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SOUTHERN DISTRICT OF CALIFORNIA  
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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

SAMUEL LEE MEDWAY,  
  
vs.  
  
MATTHEW CATE,  
  
Petitioner,  
  
Respondent.

CASE NO. 10-cv-0276 BEN (BLM)  
ORDER DENYING PETITION FOR  
WRIT OF HABEAS CORPUS

Petitioner, an inmate at Centinela State Prison, filed this action seeking a writ of habeas corpus under 28 U.S.C. § 2254 ("Petition"). On September 16, 2010, Magistrate Judge Barbara Major submitted a Report and Recommendation recommending that this Court enter an order: (1) granting the Petition; (2) releasing the Petitioner immediately; and (3) directing that Petitioner's parole term be reduced and Petitioner receive term credit. Respondent filed an objection to the Report and Recommendation, and Petitioner filed a reply. (Docket Nos. 17, 19.) The merits of the Petition are now before this Court.

For the reasons set forth below, the Court adopts in part the Report and Recommendation and DENIES the Petition.

**BACKGROUND**

In 1977, Petitioner was convicted by a jury of first-degree murder and other felonies and was sentenced to a prison term of seven years to life. This habeas petition does not challenge Petitioner's

1 conviction, but rather challenges a decision by the Board of Parole Hearings ("Board") on November  
2 24, 2008 that found Petitioner unsuitable for parole. (Tr. 1; Lodgment 7.) The 2008 hearing was  
3 Petitioner's fifteenth parole hearing and was conducted after the Governor of California reversed a  
4 prior grant of parole. Prior to filing the Petition, Petitioner sought habeas relief at all three state court  
5 levels, but without success. (Lodgment Nos. 2, 4, 6.) While Petitioner was pursuing his state  
6 collateral relief, the Board held another parole hearing. (Lodgment 8.) However, the Board again  
7 denied parole. *Id.*

### 8 I. COMMITMENT OFFENSE

9 The facts cited herein are largely undisputed and were obtained from the transcript of the 2008  
10 parole hearing and the record in this case:

11 In May 1977, a 33-year old homeless man knocked on Petitioner's door and asked for a glass  
12 of water. Petitioner invited the man inside. Soon thereafter, Petitioner accused the man of pulling a  
13 knife on Petitioner's friend some months earlier. Over the next several hours, Petitioner and other  
14 individuals repeatedly beat and kicked the man, stripped him of his clothes, urinated into his open  
15 mouth, and forced him to drink urine from a bath. The participants also attempted to hang the man  
16 in the bathroom with a belt and smother him with a towel. On at least three separate occasions, the  
17 participants told the man they were going to kill him, pointed a gun at his face, and pulled the trigger.  
18 However, on each occasion, the gun was empty. These events occurred at various times throughout  
19 the evening, interspersed by breaks where the participants drank wine and beer and sniffed paint.

20 The participants then became concerned that the man would turn them into the police. At  
21 midnight, the participants carried the man to a vacant lot and placed him under a trailer, where they  
22 shot him first in the head, then in the neck, and then in the stomach. The participants returned to the  
23 apartment, disposed of the man's belongings, and cleaned up the blood. An autopsy showed that the  
24 victim had been severely beaten prior to his death and that his death was due to a bullet wound behind  
25 his left ear. Among other injuries, the victim had six fractured ribs on the left and two on the right,  
26 a fractured skull, two broken cheekbones, and a broken nose and jaw. There were also abrasions and  
27 lacerations.

28 On December 1, 1977, Petitioner was convicted by a jury of first-degree murder and other

1 felonies. He was sentenced to an indeterminate prison term of seven years to life. At the time of the  
2 offense, Petitioner was twenty-three years old. (Lodgment 9.)

### 3 **II. PREVIOUS CRIMINAL HISTORY**

4 Petitioner's prior criminal history includes convictions in March 1974, July 1974, August 1975  
5 and July 1976. (Pet., Ex. G; Lodgment 5, p. 5-6; Lodgment 7, p. 34-36.) In March 1974, Petitioner was  
6 convicted of being a minor in possession of alcohol. In July 1974, Petitioner was convicted of  
7 prowling. In August 1975, Petitioner was convicted of being under the influence of narcotics and  
8 resisting arrest. And, in July 1976, Petitioner was convicted of entering without consent. Each of these  
9 offenses resulted in a misdemeanor conviction and a prison sentence or probation. *Id.* Petitioner  
10 emphasizes that these convictions were for non-violent offenses. (Lodgment 5, p. 5-6.) The record  
11 shows Petitioner has also been arrested for several other offenses, including burglary, robbery, and theft.  
12 (Lodgment 7, p. 34-36, 111-12.)

### 13 **III. PRISON RECORD**

14 During the first thirteen years of Petitioner's prison term, Petitioner received three serious rule  
15 violations and several misconduct reports. (Lodgment 7, p. 49.) Since then, however, Petitioner's  
16 conduct has been "consist [sic] in positive institutional behavior." *Id.* Among other things, while  
17 incarcerated, Petitioner earned trade certifications for janitorial services, dry-cleaning, and mill and  
18 cabinetry work. (Lodgment 7, p. 50.) He also participated in self-help and therapy programs, including  
19 Alcoholics Anonymous, Narcotics Anonymous and Anger Management. *Id.* Petitioner has received  
20 multiple laudatory reports from various institutional staff as well as favorable psychological work and  
21 counselor evaluations. (Lodgment 7, 9.)

## 22 **DISCUSSION**

### 23 **I. "SOME EVIDENCE" STANDARD**

24 The Court may entertain a petition for writ of habeas corpus by a state prisoner "only on the  
25 ground that he is in custody in violation of the Constitution or laws or treaties of the United States."  
26 28 U.S.C. § 2254(a). The Ninth Circuit has consistently recognized that a state prisoner possesses a  
27 federal liberty interest if parole is denied in the absence of "some evidence" that the prisoner is  
28 currently dangerous. *Hayward v. Marshall*, 603 F.3d 546, 562 (9th Cir. 2010); *see also Pearson v.*

1 *Muntz*, 606 F.3d 606, 608-09 (9th Cir. 2010). In reviewing a habeas petition, the Court must “decide  
2 whether the California judicial decision approving the [Board]’s decision rejecting parole was an  
3 ‘unreasonable application’ of the California ‘some evidence’ requirement, or was ‘based on an  
4 unreasonable determination of the facts in light of the evidence.’” *Hayward*, 603 F.3d at 562-63  
5 (quoting 28 U.S.C. § 2254(d)(1)-(2)); *Pearson*, 606 F.3d at 608. Contrary to Respondent’s Objection,  
6 and as concluded in the Report and Recommendation, this Court is not limited to merely evaluating the  
7 parole review procedures utilized by the state to ensure fairness. (Report, p. 6-11.) *Id.*

## 8 II. APPLICATION OF STANDARD

9 Where, as here, there is no reasoned decision from the state’s highest court, the Court looks  
10 through to the last reasoned decision of the state court denying relief to the petitioner. *Ylst v.*  
11 *Nunnemaker*, 501 U.S. 797, 803-04 (1991). In this case, the last reasoned state court decision is the San  
12 Bernardino County Superior Court’s order dated October 14, 2009, finding that “some evidence”  
13 supported the Board’s parole denial. (Lodgment 2; *compare with* Lodgment 4, 6.) Although the court  
14 suggested that Petitioner’s failure to fully accept responsibility for his crime, as well as the nature of  
15 Petitioner’s offense and his pre- and post-incarceration history provided “some evidence” supporting  
16 the Board’s decision, the court did not clearly explain which of the Board’s findings supported the  
17 denial of parole. (Lodgment 2.) Instead, as the Report and Recommendation notes, the court appeared  
18 to largely defer to the Board’s judgment. *Id.* Accordingly, just as the Magistrate Judge did, this Court  
19 examines the Board’s reasons for denying parole in order to evaluate the reasonableness of the superior  
20 court’s decision. *Cooke v. Solis*, 606 F.3d 1206, 1214 (9th Cir. 2010). Having conducted a de novo  
21 review, the Court agrees with the Magistrate Judge’s conclusion that Section 2254(d)(2) applies and  
22 rejects Respondent’s arguments to the contrary. However, after reviewing the record, this Court  
23 concludes there is “some evidence” of current dangerousness such that habeas relief is not warranted.

24 State parole regulations apply in determining whether an inmate poses an unreasonable risk of  
25 danger to public safety. These regulations enumerate factors tending to show suitability for parole, as  
26 well as unsuitability for parole. Cal. Code Regs., tit. 15 § 2281(c)-(d). “While the regulatory factors  
27 are designed to guide the Board’s decision, the ultimate question of parole suitability remains whether  
28 the inmate poses a threat to public safety. There must be some evidence of such a threat, and not

1 merely evidence that supports one or more of the Board's subsidiary findings." *Pirtle v. California Bd.*  
2 *of Prison Terms*, 611 F.3d 1015, 1021 (9th Cir. 2010) (quotation marks omitted) (citing *Hayward*, 603  
3 F.3d at 562). After applying the parole factors, the Board denied parole on the following grounds: (1)  
4 Petitioner's bad attitude and failure to meaningfully participate in rehabilitation programs since 2003;  
5 (2) the heinous nature of the commitment offense; (3) Petitioner's failure to accept full responsibility  
6 for the crime or show full insight or remorse; (4) Petitioner's inadequate parole plans; (5) Petitioner's  
7 unstable social history and prior criminal history; and (6) the opposition to release. (Traverse, p. 6;  
8 Lodgment 7, p. 109-124.) Cal. Code Reg., tit. 15 § 2281(b).

9 First, the Board found that Petitioner exhibited a bad attitude and insistence on doing things his  
10 way, as evidenced in part by his failure to meaningfully participate in rehabilitation programs since  
11 2003. (Lodgment 7, p. 115.) At the parole hearing, Petitioner stated he last attended the prison's  
12 rehabilitation programs, in particular Alcoholics Anonymous, in 2003. (Lodgment 7, p. 41-42, 57-61.)  
13 Petitioner explained that he no longer attends the therapy programs because he (1) has already  
14 completed them; (2) is busy with his prison job; and (3) is busy litigating the Governor's 2004 decision  
15 to reverse Petitioner's 2003 parole grant. *Id.* Petitioner further stated that, although he no longer attends  
16 the programs, he participates in them via self-study. *Id.* When requested by the Board, however,  
17 Petitioner was unable to produce a book report or other documentation evidencing his self-study.<sup>1</sup> (*Id.*,  
18 p. 41-43.)

19 The Board found Petitioner's diminished involvement in the programs troublesome and  
20 indicative of potential problems that Petitioner may have in developing relationships, dealing with  
21 people, and interacting with others outside of prison. (Lodgment 7, p. 59, 60-61, 115.) This finding  
22 is also supported by other evidence in the record. For example, Petitioner's 2008 psychological  
23 evaluation indicates that, based on events occurring prior to the commitment offense and  
24 incarceration, Petitioner exhibited a "blatant disregard" for others and Petitioner could have  
25 problems dealing with negative criticism if released on parole. (Lodgment 9, p. 11, 14.)  
26 Furthermore, Petitioner's participation in the commitment offense appeared to be based, in part, on

27  
28 <sup>1</sup> Although Petitioner produced a letter that he wrote as part of the 12-step program, it is unclear when he wrote the letter and, when questioned, Petitioner was unable to accurately recount its contents. *Id.*

1 peer pressure and the need to be accepted by the other participants. (Lodgment 9, p. 9.) The record  
2 further indicates that, while in prison, Petitioner received citations for unexcused absences and  
3 hiding during the count, which further show Petitioner may have difficulty dealing with authority  
4 and people outside of prison. (Lodgment 7, p. 40.) Indeed, it appears that Petitioner stopped  
5 attending the rehabilitation programs around the time the Governor reversed Petitioner's parole  
6 grant and Petitioner has made little if any attempt since then to remedy the concerns raised by the  
7 Governor. (Lodgment 7, p. 121-24.) These circumstances further evidence spitefulness and  
8 difficulty handling criticism and setbacks. (Lodgment 7, p. 121-24.) The Board noted these  
9 circumstances still existed in October 2009, when it again denied parole. (Lodgment 8, p. 6, 10.)

10 One could argue, however, that merely a bad attitude and potential difficulty in dealing with  
11 others is not sufficient to show that Petitioner poses an unreasonable risk of danger to society. This is  
12 especially true where, as detailed in the Report and Recommendation, there is clearly evidence in the  
13 record showing that Petitioner may be suitable for parole. However, this Court's role is limited to  
14 assessing the reasonableness of the Board's parole determination in 2008, not deciding on its own  
15 whether Petitioner is entitled to parole. *Powell v. Gomez*, 33 F.3d 39, 42 (9th Cir. 1994) ("This court  
16 cannot reweigh the evidence, but looks only to see if 'some evidence' supports the [Board's]  
17 decision."); *In re Lawrence*, 44 Cal. 4th 1181, 1191 (2008) (noting the "some evidence" standard is  
18 extremely deferential and a federal habeas court may not substitute its own judgment for the Board's  
19 merely because it would weigh the evidence differently). In this regard, all factors must be weighed:  
20 "Circumstances which taken alone may not firmly establish unsuitability for parole may contribute to  
21 a pattern which results in a finding of unsuitability." Cal. Code Regs., tit. 15 § 2281(b). Keeping this  
22 in mind, the Court notes that Petitioner's prior criminal history includes arrests and, in some instances  
23 convictions, for robbery, burglary, drugs, trespassing, prowling, and receiving stolen property.  
24 (Lodgment 7, p. 34-36, 111-12.) In fact, Petitioner was on probation when he committed the  
25 commitment offense. *Id.* Although these offenses were non-violent, they were numerous and show  
26 that, despite receiving prison time and probation, Petitioner was not deterred from future criminal  
27 conduct. The record also shows that Petitioner had no justifying motivation for the commitment  
28 offense. (Lodgment 9, p. 9.) Cal. Code Regs., tit. 15 § 2281(d)(4). Petitioner was the eldest of the

1 participants (most of whom were juveniles), Petitioner did not know the victim, and the victim did not  
2 pose an immediate threat to Petitioner or any other participants. (Lodgment 7, p. 53; Lodgment 9.)

3 In light of the above, the Court finds that the record provides "some evidence" of the Board's  
4 determination that Petitioner presented a current danger to society and, therefore, should not be granted  
5 parole. The "some evidence" standard is minimal and assures only that the record is not so devoid of  
6 evidence that the denial of parole was arbitrary. *See Sass v. Cal. Bd. of Prison Terms*, 461 F.3d 1123,  
7 1129 (9th Cir. 2006), *overruled in part on other grounds, Hayward*, 603 F.3d at 555. The standard  
8 requires only a "modicum of evidence" of unsuitability for parole. *In re Lazor*, 172 Cal. App. 4th 1185,  
9 1198 (2009) (quoting *Lawrence*, 44 Cal. 4th at 1191, n. 2). The Board cited other factors for denying  
10 parole, including the commitment offense, the lack of acceptance of responsibility or remorse,  
11 inadequate parole plans, unstable social history and opposition to release. However, for the same  
12 reasons stated in the Report and Recommendation, which are incorporated herein by this reference, the  
13 Court finds the record void of "some evidence" supporting these other findings. Nonetheless, given  
14 the standard that applies here, the Court finds that Petitioner's attitude, lack of participation in  
15 rehabilitation programs, prior criminal history and lack of motivation in committing the commitment  
16 offense, when taken as a whole, evidenced current dangerousness to society. Accordingly, the Court  
17 finds the Superior Court's order dated October 14, 2009 was not an unreasonable application of the  
18 "some evidence" standard nor was it an unreasonable determination of the facts in light of the evidence.

19 **CONCLUSION**

20 In light of the above, the Court DENIES Petitioner's petition for writ of habeas corpus.

21 **IT IS SO ORDERED.**

22 Date: November 15, 2010

23   
24 \_\_\_\_\_  
25 Hon. Roger T. Benitez  
26 United States District Court Judge  
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