UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

AUG 22 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ALFRED L. BROOKS, Petitioner-Appellant, v. DEAN BORDERS, Warden, Respondent-Appellee.	No. 18-56534 D.C. No. 5:17-cv-02535-RGK-DFM Central District of California, Riverside ORDER

Before: SCHROEDER and PAEZ, Circuit Judges.

The request for a certificate of appealability (Docket Entry No. 2) is denied because appellant's 28 U.S.C. § 2254 petition fails to state any federal constitutional claims debatable among jurists of reason. *See* 28 U.S.C. § 2253(c)(2)-(3); *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012); *see also Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *Hayward v. Marshall*, 603 F.3d 546, 552-54 (9th Cir. 2010) (en banc) (habeas challenge to parole decision requires a certificate of appealability when underlying conviction and sentence issued from a state court), *overruled on other grounds by Swarthout v. Cooke*, 562 U.S. 216 (2011).

Any pending motions are denied as moot.

DENIED.

Appendix A

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

ALFRED L. BROOKS,

Petitioner,

v.

D. BORDERS,

Respondent.

No. ED CV 17-02535-RGK (DFM)

Order Denying Certificate of Appealability

Rule 11 of the Rules Governing Section 2254 Cases in the United States District Courts provides as follows:

> (a) Certificate of Appealability. The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. Before entering the final order, the court may direct the parties to submit arguments on whether a certificate should issue. If the court issues a certificate, the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c)(2). If the court denies a certificate, the parties may not appeal the denial but may seek a certificate from the court of

Appendix B

appeals under Federal Rule of Appellate Procedure 22. A motion to reconsider a denial does not extend the time to appeal.

(b) Time to Appeal. Federal Rule of Appellate Procedure 4(a) governs the time to appeal an order entered under these rules. A timely notice of appeal must be filed even if the district court issues a certificate of appealability.

Under 28 U.S.C. § 2253(c)(2), a Certificate of Appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." The Supreme Court has held that this standard means a showing that "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were '"adequate to deserve encouragement to proceed further."'" Slack v. McDaniel, 529 U.S. 473, 483-84 (2000) (citation omitted).

Here, the Court finds and concludes that Petitioner has not made the requisite showing with respect to the claims alleged in the Petition.

Accordingly, a Certificate of Appealability is denied.

Dated: October 17, 2018

Gary Klausner

R. GARY KLAUSNER
United States District Judge

Presented by:

DOUGLAS F. McCORMICK
United States Magistrate Judge

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

ALFRED L. BROOKS, Petitioner, v. D. BORDERS, Respondent.	No. CV 17-02535-RGK (DFM) Report and Recommendation of United States Magistrate Judge

This Report and Recommendation is submitted to the Honorable R. Gary Klausner, United States District Judge, under 28 U.S.C. § 636 and General Order 05-07 of the United States District Court for the Central District of California.

I.
BACKGROUND

On December 15, 2017, Alfred Brooks ("Petitioner") filed a Petition for Writ of Habeas Corpus by a Person in State Custody, pursuant to 28 U.S.C. § 2254. See Dkt. 1 ("Petition").[1] Petitioner is a California state prisoner currently serving a sentence of 15 years to life after pleading guilty to second-

[1] All citations to docket entries use the electronic CM/ECF pagination.

degree murder in 1988. See id. at 1, 6. The Petition does not challenge the underlying criminal judgment that resulted in Petitioner's incarceration. Rather, the Petition challenges a parole suitability determination in which the California Board of Parole Hearings ("Board") denied Petitioner parole for the fourth time. See id. at 36. Petitioner first challenged the Board's September 2016 determination by filing a habeas corpus petition in the El Dorado County Superior Court, which denied that petition in a reasoned decision on March 6, 2017. See Petition at 35-41. Petitioner then filed further habeas petitions containing these same allegations in the California Court of Appeal and California Supreme Court, both of which denied his petitions without comment. See Petition at 13-14, 22, 27, 43-44.

In the instant Petition, Petitioner makes the following claims for relief: (1) the Board denied Petitioner parole in violation of his Constitutional rights to due process and equal protection; (2) the Board's denial of parole is cruel and unusual punishment under the Constitution; and (3) Petitioner's counsel rendered constitutionally ineffective assistance in violation of Petitioner's due process rights. For the reasons set forth below, the Petition should be summarily dismissed.

II.

LEGAL STANDARD

Under Rule 4 of the Rules Governing Section 2254 Cases in the United States District Court, a district court may summarily dismiss a habeas corpus petition before the respondent files an answer, "[i]f it plainly appears the petition . . . that the petitioner is not entitled to relief." Rule 4 is applicable and permits summary dismissal when no claim for relief is stated. See O'Bremski v. Maass, 915 F.2d 418, 420 (9th Cir. 1990). Summary dismissal is appropriate only where the allegations in the petition are vague or conclusory, palpably incredible, or patently frivolous or false. See Hendricks v. Vasquez, 908 F.2d

490, 491 (9th Cir. 1990) (citing Blackledge v. Allison, 431 U.S. 63, 75-76 (1977)).

III.

DISCUSSION

A. Due Process and Equal Protection

Petitioner substantively contends that the Board denied his due process and equal protection rights under the Constitution in its refusal to grant Petitioner parole. See Petition at 5, 12.

A federal court can grant habeas corpus relief to a petitioner "only on the ground that he [or she] is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a); Estelle v. McGuire, 502 U.S. 62, 63 (1991) (emphasizing that "it is not the province of a federal habeas court to reexamine state-court determinations on state-law questions"); Swarthout v. Cooke, 562 U.S. 216, 219 (2011) (same):

> There is no right under the Federal Constitution to be conditionally released before the expiration of a valid sentence, and the States are under no duty to offer parole to their prisoners. When, however, a State creates a liberty interest, the Due Process Clause requires fair procedures for its vindication—and federal courts will review the application of those constitutionally required procedures. In the context of parole, we have held that the procedures required are minimal. In [Greenholtz v. Inmates of Neb. Penal & Corr. Complex, 442 U.S. 1, 16 (1979)], we found that a prisoner subject to a parole statute similar to California's received adequate process when he was allowed an opportunity to be heard and was provided a statement of the reasons why parole was denied.

Swarthout, 562 U.S. at 220 (citations omitted); Powell v. Gomez, 33 F.3d 39,

42 (9th Cir. 1994) (noting the court "cannot reweigh the evidence" and can only look "to see if 'some evidence' supports the [parole board's] decision"). "The Constitution does not require more." Greenholtz, 442 U.S. at 16; see also Roberts v. Hartley, 640 F.3d 1042, 1046 (9th Cir. 2011) ("[T]here is no substantive due process right created by California's parole scheme."). "If the state affords the procedural protections required by Greenholtz and [Swarthout], that is the end of the matter for purposes of the Due Process Clause." Roberts, 640 F.3d at 1046.

Here, Petitioner contends his due process rights were violated by the Board's failure to find him suitable for parole. Yet, Petitioner does not contest, nor does the record show, that he was denied the required due process safeguards—i.e., an opportunity to speak at his parole hearing to contest the evidence against him and notification as to the reasons why parole was denied. See Petition at 179-242, 260-65. The Board questioned Petitioner for nearly an hour during his parole hearing, see Petition at 179-242, and comprehensively detailed the reasons why Petitioner should ultimately be denied parole—citing specifically to Petitioner's history, his 2015 rules violation for battery while in prison, his multiple denials of past misconduct, and his general and consistent failure to "take responsibility for [his] behavior." Petition at 260-65. Thus, Petitioner appears to have received adequate process in satisfaction of the "minimal" procedures required under federal law. See Swarthout, 562 U.S. at 220; see also Roberts, 640 F.3d at 1046 ("It makes no difference that [petitioner] may have been subjected to a misapplication of California's 'some evidence' standard. A state's misapplication of its own laws does not provide a basis for granting federal writ of habeas corpus. Admittedly, our prior precedent required review of the propriety of a California state court's 'some evidence' determination. Nevertheless, [Swarthout] overruled that precedent." (citations omitted)).

To the extent Petitioner alleges that his denial of parole was an equal protection violation under the Fourteenth Amendment, Petitioner's claim also fails. Prisoners are protected under the Equal Protection Clause of the Fourteenth Amendment from invidious discrimination based on race, religion, or membership in a protected class subject to restrictions and limitations necessitated by legitimate penological interests. See Wolff v. McDonnell, 418 U.S. 539, 556 (1974). The Equal Protection Clause essentially directs that all persons similarly situated should be treated alike. City of Cleburne, Texas v. Cleburne Living Center, 473 U.S. 432, 439 (1985). Violations of equal protection are shown when a respondent intentionally discriminates against a petitioner based on membership in a protected class, see Barren v. Harrington, 152 F.3d 1193, 1194 (9th Cir. 1998), or when a respondent intentionally treats a member of an identifiable class differently from other similarly situated individuals without a rational basis, or a rational relationship to a legitimate state purpose, for the difference in treatment, see Village of Willowbrook v. Olech, 528 U.S. 562, 564 (2000).

Here, although Petitioner contends, in conclusory fashion, that only African American prisoners are being held to a "zero tolerance policy" and required to serve "astronomical years of incarceration before being found suitable" for parole, see Petition at 12, 21, he presents no actual evidence or other facts to support his claim. Petitioner refers to no evidence suggesting that his parole determination was race-based, alleges no examples of systemic race discrimination in parole decisions generally, and ignores the individual circumstances that might have led to him being denied parole while others were not. Petitioner's further allegation that he was denied equal protection because he belongs to a "special class" of "African American[s] with a background of sex related allegations" likewise fails. Petition at 12. Petitioner was arrested and convicted multiple times for sex-related offenses, and "[s]ex

offenders are not a suspect class." U.S. v. LeMay, 260 F.3d 1018, 1030 (9th Cir. 2001); see also Petition at 116. In sum, Petitioner's speculative and unsupported claims do not warrant habeas relief.[2] See Blackledge, 431 U.S. at 75 n.7 (holding summary disposition of habeas petition appropriate where allegations are vague and conclusory; "the petition is expected to state facts that point to a 'real possibility of constitutional error'" (citation omitted)).

B. Cruel and Unusual Punishment and Equal Protection

Petitioner contends that the Board's failure to grant him parole is tantamount to cruel and unusual punishment in violation of the Eighth Amendment. See Petition at 14. Petitioner further alleges that the Board's "punishmen[t]" violated his equal protection rights under the Fourteenth Amendment because the denial stemmed from Petitioner's religious and philosophical practices. Id. at 15-18.

Petitioner's Eighth Amendment claim is not cognizable. The Supreme Court has previously upheld the constitutionality of indeterminate life sentences with the possibility of parole after a specified time period like that

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[2] Petitioner also alleges that he is "currently serving the time and punishments for extrajudicial convictions of dismissed allegations and an unrelated juvenile conviction." Petition at 9. This claim is meritless. Petitioner is not serving an "18 year" sentence, but a sentence of 15 years to life. See Petition at 1 ("Length of sentence: 15 to life with available half time"), 12 (admitting he is a "life term prisone[r]"); see also Cal. Penal Code § 190(a) ("[E]very person guilty of murder in the second degree shall be punished by imprisonment in the state prison for a term of 15 years to life."). This difference is critical, as a prisoner serving an indeterminate life term in state prison is not entitled to release on parole until he is found suitable for such release by the Board. See Cal. Penal Code § 3041; Cal. Code of Regs., tit. 15, § 2402(a). Under California law, Petitioner will be released on parole when the Board determines that he is suitable for parole because he is no longer an unreasonable risk to public safety. See In re Lawrence, 44 Cal. 4th 1181, 1205-06 (2008).

imposed by the Board here. See Lockyer v. Andrade, 538 U.S. 63, 74 (2003); Ewing v. California, 538 U.S. 11, 30 (2003). Generally, "so long as the sentence imposed does not exceed the statutory maximum, it will not be overturned on eighth amendment grounds." Belgarde v. Montana, 123 F.3d 1210, 1215 (9th Cir. 1997) (internal citation and alteration omitted). Indeed, district courts in the Ninth Circuit have regularly held that a denial of parole from an underlying sentence does not implicate the Eighth Amendment. See, e.g., Harris v. Long, No. 12-1349, 2012 WL 2061698, at *8 (C.D. Cal. May 10, 2012) ("[T]he Court is unaware of any United States Supreme Court case holding that . . . the denial of parole and continued confinement of a prisoner pursuant to a valid indeterminate life sentence . . . constitutes cruel and unusual punishment in violation of the Eighth Amendment. Indeed, the Supreme Court has held that '[t]here is no constitutional or inherent right of a convicted person to be conditionally released before the expiration of a valid sentence.'" (quoting Greenholtz, 442 U.S. at 7)); Prellwitz v. Sisto, No. 07-0046, 2012 WL 1594153, at *6 (E.D. Cal. May 4, 2012) (rejecting a similar Eighth Amendment claim and holding that "[w]hile petitioner might have hoped or expected to be released sooner, the Board's decision to deny him a parole release date has not enhanced his punishment or sentence"); see also Rosales v. Carey, No. 03-230, 2011 WL 3319576, at *8 (E.D. Cal. Aug. 1, 2011) ("[T]he Ninth Circuit has said that any emotional trauma from dashed expectations concerning parole 'does not offend the standards of decency in modern society.'" (quoting Baumann v. Arizona Dep't of Corr., 754 F.2d 841 (9th Cir.1985))).

Here, Petitioner was sentenced to an indefinite term of 15 years to life in state prison. The Board's denial of his parole at this time has not enhanced his punishment or sentence. See Petition at 266 (noting that Petitioner's "life-term is a life-term" and that his next parole hearing shall be in 7 years, with an

option to request an earlier hearing date for changes in circumstance or new information). As such, Petitioner's claim for cruel and unusual punishment on these grounds is meritless.

And like his equal protection claim on grounds of race discrimination, Petitioner's claims that he was unconstitutionally "punished" for his rejection of the "twelve step religious principles of AA and NA" and his religious beliefs, degrees, and philosophy, see Petition at 16-18, are similarly conclusory and speculative. As discussed, to state an equal protection claim, Petitioner must allege that he was intentionally treated differently from others similarly situated without a rational basis for the difference in treatment. See City of Cleburne, Texas, 473 U.S. at 439. There is no indication that the Board intentionally treated him differently from other similarly situated inmates. See Payne v. Sherman, No. 16-8001, 2017 WL 6459365, at *4-5 (C.D. Cal. Sept. 26, 2017) (rejecting equal protection claim regarding parole denial brought by habeas petitioner where he failed to show that the parole board intentionally treated him differently from similarly situated inmates); Sparks v. Valenzuela, No. 15-6346, 2016 WL 749318, at *4 (C.D. Cal. Jan. 26, 2016) ("[P]etitioner's equal protection challenge must fail as he has not made any showing that he was treated differently from other similarly situated prisoners, and that the unequal treatment was based on a discriminatory motive."); see also Rowe v. Cuyler, 534 F. Supp. 297, 301 (E.D. Pa. 1982) ("Indeed, it is difficult to believe that any two prisoners could ever be considered 'similarly situated' for the purpose of judicial review on equal protection grounds of broadly discretionary decisions [such as eligibility for prison pre-release program] because such decisions may legitimately be informed by a broad variety of an individual's characteristics.") Accordingly, Petitioner is not entitled to federal habeas relief based on his equal protection claim.

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C. Ineffective Assistance of Counsel

Petitioner contends that his due process rights were violated because he received ineffective assistance of counsel at his parole hearing.[3] See Petition at 22-26.

This claim fails for two reasons. First, the Supreme Court has never held that state prisoners have a federal constitutional right to counsel at parole hearings. See, e.g., Pennsylvania v. Finley, 481 U.S. 551, 555 (1987) ("[T]he right to appointed counsel extends to the first appeal of right, and no further."); Gagnon v. Scarpelli, 411 U.S. 778, 790 (1973) (rejecting "inflexible" constitutional requirement that counsel be appointed in all probation or parole revocation hearings); Dorado v. Kerr, 454 F.2d 892, 897 (9th Cir. 1972) ("[D]ue process does not entitle California state prisoners to counsel at [Department of Corrections hearings] called to determine, administratively, the length of imprisonment, and to grant or deny parole."). Because there is no federal constitutional right to counsel at parole hearings, there can be no claim that counsel's ineffective assistance at a parole hearing violated Petitioner's federal constitutional rights. See Coleman v. Thompson, 501 U.S. 722, 752-54 (1991) (holding petitioner cannot claim constitutionally ineffective assistance of counsel where there is no underlying constitutional right to counsel); see also Miller v. Keeney, 882 F.2d 1428, 1432 (9th Cir. 1989) ("If a state is not constitutionally required to provide a lawyer, the constitution cannot place any constraints on that lawyer's performance.").

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[3] While the Petition alleges a "Deprivation of Liberty without Due Process & Equal Protection, U.S. Const. Amend. 14," the substance of Petitioner's third ground for relief exclusively discusses his counsel's alleged ineffectiveness at the September 21, 2016, parole hearing before the Board. See Petition at 22-26. Thus, the Court construes this claim as alleging constitutionally ineffective assistance of counsel.

Second, even if the Court assumes that Petitioner had a constitutional right to effective assistance of counsel at his parole hearing, Petitioner failed to show any prejudice—i.e., that there is a reasonable probability that, but for his counsel's unprofessional errors, the result of the proceeding would have been different. See Strickland v. Washington, 466 U.S. 668, 687-88 (1984). Petitioner alleges that his counsel failed to share the parole packet with Petitioner and generally failed to object to and rebut the adverse testimony and documentary evidence considered at the parole hearing. See generally Petition at 22-26. But Petitioner has not demonstrated what difference his claimed objections and rebuttals would have had on the Board's ultimate determination that there was "some evidence" of Petitioner's future dangerousness.[4] Absent any evident prejudice, habeas relief is not warranted on grounds that Petitioner was denied constitutionally effective assistance of counsel at his parole hearing.

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[4] Under California law, the Board "shall grant parole to an inmate unless it determines that . . . consideration of the public safety requires a more lengthy period of incarceration for this individual." Cal. Penal Code § 3041(b)(1) (2016) (amended 2018). If the Board denies parole, the prisoner can seek judicial review in a state habeas petition. See Lawrence, 44 Cal. 4th at 1190-91. The California Supreme Court has explained that "the standard of review properly is characterized as whether 'some evidence' supports the conclusion that the inmate is unsuitable for parole because he or she currently is dangerous." Id. at 1191.

IV.

CONCLUSION

IT IS THEREFORE RECOMMENDED that the District Judge issue an order (1) approving and accepting this Report and Recommendation; and (2) directing that Judgment be entered summarily denying the Petition and dismissing this action with prejudice.

Dated: February 13, 2018

DOUGLAS F. McCORMICK
United States Magistrate Judge

FILED
MAR 06 2017
EL DORADO CO. SUPERIOR COURT
BY
(DEPUTY CLERK)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF EL DORADO

Alfred Lawrence Brooks, Petitioner, v. **D. Borders, Warden, et al.,** Respondents.	Case No. SC20160215 **Decision Denying Petition for Writ of Habeas Corpus**

Petitioner Alfred Brooks, a state prisoner incarcerated at California Institute for Men in Chino, California, filed a petition for writ of habeas corpus on December 30, 2016. Petitioner entered a plea of guilty to second degree murder, a violation of Penal Code § 187, in November 1989 and was sentenced on January 4, 1989, to an indeterminate term of 15 years to life. The instant petition stems from the Board of Parole Hearings' ("Board") decision on September 21, 2016, to deny petitioner's fourth application for parole (7-year denial). Petitioner previously filed petitions for writ of habeas corpus in 1990, 2001, 2005, and 2007.

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Appendix C

1. LEGAL PRINCIPLES

"To satisfy the initial burden of pleading adequate grounds for relief, an application for habeas corpus must be made by petition ...." (*People v. Duvall* (1995) 9 Cal.4th 464, 474 [37 Cal.Rptr.2d 259].) "When presented with a petition for a writ of habeas corpus, a court must first determine whether the petition states a prima facie case for relief—that is, whether it states facts that, if true, entitle the petitioner to relief—and also whether the stated claims are for any reason procedurally barred." (*People v. Romero* (1994) 8 Cal.4th 728, 737 [35 Cal.Rptr.2d 270].)

The statutory presumption is that "official duty has been regularly performed" (Evid. Code § 664), which may be rebutted and affects the burden of proof (Evid. Code § 660). This presumption applies to parole suitability decisions. (*In re McClendon* (2003) 113 Cal.App.4th 315, 323 [6 Cal.Rptr.3d 278]; *In re Arafiles* (1992) 6 Cal.App.4th 1467, 1478 [8 Cal.Rptr.2d 492].) The Board "shall grant parole to an inmate unless it determines that the gravity of the current convicted offense or offenses, or the timing and gravity of current or past convicted offense or offenses, is such that consideration of the public safety requires a more lengthy period of incarceration for this individual." (Pen. Code § 3041, subd. (b)(1).) California Code of Regulations, title 15, § 2402, sets forth the factors to be considered by the Board in assessing whether an inmate is suitable for parole or poses "an unreasonable risk of danger to society if released from prison." (*Id.*, subd. (a).)

The Board is authorized to "identify and weigh only the factors relevant to predicting 'whether the inmate will be able to live in society without committing additional antisocial acts.' [Citation.]" (*In re Lawrence* (2008) 44 Cal.4th 1181, 1205–1206 [82 Cal.Rptr.3d 169], quoting *In re Rosenkrantz* (2002) 29 Cal.4th 616, 655 [128 Cal.Rptr.2d 104].) The manner in which the parole suitability factors are considered and balanced lies within the discretion of the Board. (*In re*

Rosenkrantz, supra, 29 Cal.4th at p. 677; *see also In re Prather* (2010) 50 Cal.4th 238, 257, fn. 12 [112 Cal.Rptr.3d 291].)

The court applies the "some evidence" standard to review the Board's decision. (*In re Shaputis* (2008) 44 Cal.4th 1241, 1254 [82 Cal.Rptr.3d 213] [*Shaputis I*].) Specifically, the standard "is whether there exists 'some evidence' that an inmate poses a current threat to public safety ...." (*Ibid.*) Under this standard, the Board's decision will be upheld as long as there is some basis in fact for the decision. (*Ibid.*) "The court is not empowered to reweigh the evidence." (*In re Shaputis* (2011) 53 Cal.4th 192, 221 [134 Cal.Rptr.3d 86] [*Shaputis II*].) "It is irrelevant that a court might determine that evidence in the record tending to establish suitability for parole far outweighs evidence demonstrating unsuitability for parole." (*In re Rosenkrantz, supra*, 29 Cal.4th at p. 677.)

The nature of the offense alone can constitute a sufficient basis for denying parole. (*Id.* at p. 682.) The Board "properly may weigh heavily the degree of violence used and the amount of viciousness shown by a defendant." (*Ibid.*)

2. DISCUSSION

The committing offense, the murder of petitioner's wife Roberta, occurred when petitioner was 19 years old. They had been married for three months. Petitioner shot Roberta twice, once in the chest and once in the back, killing her from massive bilateral pleural hemorrhage. Roberta was found on a walkway outside her apartment building bleeding from the gunshot wounds and holding her 11-month-old infant daughter.

The court has reviewed and considered the petition, as well as Exhibits A through Q of the petition. As an initial matter, petitioner again raises claims that were raised in earlier petitions; i.e., claims concerning the nature and validity of his plea bargain. As these claims were previously raised and ruled upon, the court declines to do so again.

The record here establishes the Board read and considered the written record before it, including, *inter alia*, the Central File, the confidential portion of the Central File, the Comprehensive Risk Assessment, and written correspondence submitted by petitioner. The record also establishes the Board heard and considered testimony from petitioner, a representative from the El Dorado County District Attorney's Office, and the victim's daughter.

This court's review of the Board's decision establishes the decision was based upon weighing the specified factors relevant to parole suitability in light of the record before it. The Board ultimately determined, in a unanimous decision, that petitioner poses a current, unreasonable risk of danger to society or a threat to public safety, and therefore is not eligible for parole.

In this regard, in considering historical factors, the record establishes petitioner had significant early criminal history. Petitioner was first arrested for battery at age 10. He was arrested for grand theft at age 12, declared a ward of the court, placed in juvenile hall for 10 days, and placed on probation. Six months later, while still on probation, he was arrested for assault with a deadly weapon, sent to juvenile hall for 30 days, and placed in a group home. All these offenses occurred in Fresno. He was arrested at age 13 (the record does not specify the offense) and his probation was modified so he could return to his mother in Louisiana. At age 16 he was arrested in Oakland for forcible oral copulation on a minor and was sent to the CYA. He was paroled from the CYA in June 1986 and committed the subject murder in April 1988.

In prison, petitioner has worked several different jobs. His Work Supervisor Reports have ranged from below average in 2005 to satisfactory and above average since. He participated in vocational masonry and vocational electronics, but was unable to complete the programs. He completed level II welding in 2009 and completed vocational office services and related technology in 2013. He has

also completed several college courses, and reports he is pursuing an AA degree in Social and Behavioral Sciences.

In the Comprehensive Risk Assessment report, Dr. Larmer notes petitioner's history of alcohol abuse from approximately age 11, when he was in a sexual relationship with a 38-year-old woman. Dr. Larmer reports that petitioner admitted to having consumed alcohol at the time of the crime, and claims the crime "would never have happened if [he] hadn't been drinking." Petitioner has participated in substance abuse treatment groups in prison, but stopped attending in 2014 because he believes it is unnecessary and he wants to manage his sobriety himself.

Dr. Larmer notes petitioner "has consistently been diagnosed with Antisocial Personality Disorder. He presents with pervasive antisociality characterized entitlement, grandiosity, and limited remorse and empathy. He did not present with hostility, interpersonal dominance or antagonism." The report notes petitioner had a recent CDCR 115 in January 2015, which suggests possible recent instability, but that petitioner adamantly denies committing the alleged violation. Dr. Larmer also reports that petitioner's version of the subject murder remains unchanged from 2014. Dr. Larmer opines that petitioner's "expression of remorse was intellectualized and lacking a strong emotional component."

The report indicates few risk management factors. Dr. Larmer states that petitioner's plan to initially parole to a transitional program is well planned, and that petitioner appears to have adequate social support in the community despite his estrangement from his remaining family. But, one notable exception is petitioner's plans to work at a so-called adult entertainment company. Dr. Larmer states that given petitioner's history of objectifying women, interpersonal problems, and sexual violence, that being in a workplace culture that normalizes objectification of women could increase petitioner's risk of sexual violence.

Based on the assessment, Dr. Larmer concluded petitioner represents a moderate risk for violence. Dr. Larmer notes the STATIC-99R reflects a finding of high risk of sexual recidivism, whereas the ultimate opinion of the risk of general violence is in the moderate range. Dr. Larmer further notes petitioner's behavior is improving, but that psychological and interpersonal changes are still developing.

In denying parole, concluding petitioner would pose an unreasonable risk of danger to society and would be a threat to public safety if released from prison, the Board noted petitioner lacks insight into the impact of his crime on the victim and her family, and lacks insight into the motivation and causative factors of the offense. In making its findings, the Board considered the relevant factors (*see* Cal. Code Regs., tit. 15, § 2402), cited specific evidence in the record before it, and the Board articulated a rational nexus between the evidence and petitioner's current dangerousness. There is no evidence the Board's decision was arbitrary or without any evidentiary support, or relied solely on immutable factors in determining petitioner's current dangerousness.

Accordingly, after reviewing and considering the entire record before this court, the court concludes the Board acted properly, afforded due process, and its decision is supported by some evidence in the record.

The petition is denied.

IT IS SO ORDERED.

March 6, 2017

Honorable Steven C. Bailey
Superior Court Judge

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Court of Appeal, Third Appellate District
Andrea K. Wallin-Rohmann, Clerk/Administrator
Electronically FILED on 5/4/2017 by J. Swartzendruber, Deputy Clerk

IN THE

Court of Appeal of the State of California

IN AND FOR THE THIRD APPELLATE DISTRICT

In re ALFRED LAWRENCE BROOKS on Habeas Corpus.

Case No. C084492

BY THE COURT:

The petition for writ of habeas corpus is denied.

HULL, Acting P.J.

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cc: See Mailing List

Appendix D

IN THE

Court of Appeal of the State of California

IN AND FOR THE

THIRD APPELLATE DISTRICT

MAILING LIST

Re: In re ALFRED LAWRENCE BROOKS on Habeas Corpus
C084492

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✓ Alfred Lawrence Brooks
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Office of the State Attorney General
P.O. Box 944255
Sacramento, CA 94244-2550

SUPREME COURT
FILED

OCT 25 2017

Jorge Navarrete Clerk

Deputy

S243448

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re ALFRED LAWRENCE BROOKS on Habeas Corpus.

The petition for writ of habeas corpus is denied.

CANTIL-SAKAUYE

Chief Justice

Appendix E