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UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

EUGENE WALKER,	)	No. C 07-0644 MMC (PR)
	)	
Petitioner,	)	<b>ORDER DENYING</b>
vs.	)	<b>PETITION FOR WRIT OF</b>
	)	<b>HABEAS CORPUS</b>
BEN CURRY, Warden,	)	
	)	
Respondent.	)	

**INTRODUCTION**

On January 31, 2007, petitioner Eugene Walker, a California state prisoner proceeding pro se, filed, pursuant to 28 U.S.C. § 2254, the above-titled petition for a writ of habeas corpus. For the reasons stated herein, the petition is hereby DENIED.

**BACKGROUND**

In 1981, petitioner and his accomplices assaulted and robbed four victims near a housing project, using knives, sticks, and a gun. (Ans. Ex. 5 at 10.) The incident resulted in the death of victim Jesus Garcia. (Id. Ex. 7 at 1.) In 1982, pursuant to a plea agreement, petitioner pleaded guilty to one count of second degree murder and was sentenced to fifteen years to life in prison; additionally, petitioner pleaded guilty to one count of felony burglary in an unrelated case, for which he was sentenced to four years in prison, to be served concurrently with his indeterminate life sentence. (Id. Ex. 3 at 2-3.) In January 2005, the Board found petitioner unsuitable for parole, on the ground he

1 “would pose an unreasonable risk of danger to society or a threat to public safety if  
2 released from prison.” (Ans. Ex. 5 at 54.)

3 In reaching its decision, the Board accepted the following facts taken from  
4 petitioner’s 2001 probation report:

5 On 11/26/1981 at approximately 2:30 a.m. victim [Jesus] Garcia was in a  
6 car with his brother Nasario Garcia . . . and two friends. Lorendo Leora  
7 . . . and Alfons Alfredo Gonzales . . . . The car had run out of gas in an area  
8 of Olympic Boulevard near [the] Estrada Housing Project. At that location,  
9 they were assailed by a group of young men described as Latinos and one  
10 black who used knives, sticks, and a gun to assault everyone in the car. All  
11 the victims was [sic] pulled from the car and were beaten and robbed.  
12 Victim Gonzales surrendered his wallet containing 200 dollars, and two of  
13 the group then tried to stab him. He managed to flee. As he was running,  
14 he heard two shots fired and heard bullets hit the ground next to him and  
15 heard someone yell out, if you come back to your car, we’ll kill you. He  
16 sustained superficial abrasions to the abdomen. Victim [Nasario] Garcia  
17 stated that he was pulled out of the car by two members of the group and  
18 stabbed in the back. He surrendered his wallet containing 180 dollars, as  
19 well as a woman’s wristwatch. He received treatment for multiple  
20 lacerations, a stab wound to the face, extremities, and abdomen. Victim  
21 Leora . . . confirmed that his wallet containing 80 dollars was taken. He  
22 was hit across the face with a stick. After he fell to the ground, he was  
23 beaten and kicked. One of the assailants jumped on him, trying to break his  
24 leg. He was treated for multiple contusions to his face, a fractured nose,  
25 and badly sprained ankle. Victim Jesus Garcia was stabbed at the scene and  
26 died as a result of multiple stab wounds to the chest, one which severed an  
27 artery and one which penetrated his heart. Investigation revealed that  
28 [petitioner], Johnny, Lumpy, Guhardo, and Frankie, Sleepy, Castro,  
members of the BNE gang and the Estrada Housing Project gang,  
committed the robbery and murder. Investigating officers of the  
Hollenbeck Station noted that [petitioner], the only adult in the group, was  
the instigator in the murder and robbery.

(Id. at 10–12.) Although petitioner admitted participating in the robbery and assault, he  
denied having stabbed or shot anyone and denied being involved in the murder. (Id. at  
12-14.)

At the parole hearing, the Board reviewed petitioner’s record, including the  
circumstances of his commitment offense, his criminal history, and his behavior in prison.  
With respect to the commitment offense, the Board found the crime to be of the kind that  
would “shock the conscience of any people.” (Id. at 54.) The Board noted that multiple  
victims not only were “attacked” but also “abused,” and that the crime was carried out in  
a “dispassionate and calculated manner” and demonstrated a “total callous disregard for

1 one's fellow man.” (Id. at 54–55.)

2 The Board also reviewed petitioner’s criminal history. Petitioner was first arrested  
3 at sixteen; his juvenile criminal history includes arrests for receiving stolen property,  
4 burglary, robbery, and grand theft, and he was declared a ward of the court. The robbery,  
5 as the Board noted, was of a 24-year old boy, who, while lying on the ground, was  
6 reportedly kicked in the head by petitioner. (Id. at 16.) The commitment offense and a  
7 conviction for burglary comprise his adult criminal history. (Id. at 16; Ex. 7 at 3-4.)

8 The Board also examined petitioner’s behavior in prison. The Board noted that  
9 petitioner had committed many disciplinary infractions, (id. at 25), ranging from petty  
10 violations, such as failure to report to work, to more serious offenses, such as assaulting  
11 an inmate and destruction of state property (id. Ex. 7 at 11–12), but also acknowledged  
12 that those disciplinary problems had occurred at a time when petitioner was young and  
13 immature (id. Ex. 5 at 32), and that petitioner had no disciplinary actions for the  
14 preceding seven years (id. at 31). The Board made note of petitioner’s accomplishments  
15 in various inmate programs, including self-help programs, and noted in particular  
16 petitioner’s successful involvement with the Straight Life program, in which petitioner  
17 was working with at-risk youth. (Id. at 26, 29-31.) Petitioner’s latest psychological  
18 report, as the Board noted, also was positive; the report assessed petitioner’s potential for  
19 violence as “no more than the average citizen in the community,” and further found  
20 petitioner had “learned lessons that many citizens in the community haven’t learned,” and  
21 thus, petitioner’s “potential for violence [might] be even less than the average citizen.”  
22 (Id. at 32.)

23 After a full hearing, during which all of the above evidence was considered, the  
24 Board found petitioner unsuitable for parole. (Id. at 54.) In response to the Board’s  
25 decision, petitioner filed state habeas petitions, later denied, in the Los Angeles Superior  
26 Court, California Court of Appeal, and California Supreme Court. (Id. Ex. 12, 14, 16.)

27 In 2007, petitioner filed the instant federal habeas petition, alleging that (1) the  
28 Board violated his right to due process because the decision to deny him parole was not

1 based on “some evidence,” but rather was based on the unchanging facts of his  
2 commitment offense,<sup>1</sup> and (2) the Board violated his plea agreement, and thus his right to  
3 due process, by denying him parole.

## 4 DISCUSSION

### 5 A. Standard of Review

6 This Court may entertain a petition for a writ of habeas corpus “in behalf of a  
7 person in custody pursuant to the judgment of a State court only on the ground that he is  
8 in custody in violation of the Constitution or laws or treaties of the United States.” 28  
9 U.S.C. § 2254(a); Rose v. Hodges, 423 U.S. 19, 21 (1975).

10 A district court may not grant a petition challenging a state conviction or sentence  
11 on the basis of a claim that was reviewed on the merits in state court unless the state  
12 court’s adjudication of the claim: “(1) resulted in a decision that was contrary to, or  
13 involved an unreasonable application of, clearly established Federal law, as determined  
14 by the Supreme Court of the United States; or (2) resulted in a decision that was based on  
15 an unreasonable determination of the facts in light of the evidence presented in the State  
16 court proceeding.” 28 U.S.C. § 2254(d); Williams v. Taylor, 529 U.S. 362, 412–13  
17 (2000). A federal court must presume the correctness of the state court’s factual findings.  
18 28 U.S.C. § 2254 (e)(1). Habeas relief is warranted only if the constitutional error at  
19 issue had a “substantial and injurious effect or influence in determining the jury’s  
20 verdict.” Penry v. Johnson, 532 U.S. 782, 795 (2001) (internal quotation and citation  
21 omitted).

22 The state court decision implicated by 2254(d) is the “last reasoned decision” of  
23 the state court. See Ylst v. Nunnemaker, 501 U.S. 797, 803–04 (1991); Barker v.  
24 Fleming, 423 F.3d 1085, 1091–92 (9th Cir. 2005). Where there is no reasoned opinion  
25 from the highest state court to have considered the petitioner’s claims, the district court  
26 looks to the last reasoned state court opinion, which, in this instance, is the opinion of the  
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28 <sup>1</sup> This claim is encompassed by Claims 1 and 2 of the petition.

1 Los Angeles Superior Court. (Ans. Ex. 12); see Nunnemaker, 501 U.S. at 801–06;  
2 Shackleford v. Hubbard, 234 F.3d 1072, 1079 n.2 (9th Cir. 2000).

3 **B. Petitioner’s Claims**

4 **1. Sufficiency of Evidence**

5 Petitioner claims the Board violated his due process rights by denying him parole  
6 without “some evidence” to support the decision. The superior court rejected the claim,  
7 finding there was some evidence to support the Board’s decision, in particular, the facts  
8 of the commitment offense, petitioner’s institutional misconduct, petitioner’s unstable  
9 social history and his criminal history, which record reflected a pattern of violence and, as  
10 the Board noted, a “fail[ure] to profit from society’s previous attempts to correct [his]  
11 criminality.” (See Ans. Ex. 12; Ex. 5 at 54–57.)

12 A denial of parole complies with due process provided there is “some evidence” to  
13 support the parole board’s decision. A parole board’s decision deprives a prisoner of due  
14 process if such decision is not supported by “some evidence in the record,” or is  
15 otherwise “arbitrary.” See Superintendent v. Hill, 472 U.S. 445, 454–55 (1985); Sass v.  
16 California Bd. of Prison Terms, 461 F.3d 1123, 1129 (9th Cir. 2006). Additionally, the  
17 evidence underlying the parole board’s decision must have “some indicia of reliability.”  
18 See McQuillion v. Duncan, 306 F.3d 895, 904 (9th Cir. 2002). Accordingly, if a parole  
19 board’s determination with respect to parole suitability is to satisfy due process, such  
20 determination must be supported by some evidence having some indicia of reliability.  
21 Rosas v. Nielsen, 428 F.3d 1229, 1232 (9th Cir. 2005).

22 Additionally, in assessing whether there is “some evidence” to support the Board’s  
23 denial of parole, this Court must consider the regulations that guide the Board in making  
24 its parole suitability determinations. Pursuant to such regulations, “[t]he panel shall first  
25 determine whether the life prisoner is suitable for release on parole[;] [r]egardless of the  
26 length of time served, a life prisoner shall be found unsuitable for and denied parole if in  
27 the judgment of the panel the prisoner will pose an unreasonable risk of danger to society  
28 if released from prison.” 15 Cal. Code Regs. § 2402(a). The regulations enumerate

1 various circumstances tending to indicate whether or not an inmate is suitable for parole.  
2 Id., § 2402(c)–(d).<sup>2</sup> One circumstance tending to show an inmate’s unsuitability is that  
3 the crime was committed in an “especially heinous, atrocious or cruel manner.” Id.,  
4 § 2402(c). Two factors that the parole authority may consider in determining whether  
5 such a circumstance exists are whether “[t]he offense was carried out in a manner that  
6 demonstrates an exceptionally callous disregard for human suffering,” and whether “[t]he  
7 motive for the crime is inexplicable or very trivial in relation to the offense.” Id.,  
8 § 2402(c)(1)(D) & (E). In addition to these factors, the Board is to consider “all relevant,  
9 reliable information available.” Id., § 2402(b).

10 It is now established under California law that the task of the Board is to determine  
11 whether the prisoner would be a danger to society if he or she were paroled. See In re  
12 Lawrence, 44 Cal. 4th 1181 (2008). Consequently, the constitutional “some evidence”  
13 requirement is that there exists some evidence that the prisoner constitutes such a danger,  
14 not simply that there exists some evidence of one or more of the factors listed in the  
15 regulations as considerations appropriate to the parole determination. Id. at 1205–06.

16 In that regard, however, a parole authority’s continued reliance on the  
17 circumstances of the commitment offense as the sole basis for denying parole can, over  
18 time, raise due process concerns. See Biggs v. Terhune, 334 F.3d 910, 916 (9th Cir.  
19 2003). “[I]n some cases, indefinite detention based solely on an inmate’s commitment  
20 offense, regardless of the extent of his rehabilitation, will at some point violate due  
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22 <sup>2</sup> The circumstances tending to show an inmate’s unsuitability are: (1) the  
23 commitment offense was committed in an “especially heinous, atrocious or cruel  
24 manner;” (2) previous record of violence; (3) unstable social history; (4) sadistic sexual  
25 offenses; (5) psychological factors such as a “lengthy history of severe mental problems  
26 related to the offense;” and (6) prison misconduct. 15 Cal. Code Regs. § 2402(c). The  
27 circumstances tending to show suitability are: (1) no juvenile record; (2) stable social  
28 history; (3) signs of remorse; (4) commitment offense was committed as a result of stress  
which built up over time; (5) Battered Woman Syndrome; (6) lack of criminal history;  
(7) age is such that it reduces the possibility of recidivism; (8) plans for future including  
development of marketable skills; and (9) institutional activities that indicate ability to  
function within the law. Id. § 2402(d).

1 process, given the liberty interest in parole that flows from the relevant California  
2 statutes.” Irons v. Carey, 505 F.3d 846, 854 (9th Cir. 2007).

3 Here, the Court cannot find the state court was unreasonable in concluding there is  
4 some evidence to support the Board’s decision that petitioner would pose a danger to  
5 society if released. The record contains evidence to support the Board’s finding,  
6 including the circumstances of the commitment offense, petitioner’s criminal history, and  
7 his prison disciplinary infractions.

8 First, evidence exists to support the Board’s determination that the circumstances  
9 of the commitment offense indicated petitioner presented a risk of danger to society if  
10 released. The record contains evidence that the commitment offense was committed in an  
11 “especially heinous, atrocious or cruel manner,” a circumstance tending to show parole  
12 unsuitability, see 15 Cal. Code Regs. § 2402(c), in that the offense would “shock the  
13 conscience of any person,” and was “carried out in a dispassionate and calculated  
14 manner” . . . . and “in a manner that demonstrate[d] a total callous disregard for one’s  
15 fellow man.” (Ans. Ex. 5 at 54–55.) In particular, petitioner and his accomplices  
16 targeted a group of stranded victims and attacked them with knives, sticks, and a gun.  
17 Significantly, even after the victims complied with petitioner and his accomplices’  
18 demands for money, the vicious attack continued, resulting in the death of Jesus Garcia,  
19 as well as serious injury to other victims. Under such circumstances, the Board’s  
20 description of the offense as “dispassionate” and a “total callous disregard for one’s  
21 fellow man” is not unreasonable. While at some point, the circumstances of the  
22 commitment offense may cease to have probative value, they constitute, at present, some  
23 evidence of petitioner’s dangerousness.

24 Moreover, petitioner’s institutional behavior and his criminal history constitute  
25 additional evidence of petitioner’s unsuitability for parole. While in prison, petitioner  
26 committed at least thirty disciplinary infractions. (Ans. Ex. 7.) Prior to his current  
27 incarceration, petitioner had acquired a substantial criminal history, including violent  
28 offenses. Because the Board relied on such additional evidence, petitioner’s claim that

1 the Board’s decision violated his right to due process by relying solely on the unchanging  
2 circumstances of the commitment offense is without merit.

3 Accordingly, petitioner is not entitled to habeas relief on this claim.

## 4 **2. Plea Agreement**

5 Petitioner claims respondent, by denying him parole, violated his rights under his  
6 plea agreement. (Pet. at 24.) The plea agreement, petitioner contends, promised  
7 petitioner he would be released on parole if he “met the suitability criteria, [and] served  
8 sufficient time per the Board of Prison Terms Matrix.” (Id. at 25.)

9 “[D]ue process rights conferred by the federal constitution allow [a defendant] to  
10 enforce the terms of [his] plea agreement.” Brown v. Poole, 337 F.3d 1155, 1159 (9th  
11 Cir. 2003). Plea agreements are construed using the ordinary rules of contract  
12 interpretation. See id. at 1159. “[W]hen a plea rests in any significant degree on a  
13 promise or agreement of the prosecutor, so that it can be said to be a part of the  
14 inducement or consideration, such promise must be fulfilled.” See Santobello v. New  
15 York, 404 U.S. 257, 262 (1971); see also Brown, 337 F.3d at 1159 (holding prosecutor’s  
16 promise, specifically, that petitioner would be released on parole after serving half the  
17 minimum sentence discipline-free, was binding).

18 Here, petitioner’s claims are without merit. Because the Board found petitioner  
19 unsuitable for parole, the first of the provisions of the plea agreement on which petitioner  
20 relies was not implicated, and therefore respondent did not violate its terms. Moreover,  
21 the Board is under no duty to apply the sentencing matrix once it has determined a  
22 prisoner is unsuitable for parole. In Re Dannenberg, 34 Cal. 4th 1069, 1071 (2005).

23 Accordingly, petitioner is not entitled to habeas relief on this claim.

## 24 **CONCLUSION**

25 Because the record contains some evidence to support the Board’s determination  
26 that petitioner would present an unreasonable risk of danger to society if released, and  
27 because petitioner has made an insufficient showing as to his entitlement to relief on his  
28 other claims, the Court finds the state court’s determination was neither contrary to nor an



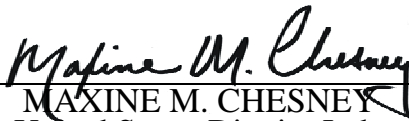
1 unreasonable application of clearly established Supreme Court precedent, nor can the  
2 Court say it was based on an unreasonable determination of the facts.

3 Accordingly, the petition for a writ of habeas corpus is hereby DENIED.

4 The Clerk shall enter judgment in favor of respondent and close the file.

5 **IT IS SO ORDERED.**

6 DATED: December 18, 2009

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9 MAXINE M. CHESNEY  
10 United States District Judge  
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