent amendments. Instead, as noted by the court in Trejo, the structure of the enactment demonstrates that the Legislature intended section 3051 to supersede sentences for in-prison offenses not expressly enumerated in the statute. (*Trejo, supra*, 10 Cal.App.5th at p. 985.)
>
> The final sentence of subdivision (h) excludes from early parole consideration those who "subsequent to attaining 26 years of age" commit "an additional crime for which malice aforethought is a necessary element of the crime or for which the individual is sentenced to life in prison." (§ 3051, subd. (h).) This specific exception in the statute limits the exclusion to those who commit the specified offenses. In concluding that in situations not subject to a specified exclusion, section 3051 supersedes section 1170.1, subdivision (c), Trejo invoked the statutory maxim of construction, "*expressio unius est exclusio alterius*, if exemptions are specified in a statute, [a court] may not imply additional exemptions unless there is a clear Legislative intent to the contrary." (*Id*. at p. 983.)

The Court also rejected the State's argument that thus "excusing" a *Thompson* term amounted to an irrational windfall for the worst behaving prisoners.

> Finally, the *Trejo* court rejected respondent's argument that failing to apply section 1170.1 subdivision (c) would provide youth offenders with a windfall. The court explained there was no windfall because the Board would necessarily take in-prison offenses into account in determining the degree of risk an inmate posed to the public and the extent of a youth offender's growth and maturity. (*Trejo, supra*, 10 Cal.App.5th at p. 988.)

In sum, *Trejo* examined the plain text of the juvenile offender parole statute, the purpose of

the statute, and the Department's own website describing the operation of the statute and concluded that a youth offender found suitable for release on parole pursuant to section 3051, was not required, before being released, to serve a consecutive sentence imposed for a crime he committed in prison at age 20. (*Trejo, supra*, 10 Cal.App.5th at p. 975.)

Turning to relief, the Court relied on *Trejo* and *Jenson* to find that *Trejo* relief applied not just for in-prison crimes committed before age 26, but also after.

Discussing section 3051, *Trejo* explained, "[t]his statutory scheme, designed to effectuate the constitutional prohibition against excessive punishment of youthful offenders, would be thwarted if a youth offender found suitable for parole pursuant to section 3051 was required to remain in custody due to a consecutive sentence for an in-prison offense." (*Trejo*, at p. 987.)

Respondent argues that the reasoning of *Trejo* does not apply to Williams because he was no longer a juvenile when he committed the in-prison offense of battery. We disagree. While footnote 7 in *Trejo* states that the opinion does not address the application of section 1170.1, subdivision (c) to youth offenders who commit in-prison crimes at age 26 or older, that issue was not before the court. *Trejo's* reasoning, however, adheres with equal force here. *Trejo's* examination of the plain text of section 3051 in concert with its legislative purpose persuades us that section 3051 overrides sentences for all in-prison offenses not expressly excluded by operation of the statute. The opinion's language and reasoning provide a cogent understanding of the legislative scheme and its constitutional mandate, and support the conclusion that the age at which the juvenile offender commits the in-prison offense is not a disqualifying factor. We agree with *Trejo's* analysis and extend it to the facts here.

A more recent Court of Appeal decision agrees as well. (*In re Jenson*, 2018 Cal.App.LEXIS 527 (Second Appellate District, Division Three, June 6, 2018) (*Jenson*).) In *Jenson*, the court held that a youth offender granted parole was not required to serve a consecutive five-year term for an in-custody offense committed when he was age 29. The court explained: "while *Trejo's* holding necessarily is limited to its facts, we discern nothing in the court's thoughtful statutory analysis that would not apply equally to defendants who commit in-prison crimes as adults." (*Id*. at p.*17.)

As to the question of whether Williams' in-prison crimes had been considered by the Board when it was deciding *if he was currently a danger to society if released*, the Court found the record clear.

On December 29, 2016, the Board conducted Williams' juvenile offender parole hearing and found Williams suitable for release. The Board explained that because Williams was 21 years old when he committed the commitment offense, it gave "great weight to the diminished culpability of juveniles as compared to adults, the hallmark features of youth, and any subsequent growth and maturity in reviewing an inmate's suitability for parole pursuant to Penal Code section 3041.5." The Board stated that it "look[ed] at the fact that 25 years have passed and many of the circumstances that tend to show suitability pursuant to Title 15, Section 2402, Subdivision (d) are present in this case." The Board was "satisfied that [Williams] had shown signs of remorse and accepted responsibility for [his] crime." They also stated: "We did look at your disciplinary record and we took into consideration your lack of violence-related infractions since 2000 and we observed the upward trend, the positive trend in self-discipline and self-control." Having considered Williams' controlling offense, his disciplinary record, Williams' age of incarceration, 21, and present age, 48, they also concluded the probability of recidivism was reduced. Although the Board cautioned Williams at the end of the hearing that "[j]ust keep in mind this is a tentative decision and you've got a *Thompson* term I think you have to serve[,]" it was clear that the Board had considered Williams in-prison conviction in deciding that "Williams would not pose a potential threat to public safety."

This demonstrates that Williams' commission of an in-prison crime was expressly considered in the parole decision. As explained in *Trejo*: "It is obvious, however, that in considering a youth offender's suitability for parole release, commission of an in-prison offense after age 23 would weigh against finding the inmate had rehabilitated and gained maturity so as to warrant release pursuant to section 3051." (*Trejo, supra*, 10 Cal.App.5th at p. 987, fn. 7.) We agree with the principle that section 3051 renders a person's *Thompson* offense a factor to be considered by the Board, even though it will not result in a consecutive sentence that must be served before release. Any other reading of section 3051 would thwart its legislative purpose.

The Board in Williams' case weighed his in-prison offense in the manner described and nonetheless found Williams suitable for parole. Requiring him to serve an additional eight-year term would undermine the purpose of section 3051 and its constitutional underpinnings. Based on these principles, we conclude that Williams was entitled to release when his parole became effective on April 24, 2017, despite the consecutive eight-year term imposed for his in-prison conviction in 1996.

Finally, the Court turned to specific relief appropriate here.

Williams asserts that he is entitled to have his period of supervised release reduced by the amount of time he has been in prison after he was found suitable for parole on April 24,

2017. The petitioner in *Trejo* made the same argument Williams makes here. There, the court concluded that because the parole provisions of section 3051 superseded petitioner's otherwise statutorily mandated sentences, "[p]etitioner's continued confinement to serve the consecutive sentence imposed under section 1170.1, subdivision (c), was not lawful in the circumstances of this case, and he is entitled to credit against his parole period." (*Trejo, supra*, 10 Cal.App.5th at p. 991.) The same is true in this case.

Relief is granted. Respondent is ordered to amend petitioner's release date to April 24, 2017, to release petitioner on parole, and to deduct from his parole period the days of incarceration served beyond that date.

NEW LIFER HEARING ORDERED BASED ON LACK OF EVIDENCE TO DENY PAROLE; ANCILLARY LEGAL QUESTIONS REGARDING MARSY'S LAW PREJUDICE AND APPOINTED ATTORNEY FEE PREJUDICE REMANDED TO SUPERIOR COURT FOR EVIDENTIARY HEARING

In re Darryl Poole

---Cal.App.5th ---; CA1(2); No. A152341
June 22, 2018

In yet another published decision, the unflappable Second Division of the First District Court of Appeal hit a three-bagger against the Board in considering the case of lifer Darryl Poole.

First, it found that the Board's decision to deny Poole parole was not based on any evidence in the record, and, accordingly, ordered a new hearing. Second, it considered Poole's complaint that the lately enacted "Marsy's Law" amounted to ex post facto punishment as applied to him. Third, he argued that the limited funds provided to pay appointed lifer attorneys deprive him and other inmates of effective assistance of counsel.

As to the second and third legal questions, the Court noted in a footnote:

> The two other issues raised by the supplemental petition are distinct from the question of petitioner's suitability for parole. By order of June 13, 2018, we bifurcated the petition into two separate cases. The first, challenging the denial of parole, is the case we decide in this opinion. The issues concerning the Board's application of Marsy's Law and compensation of appointed counsel, will be considered in a new case No. A154517.

[California Lifer News is monitoring this new case and will report on any significant activity.]

As to the absence of evidence to deny parole, the Court rejected the Board's "lack of insight" basis.

> The sole issue of concern at the hearing was petitioner's reason for the shooting. As will be described, petitioner related shooting because he needed to evade the police, or retaliation from the occupants of the truck Grant had shot at, and the Ellingsens' car was in his way. He also described motivations including wanting to impress Grant and prove himself as a leader to his criminal associates. The commissioners dismissed most of petitioner's explanations and concluded—contrary to the psychologists who evaluated him in 2010, 2015, and 2017—that he lacked insight into the "real" reasons for his crime. …
>
> The Board found that petitioner posed an unreasonable risk and was therefore not suitable for release because it found his "version" and "understanding" of the life crime "significantly lacking"—"basically it's an insight only." The presiding commissioner discussed petitioner having initially testified that

he was concerned about being pursued by the police or the people in the truck, then "as we go through the hearing, we find out that's not the case" and, instead, "you're trying to impress Mr. Grant." The commissioner did not believe this explanation of the crime, as Grant worked for petitioner and the commissioner felt petitioner had been unable to explain why he was trying to impress Grant or how shooting Ellingsen would impress him. The commissioner also told petitioner he "felt like he was trying to pull a molar. I usually don't have to ask that many questions, sir. Usually it just comes out, cause it's been addressed." Observing that "the doctors" had found petitioner would present a low risk of violence if released, the presiding commissioner said, "I don't think they're really getting it. No disrespect to the doctors but I do not agree with their assessment. I don't think you've addressed the causative factors of the crime."

The deputy commissioner, agreeing, told petitioner his credibility suffered because the commissioners at his hearing in 2015 made it clear they did not believe "the story about fleeing from something chasing you on the freeway" but petitioner repeated that story at the present hearing and "stuck with it until I basically had to corner you into admitting . . . there was no truth in that." The deputy commissioner viewed this as minimization "because you're suggesting that there was some real reason that you had to get down the freeway at 100 miles an hour." The commissioner found petitioner had not identified or addressed the causative factors of the crime and criticized petitioner's description of his "character defects" as "criminal, violent, sarcastic, pariah, angry and procrastination"; the commissioner suggested an applicable list might be "greedy, devious, deceptive, cruel, uncompassionate, intolerant, manipulative, vengeful, self-indulgent, destructive, selfish."

After a lengthy reevaluation of the record and current lifer case law, the Court made its own suitability determination, opposite to that of the Board.

> The record clearly demonstrates that petitioner has long since disavowed the criminal conduct and values of his youth and dedicated himself to improvement of his own skills and internal resources and to providing help to others. He has expressed understanding of what caused him to commit a heinous crime as a 19-year-old, over 28 years ago, and remorse for taking an innocent life and the resulting pain he inflicted on the victim's family. Even without reference to the directives of Penal Code section 4801, this record reflects no support for the Board's finding of "no insight," and no evidence petitioner poses a current threat to public safety. Considering the contrast between the irrationality, impulsivity and recklessness of petitioner's offense as a 19-year-old, and the evidence of his subsequent development of maturity and changes in attitude and conduct, the Board's hearing and decision in this case inspire little confidence that it took seriously the directive of Penal Code sections 3051 and 4801, subdivision (c), for it to provide a "meaningful opportunity to obtain release," with "great weight" given to "the diminished culpability of youth as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity of the prisoner in accordance with relevant case law."
>
> The Board's decision cannot stand.
>
> The decision of the Board is hereby vacated. The matter is remanded for a new parole suitability hearing consistent with due process of law and this decision. (See *Prather, supra*, 50 Cal.4th at p. 244.)

Lifers suffering from "lack of insight" denials would do well to read this published case in detail to understand the Court's reasoning. At the same time, it is important to understand that the Court's ruling does not require an automatic grant of parole at the remanded hearing. In recent times, some lifers so ordered for new hearings have again been denied.

STAYED SENTENCING RELIEF FOR GUN USE IN ROBBERIES GRANTED ON HABEAS PETITION TWO YEARS AFTER APPEAL WAS FINAL

In re Paul Ahumada

CA2(5); No. B289191
June 1, 2018

For anyone who was sentenced to gun use enhancements under both PC § 12022.1(a)(1) and § 12022.1(b)(1), where one of those enhancements was not stayed, you may be able to file a late habeas petition for retroactive sentencing relief.

> Petitioner Paul Ahumada (petitioner) filed a habeas corpus petition contending, among other things, that the trial court erred in imposing both a Penal Code section 12022, subdivision (a)(1) enhancement ("a person who is armed with a firearm in the commission of a felony or attempted felony shall be punished by an additional and consecutive term of imprisonment") and a Penal Code section 12022, subdivision (b)(1) enhancement ("[a] person who personally uses a deadly or dangerous weapon in the commission of a felony or attempted felony shall be punished by an additional and consecutive term of imprisonment") as to each of his nine robbery convictions. This court ordered the Attorney General to file an informal response addressing whether the trial court's imposition of both enhancements constitutes an unauthorized sentence. (Pen. Code, §§ 12022, subd. (e), 1170.1, subd. (f).) The Attorney General's informal response concedes that one of the two imposed weapon

enhancements pertaining to the robbery convictions must be stayed.

Pursuant to *People v. Romero* (1994) 8 Cal.4th 728, 740, footnote 7, the habeas corpus petition is deemed an existing cause before this court. The petition is granted solely as to petitioner's claim that imposition of both enhancements constitutes an unauthorized sentence. (*People v. Espinoza* (1983) 140 Cal.App.3d 564, 566-567.) The remainder of petitioner's claims lack merit.

DISPOSITION

The judgment is modified to stay imposition of the additional term of imprisonment for the Penal Code section 12022, subdivision (a)(1) enhancement as to each robbery count.

HABEAS RELIEF GRANTED FOR *CHIU* ERROR

In re Juan Manzanares

CA4(3); No. G055101
June 19, 2018

CLN has previously reported on relief granted for *Chiu* error, long after a conviction has become final. *Chiu* error refers to a first degree murder conviction obtained wherein the jury was instructed both as to a "natural and probable consequences" liability and to another first degree liability theory. Under *Chiu*, the "natural and probable consequences" theory may not have been considered by the jury in its first degree verdict.

In this case, a pro per prisoner with a 75-life sentence plus 60 years a la carte was able to get his first degree murder conviction lately reversed on a habeas corpus petition, with an order for substantial resentencing.

CLN reports this case to again encourage lifers whose first degree murder convictions were thusly illegally obtained to seek legal help for what can be substantial relief.

Chiu was decided in 2014, after the judgment against petitioner became final. In that case, the California Supreme Court examined which theories of aiding and abetting liability can be used to convict a defendant of first degree premeditated murder. The court held a defendant cannot be convicted of that offense under the natural and probable consequences theory of aiding and abetting. (*Chiu, supra*, 59 Cal.4th at p. 166.) However, "[a]iders and abettors may still be convicted of first degree premeditated murder based on direct aiding and abetting principles. [Citation.] Under those principles, the prosecution must show that the defendant aided or encouraged the commission of the murder with knowledge of the unlawful purpose of the perpetrator and with the intent or purpose of committing, encouraging, or facilitating its commission. [Citation.]" (*Id.* at p. 167.) In other words, the state must prove the defendant acted with premeditation.

Chiu also made clear that when a first degree murder conviction is prosecuted on both theories of liability, reversal is required unless the record establishes beyond a reasonable doubt the jury relied on the legally valid theory of direct aiding and abetting. (*Chiu, supra*, 59 Cal.4th at p. 167.) These principles also apply in the context of a petition for writ of habeas corpus to cases that are already final on direct appeal. (*In re Martinez* (2017) 3 Cal.5th 1216.)

Here, the state relied on both the direct theory of abetting and abetting and the natural and probable consequences theory in prosecuting petitioner for first degree premeditated murder. And, as respondent concedes, the record is unclear as to which theory the jury relied on in convicting petitioner of that offense. Therefore, the conviction must be reversed and the matter must be remanded. On remand, the prosecution may accept a reduction to second degree murder or retry pe-

titioner for first degree murder on the theory he directly aided and abetted the killing. (*Chiu, supra*, 59 Cal.4th at p. 168; *In re Martinez, supra*, 3 Cal.5th at p. 1227.) ….

DISPOSITION

The petition for a writ of habeas corpus is granted. Petitioner's conviction for first degree murder is reversed, his sentence is vacated, and the matter is remanded for resentencing. On remand, the trial court shall also conduct a *Franklin* [youth offender] hearing to allow the parties to make a record relevant to petitioner's future parole hearing.

PROP. 36 CASES

CRIMES WERE NOT "SINGLE ACT" SUCH AS TO PRECLUDE THREE-STRIKES SENTENCING

P. v. Harry Roberson

CA2(6); No. B278465
June 28, 2018

In this case, Harry Roberson was eligible for a Prop. 36 resentencing hearing, but was denied relief on the merits due to his record. Of legal significance, he also claimed that he was illegally sentenced for three crimes based on but one act. The Court denied relief.

Following argument by the parties, the trial court denied the resentencing petition. Roberson appeals and contends that the trial court erred by: 1) declining to sentence him to a two-strike sentence because the four strikes (1997 robbery at a Circuit City store) arose from one act, i.e., driving the getaway vehicle, and 2) determining that sentencing him to a two-strike sentence would pose an unreasonable risk of danger to public safety.

Roberson argues that the trial court erred by denying his motion pursuant to *People v. Vargas* (2014) 59 Cal.4th 635 (*Vargas*) to resentence him to a two-strike sentence. (*Id*. at pp. 637, 645 [two prior convictions arising from a single act against a single victim cannot constitute two strikes pursuant to the three strikes law].) He asserts that he committed the single act of driving a getaway vehicle. Roberson claims that his three-strike sentence is therefore an unauthorized sentence that may be corrected at any time.

In *Vargas, supra*, 59 Cal.4th 635, 637, our Supreme Court held that two prior convictions arising from a single act against a single victim could not constitute two strikes. There, the defendant had two prior strikes -- carjacking and robbery -- which were based on the same act of taking the victim's car by force. (*Id*. at p. 645.) The trial court counted each prior conviction separately and sentenced the defendant to prison for 25 years to life. (*Id*. at p. 639.)

Our Supreme Court concluded that Vargas's case fell into a "rare category" because her "two strikes were based on the same act." (*Vargas, supra*, 59 Cal.4th 635, 642.) The court reasoned that treating the defendant as a third-strike offender was inconsistent with the intent underlying the legislative and initiative versions of the three strikes law. (*Id*. at p. 645.) In vacating the judgment, the court stated: "We conclude this is one of the extraordinary cases [citation] in which the nature and circumstances of defendant's prior strike convictions demonstrate the trial court was required to dismiss one of them because failure to do so would be inconsistent with the spirit of the Three Strikes law." (*Id*. at p. 649.)

Roberson is not entitled to resentencing pursuant to *Vargas*. His four prior strikes arose from the 1997 armed robbery of four individuals in a Circuit City store. Pursuant to princi-

ples of criminal liability, Roberson was properly convicted of the four robberies committed inside the store by his crime partner. (§ 31 ["All persons concerned in the commission of a crime, whether it be felony or misdemeanor, and whether they directly commit the act constituting the offense, or aid and abet in its commission . . . are principals in any crime so committed"]; *People v. Covarrubias* (2016) 1 Cal.5th 838, 905 [statement of general rule].) The Circuit City robberies did not involve a single act against a single victim as was the situation in *Vargas*. As such, Roberson's sentence is not unauthorized.

On the merits of Roberson's claim that the trial court's denial of resentencing relief as to him was an abuse of discretion, the Court of Appeal upheld the trial court.

> Roberson asserts that the trial court abused its discretion by finding that he currently poses an unreasonable risk of danger to public safety. He points to the overwhelming evidence of rehabilitation as reflected by his college diploma, four vocational training certificates, attendance at self-help classes, and letters from inmates and prison employees describing his efforts to assist other inmates in learning to read and to resolve conflicts peacefully.
>
> Section 1170.126 permits a person presently serving a three strikes sentence for a felony that is neither serious nor violent to petition for resentencing as a second-strike offender subject to certain disqualifying exceptions. If the petitioner is not subject to one of the disqualifying factors, then the trial court shall resentence him pursuant to the two-strike provision "unless the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety." (*Id*., subd. (f).) In exercising its discretion, the court must consider the petitioner's criminal conviction history, including the type of crimes committed, the extent of injury to victims, the length of prior prison commitments, and the remoteness of the crimes; the petitioner's disciplinary record and record of rehabilitation while incarcerated; and any other evidence the court, within its discretion, determines to be relevant in deciding whether a new sentence would result in an unreasonable risk of danger to public safety. (*Id*., subd. (g).)
>
> The trial court possesses discretion to determine whether a petitioner presents an unreasonable risk to public safety. (*People v. Williams* (2018) 19 Cal.App.5th 1057, 1061.) In our review, we determine whether the court's ruling is reasonable. (*Id*. at p. 1062.) Moreover, the abuse-of-discretion standard of review involves "abundant deference" to the court's ruling. (*Ibid*.)
>
> In view of Roberson's seven-year span of criminal acts involving threats with a firearm, armed robbery, and dangerous and frightening freeway pursuits, the trial court did not abuse its discretion. The interludes between Roberson's crimes are brief and he committed the present offenses while on parole for the Circuit City armed robbery.
>
> Roberson has been a model inmate during confinement. Although a different conclusion of dangerousness may be drawn from the evidence of his commendable rehabilitation, we cannot say the trial court's conclusion constitutes an abuse of discretion.

MULTIPLE ACTS DURING SINGLE COURSE OF CRIMINAL CONDUCT COUNT AS MULTIPLE STRIKES

P. v. Ricky Burton

CA4(2); No. E066290
October 19, 2017

Ricky Burton had petitioned the Superior Court to resentence him, complaining that his multiple strikes should not add on, because they came from a single course of conduct. The Superior Court granted the petition, but the Court of Appeal now reversed, and reinstated his original sentence.

> Defendant and respondent Ricky Burton suffered two prior strike convictions, first degree burglary (Pen. Code, § 459) and first degree robbery (§ 211), as a result of offenses he committed in 1995. In 2001, he was convicted of two drug offenses by a jury, and his two strikes were found to be true. Under the Three Strikes law, the trial court sentenced him to 25 years to life. On July 10, 2015, he petitioned for resentencing in light of *Vargas*, in which the California Supreme Court held that two prior convictions arising out of a single act against a single victim cannot constitute two separate strikes, and the sentencing court should dismiss one of them. Defendant argued that because the two strikes used to qualify him for "three strikes" sentencing were based on the same single act, the trial court was required to dismiss one of them and resentence him. The trial court agreed and ordered defendant to be resentenced. The People appeal the resentencing court's order, arguing the court erred in applying *Vargas*. We agree and reverse.

Burton's criminal history was not unlike that of many Three-Strikers.

> Defendant was subsequently convicted of both first degree burglary (§ 459) and first degree robbery (§ 211) in Los Angeles Court Superior Court, case No. TA033430. However, because the robbery and burglary "involved the same basic set of facts," the court stayed punishment for the burglary count under
>
> On January 18, 2002, a Riverside County jury convicted defendant of possession of cocaine base for sale and transportation/sales of cocaine (Health & Saf. Code, §§ 11351.5, 11352, subd. (a)). The trial court found true the allegation that defendant suffered two strikes (robbery and burglary convictions). (§ 667, subds. (c), (e).) Under the Three Strikes law defendant was sentenced to 25 years to life.

The relief granted by the trial court was explained.

> On July 10, 2015, defendant petitioned the trial court for a writ of habeas corpus, arguing that because the two strikes used to qualify him for "three strikes" sentencing were based on the same single act, the trial court was required to dismiss one and resentence him. (*Vargas*, supra, 59 Cal.4th at pp. 646, 649.) The trial court agreed, observing: "When a defendant's prior strike is for a first degree robbery where the degree is due to the robbery's 'perpetration in an inhabited dwelling house' (Penal Code § 212.5(a)), and for a first degree burglary where the defendant's felonious intent was effectively to commit the robbery, the two priors are for the same act under the narrow holding in Vargas, and cannot be used to enhance the defendant's sentence under the three strikes law." The trial court granted relief and ordered the defendant to be brought to court to be resentenced.

The appellate Court then noted that there was an alternative precedent to *Vargas*, *P. v. Benson*, that required a different result.

> In reaching its conclusion, the Supreme Court reasoned that when the offender commits but a single act, he or she does not pose a greater risk to society merely because the Legislature has chosen to criminalize the act in different ways. (*Vargas, supra*, 59 Cal.4th at p. 646.) The Court noted it had previously held that multiple crimes may constitute multiple strikes when crimes are tried together (*People v. Fuhrman* (1997) 16 Cal.4th 930, 933) or even when, because the multiple crimes occur during a single course of conduct, punishment of only one crime is imposed and punishment is stayed under section 654 with respect to the other crimes (*People v. Benson* (1998) 18 Cal.4th 24, 27-31 (*Benson*)). (*Vargas, supra*, at pp. 638-639.) However, the Court clarified that it was addressing "multiple criminal convictions stemming from the commission of a single act[]" and not "multiple criminal acts" committed in a single course of conduct. (*Id*. at p. 648.)

Finding *Benson* to be controlling here, the Court reversed the trial court.

> The facts of this case are similar to *Benson*. Here, defendant committed a robbery during the course of a burglary, rather than an assault, but this is a distinction without a difference for present purposes. And *Benson* remains good law; in *Vargas*, the Supreme Court reiterated the words it stated in *Benson*, "'the electorate and the Legislature rationally could—and did—conclude that a person who committed additional violence in the course of a prior serious felony (e.g., shooting or pistol-whipping a victim during a robbery, or assaulting a victim during a burglary) should be treated more harshly than an individual who committed the same initial felony, but whose criminal conduct did not include such additional violence.' [Citation.]" (*Vargas, supra*, 59 Cal.4th at pp. 646, 648.)
>
> For the foregoing reasons, we conclude the trial court erred by granting defendant's petition for writ of habeas corpus, striking one of his prior felony convictions, and ordering him to be resentenced.
>
> III. DISPOSITION
>
> The trial court's order granting defendant's petition for writ of habeas corpus is reversed, and the sentence imposed on September 2, 2016, is vacated. The trial court is directed to enter a new order denying defendant's petition for writ of habeas corpus: defendant's original sentence is reinstated.

PROP. 36 PETITION CANNOT BE USED AS A LATE VEHICLE FOR GAINING RESENTENCING

P. v. Miguel Cabrera

---Cal.App.5th ---; CA3; No. C081532
March 19, 2018

A trial court's jurisdiction to resentence an eligible Three Strikes defendant does not include reconsidering the initial sentencing court's finding that the conviction was for a serious felony.

Miguel Cabrera was convicted of assault with force likely to cause great bodily injury (GBI) and battery with serious bodily injury. At his trial, the jury failed to render findings on the GBI allegations as to two counts. In 2008, the initial *sentencing court* found the offenses were serious felonies based on the infliction of GBI, and Cabrera received a Three Strikes life sentence. His convictions were affirmed on appeal.

In 2014, Cabrera petitioned for resentencing under Prop. 36. In arguing for his eligibility for Prop. 36 relief, he alleged the initial sentencing court imposed an unauthorized sentence after finding his conviction a serious felony, despite the jury's lack of a finding on that allegation. The trial court declined to alter the original sentencing court's findings and denied resentencing. The Court of Appeal now upheld the trial court.

Under Prop. 36, a qualified defendant serving a Three Strikes sentence for a nonserious felony may petition the trial court for resentencing as a second strike offender. In Cabrera's case, the initial sentencing court's finding that his convictions were serious felonies rendered him ineligible for relief. Although Prop. 36 is an exception to the general rule divesting a trial court of jurisdiction once execution of sentence has begun, that jurisdiction is limited. If the defendant does not satisfy the criteria for resentencing then the trial court has no power to do anything but deny the petition, which the trial court here properly ordered.

Cabrera had been charged multiple counts of assault with GBI, as well as four prior strikes (§ 1170.12) and four prior serious felony allegations (§ 667, subd. (a)(1)). The jury found him guilty on counts 1, 2, and 4, but could not reach verdicts on count 3 and the GBI allegations as to counts 1 and 2. It sustained the strike and prior serious felony allegations. The trial court declared a mistrial as to count 3 and the GBI allegations.

> At the sentencing hearing, the defense objected to serious felony findings on any of the counts of conviction, and the parties argued at length about the effect, if any, that the jury's failure to reach verdicts on the GBI allegations would have on the potential classification of counts 1 (assault) and 2 (battery with SBI) as serious felonies. The defense further argued defendant was entitled to a jury determination before the court could find GBI and thus classify counts 1 and 2 as serious felonies. The sentencing court found that counts 1, 2, and 4 were indeed serious felonies based on its determination that "there [was] great bodily injury" but did not elaborate further on the basis or rationale for that decision. The court sentenced defendant to 30 years to life in prison on count 1, consisting of 25 years to life in prison on count 1, plus a consecutive five years for the prior felony allegation, and identical concurrent terms on counts 2 and 4.

On September 4, 2014, Cabrera filed a Prop. 36 petition for resentencing. The People countered that the original sentencing court had already found defendant's crimes of conviction to be serious felonies and therefore Cabrera was not eligible for relief, because he was serving his current term for a serious felony.

Cabrera replied that the evidence did not support the sentencing court's serious felony findings (made in 2008), and the findings violated *Apprendi v. New Jersey* (2000) 530 U.S. 466 [147 L.Ed.2d 435]. In support of his argument, he cited *People v. Taylor* (2004) 118 Cal.App.4th 11 (*Taylor*), which held that an acquittal on a GBI allegation precluded finding that a battery with SBI conviction was a serious felony due to personal infliction of GBI. (*Id*. at p. 29.) He asked the trial court for "a ruling . . . that the original sentencing court committed error." He characterized the proposed ruling as a "proper exercise of discretion" by the trial court.

At the final hearing on the petition, the

trial court noted that at the original sentencing hearing the People had cited (to the sentencing court) cases holding sections 243 (SBI) and 12022.7 (GBI) were essentially equivalent. Citing *Taylor*, the court opined that the jury's failure to return a verdict on the GBI allegations prevented it from considering the section 243 conviction as the equivalent of a GBI finding. *However, the court concluded that it could not find defendant eligible for relief because the sentencing court's finding that the current crimes were serious felonies was a final judgment*.

Section 1170.126 allows a person presently serving a three strikes sentence for a felony that is neither serious nor violent to petition the trial court for resentencing as a second strike offender subject to certain disqualifying exceptions. (§ 1170.126, subds. (a), (e).) If the prisoner is not subject to one of the disqualifying factors, then the trial court shall resentence him under the two strikes provision "unless the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety." (*Id*., subd. (f).)

Under section 667, subdivision (a), a person convicted of a serious felony who has previously been convicted of a serious felony is subject to a five-year enhancement. In this case, the sentencing court's explicit finding that defendant's current offenses were serious felonies (and therefore subject to the section 667, subdivision (a) enhancement for his prior convictions, which the sentencing court imposed in 2008) renders defendant ineligible for resentencing under the Act. (§ 1170.126, subd. (e)(1).)

Thus, defendant was ineligible for relief unless the trial court had the authority to vacate the explicit findings made by the sentencing court when it rendered judgment in 2008.

This latter conclusion was the crux of the matter. The Court of Appeal determined that because of the finality of the sentencing court findings as to GBI, any reconsideration of the now would amount to an excess of the trial court's jurisdiction.

"Subject to limited exceptions, well-established law provides that the trial court is divested of jurisdiction once execution of a sentence has begun." (*People v. Scarbrough* (2015) 240 Cal.App.4th 916, 923.) Section 1170.126 is one exception to this rule, vesting the trial court with the jurisdiction to resentence qualified defendants serving three strikes sentences. However, that jurisdiction is limited. Section 1170.126 "merely provides a limited mechanism within which the trial court may consider a reduction of the sentence below the original term," and "the potential reduction of the sentence is narrowly circumscribed by the statute." (*People v. Bradford* (2014) 227 Cal.App.4th 1322, 1336.) "[A] section 1170.126 proceeding is not a 'plenary resentencing proceeding.' [Citation.]" (*People v. Clark* (2017) 8 Cal.App.5th 863, 873 (*Clark*).) ….

"Section 1170.126 grants a trial court the power to determine an inmate's eligibility to be resentenced under the Reform Act only if the inmate satisfies the three criteria set out in subdivision (e) of the statute, as previously noted, and contains no provision authorizing a trial court to disregard the required criteria. (§ 1170.126, subd. (e).) Rather, the plain language of subdivision (e) clearly provides that an inmate must first satisfy each criteria set out in subdivision (e) of section 1170.126 before he or she can be resentenced under the Reform Act, and gives the trial court no discretion to depart from the three-step requirement. In other words, if the inmate does not satisfy one or more of the criteria, section 1170.126 grants the trial court no power to do anything but deny the petition for recall of sentence." (*Brown*, at pp. 1511-1512.)

> Revisiting and vacating the sentencing court's conclusion that defendant's prior convictions were serious felonies under the relevant statutory scheme is therefore beyond the scope of section 1170.126's limited grant of jurisdiction.

Finally, Cabrera attempted to argue – now many years after his appeal was final – that the sentencing court rendered an illegal sentence. The Court of Appeal rejected this end run trying to find footing for retroactive resentencing jurisdiction.

> Even were we to analyze the 2008 findings challenged here, which we do not, and conclude that the sentencing court erred in 2008 when it classified the assault and battery convictions as serious felonies and imposed five-year terms for the corresponding section 667, subdivision (a) allegations accordingly, that claim could not be presented to the trial court in 2015, as it correctly ruled. The sentencing court's 2008 findings were not appealed and are now final; the fact that defendant's crimes were found to be serious felonies rendered him ineligible for relief under section 1170.126.

NEVADA CONVICTION DOES NOT SUPPORT CALIFORNIA STRIKE

P. v. Samuel Culverson

CA3; No. C084286
July 3, 2018

Samuel Culverson suffered a 2000 Nevada conviction for robbery with use of a deadly weapon. A jury found true the allegations that he had been convicted of robbery with a deadly weapon in Nevada in 2000 and that the prior conviction met the statutory elements for robbery under California law. The trial court sentenced him as a third striker with enhancements for each of the two prior strikes and personal use of a firearm. Culverson appealed, challenging the use of the Nevada conviction. The Court of Appeal agreed with him.

> We agree with defendant that, pursuant to our Supreme Court's decision in *People v. Gallardo* (2017) 4 Cal.5th 120 (*Gallardo*), the jury impermissibly determined the Nevada conviction met the elements of robbery under California law. We therefore reverse the true finding that defendant's Nevada conviction was a serious felony within the meaning of the three strikes law, strike the associated five-year sentence enhancement, and remand for resentencing.

At retrial of the Nevada conviction as a strike prior/serious felony conviction, the prosecution asked the jury to make two findings: (1) that there had been a conviction of robbery with a deadly weapon in Nevada on August 23, 2000; and (2) that the prior conviction met the elements of robbery under California law.

> In closing argument, the prosecution asked the jury to compare the factual record from the Nevada Supreme Court's opinion against the elements for robbery in California. The trial court informed the jury that defendant appeared to be depicted in the photographs attached to the Nevada judgment of conviction and the jury returned a verdict finding both allegations true. The trial court sentenced defendant to 25 years to life for robbery (based on defendant's status as a third striker) and 10 years for the firearm enhancement, 5 years for the prior strike upheld in our prior decision, and 5 years for the strike arising from the Nevada conviction.

California law permits use of an out-of-state conviction as a prior strike providing

it meets stringent tests. The Court recited the relevant law, as to Three Strikes.

> Under California's three strikes law, a defendant's sentence is enhanced upon proof that the defendant has been previously convicted of a "strike" -- a " 'violent felony' " as defined in section 667.5, subdivision (c), or a " 'serious felony' " as defined in section 1192.7, subdivision (c). (§§ 667, subd. (f)(1), 1170.12, subd. (d)(1).) A qualifying strike includes "[a] prior conviction in another jurisdiction for an offense that, if committed in California, is punishable by imprisonment in the state prison . . . if the prior conviction in the other jurisdiction is for an offense that includes all of the elements of [a] . . . serious felony as defined in subdivision (c) of Section 1192.7." (§§ 667, subd. (d)(2), 1170.12, subd. (b)(2); *People v. Denard* (2015) 242 Cal.App.4th 1012, 1024 [prior out-of-state conviction must involve the same conduct as would qualify as a strike in California and "include all the elements of the California strike offense"].) An out-of-state prior conviction may also be used to impose a five-year sentence enhancement for a prior conviction that is a serious felony listed in section 1192.7, subdivision (c). (§§ 667, subd. (a)(1), (a)(4), 668, 1192.7, subd. (c).)

The legal issue here was whether a judge could make the finding that the alleged strike qualified under California law, or whether this must be determined by a properly instructed jury – a Sixth Amendment question. The California Supreme Court had recently decided this question, based on recent US Supreme Court precedent.

> " 'The Sixth Amendment contemplates that a jury -- not a sentencing court -- will find' the facts giving rise to a conviction, when those facts lead to the imposition of additional pun-

ishment under a recidivist sentencing scheme. [Citation.] This means that a sentencing court may identify those facts it is 'sure the jury . . . found' in rendering its guilty verdict, or those facts as to which the defendant waived a right of jury trial in entering a guilty plea. [Citation.] But it may not 'rely on its own finding' about the defendant's underlying conduct 'to increase a defendant's maximum sentence.' " (*Gallardo, supra*, 4 Cal.5th at p. 134.) ….

Turning to the merits of [that] case, our Supreme Court found the trial court violated [Gallardo's] Sixth Amendment right to a jury trial by engaging in factfinding about the nature or basis of the defendant's assault guilty plea and finding "a disputed fact about the conduct underlying the defendant's assault conviction that had not been established by virtue of the conviction itself." (*Gallardo, supra*, 4 Cal.5th at pp. 124-125, 136-137.)

The jury impermissibly determined that the Nevada conviction

met the elements of robbery under California law.

The parties agree the second question presented to the jury, i.e., whether the Nevada conviction met the elements of robbery under section 211 -- was improper as stated in *Gallardo*, and we agree. Our Supreme Court has been clear that "questions about the proper characterization of a prior conviction are for a court to resolve, based on its evaluation of the facts necessarily encompassed by the guilty verdict or admitted by the defendant in pleading guilty to the prior crime." (*Gallardo, supra*, 4 Cal.5th at p. 139, fn. 6.) Like the jury's proposed review of the preliminary hearing transcript in *Gallardo*, the jury's review of the record of the Nevada conviction did not allow for "the procedural safeguards, such as the Sixth Amendment right to cross-examine one's accusers, that normally apply in criminal proceedings. This kind of proceeding might [have] involve[d] a jury, but it [was not] much of a trial." (*Id*. at pp. 138 -139, fns. omitted.)

The error was not harmless.

The People maintain the jury's serious felony finding error was harmless and we need not reverse it because "this Court can be confident that the Nevada jury that convicted [defendant] necessarily found that he personally used a firearm in committing robbery." The People further argue that, even if we find prejudicial error occurred, we should remand the case "to the trial court with instructions to determine what facts were necessarily proved in [defendant's] Nevada jury trial." We disagree with both arguments.

The Court identified the mismatches between California and Nevada robbery criminal elements.

We reject the People's arguments on harmless error and remand for the same reason -- having reviewed the record presented, there are no facts from which a trial court could conclude the Nevada conviction meets the elements of robbery under section 667, subdivision (a), without violating defendant's Sixth Amendment right.

The elements for robbery under Nevada law and California law do not match. "First, under Nevada law, robbery requires only general criminal intent [citation], whereas under California law, robbery requires a specific criminal intent to permanently deprive another person of property [citation]. Second, under Nevada law, a taking accomplished by fear of future injury to the person or property of anyone in the company of the victim at the time of the offense qualifies as robbery [citation], whereas under California law such a taking does not [citation]. [¶] In view of the foregoing distinctions between the elements of robbery under California law and those under Nevada law, it

was at least theoretically possible that defendant's Nevada conviction[] involved conduct that would not constitute robbery under California law." (*People v. McGee, supra*, 38 Cal.4th at p. 688, disapproved on other grounds in *Gallardo, supra*, 4 Cal.5th 120.) This requires an "inquiry into the record of the Nevada conviction[] . . . to determine whether [the conviction] constitute[s] a qualifying felony for purposes of the relevant California sentencing statutes." (*McGee*, p. 688.)

As our Supreme Court said in *Gallardo*, a trial court is "limited to identifying those facts that were established by virtue of the conviction itself -- that is, facts the jury was necessarily required to find to render a guilty verdict, or that the defendant admitted as the factual basis for a guilty plea." (*Gallardo, supra*, 4 Cal.5th at p. 136.) Here, we do not have a guilty plea. We only have the Nevada jury's verdict and, in rendering that verdict, the jury was not necessarily required to find facts relating to specific intent, nor is there any indication in the record that the jury did so.

The bottom line for CLN readers whose sentences were enhanced by out-of-state convictions is to review the transcripts to determine if the jury made such a finding, and if the elements of the out-of-state offense match those of the California corresponding offense. If not, seek legal counsel to aid in perfecting a sentencing review.

NUMEROUS PROP. 36 DENIALS IN SUPERIOR COURT HAVE BEEN BASED ON TERRIBLE INMATE RECORDS

Many of the unpublished Court of Appeal cases challenging superior court denial of relief to life-sentenced third strikers make findings of record that are on their face incorrigible. Many third-strike lifers had a long history of criminal behavior, making them poster-children for such harsh sentencing. Some are now maturing. When these candidates meet the BPH, they will have to show more than they showed the superior courts in their Prop. 36 petitions in order to gain release on parole. Below are some (redacted) records of what recent third-strike lifers tried to get the superior courts to accept as evidence of safe releasability.

These record summaries are offered to CLN readers in the spirit that they will stimulate self-examination with an eye for what changes a "serious third-striker" will have to make in order to be found suitable by the BPH in years to come.

Case #1 – Pre-prison record:

The court observed that defendant's criminal history reflected a 13–year string of violent property crimes, dating back to 1986 when he was 14 years old. Two juvenile petitions were sustained against him for robbery. During one of those robberies, defendant grabbed the victim's purse, knocked her to the ground and dragged her by the hair. When defendant was 15 years old, a juvenile petition was sustained against him for attempted robbery and assault with a firearm. He and a companion ordered a pizza, intending to rob the delivery boy. During the attempted robbery, defendant shot the victim in the stomach. Defendant denied he had intended to shoot the victim, and claimed the gun had accidentally discharged. He was committed to a camp community placement for nine months.

At age 17, defendant was convicted of attempted robbery with personal use of a firearm. He accosted two people on the street, yelling, "Give me your money, I have a gun!" A patrol car

pulled up and he was arrested. Defendant was deemed unfit for juvenile proceedings, tried as an adult and sentenced to 40 months in prison in October 1989. He was paroled in July 1991.

In October 1993, defendant was convicted of possession of a controlled substance and sentenced to three years' probation and one year in county jail.

In March 1995, defendant was sentenced to six years in prison for first degree robbery. He had grabbed money from a woman on the sidewalk and, when her boyfriend approached, struck the boyfriend in the head with a brick. Defendant was charged with assault with a deadly weapon and robbery, but convicted only of robbery. Defendant denied having hit the man with a brick.

Defendant was returned to custody four times between July 1998 and March 2001: (1) in July 1998, he suffered a parole violation, following an arrest for assault with a deadly weapon; (2) in June 1999, he was returned after an arrest for robbery; (3) in November 1999, he was returned to custody for receiving stolen property; and (4) in March 2001, he was returned after a parole violation following another arrest for robbery. Defendant's current life commitment offense was committed in 2002. Defendant denied any involvement in the burglary that led to his current commitment, and claimed that no witness identified him as a perpetrator, a claim the court found contradicted by the probation report.

Case #1 – In-prison record:

11 RVR's:

March 14, 2003: Delaying a peace officer. Defendant participated in a protest by African-American inmates who felt oppressed by guards who kept them on lockdown and kept them from visiting the canteen. Protestors refused to relinquish food trays and covered their cell windows with paper.

June 24, 2005: Possession of inmate manufactured weapon. A plastic weapon made from a toothbrush was found among defendant's belongings, previously inventoried and stored in a locker after he had been moved to segregated housing. The court gave little weight to this incident because evidence showed defendant had not possessed the weapon, which was placed by another in his belongings.

June 1, 2007: Battery of another inmate resulting in no serious injury. Several inmates were fighting on a basketball court. Defendant was not a participant at first, but then he ran toward an inmate who belonged to the Bloods gang (who had been sitting on the court) and struck him in the face. Defendant refused to follow orders to stop fighting, and had to be subdued by guards. He was found guilty of battery on an inmate without serious injury.

August 13, 2008: Conduct which could lead to violence. A guard saw defendant and another inmate "squared off [against] one another" in a "fighting stance."

March 10, 2103: Fighting. Defendant and another inmate used their fists to strike one another in the chest and upper arms, ignoring orders to stop fighting, until they were subdued by blasts of pepper spray.

July 19, 2013: Fighting. Defendant and another inmate fought in the prison yard. Both men ignored an activated alarm and continued to fight until grenades were detonated.

April 30, 2014: Fighting. Defendant fought with another inmate in a housing unit, and other inmates tried to join the fight. A guard ordered the inmates to stop, but defendant and two others kept fighting until the guard fired a sponge round.

May 8, 2014: Fighting. Defendant and another inmate struck one another with their fists in the face and torso until a guard blasted them with pepper spray.

November 7, 2014: Fighting. An inmate rushed into defendant's cell and attacked him. Three

rounds of pepper spray were required to stop the fight.

January 19, 2015: Fighting. Defendant fought with another inmate on the yard, and failed to stop after an alarm was activated and two guards ordered them to stop. Guards deployed grenades to stop the fight.

March 31, 2015: Conduct conducive to violence. Defendant and another inmate were trying to strike one another, when a guard ordered the entire prison yard down, and they assumed a prone position.

Case #1 – Rehabilitation record:

Defendant obtained his GED while incarcerated. From 2002-2012, defendant consistently attended and helped arrange weekly worship services, bible studies, and choir rehearsal, and helped to facilitate the choir rehearsal and group bible studies. A prison chaplain observed that defendant's involvement and desire to grow spiritually had a positive effect on his life and those of his peers. Defendant acknowledged that, although he had limited access to work and programs, he could have participated in mail-order correspondence courses. Instead, he had chosen to spend his time in church and writing. He tried to take a vocational course, but the funding was cut.

Defendant began participating in self-help programming in earnest after filing his petition for resentencing. In 2014, he participated in a mental health life skills group, and was commended for his willingness to share his knowledge and insight with others. In 2015 defendant completed a number of self-study courses, and received a certificate of achievement for completing a program on crisis management. In 2016, he attended meetings for a gang prevention program, attended 10 AA/NA meetings, and completed 15 hours of substance abuse training.

Defendant worked on a recycling crew from August 2011 through March 2012, and as a porter from May 2012 through May 2014. In October 2015, he asked to be placed on a wait list for a job in laundry services.

Defendant had been offered housing and a volunteer clerk position through the Partnership for Reentry Program (PREP) program. As a clerk, defendant would gain work experience filing, writing letters, making phone calls and working with computers, at the same time he received help adjusting to life in the community. PREP guaranteed defendant an interview with a job developer, and offered to support him until he had a job and had reacclimated to society. In addition, Homeboy Industries had offered mentoring and counseling services, and had also offered to help defendant find work. Defendant's mother, his lifelong friend and a reverend had each professed their willingness to provide emotional and financial support, including clothing, necessities and transportation. The court found that defendant's post-release plan was realistic and supported his suitability for resentencing.

Case #2 – Pre-prison record:

Defendant was convicted of possession of a controlled substance in 1978 or 1979, 1980 and 1983. In 1986, he was convicted of robbery; a co-perpetrator in the robbery had a firearm. He was committed to the [prison] and ultimately discharged in 1992. That same year, he was again convicted of possession of a controlled substance. In 1993, while on probation, he was convicted of second degree burglary of a school. He was released on parole and violated his parole several times. In 1995, while on parole, defendant was convicted of three counts of robbery, being a felon in possession of a firearm and evading a peace officer. While in prison in 1998, he was convicted of the current offense of possession of heroin in prison. Defendant's wife brought him 2.5 grams of heroin in balloons, which defendant swallowed. Prison officials were required to obtain a court order for a laxative to force defendant to pass the balloons.

Case #2 – In-prison record:

9 RVR's:

Defendant received nine disciplinary serious rules violations (RVR's) between 2000 and 2012. Four RVR's were drug related: two for drug possession, one for possession of drug paraphernalia and one for distribution of drugs. The 2006 RVR for distribution of drugs involved defendant's swallowing seven balloons of heroin weighing 13.5 grams. Four additional RVR's were for failure to obey a direct order. One RVR was for battery with a weapon on a fellow inmate.

Case #2 – Rehabilitation record:

The court also considered defendant's general lack of preparation for his post-release life. Defendant did not have any satisfactory or better performance in work, school or vocational training. He did not provide the court with any post-release plans.

Case #3 – Pre-prison record:

Appellant suffered his first misdemeanor conviction in 1985, when he was 19, for being under the influence of a controlled substance (Health & Saf. Code, § 11550, subd. (a)). In 1987, he was convicted of misdemeanor assault with a deadly weapon (§ 245, subd. (a)(1)). In 1988 and 1990, he again suffered misdemeanor convictions for controlled substance use (Health & Saf. Code, § 11550, subd. (a)). The record–a CLETS printout–says 1988 and 1990. In 1989, appellant was convicted of misdemeanor assault with a deadly weapon (§ 245, subd. (a)(1)) and petty theft (§ 484, subd. (a)). In 1990, appellant suffered a second misdemeanor conviction for petty theft (§ 484, subd (a)).

Appellant suffered his first felony conviction, for robbery, in 1990 (§ 211). Shortly after his release from prison, in 1991, appellant robbed a [fast food store] while armed with a screwdriver (§ 211). Approximately two weeks later, he robbed the same donut shop, again while brandishing a screwdriver (§ 211). Three days after that, appellant robbed a [convenience] store (§ 211). Appellant pled guilty to all three robberies and related weapons enhancements (§ 12022, subd. (b)) in September 1991 and was sentenced to eight years in prison.

Appellant was paroled in 1996. He committed the instant offenses, unlawful taking or driving of a vehicle, burglary of a vehicle, and attempted grand theft auto, while on parole.

Case #3 – In-prison record:

13 RVR's:

During his current term of incarceration, appellant has committed 13 serious rule violations. In 2000, he and a group of other inmates attacked an inmate whom guards were escorting through the prison. After a disciplinary hearing, appellant was found guilty of "Active Participation in Condition Likely to Threaten Institutional Security."

Appellant amassed three more serious rule violations and two felony convictions as a result of an incident in October 2002. A correctional officer observed appellant and his cellmate injecting themselves with a substance later determined to be heroin. Appellant pushed the officer's arm out of the way and knocked him to the ground while attempting to flush the heroin down the toilet. The officer later complained of elbow and back pain, as well as a possible needle puncture. Appellant refused demands to submit to a urine test. After a disciplinary hearing, appellant was found guilty of possessing a controlled substance, battery on a peace officer, and refusing to provide a urine sample. He also was criminally prosecuted for battery on a prison guard (§ 4501.5) and possession of a controlled substance in prison

(§ 4573.6). He pled no contest to the possession offense and was sentenced to four additional years in prison.

In April 2003, appellant manufactured alcohol in his cell. In October 2003, he participated in a riot after engaging in a fistfight with nine other inmates. He was found guilty of both offenses after

disciplinary hearings

After remaining discipline-free for more than a year, appellant committed several offenses in 2005 and 2006; he was found guilty of each offense after disciplinary hearings. In February 2005, he possessed an "inmate manufactured weapon rolled up in plastic in the crotch flap" of his shorts. Just a few days later, appellant appeared at another disciplinary hearing and was found guilty of conspiracy to introduce narcotics into the prison after a holiday card addressed to him was found to contain methamphetamine. In June 2005, he engaged in mutual combat with his cellmate and was found guilty at a disciplinary hearing. A few weeks later, at another hearing, he was found guilty of obstructing a peace officer when he refused to accept a new cellmate. In April 2006, he failed to report to church to gain access to a certain prison yard and was found guilty of the offense at a disciplinary hearing.

In March 2008, appellant and another inmate attacked a third inmate "about the head and upper torso" with "inmate manufactured weapons" made of sharpened copper tubing. The victim suffered puncture wounds and slashes to his face, back, and forearms. Appellant initially was cited for attempted murder, but after a disciplinary hearing was found guilty only of the lesser included offense of battery on an inmate with a weapon. Appellant also was criminally prosecuted for assault with a deadly weapon (§ 245, subd. (a)(1)). He pled guilty and was sentenced to an additional four years in prison.

Appellant's final disciplinary hearing occurred in January 2012. He was found guilty of participating in a riot that involved all inmates on the yard.

Case #3 – Rehabilitation record:

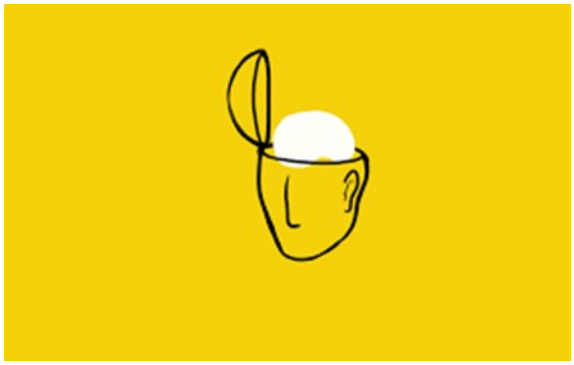
He began receiving vocational training. He completed a 20-hour safety training orientation for healthcare facilities maintenance in October 2014 and later received training in cleaning chemicals and maintaining floors and other surfaces. He started a job working in the prison's healthcare department and received laudatory "chronos" from his supervisors. One such chrono, dated June 10, 2014, stated that appellant "has followed direction at all times, has shown the utmost respect to all staff in his vicinity, and never misses a day of scheduled work. He takes pride and personal initiative in making [his work area] immaculately clean." Appellant testified that he planned to "come back and be a supervisor" at the same facility if he were released.

Appellant also reached out to two placement programs that could house him if he were released. One of the programs, a "residential educational organization for former alcoholics, drug addicts and convicts," tentatively accepted him, "pending any unknowns found during the final interview at our facility the day of entry." Appellant additionally testified that he was working on earning his G.E.D.

SUMMARY

The point of reviewing these cases is that they all begin with hopelessly unacceptable behavior in society, for which lengthy incarceration was invoked to free the public of the individuals' continued threat. Under Prop. 36, each of these prisoners who had been convicted of a non-violent third offense, but nonetheless sentenced to a life term because of their protracted incorrigibility, failed to convince a superior court judge that their sentence should be ameliorated.

What remains to be answered is when and how these lifers can turn their lives around sufficiently to convince a panel of the BPH that they are now no longer a danger to society. Today the BPH offers hope to those who make the internal changes and do the work to demonstrate their true reform from their past. CLN will report on upcoming repeat-offender Third-Strike lifer parole hearing results as they are made public in the Court of Appeal records.



Board's Information Technology System

Commissioners Summary
All Institutions
June 01, 2018 to June 30, 2018

Summary of Suitability Hearing Results per Commissioner

	ANDERSON, JR	BARTON	CASSADY	CASTRO	CHAPPELL	DOBBS	GROUNDS	LABAHN	LONG	MINOR	MONTES	PECK	ROBERTS	RUFF	TAIRA	TURNER	BPH HQ	Total CMR Hrg	Hrgs Conducted w/ more than 1 CMR	Actual Hrgs Conducted
Suitability Hrg Total	**26**	**17**	**24**	**24**	**20**	**22**	**25**	**24**	**17**	**15**	**28**	**0**	**24**	**22**	**9**	**14**	**145**	**456**	**5**	**451**
Grants	12	5	8	2	4	9	2	6	9	3	8	0	7	4	4	4	0	87	2	85
Denials	13	8	11	15	10	10	18	14	8	7	12	0	10	15	5	8	0	164	1	163
Stipulations	0	4	2	3	4	3	3	4	0	4	6	0	5	2	0	0	0	40	2	38
Waivers	0	0	0	0	1	0	0	0	0	0	1	0	1	0	0	0	32	35	0	35
Postponements	0	0	2	3	1	0	2	0	0	1	1	0	0	1	0	2	103	116	0	116
Continuances	1	0	1	0	0	0	0	0	0	0	0	0	1	0	0	0	0	3	0	3
Tie Vote	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	1
Cancellations	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	10	10	0	10

Denial Length Analysis per Commissioner (Summary of Denials and Stipulations)

Subtotal (Deny+Stip)	**13**	**12**	**13**	**18**	**14**	**13**	**21**	**18**	**8**	**11**	**18**	**0**	**15**	**17**	**5**	**8**	**0**	**204**	**3**	**201**
1 year	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2 years	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
3 years	10	10	9	7	13	12	8	10	3	8	9	0	9	8	5	7	0	128	3	125
4 years	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
5 years	2	1	3	5	0	1	10	3	3	1	7	0	4	6	0	1	0	47	0	47
7 years	1	1	1	5	1	0	1	5	2	1	2	0	2	3	0	0	0	25	0	25
10 years	0	0	0	1	0	0	1	0	0	1	0	0	0	0	0	0	0	3	0	3
15 years	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1	0	1

Waiver Length Analysis per Commissioner

Subtotal (Waiver)	**0**	**0**	**0**	**0**	**1**	**0**	**0**	**0**	**0**	**0**	**1**	**0**	**1**	**0**	**0**	**0**	**32**	**35**	**0**	**35**
1 year	0	0	0	0	1	0	0	0	0	0	0	0	1	0	0	0	18	20	0	20
2 years	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	6	7	0	7
3 years	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	7	7	0	7
4 years	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
5 years	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	0	1

Postponement Analysis per Commissioner

Subtotal (Postpone)	**0**	**0**	**2**	**3**	**1**	**0**	**2**	**0**	**0**	**1**	**1**	**0**	**0**	**1**	**0**	**2**	**103**	**116**	**0**	**116**
Within State Control	0	0	0	1	0	0	0	0	0	0	0	0	0	1	0	0	91	93	0	93
Exigent Circumstance	0	0	0	2	1	0	2	0	0	1	1	0	0	0	0	2	12	21	0	21
Prisoner Postpone	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	2

LSA AT BPH

At the July Executive Board meeting of the BPH, Life Support Alliance was given the opportunity bring commissioners up to date on who we are, what we do and how we do it. Noting that a majority of commissioners have joined the board since LSA began regularly attending the monthly business meetings, we wanted to the newer appointees to understand our larger mission and our history, as well as how we go about achieving that mission.

Following a brief recounting to our history (founded in 2010, for the purpose of educating ourselves and lifers about the parole process and the public about the rehabilitation of lifers) and past events (being originally stonewalled by previous BPH administrations, early successes in an Assembly Public Safety Committee hearing in 2010 about lifers) the positive change wrought by a new political administration and new officials at BPH (the Brown administration began in 2011, the appointment of an actual attorney, Jennifer Shaffer as head of the BPH and increase in transparency) we outlined for the board our multiple messages, messages to prisoners, to lifer families, to the public, and to the system, and how we present those messages.

Our message to lifers is pretty simple:

1) In most cases, you got yourselves in here, and it's largely up to you to get yourself out.
2) Parole hearings are no longer venues simply to find quasi-legal reasons to keep lifers in prison; if you go in prepared to succeed, you will
3) It is a process, and not an easy one, but no one said it would be easy, nor should it be. Suitability isn't easy, but it is possible.
4) No attorney can 'get' a date for an unprepared lifer and no attorney can 'loose' a date for a prepared lifer

Our message to families is that they can be a substantial help to their prisoners, but not if their only action is to rail against the system and make an emotional plea for Johnny to come home. Learn what you can do, understand and follow through

And that's our message to the system, this is where we come in, providing the bridge between the system and the end users, prisoners and families, understanding the process and being willing to do the work required.

How do we pursue conveying these messages? Through several methods.

We reach our constituents through our newsletters: Lifer-Line, our free monthly newsletter. We began this publication in 2010 mailing it to 6 inmates. It now goes to nearly 1700 people each month via email, who print the newsletter and mail it to their lifer. We also serve about 450 indigent inmates, who have no family to do this for them, via a mail tree system, where a volunteer will adopt 5-20 inmates and provide the mailing service for them. Our email subscribers include interested parties in the UK, France, Australia and Germany. And those international subscribers are surprisingly vocal about California corrections.

California Lifer Newsletter is the pre-eminent publication for California life term inmates. We assumed publication of this bi-monthly periodical in 2012, mailing it to a paid subscriber list of nearly 500, mostly inmates, but also attorneys, public defenders, and even a few elected officials. We also provide 2 copies to each prison library. CLN contains legal analysis of cases germane to lifer issues, written by John Dannenberg, a former lifer, now paralegal.

And we hear directly with inmates through the more than 250 letters we receive each month, along with countless phone calls and emails from family, asking question on anything from what, really, is insight, to how to appeal a CRA, to underperforming state attorneys.

And in keeping up with the times, we have a presence on social media. Our Facebook page, Life Support Alliance (what else?) posts information on subjects from upcoming seminars to changes to regulations to new commissioners. Recent posts on

up-coming changes to family visiting regulations have elicited over 10,000 'hits,' or views in less than 2 days. And once a lifer is released, he or she can join the Facebook page of Lifers' Success Association, where paroled lifers keep in touch, welcome newly released lifers back into society and provide contacts and context for each other.

We reach family members via our Lifer Family Seminars, covering everything from new laws to why Johnny isn't home 20 years into a 15 to life sentence, to why hasn't by B number boyfriend come home. We provide with both hope and practical advice on what can be done. Families are often more lost at the beginning of a life term than the prisoner and can be a source of assistance or hindrance as their lifer moves through the system—we try to give them to the tools to hold their lifer accountable, while assisting him or her in the changes needed to come home.

The seminars are a full day--no other group provides this sort of realistic, comprehensive look at parole suitability, the hearing process and new laws and policies, including multiple page resource packet for each participant, that contains an attorney list, transitional housing list and how to navigate the CDCR website and BPH home page. Many attendees return for more than one seminar, and other organizations send representatives, to learn from what we've learned, attorneys are often present as attendees not presenters, members of the faith community and even the occasional elected officials. But CDCR keeps us supplied with a never-ending stream of first time customers. We also host training sessions for members of Inmate Family Councils.

We also speak publicly to the media about lifers. The press tells us it's often hard to find someone willing to go on camera with positive words about prisoners' release, but we are willing to put ourselves out there, with facts, not just opinions. We've also quoted in several books including Nancy Mullane's Life After Murder and used as a source in several academic studies and print media articles.

As we've grown, we've adapted our mission to provide help directly to inmates, via workshops and programs presented in the prisons. The Amends Project is just over 2 years old, a fully researched and studied program on writing appropriate and meaningful letters of apology to victims. Presented to date in nearly a dozen prisons, with over 200 certificates of achievement awarded.

Connecting the Dots develops insight in to the causative factors of crime, with part of the presentation done by former lifer currently on parole. This program rolled out about 6 months ago, to date presented at 6 prisons, to over 600 lifers, including all yards at PVSP and HDSP. At CCC and HDSP, we were only the second outside group to come to the institutions.

Transcript Reviews are not legal reviews, but more a Toastmaster's Lesson, on how to make your case, organize your presentation and put your best foot forward—no holds barred, real and straight talk. No charge, no obligation.

What do we see going forward? We'll continue to monitor the process, as new laws are enacted, and new commissioners appointed we will study the process and policy changes to keep lifers informed of how these changes affect their hearing prospects, as well as provide input to the legislative branch. We continue to train new parole hearing observers to create a foundational understanding of the process and to allow them to continue programs and services.

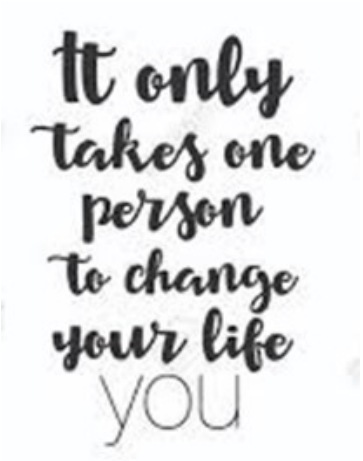
And CRA process; one of our prime areas of concern and study continues to be the CRA process—we've studied and observed this from the sketchy beginning of the FAD, to policy and procedure today. We think there remains room for improvement.

Also, on the horizon are additional programs. Understanding Suitability will provide practical explanations on the basic mechanics of a parole hearing, to promote understanding of the importance of transparency and openness in that proceeding, providing prisoners with insight into presentation, how to prepare parole plans and resources availa-

ble after release. The program revolves around a straight talk explanation of what the board expects in terms of rehabilitative programming and results, and how prisoners, their families and supporters can work together for a successful outcome, not only in parole suitability, but reintegration into the community.

Two of the most monumental events in any prisoner's life are entering prison and being released from prison. Lifers and Wifers introduces some of the potential pitfalls to relationships, support networks and smooth transitions by alerting returning prisoners to unforeseen issues often experienced by returning lifers, providing experience-based suggestions on remedies and support providers. Focused primarily on those issues often experienced by prisoners returning to a spousal or partner relationship, the information and counsel provided is also valuable to the family and we hope to include some of those family members in the workshop

Mock Board Hearings, with inmates' role playing the various characters in the proceedings, allows prisoners to experience an approximation of a hearing, providing them with a reference experiences prior to their own hearing. Real, redacted case factors are used.



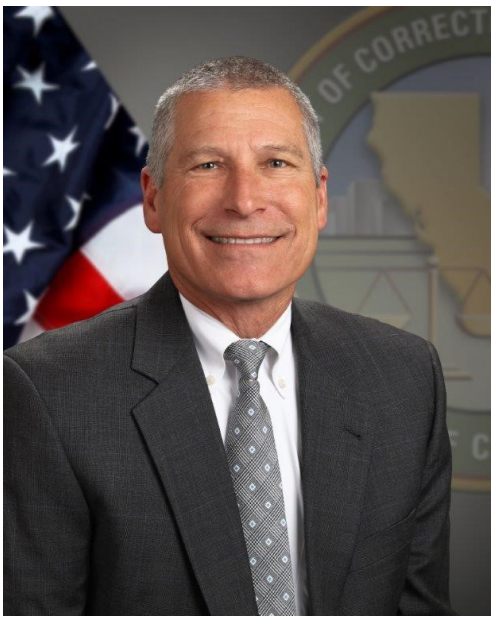
A NEW FACE ONCE AGAIN

As we reported, unofficially, a few months ago, BPH Commissioner Marisela Montes has stepped down from the board, officially leaving her position at the end of June. Montes was appointed to the board in 2012 and reappointed again in 2015, and again in 2017. However, she declined to sit for a confirmation hearing from the Senate Rules Committee.

In her place, Brown, in early July appointed Neil Schneider, 58, of Sacramento. At first blush Schneider seems a bit of a change from the usual commissioner material. In 2018 he became and adjunct assistant professor in the Administration of Justice Department at Los Rios Community College.

Before joining academia, Schenider was a 20+ year veteran of the Sacramento Police Department, staring as an officer and rising to the level of Captain. He received a Master of Public Policy and Administration from California State University, Sacramento. Schneider is now undergoing the training process for new commissioners and has reportedly been seen observing several parole hearings. He is expected to begin 'flying solo' within a few months.

Also reappointed by Brown, for varying terms, were Dianne Dobbs, David Long, Michelle Minor, Terri Turner and Troy Taira. These renominations are interesting from several perspectives, given that Dobbs, Long and Turner were only recently, as in last month, approved from their previous appointments by Brown. Taira rejoined the board last month, appointed to fill the spot left vacant by the retirement of John Peck; Taira has yet to undergo a confirmation hearing for this appointment, and now has been re-appointed before, it appears, being approved for the previous appointment.



Commissioner Neil Schneider

BOARD BUSINESS

The early summer months' Executive Board Meetings of the Board of Parole hearings were remarkably brief, absent the en banc hearings. June's meeting lasted less than two hours over the span of two days, including en bancs for that month. And the July meeting, despite two presentations including one by Life Support Alliance (see report else where in this issue) consumed less than two hours on the first day and just over 2 hours on the second day, which was devoted to en banc considerations. As a reminder, Executive Board meetings are held the third week of every month, beginning on Monday afternoon and continuing to Tuesday, when en banc hearings are held.

In June the commissioners heard routine reports from staff, including Chief Legal Counsel Jennifer Neill's report that In Re: Butler is now settled, and the board will no longer be required to calculate base terms at any parole hearing. The Butler case concluded a few months ago, basically setting the standard that lifers' base terms will be considered the length of the sentence imposed by the court; thus, those with a 25 to life sentence will have a base term of 25 years, those with a 15 to life sentence, will have a base term of 15 years, etc.

And, in one of her last appearances at the Executive Board meetings, now former Commissioner Marisela Montes requested future training for commissioner on any differences or considerations in conducting hearings for those originally sentenced to LWOP but who are now eligible for parole hearings, due to changing laws. BPH Executive Director Jennifer Shaffer, while not closing the door on such future training, stated hearings for those now eligible for parole but with original LWOP sentences are subject to the same legal standards as any other parole hearing.

At the July meeting, Shaffer noted that 5 commissioners, Turner, Dobbs, Barton, Castro and Long were confirmed. She also announced the departure of Montes and the appointment by Brown of Neill Schneider as her replacement. For more on Schneider, see story elsewhere in this issue of CLN.

July also saw a report from CDCR's Division of Rehabilitative Programs on DRP's transitional housing program, which has expanded to provide additional services in transitional housing to lifers and other long-term prisoners. DRP representative informed the board the division now operates two houses in Northern California, 50 beds each in Oakland and San Francisco and several facilities in Southern California, including 127 beds in Los Angeles, and 2 facilities of 15 beds each in Riverside and San Diego. DRP hopes to add 98 more beds in Los Angeles.

EN BANC HEARINGS

As Governor Jerry Brown's term nears its end, the number of commutation petitions flooding his office increases, evidence of which is noted in the increasing number of those considerations coming before the Board of Parole Hearings each month at the BPH's monthly Executive Board meetings. To wit, one commutation consideration in June, and a whopping 6 such appeals at the July meeting.

The June request for commutation by **Timothy Thompson**, supported by representatives from the Prison University Project, and, surprisingly, not opposed by the LA DA's office, was sent to the Governor with a recommendation to grant the commutation request. In July 5 of the 6 commutation considerations were returned to the Governor in support of commutation. The requests of **Arturo Guerrero** and **Eric Lockhart**, who saw no speakers in support or opposition, were recommended for approval. The request of **Kenneth Jordon**, despite being opposed by the LA DA's office, was still recommended for approval.

A similar positive nod was given to the commutation request of **David Smith**, who was supported by his brother, a former Los Angeles police officer, who noted his incarcerated bother has been diagnosed with a terminal disease. Despite this, the LA County DA's office predictably opposed the ailing Smith's release under commutation of sentence. The commutation request of **Travis Westly** was referred to the next BPH meeting of the board, to allow for investigation of new allegations raised at the en banc by the Riverside County DA's office. Westley's request was supported by several relatives.

In an interesting and troubling case, a parade of over a dozen supporters of commutation for **Alfredo Perez** appeared to speak on his behalf, noting Perez had previously been released under the provisions of Prop. 36, but remanded to custody again after the Fresno County DA's office eventually prevailed in the courts with their argument that Perez' release under Prop. 36 had been improper. During the over 4 years Perez was in the community, he appeared to have made a successful transition, as his supporters detailed, including a wrenching appeal from Perez' now terminally ill daughter.

In addition to family Perez' release under commutation of sentence to time served was supported but a former correctional officer at CCWF and the Fresno County public defender's office. Predictably, the Fresno DA's office opposed. However, the BPH voted to send the request to the Governor with a positive recommendation.

A July request for support in the request by **Vonya Quarles** for a pardon also received a positive vote from the board, and was, surprisingly, supported by the LA DA's office. There were no other speakers in support or opposition.

In June the board, scheduled to consider 4 requests for recall of sentence under compassionate release due to terminal illnesses, in the end, were only able to consider two of those requests, as two of the inmates, **Albert Davis** and **Claude Corker**, died before their requests for release could be considered. The remaining two ill prisoners, **Charles Brewer** and **Angelo Melendez**, both received a recommendation for recall of sentence. Similarly, the July request of **David Hayward** for compassionate release, was also approved.

En banc considerations that always elicit questions, though those questions are seldom answered, are those generated by a member of the parole panel which made the suitability decision and who may have later had second thoughts and requested consideration by the entire board. Such was the case in June for **Bernadette Corvera**, granted a parole in May. The board voted to vacate the grant and schedule a new hearing to further consider Corvera's underlying factors of criminality and substance abuse.

In July the grants of **Adrian Cain** and **Mark Radke** were explored by the entire board because of referral by a panel member, with Cain's denial of parole being affirmed, and the grant for Radke vacated, with a new hearing scheduled. The LA County DA supported the denial of Cain.

Radke's complicated case has been before the Executive Meeting in previous months, and as previously the San Diego County DA opposed the grant, in this instance playing to the audience and public fears, claiming the board had received several letters from San Diego residents, who, though they did not know Radke, nonetheless, feared his release. Radke will receive another hearing to consider, once again, whether Radke's version of the crime is implausible.

In July the denial of **Charles Spence**, referred to the board by the Governor, was vacated and a new hearing ordered for the next available calendar. Spence was supported by a large contingent of family members and attorney Keith Wattley. Also, in July the grant given to **Jermaine Johnson** was referred to en banc by BPH counsel, to consider new information. Johnson's grant was vacated and a new hearing slated.

June and July meetings both saw the commissioners act to decide tie votes from parole panels considering **Phillip Vasquez** in June and **Thue Vang** in July in both cases standing with the panel member who voted to deny parole. In tie votes, no public comment is allowed.

BILL AND INITIATIVE UPDATE

Legislative bills introduced this session must be passed and signed into law by the Governor by September 15, 2018, most to take effect on January 1, 2019. Several ballot measurers were also proposed for the upcoming November election, some have already failed to obtain the required number of signatures, some will be on a future ballot.

BILLS

AB 665—This bill authorizes veterans who were convicted of a felony prior to January 1, 2015 and who may have suffered various PTSD or other emotional issues as the result of their service to petition for a recall of sentence under specified conditions. The bill would require the court to determine whether the person satisfies the specified criteria and authorizes the court, in its discretion, to resentence the person following a resentencing hearing. Any resentencing could not be for a term longer than the original sentence and would require the individual to be given credit for time served. This bill passed the legislature but is currently held in the Senate Appropriations Suspense file, pending budgetary action to provide funds for implementation. This bill is out of the Assembly, where it faced little opposition, and is now in the Suspense fine in the Senate, awaiting assignment

AB 1940—This bill would have created an earned discharge program for those on parole to earn credits toward their parole discharge date through accomplishment of various educational, vocational and public service activities. Lifers, subject to possible lifetime parole, could earn credits toward their discharge review date via the same activities. The bill failed to pass its house of origin and is now dead.

AB 2550—prevents male officers from performing pat down searches of female inmates or entering areas where female inmates are likely to be undressed, unless there is imminent danger of harm to the inmate or others, or unless a female officer is not available. This bill is now on the Assembly floor, awaiting a vote. If passed it will proceed to the Senate side.

SB 1242—add language requiring additional conditions to grant parole be codified, including demonstration of remorse and insight, reasonable time free of disciplinary, realistic post release plans, all of which are already part of parole consideration, though not in legal terms. In some way this bill impinges on the discretion of the BPH yet gives no specific standards/guidelines. More importantly, and the real purpose of the bill, would be to exclude from YOPH consideration those prisoners whose victim was a peach officer or former peace officer. This bill has been referred to the Senate Committee on Public Safety.

SB 1391—This bill would amend Prop. 57, as allowed in the language and consistent with and in furtherance of the intent that proposition, regarding the authority of the District Attorney relative to juvenile offenders. This bill passed the Senate and is now in the Assembly Approbations committee.

SB 1437—proposed change to the felony murder rule, through legal language that would remove malice from consideration in a crime unless the individual charged personally committed the homicidal act, acted with premeditated intent to aid and abet that act where in death occurred or the person was a major participant in the underlying felony and acted in reckless indifference to human life. It would also be retrospective, providing a method of resentencing those convicted of first or second-degree murder under

the felony murder rule or the natural and probable consequences doctrine. This bill has passed the Senate and is now in the Assembly Appropriations Committee.

On the initiative front, any proposition proposed for the ballot, where the voting populace would pass, or not, the proposal, most of those proposed have failed to acquire the required number of registered voter signatures before their specific deadlines. Gone from possible consideration in November are:

Parole Consideration for Elderly Prison Inmates: failed as of February 2018, this would have allowed elderly parole consideration for those inmates who were 80 years of age, had served at least 10 years in prison and had not been previously denied parole.

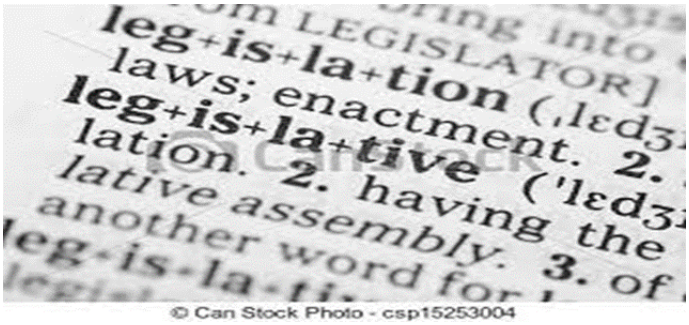
Second Chance for Second Strikers: failed as of April 2018. This would have brought to earlier parole hearings those who received an enhanced sentence for a second-strike crime committed before the age of 23.

Eliminating Voting Restrictions on Prisoners and those on Parole: failed as of May 2018. This would have allowed those convicted of felonies and still in prison or on parole to register to vote and vote in elections.

Amending Three Strikes for Repeat Offenders: failed, July 2018, would have allowed imposition of three strikes penalties only for violent or certain specified sex offenses.

And while the following initiative will not be on the ballot in 2018, it will appear on the November 2020 ballot, and something all prison advocates should be wary of. The "Reducing Crime and Keeping California Safe Act of 2018," (which may be renamed to reflect the change in a ballot year) has, from the beginning, been viewed with concern by many, from prisoner advocates to CDCR officials.

This initiative which gathered the required number of signatures but failed to get all authenticated by the required time frame, meaning that while it will not be on the November ballot this year, it WILL appear on the ballot for the general election in 2020. And while we plan to be around in 2020 and will remind everyone why this proposal should be repudiated, basically it would reverse many of the positive effects of Propositions 36, 47 and 57. And while sweetly named (who wouldn't want to keep California Safe?) this is a nasty piece of work, supported by DAs, Sheriff's associations and retail money, based on the premise that the above previous propositions, in conjunction with AB 109, have caused an increase in crime state wide that is costly for retail businesses.



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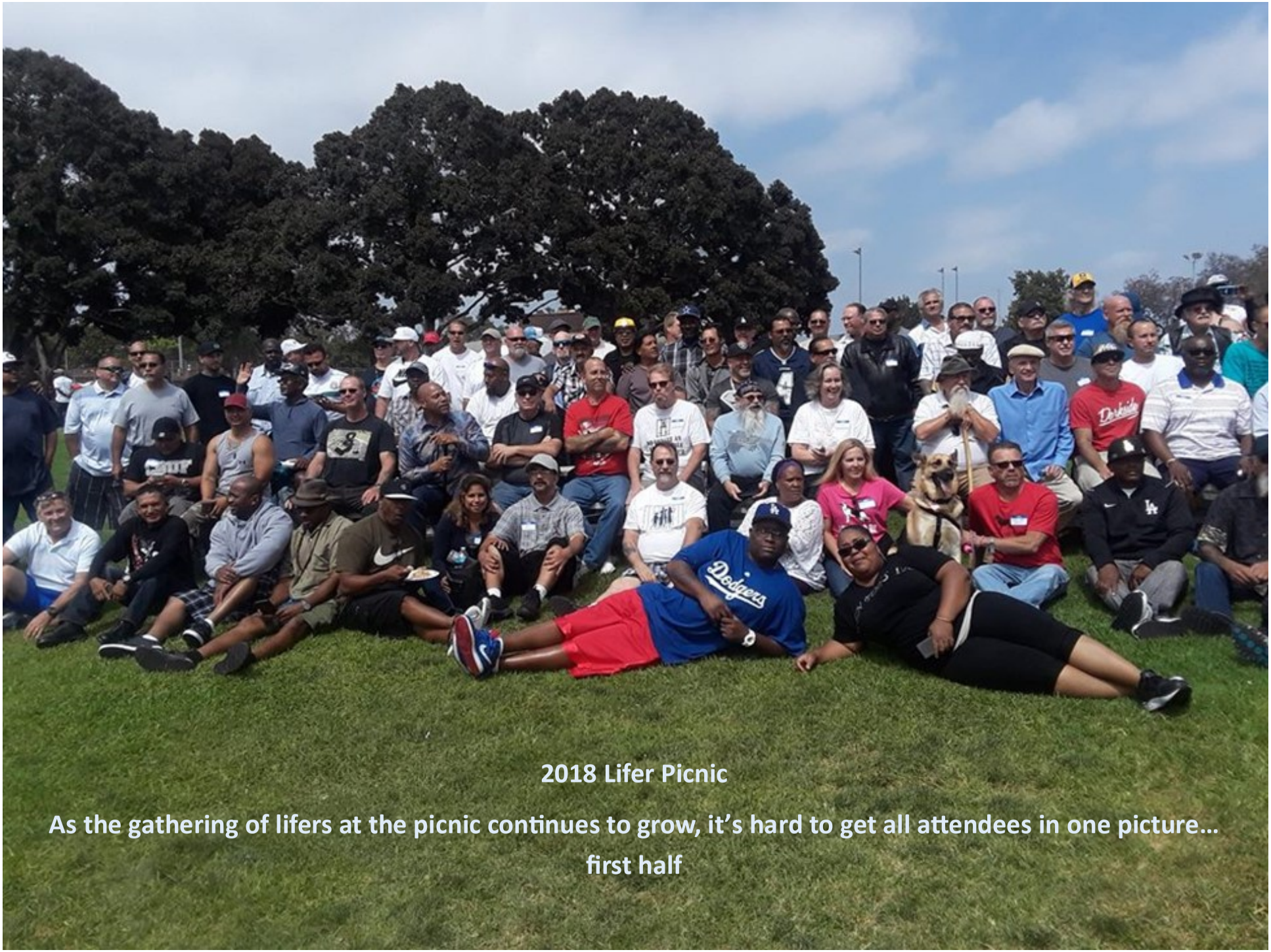
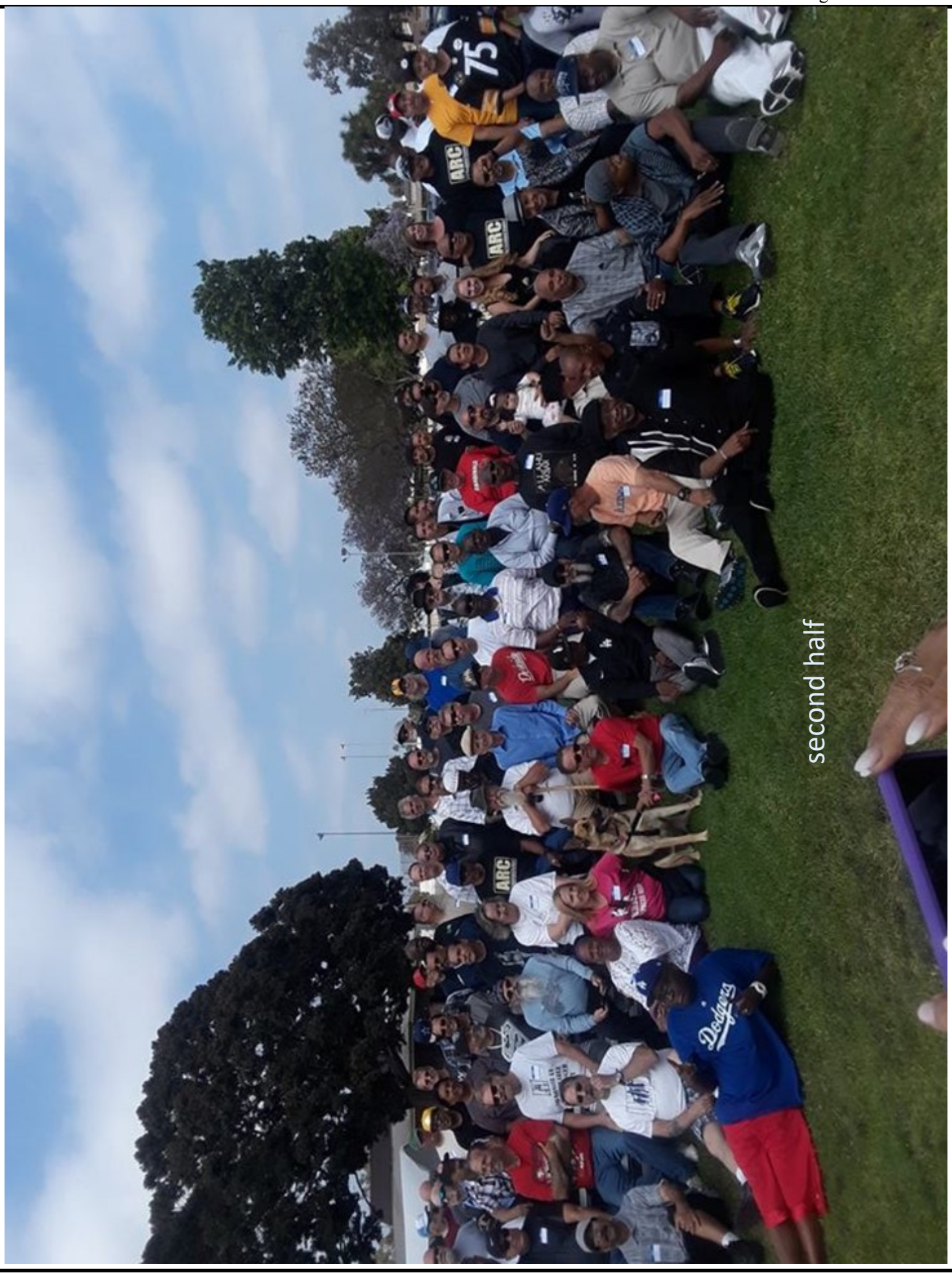


2018 Lifer Picnic

As the gathering of lifers at the picnic continues to grow, it's hard to get all attendees in one picture… first half


ARC
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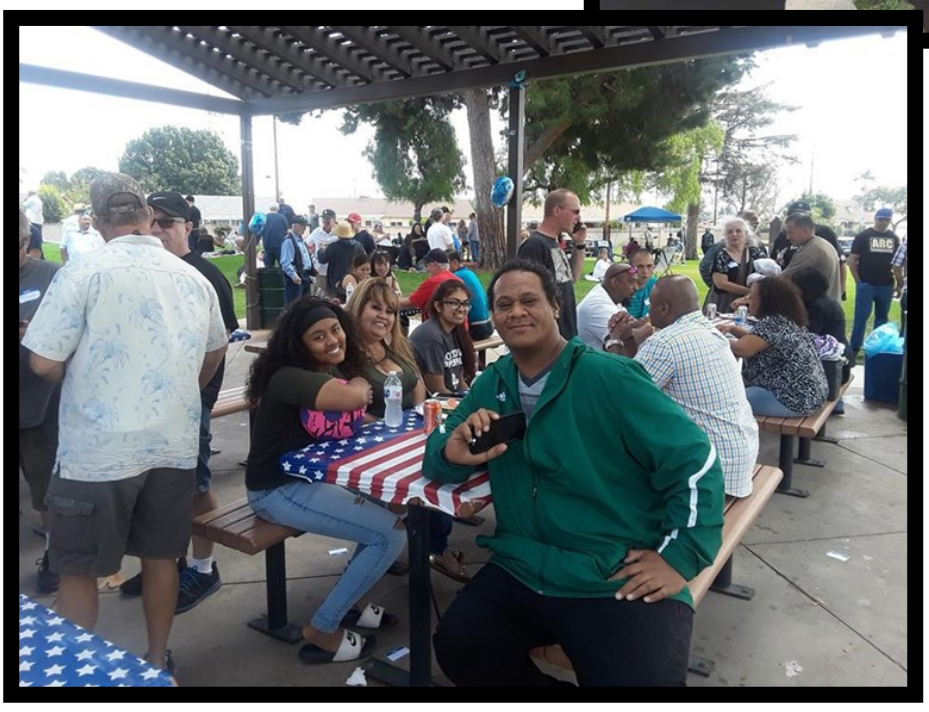
Dodgers
second half

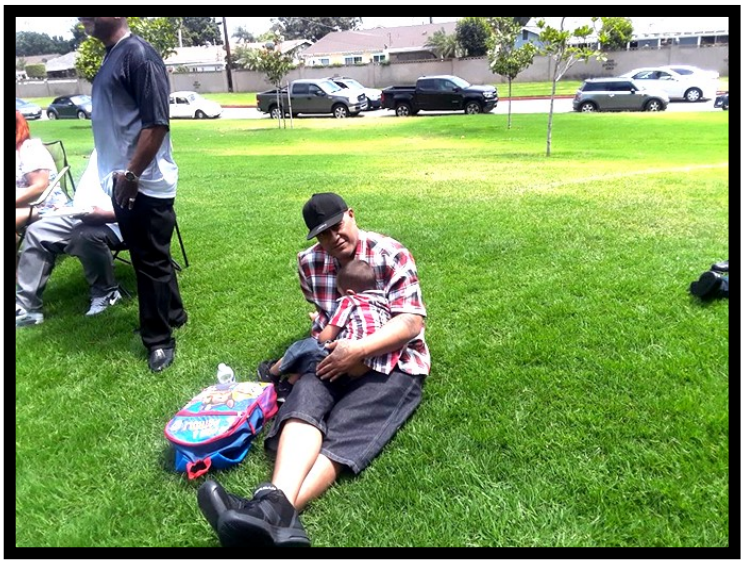
Kathleen, former lady lifer, and LSA Director Vanessa Nelson-Sloane (right)

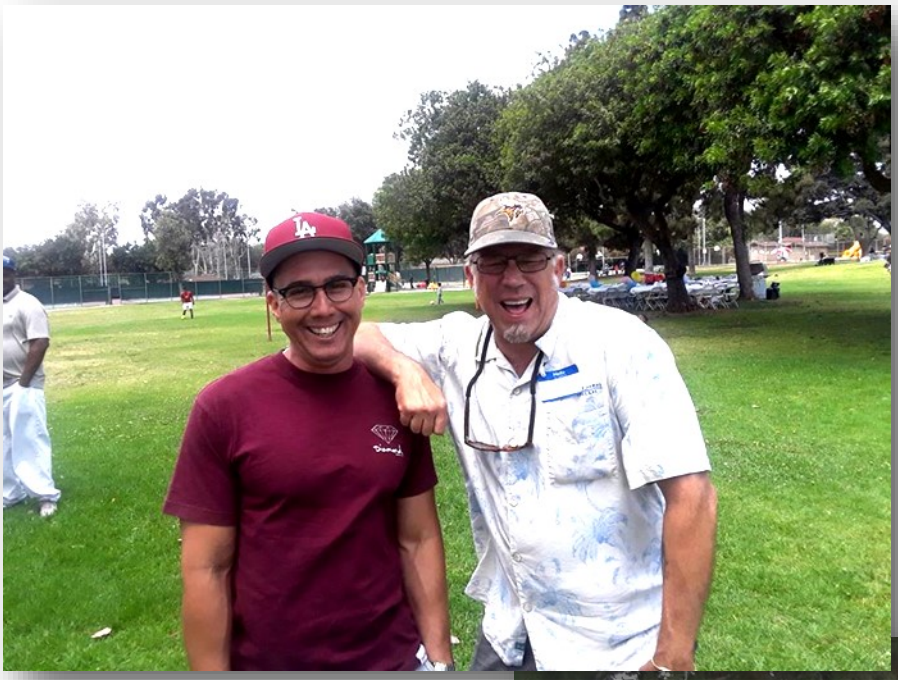
Former lady lifer Kimberly Fudge (left) with friends



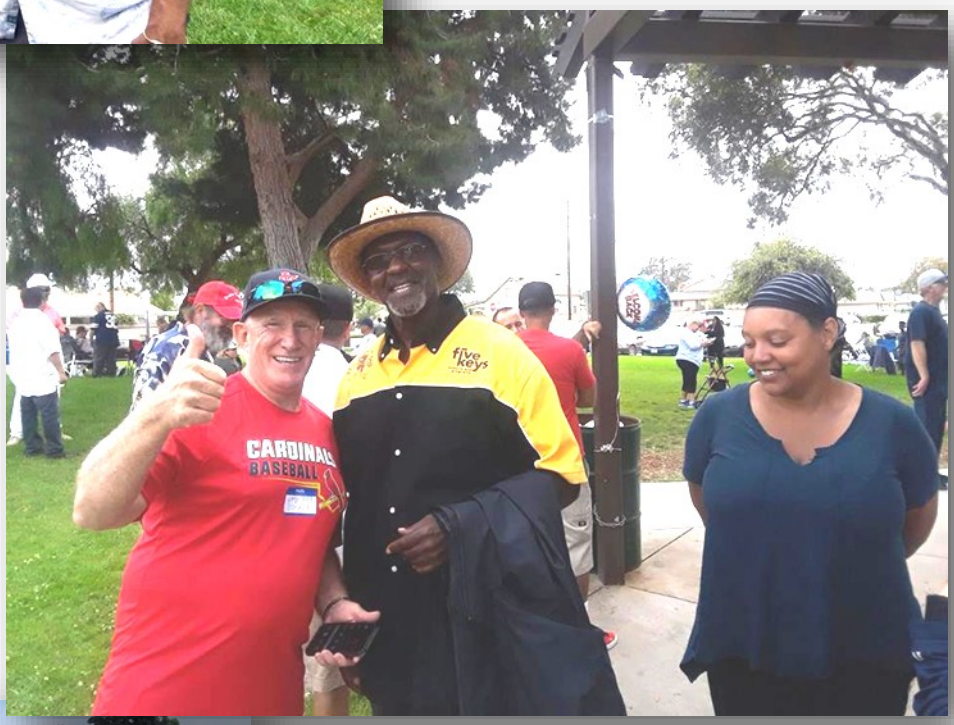
The place fills up fast

Reunions—always the best part of the day

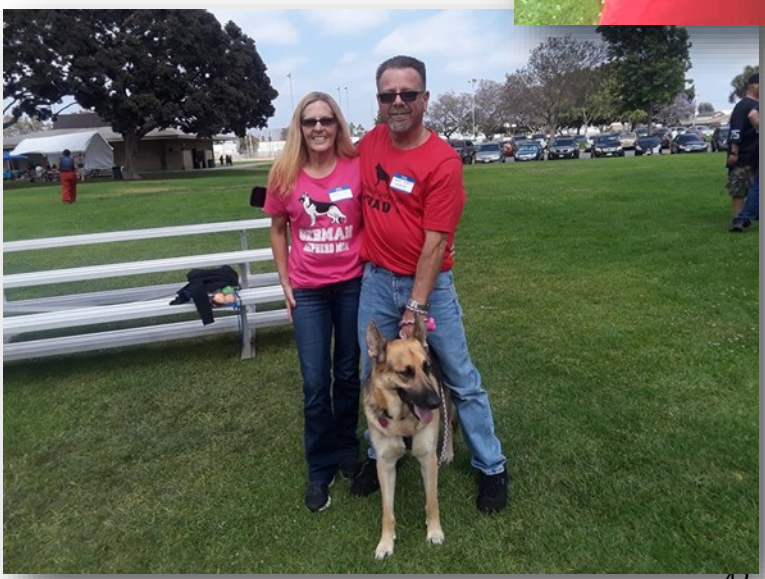




Lifer attorney and avid fisherman Marc Norton (right) with former client

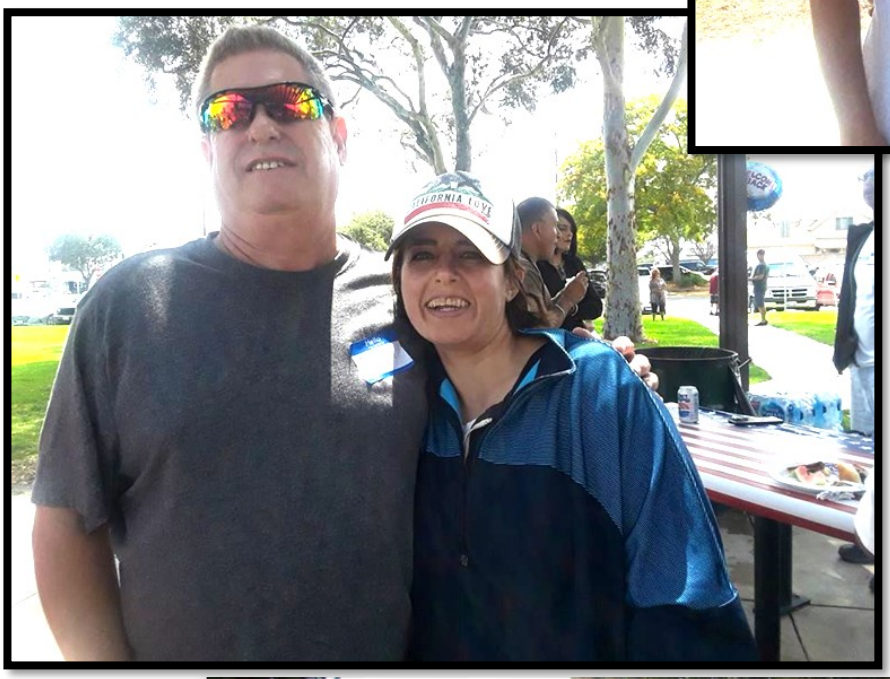


Picnic sponsor and paralegal extrodianre, Gary Eccher (left) with friends



Lifer couple Leslie Thornell and Robert Hunke, with 'baby'

Another former lifer, soon to be on the other side of the table representing lifers rather than being represented, Steve Bell (left) and Tony



Former lifer and soon-to-be attorney Keith Chandler (also co-sponsor of the picnic) with newly-minted attorney Kristin Fox

CONSULTATION HEARING SURVEY

*About 6 years before a MEPD, those prisoners who are seeking release via the Board of Parole Hearings, will receive a "Consultation Hearing," more of an interview between the inmate and an parole commissioner or Deputy Commissioner. The purpose is to advise the prisoner of what areas he/she needs to address prior to a parole hearing to have maximum potential for parole. These meetings can be productive and helpful, or just a time filler. The purpose of this survey is to allow prisoners to provide input into how helpful these meetings have been. The results, including names of participating Commissioners/DCs, but not the names of the inmates, will be shared with the BPH in an effort to help consultation hearings become more helpful to prisoners. * Notes required information.*

*NAME_____ *CDCR#_____

*CONSULTATION DATE_____ *MEPD_____

*COMM/DC NAME_____ PRISON_____

*CIRCLE ONE: YOPH/LWOP ELDERLY PAROLE LIFER 3 STRIKER

Did the consultor appear to have read your file and be aware of your institutional record? _____

Were specific recommendations as to programming/education made, if so, what?_____

_____

_____

_____

_____

Did you feel the consultation was helpful, why/why not?_____

_____

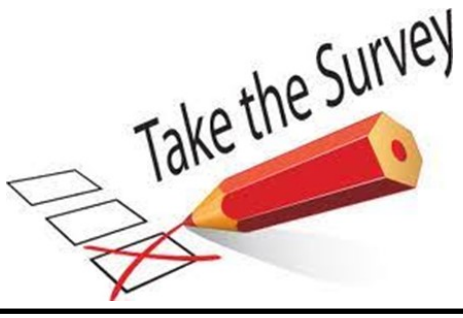
_____

_____

_____

LIFE SUPPORT ALLIANCE & California Lifer Newsletter

Public Safety and Fiscal Responsibility
www.lifesupportalliance.org



A WORD ABOUT OUR SURVEYS

An article in this month's Lifer-Line deals with reports and statistics presented by the BPH regarding what went on last year. These reports are always interesting, informative and helpful, as we assess how things are going and what are areas of concern.

We try to provide CDCR/BPH our own feedback, always based not on emotion or feeling, but on facts. And so we often ask for help from you, the end user of CDCR 'services.'

Surveys are the way we gather factual information, specific facts and instances of interest and importance. If you've had a parole hearing in the last year or two and had the services of a state appointed attorney, please consider filling out these surveys and sending it to us.

We do make use of this information, without using your name, to let BPH know how the appointed attorneys are doing, who needs 'special attention,' and what areas of training for these attorneys could be improved.

Be real, be detailed and be fair. No attorney is going to get you a date, but if someone was really a help, put forth their best effort, or even failed to meet basic expectations, we want to know. Thanks for your help!

ATTORNEY SURVEY

Life Support Alliance is seeking information on the performance and reliability of state appointed attorneys in the lifer parole hearing process. Please fill out the form below in as much detail as possible, use extra sheets if needed. Please include your name, CDC number and date of hearing, as this will allow us to request and review actual transcripts; your name will be kept confidential if you desire. Details and facts are vital; simple yes or no answers are not particularly helpful. Mail to PO Box 277, Rancho Cordova, CA. 95741. We appreciate your help in addressing these issues.

NAME*_____ CDC _____ HEARING DATE*_____

COMMISSIONER_____ GRANTED/DENIED(YRS)_____

INITIAL/SUBSEQUENT (how many)_____EVER FOUND SUITABLE/WHEN_____

ATTORNEY_____ PRISON _____

MEET BEFORE HRG?_____ HOW FAR IN ADVANCE OF HRG? _____

TIME SPENT CONSULTING_____ OBJECT TO PSYCH EVAL?_____

LANGUAGE PROBLEMS?_____ WAS ATTORNEY PREPARED?_____

DID SHE/HE BRING ANY DOCS NEEDED?_____ SUGGEST STIP/WAIVE?_____

Please provide details regarding attorney's performance, or lack of, including interaction with parole panel and/or any DAs and VNOK present. Was attorney attentive during pre-hearing meeting and hearing, did s/he provide support/advice to you? Was s/he knowledgeable re: your case and/or parole process? Had s/he read your C-file before meeting with you?

*required

FYI

For LWOP, (Life Without Parole), inmates that have lowered their points to live in a level II institution with electrical fencing around it,
the following institutions have level II programs within an LEF, (Lethal Electrified Fence)

ASP: Avenal, Avenal
CCWF: Central California Women's Facility, Chowchilla
CHCF: California Health Care Facility, Stockton
CIM: California Institution for Men, Chino
CMC: California Men's Colony, San Luis Obispo
CMF: California Medical Facility, Vacaville
CVSP: Chuckawalla Valley State Prison, Blythe
MCSP: Mule Creek State Prison, Ione
PBSP: Pelican Bay State Prison, Crescent City
RJD: Richard J. Donovan, San Diego
SATF: California Substance Abuse Treatment Facility and State Prison, Corcoran
SOL: California State Prison, Solano
VSP: Valley State Prison, Chowchilla

CLN Subscription Price will Change January 2017 TO $35-one year (inmate cost) SEE PAGE 46 THIS ISSUE FOR DETAILS
ALL SUBSCRIPTIONS PAID PRIOR TO THIS INCREASE WILL BE HONORED AT PRE-2017 PRICE.

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