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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re JIMMIE SOLE,
on Habeas Corpus.

A127898

(Sonoma County
Super. Ct. No. SCR-9772)

This appeal is taken from a superior court order granting the petition for writ of habeas corpus filed by Jimmie Sole challenging a decision by the Governor to deny him parole on the ground that he remains an unreasonable risk to public safety. Sole, who received an indeterminate life sentence for the second degree murder of his former wife, was granted parole by the Board of Parole Hearings (Board) on August 25, 2008. The superior court thereafter vacated the Governor's reversal of the Board's decision after concluding it was not adequately supported by the evidence. For reasons we will explain, we conclude the superior court's order is improper and must be reversed.

FACTUAL AND PROCEDURAL BACKGROUND

I. Sole's Relationship with and Murder of His Former Wife, Joyce.

Sole met Joyce, the victim in this case, in Missouri in approximately 1964. The couple married in 1965. After the birth of their daughter in 1966, the couple's relationship deteriorated and Joyce became unfaithful to Sole. Sole and Joyce had two more children, but ultimately separated in 1972 and divorced in 1974.

During the seven year period that followed, Sole's relationship with Joyce was very turbulent. Although Joyce remarried twice after their divorce, Sole reported that she

continued to harass him about child support payments and alleged to his parole officer that he was physically abusing her. Nonetheless, the couple reconciled in early 1979, when Sole assisted with medical treatment for their daughter's heart condition.

Unbeknownst to Sole, however, Joyce remained married to another man, who was in the hospital. Sole and Joyce thereafter moved to Rohnert Park, where Sole's mother lived, at which time problems in their relationship resurfaced, resulting in another separation.

After their latest separation, Sole believed Joyce began frequenting a bar near his mother's house intending to bother him. Then, in the weeks just before her murder, Sole "got wind" that Joyce was living with a known child molester. Sole also had difficulty getting Joyce to return some of his personal property. These circumstances led to a telephone altercation between Sole and Joyce and her boyfriend the night before her murder. Afterward, Sole and an acquaintance went to Joyce's house and, finding it empty, entered to retrieve a television he claimed to own.

On the day of Joyce's murder, July 30, 1979, Sole was drinking heavily, ultimately consuming several quarts of whiskey and an unknown quantity of beer.¹ Sole's 13-year-old daughter reported to police that he came to Joyce's and her residence, threatened her with a gun and asked where her mother was. Sole told his daughter to "tell your mother that she's fucking dead, and the [man] that's with her, because he wasn't man enough to stay here last night." Sole then warned his daughter: "[D]on't call anybody . . . you stay off the phone, you call the police, you're dead too." About fifteen minutes later, Sole fatally shot Joyce multiple times in the heart and lungs while she sat in a Petaluma bar with her boyfriend, after telling her: "I told you I'd blow you away last night." Sole also fired shots toward the bartender after she warned him, "You don't want to do that," and moved toward the cash register for a dime to call police. Afterward, as the bartender hid behind a refrigerator, Sole fled the scene.

¹ During this time, Sole was consuming about a quart of whiskey per day.

On January 10, 1980, Sole pleaded guilty to second degree murder by use of a firearm, and was sentenced to an indeterminate term of 15 years to life in prison. Sole's minimum eligibility parole date was set for December 9, 1987.

II. Sole's Personal Background.

Sole was born on December 27, 1937 in Missouri. Sole's parents divorced when he was five years old, and his mother raised him in Olivehurst, California. Sole described his childhood as chaotic. Sole's mother was an alcoholic who had several relationships with abusive, alcoholic boyfriends. Sole has three siblings, with whom he remains in frequent contact. Two siblings live in Fairfield.

Sole has been married five times. Two marriages ended when he became widowed, two ended in divorce, and one was annulled. He has five children, all of whom live in Oregon.

Prior to his incarceration, Sole worked as a cement finisher and truck driver. He was dishonorably discharged from the National Guard.

Sole has a history of severe alcohol abuse, which in several instances has played a role in criminal activity. For example, in 1956, at the age of 19, Sole was arrested and served jail time for "various drunk, sex, battery, and vehicle theft offenses." Sole was then arrested for going AWOL from the military authorities and committing various offenses, including furnishing alcohol to minors. In 1960, Sole was committed to state prison after escaping from county jail. In 1972, Sole was committed to federal prison after he and two accomplices severely beat a man during a bar fight and then abandoned him in another county. In 1975, Sole was committed to a Missouri prison after being convicted of assault with intent to do great bodily harm. According to the Board, Joyce was the victim of this assault. When Sole subsequently killed Joyce, he was on parole and wanted by the state of Missouri.

III. Sole's Incarceration and Efforts at Rehabilitation.

While serving his life sentence, Sole has worked as a maintenance person in prison industries, a plumber, and a warehouseman. Sole has completed vocational training in

fork lift operation, and has completed over 2,000 hours of work in machine operation and over 845 hours in computer operation. His work reports have been above average and excellent. In 1999, Sole was described by a supervisor as an “exceptional” skilled machine operator and warehouseman, who would be a “valuable employee.”

Sole has been discipline free since 2000. Before that time, Sole committed two CDC “115” violations in prison, one involving taking food and the other possessing cigarettes. Sole also committed one CDC “128A” violation for disobeying orders, resulting in a custodial counseling memorandum. He has not participated in psychiatric treatment, nor has he been disciplined for any misconduct involving alcohol, drugs or violence.

Sole participated in the Alternatives to Violence anger management program in 1998. Sole has also participated in one-on-one therapy and the CAT X group therapy program, although it does not appear the latter program addressed domestic violence issues. Sole regularly attended Alcoholics Anonymous (AA) meetings from 1999 until September of 2007, at which point his attendance ceased.

Sole’s Life Prisoner Evaluation prepared for his August 2008 parole hearing noted that, since his last parole hearing, “the prisoner has stopped participating in Alcoholics Anonymous and now does not participate in any Self Help or Therapy Activities.” This was despite the Board’s recommendation to Sole on August 23, 2007, when issuing a one-year denial of parole, that he continue self help, including AA.² Further, when questioned in 2008 by a mental health evaluator, Sole could not recall any of the steps of the AA program. However, there is no evidence Sole has consumed alcohol during his incarceration.

Sole has undergone numerous psychological evaluations during his incarceration, the most recent of which occurred in 2004 and 2008. The 2004 evaluation expressed concern that, when describing his commitment offense, Sole denied threatening his 13-year-old daughter before tracking down his ex-wife at the bar and shooting her, although

² Sole also failed to act upon the Board’s recommendation on August 23, 2007 that he obtain a GED.

the probation report stated otherwise. In addition, Sole told the evaluator his ex-wife was taunting him by repeatedly calling him and implying her boyfriend was molesting their daughter. These statements prompted the evaluator to note as follows:³

“To this evaluator the inmate tells a nearly identical story as offered in the probation report, with one significant exception. He denied threatening to kill his daughter. He offered no explanation as to why she would have made up this story to the police. . . . Perhaps the most controversial claim he makes is that his ex-wife would call him on ‘many’ occasions and imply that her new boyfriend was molesting their oldest daughter, 13-year-old Linda. He said he had no actual knowledge of this for a fact, but that trial court records showed her ex-boyfriend had been previously convicted on child molestation charges. It was this knowledge and the taunting that eventually set him off, or as he describes it, ‘I lost it.’ However, in a 1980 psychological evaluation he claimed he was antagonized by the boyfriend’s claim that he was going to take the children out of state and care for them. He tells the evaluator ‘things started clicking in my head’ and that he wanted to confront his ex-wife and find out what was going on with her and the children.

“This evaluator does not know what the truth is here. But it appears, on the surface, that the defendant has confabulated a more sympathetic story to justify the shooting of his wife. He also claims that he was highly intoxicated and on pain medication for dental surgery as well. But the bartender (witness) questioned this based on her observation of his behavior at the scene of the crime. The picture he paints suggests that his long-time anger towards his ex-wife had boiled over with his threatened separation from his children. He said he went over to his ex-wife’s house to straighten out this matter, but that hardly explains why he had a gun with him. It is also clear that he had made threats to kill his ex-wife and her boyfriend the night before and was clearly carrying out this threat in a rather systematic way the next day. While this all happened many years ago,

³ We set forth this somewhat lengthy passage in full because it was relied upon by the Governor in 2008 when denying parole to Sole.

this evaluator is disturbed by the inconsistencies and contradictions in the inmate's understanding and telling of his offense.” (Emphasis added.)

Ultimately, the 2004 evaluation concluded Sole posed a low-to-moderate risk for engaging in future acts of violence. The key factors mitigating this risk included Sole's age, health problems, commendable disciplinary and work record in prison, and family support. The evaluation further noted that “[n]umerous psychological evaluations have determined this inmate has made significant changes in his thinking and behavior and is a low risk to re-offend in the community.” However, the 2004 evaluation identified the following key risk factors as enhancing his potential for future violence: the premeditated nature of the offense, Sole's lengthy history of multiple convictions, his lifelong history of serious alcohol abuse, two prior supervision failures on parole, and “a limited expression of remorse for his offense, along with a confused understanding of his own motivation for violence.” Finally, the 2004 evaluation added that “while the documented record shows this inmate has changed for the better it appears to be primarily due to aging and lack of alcohol and not any consciously directed process to understand himself and make change.”

The most recent evaluation, prepared in August of 2008, was generally supportive of parole. Although the 2008 evaluation confirmed that a diagnosis of Antisocial Personality Disorder was appropriate for Sole, it noted his disorder was “now improved” and labeled him a “low” risk for future violence based on, among other things, his age, maturity, participation in AA, and family support.⁴ However, the 2008 evaluation added that, given Sole's long history of alcohol abuse, “[s]hould he abuse alcohol in the future, it would increase his violence potential.”

With respect to the commitment offense, the 2008 evaluation noted that, in July of 2008, Sole offered the following explanation: “[Joyce] was lying and going out with a child molester. She was molesting my daughter, I think. I lost it and when I got in the bar we were arguing. I shot her two times, they say three. My brother-in-law was in the

⁴ Sole's 2004 psychological evaluation likewise identified diagnoses of alcohol dependency and Antisocial Personality Disorder.

car. I was drunk and taking Percodan at the time because they had just pulled all my teeth out.” With respect to whether Sole has “come to terms with the underlying causes,” the evaluation concluded he has “worked on this issue” and “[t]here is nothing else [he] can do therapy wise in regard to the commitment offense. The inmate stated, ‘I should have let the authorities handle it instead of me handling [sic] accusation of molestation against my daughter.’ ”

At the time of the 2008 evaluation, Sole was taking sixteen different medications for various medical concerns, none of which were psychotropic medications. His medical concerns include heart bypass surgery in 2003, which led to complications in the groin area, thyroid removal in 1985, high blood pressure, gallstones, and arthritis in the back, neck and legs. He has no present mental health issues.

IV. Sole’s Parole Plans if Released.

If released on parole, Sole plans to live in Fairfield with his sister, who he last saw two months ago, and to work part time in the trades. He has applied for Social Security Benefits, which will approximate \$1,009 per month. Sole intends to continue attending AA meetings in order to stay sober.

V. The Parole Hearings and Administrative Decisions.

Sole has participated in eleven parole hearings since being incarcerated for murdering Joyce. The most recent parole hearing occurred on August 25, 2008, after which a panel of the Board’s hearing officers found him suitable for parole and set a release date. In doing so, the Board found the following facts relevant: (1) Sole committed the offense during a time of significant stress in his life caused by the very chaotic nature of his relationship with Joyce, which had recently worsened due to her romantic involvement with an alleged pedophile, (2) Sole was under the influence of alcohol and medication at the time of the offense, which clouded his judgment; (3) Sole has had an exemplary disciplinary record in prison, and (4) has regularly attended AA

meetings, reflecting a “lifelong commitment” to remain sober in the aftermath of his crime.⁵

On January 22, 2009, the Governor reversed the Board’s decision after concluding Sole remained a risk to public safety. The Governor was “particularly concerned by the information indicating that Mr. Sole still lacks full insight into the circumstances of the life offense, that he has not taken sufficient steps to gain better insight or avoid violence in the future, and that he still poses a risk of violence.” In addition, the Governor was troubled by evidence that Sole’s offense was “premeditated on some level,” and that he generally demonstrated “an exceptionally callous disregard for [Joyce’s] life and suffering.” Accordingly, the Governor denied parole for Sole, a decision supported by the Sonoma County District Attorney’s Office and the Petaluma Police Department.⁶

On March 12, 2009, Sole filed a petition for writ of habeas corpus in superior court challenging the Governor’s decision. After issuing an order to show cause, the superior court granted Sole’s petition on January 6, 2010 on the ground that the Governor’s denial of parole was not supported by the record. In doing so, the superior court vacated the Governor’s 2009 decision and reinstated the Board’s 2008 finding that Sole was suitable for parole. The People’s timely appeal followed.

DISCUSSION

The Board is the administrative agency within the executive branch generally authorized to grant parole and set a release date for an inmate. In doing so, the Board is governed by Penal Code section 3041 and title 15, section 2402 of the California Code of

⁵ This was the second time Sole was found suitable for parole. The first time occurred in 2001, when the superior court granted Sole’s writ of habeas corpus challenging a 1999 decision by the Board to deny parole. The superior court ordered the Board to hold a new parole hearing, to consider the evidence at the hearing consistent with the court’s findings and conclusions, and to set a release date. Following a new hearing, the Board again found Sole unsuitable for parole, but nevertheless set a release date to comply with the court order. However, the Governor thereafter reversed the Board’s grant of parole for Sole after concluding he remained a danger to public safety.

⁶ The District Attorney who actually prosecuted the case against Sole has in the past supported granting him parole.

Regulations.⁷ Under these provisions, “ ‘parole applicants in this state have an expectation that they will be granted parole unless the Board finds, in the exercise of its discretion, that they are unsuitable for parole in light of the circumstances specified by statute and by regulation.’ ([*In re*] *Rosenkrantz* [(2002) 29 Cal.4th 616,] 654)” (*In re Shaputis* (2008) 44 Cal.4th 1241, 1258.)

Section 3041 provides that the Board is normally required, one year before an inmate’s minimum eligible parole release date, to set a parole release date “in a manner that will provide uniform terms for offenses of similar gravity and magnitude with respect to their threat to the public” (§ 3041, subd. (a).) The statute further provides that the Board *must* set a parole release date unless it determines that public safety requires a lengthier period of incarceration for the inmate given the gravity of the commitment offense. (§ 3041, subd. (b); see also *In re Shaputis, supra*, 44 Cal.4th at pp. 1257-1258.)

Under the governing regulations, the Board must determine whether an inmate is suitable for parole after considering “[a]ll relevant, reliable information available to the panel”⁸ (Cal. Code Regs., tit. 15, § 2402, subd. (b).) “Regardless of the length of time served, a life prisoner shall be found unsuitable for and denied parole if in the judgment of the panel the prisoner will pose an unreasonable risk of danger to society if released from prison.” (*Id.*, § 2402, subd. (a).) In making this judgment, “[i]t is not the existence or nonexistence of suitability or unsuitability factors that forms the crux of the

⁷ Unless otherwise stated, all statutory citations herein are to the Penal Code.

⁸ Factors set forth under the governing regulations that demonstrate an inmate’s suitability for parole include: (1) lack of juvenile record; (2) stable social history; (3) signs of remorse; (4) motivation for the crime (e.g., whether the inmate committed the crime as the result of significant stress in his life); (5) experience of battered woman syndrome; (6) lack of criminal history; (7) present age; (8) plans for release; and (9) institutional behavior. (Cal. Code Regs., tit. 15, § 2402, subd. (d).)

Factors demonstrating an inmate’s unsuitability for parole include: (1) the nature of the commitment offense; (2) previous record of violence; (3) unstable social history; (4) commission of sadistic sexual offenses; (5) psychological factors (e.g., whether the inmate has a lengthy history of severe mental problems related to the offense); and (6) institutional behavior. (Cal. Code Regs., tit. 15, § 2402, subd. (c).)

parole decision; the significant circumstance is how those factors interrelate to support a conclusion of current dangerousness to the public.” (*In re Lawrence* (2008) 44 Cal.4th 1181, 1212.) However, “the importance attached to any circumstance or combination of circumstances in a particular case is left to the judgment of the panel.” (Cal. Code Regs., tit. 15, § 2402, subds. (c), (d).)

Once the Board has made a decision regarding a particular inmate’s suitability for parole, the Governor is authorized to review it under article V, section 8, subdivision (b) of the California Constitution. (Cal. Const., art. V, § 8, subd. (b).) However, “[t]he Governor may only affirm, modify, or reverse the decision of the parole authority on the basis of the same factors which the parole authority is required to consider.”⁹ (*Ibid.*)

On appeal, “because the paramount consideration for both the Board and the Governor under the governing statutes is whether the inmate currently poses a threat to public safety, and because the inmate’s due process interest in parole mandates a meaningful review of a denial-of-parole decision, the proper articulation of the standard of review is whether there exists ‘some evidence’ that an inmate poses a current threat to public safety, rather than merely some evidence of the existence of a statutory unsuitability factor,” to support the parole decision. (*In re Shaputis, supra*, 44 Cal.4th at p. 1254; see also *In re Lee* (2006) 143 Cal.App.4th 1400, 1409 [“[s]ome evidence of the existence of a particular factor does not necessarily equate to some evidence the parolee’s release unreasonably endangers public safety”].)

In applying this “highly deferential” standard, the reviewing court must affirm the Board’s or Governor’s reading of the evidence so long as it is reasonable and based upon due consideration of the relevant legal factors. (*In re Lawrence, supra*, 44 Cal.4th at

⁹ This constitutional provision provides in relevant part: “No decision of the parole authority of this state with respect to the granting, denial, revocation, or suspension of parole of a person sentenced to an indeterminate term upon conviction of murder shall become effective for a period of 30 days, during which the Governor may review the decision subject to procedures provided by statute. The Governor may only affirm, modify, or reverse the decision of the parole authority on the basis of the same factors which the parole authority is required to consider. . . .” (Cal. Const., art. V, § 8, subd. (b).)

pp. 1204-1205, 1210; *In re Shaputis*, *supra*, 44 Cal.4th at p. 1258; *In re Singler* (2008) 169 Cal.App.4th 1227, 1238.) “If the decision’s consideration of the specified factors is not supported by some evidence in the record and thus is devoid of a factual basis, the court should grant the prisoner’s petition for writ of habeas corpus and should order the Board [or the Governor] to vacate its decision denying parole and thereafter to proceed in accordance with due process of law.” (*In re Rosenkrantz* (2002) 29 Cal.4th 616, 658; see also *In re Lawrence*, *supra*, 44 Cal.4th at pp. 1204-1205, 1210 [while this standard is “highly deferential,” requiring just a “modicum of evidence,” it “certainly is not toothless”].)

Here, the People argue that the interrelation of the commitment offense, Sole’s lack of insight into the offense as evidenced by his statements to mental health evaluators and correctional counselors, and his insufficient participation in self-help programs provide “some evidence” supporting the Governor’s conclusion that he remains a current risk to public safety, and thus unsuitable for parole. (See *In re Lawrence*, *supra*, 44 Cal.4th at pp. 1191, 1212.) Below, the superior court disagreed, finding no evidence in the record that Sole lacked insight into his crime or failed to adequately participate in self-help programs and therapy.

Having independently reviewed the record, we reach a contrary conclusion from the superior court. As we will explain, we conclude the Governor’s denial of parole for Sole was in fact supported by “some evidence” that he poses a current threat to public safety, and thus should have been upheld. (*In re Shaputis*, *supra*, 44 Cal.4th at p. 1254.)

A. The Aggravated Nature of the Commitment Offense.

In deciding an inmate’s suitability for parole, the Governor may consider whether the commitment offense was committed in an especially heinous, atrocious or cruel manner.¹⁰ (Cal. Code Regs., tit. 15, § 2402, subd. (c)(1).) However, “the aggravated

¹⁰ The governing regulations permit the Governor to consider, among other things, whether the commitment offense had multiple victims, whether it was carried out in a dispassionate and calculated manner, whether the inmate acted with exceptionally callous

nature of the crime does not in and of itself provide some evidence of *current* dangerousness to the public unless the record also establishes that something in the prisoner's pre- or post-incarceration history, or his or her current demeanor and mental state, indicates that the implications regarding the prisoner's dangerousness that derive from his or her commission of the commitment offense remain probative of the statutory determination of a continuing threat to public safety." (*In re Lawrence, supra*, 44 Cal.4th at p. 1214.) "This inquiry is, by necessity and by statutory mandate, an individualized one, and cannot be undertaken simply by examining the circumstances of the crime in isolation, without consideration of the passage of time or the attendant changes in the inmate's psychological or mental attitude. ([*In re*] *Rosenkrantz, supra*, 29 Cal.4th at p. 682.)" (*In re Lawrence, supra*, 44 Cal.4th at p. 1221; see also *In re Shaputis, supra*, 44 Cal.4th at p. 1255.)

Here, the Governor found the commitment offense "especially atrocious" in light of evidence that it was premeditated and involved multiple victims. (See Cal. Code Regs., tit. 15, § 2402, subd. (c)(1).) For example, the Governor pointed out that Sole took the gun to the family residence looking for Joyce, and then used it to threaten his young daughter and to, among other things, demand that she tell Joyce she and her boyfriend were "fucking dead." Then, despite having "sufficient time to cool off when he left his ex-wife's home," Sole went to the bar and repeatedly shot Joyce after stating: "I told you I'd blow you away last night." He then fled the scene.

Sole disputes that his offense was "especially egregious . . . such that it remains predictive of [his] current dangerousness." In particular, Sole denies there were multiple victims of the crime or that he engaged in deliberation before its commission. However, there is indeed evidence in the record that Sole fired at least one shot toward the bartender, an innocent witness who was attempting to get a coin to call police, before fleeing the scene. There is also evidence supporting the Governor's finding of premeditation, including the fact that, by his own words, Sole threatened to kill Joyce the

disregard for human suffering, and whether the inmate's motive was inexplicable or very trivial. (Cal. Code Regs., tit. 15, § 2402, subd. (c)(1).)

day before her murder, and that he told his 13 year-old daughter to warn Joyce and her boyfriend that they were “fucking dead” before arriving at the bar.

Sole also argues that Joyce’s murder can be chalked up to his intoxication, alcoholism, and the couple’s “15-year turbulent and chaotic relationship” at the time of its commission. The fact that he has not consumed alcohol in 30 years, Sole argues, proves he is not a current risk. However, as Sole’s mental health evaluators noted, if Sole were to fall off the sobriety wagon upon his release, the risk that he would engage in future acts of violence would undoubtedly increase.

Moreover, and in any event, the California Supreme Court has made quite clear the aggravated nature of the crime cannot be considered in isolation, but rather must be considered in the context of the record as a whole, a fact acknowledged in the Governor’s decision. (*In re Lawrence, supra*, 44 Cal.4th at p. 1221.) Accordingly, we return to the record to determine whether this factor, *when considered in conjunction with other factors relied upon by the Governor*, provided some evidence of Sole’s continuing threat to public safety. (See *In re Lawrence, supra*, 44 Cal.4th at p. 1212 [“It is not the existence or nonexistence of suitability or unsuitability factors that forms the crux of the parole decision; the significant circumstance is how those factors interrelate to support a conclusion of current dangerousness to the public”].)

B. Sole’s Lack of Insight into the Offense.

As noted above, the Governor placed heavy emphasis on Sole’s apparent lack of insight into his commission of the commitment offense in concluding that he remained a threat to public safety. Specifically, the Governor quoted extensively from the 2004 psychological evaluation (as we did above), in which the evaluator expressed concerns regarding “the inconsistencies and contradictions in the inmate’s understanding and telling of his offense,” before concluding that “it appears, on the surface, that the defendant has confabulated a more sympathetic story to justify the shooting of his wife.” (See pp. 5-6, above.) The Governor also quoted from the 2008 psychological evaluation, which included Sole’s July 2008 description of the crime, as indicating that “Sole still lacks full insight into the circumstances that led to the murder, and that he still poses a

risk of recidivism.”¹¹ Finally, the Governor noted that the mental health evaluator in 2008, as well as correctional counselors in 2002 and 2000, rated Sole a “moderate” risk for future violence.

Despite Sole’s contrary claims, our review of the record reveals evidentiary support for the Governor’s lack of insight concerns. Most significantly, the concerns expressed by the mental health evaluator in 2004, described above, speak for themselves. The Governor was undoubtedly entitled to credit these concerns of a mental health professional who spent several hours evaluating Sole before drawing conclusions based upon valid scientific criteria.

We acknowledge Sole’s argument that the 2004 evaluation is “stale” given the passage of time and the existence of the more-recent 2008 evaluation, which Sole describes as “overwhelmingly positive.” We also acknowledge the 2004 evaluation’s description of Sole as having an “excellent probability of succeeding on parole” if he remains sober, and the 2008 evaluation’s statement that “[t]here is nothing else [he] can do therapy wise in regards to the commitment offense.” However, despite this evidence, it remains true that Sole’s description of the crime in 2008, in which he accuses Joyce of lying, going out with a child molester and even molesting their daughter, is generally consistent with his description in 2004 – which is what prompted the mental health professional’s concern that he had “confabulated a more sympathetic story” to justify Joyce’s murder. Moreover, Sole’s stated justification for Joyce’s murder – his need to protect their daughter against sexual molestation – is inconsistent with the evidence that he threatened his daughter’s life, in addition to Joyce’s life, on the day of the crime, prompting her to report his actions to the police. While Sole denied threatening his daughter, he fails to explain why she would have stated otherwise to police, and there is no other evidence in the record casting doubt on the veracity of her statement.

¹¹ As set forth above, Sole described his crime as follows: “[Joyce] was lying and going out with a child molester. She was molesting my daughter, I think. I lost it and when I got in the bar we were arguing. I shot her two times, they say three. My brother-in-law was in the car. I was drunk and taking Percodan at the time because they had just pulled all my teeth out.” (See pp. 6-7, above.)

In all events, the inclusion of both positive and negative observations in the 2008 and 2004 psychological evaluations regarding Sole’s suitability for parole, including the 2008 evaluator’s observation that there was nothing left for Sole to do “therapy wise”, does not dictate any particular decision. Rather, the weight to be afforded to any particular aspect of those evaluations is for the Governor to decide.¹² (*In re Rozzo* (2009) 172 Cal.App.4th 40, 62 [“the Governor . . . has broad discretion to disagree with his State’s forensic psychologists”]; see also *In re Lazor* (2009) 172 Cal.App.4th 1185, 1202.) Even if a contrary conclusion could be drawn on this record, we are required on appeal to resolve evidentiary conflicts in favor of the Governor’s decision. (*In re Prather* (2010) 50 Cal.4th 238, 256 [“Without question, consideration of the interrelationship and possible probative value of both new and existing evidence in the record lies squarely within the discretionary authority vested in the Board”]; *In re Rosenkrantz, supra*, 29 Cal.4th at p. 677 [“Resolution of any conflicts in the evidence and the weight to be given the evidence are matters within the authority of the Governor. . . . 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”].) As such, we accept the Governor’s conclusion that both evaluations provide reasonable support for his finding that Sole continues to lack insight into his violent past.

¹² As the California Supreme Court has noted, “expressions of insight and remorse will vary from prisoner to prisoner and . . . there is no special formula for a prisoner to articulate in order to communicate that he or she has gained insight into, and formed a commitment to ending, a previous pattern of violent behavior.” (*In re Shaputis, supra*, 44 Cal.4th at p. 1260 fn. 18.) In this case, however, we are not simply concerned with Sole’s attempt to articulate in a meaningful way the impulses that led him to commit murder. Rather, we are concerned with his very straightforward descriptions of the murder itself and the events leading up to it. (Cf. *In re Roderick* (2007) 154 Cal.App.4th 242, 270-271 [reversing a denial of parole where, despite “his inability to articulate a more insightful explanation,” the inmate expressed genuine remorse for the crime and acknowledged after several years of claiming self defense that it was intentional].)

C. Sole's Inadequate Efforts at Self Help.

We now turn to the Governor's finding that Sole failed to take sufficient steps to address his extensive violent history through self help and other therapy programs in prison. Again, we find evidentiary support in the record.

As set forth above, it is undisputed Sole participated in just one program specifically designed to address inmates' violent tendencies during his three decades in prison – the Alternatives to Violence program in 1998. (See p. 4, above.) While Sole also participated in the CAT X therapy program, it does not appear from the record that this program addressed domestic violence issues. Moreover, while Sole participated regularly in AA from 1999 to 2007, his Life Prisoner Evaluation prepared for the August 2008 parole hearing noted “[he] has stopped participating in Alcoholics Anonymous and now does not participate in any Self Help or Therapy Activities.” This was despite the Board's recommendation following his 2007 parole hearing that he continue AA and other self help programs. Finally, when questioned by the mental health evaluator in 2008, Sole could not recall any of the steps of the AA program.

Given this evidence, we conclude the Governor had a reasonable basis for finding Sole has failed to sufficiently commit himself to intensive rehabilitative efforts designed to address the circumstances under which he is likely to return to the violent conduct checkering his past.

D. The Interrelationship Between these Factors and Sole's Current Dangerousness.

Finally, as we have already pointed out, our role as reviewing court is not simply to consider whether each unsuitability factor relied upon by the Governor, standing alone, supports a finding that Sole remains a threat to public safety. We must consider whether these factors, considered collectively, support such a finding. (*In re Lawrence, supra*, 44 Cal.4th at p. 1212 [“It is not the existence or nonexistence of suitability or unsuitability factors that forms the crux of the parole decision; the significant circumstance is how those factors interrelate to support a conclusion of current dangerousness to the public”].)

Without wholly rehashing our discussion of the supporting evidence, we conclude in this case the relevant standard has been met. In particular, the record reflects the Governor was well aware that Sole's advanced age, commitment to sobriety, commendable prison work efforts, and supportive family structure weighed in favor of his suitability for parole. Nonetheless, based upon his review of the record and, in particular, the 2004 and 2008 psychological evaluations, the Governor had reasonable concerns that Sole continued to minimize the circumstances of the murder by in effect blaming Joyce for his actions by painting her as a liar who put their daughter at serious risk by dating a known child molester. Further, as the Governor noted, Sole's actions, including his threats to kill Joyce the day and hour before her murder, demonstrate an element of premeditation that Sole does not appear to have ever acknowledged, supporting the Governor's finding that he lacked sufficient insight into why he committed murder in the first place. When this evidence is considered in the context of Sole's by-all-accounts minimal engagement in self help programs specifically directed towards his violent tendencies, his recent discontinuation of AA and his inability to recount the basic AA steps (despite the key role alcohol has played in his criminal history), the Governor's decision, we believe, reflects the necessary nexus between the factors demonstrating Sole's unsuitability for parole and his current dangerousness to the public.

As we very recently explained: "Whether this court would have assigned more or less significance to this evidence is beside the point. Under the applicable standard of review, we need only conduct 'such review as is necessary to determine whether there is any evidence in the record supporting the denial.' (*In re Van Houten* (2004) 116 Cal.App.4th 339, 347-348; *In re Shaputis*, *supra*, 44 Cal.4th at p. 1261; [see also] *In re Rosenkrantz*, *supra*, 29 Cal.4th at p. 677 ['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 Shippman* (2010) 185 Cal.App.4th 446, 464.) Accordingly, given the existence in the record of some evidence supporting the Governor's denial of parole, the superior court's order granting Sole's request for habeas corpus relief was erroneous.

DISPOSITION

The superior court's order granting Sole's petition for writ of habeas corpus and vacating the Governor's denial of parole is reversed.

Jenkins, J.

We concur:

McGuiness, P. J.

Siggins, J.