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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re	) B161777
	)
ORLANDO ROBERTS,	) (Los Angeles Super. Ct.)
	) No. A330146)
on Habeas Corpus.	) (San Diego Super. Ct.
	) No. HSC10349
	) (Melinda J. Lasater, Judge)
	)
	) ORDER
_____	)

THE COURT:*

The petition for writ of habeas corpus has been read and considered.

The petition is denied.

Petitioner contends, in the context of parole suitability proceedings, that he is entitled to have a "primary term" fixed under the Indeterminate Sentencing Law prior to being determined suitable for parole because his underlying offense was committed in 1976 and he was sentenced in 1977 when that law was in effect.

Petitioner is not entitled to the relief requested because in 1976 and 1977 an inmate was not entitled to have a determinate "primary term" set until a determination of parole suitability. Even if the requested relief were granted it would not result in an earlier determination of parole suitability or an earlier parole release date because an initial primary term would be negated by determinations of unsuitability for parole and the Indeterminate Sentencing Law and Determinate Sentencing Law parole suitability guidelines are functionally identical. (*In re Rodriguez* (1975) 14 Cal.3d 639, 646-647; *People v. Wingo*

(1975) 14 Cal.3d 169, 182-183; *In re Seabock* (1983) 140 Cal.App.3d 29, 40-41; *In re Duarte* (1983) 143 Cal.App.3d 943, 946-951.)

Having denied the petition on the merits, we turn to address a troublesome procedural matter.

After denying petitioner's habeas petition on the merits, the San Diego Superior Court advised him that the appropriate venue for appellate review lies in our district under authority of *In re Sena* (2001) 94 Cal.App.4th 836. Despite our disagreement with *In re Sena,* we determined the petition to spare petitioner from being bounced back and forth between the Second Appellate District and the Fourth Appellate District.

We believe that the proper venue for habeas corpus review of parole suitability denials lies in the county in which the inmate is housed (or was housed at the time of the parole denial) and in the corresponding appellate district. We also believe that substantial justification exists for requiring habeas review of such parole determinations to be commenced in the proper venue to promote efficient, consistent handling of such petitions and to discourage the filing of duplicate petitions in various counties in a forum shopping endeavor.

Our two major points of disagreement with *In re Sena* are (1) its categorization of a habeas corpus challenge to a denial of parole suitability as "a challenge to the length of sentence, i.e., the sentence itself" with proper venue in the county where sentence was imposed (*In re Sena, supra*, 94 Cal.App.4th at p. 839), and (2) its omission to consider that habeas petitions challenging denial of parole suitability might fall within a venue category other than the two categories identified in *Griggs v. Superior Court* (1976) 16 Cal.3d 341, at 347 ("challenge … to a particular judgment or sentence" and "challenge… to conditions of the inmate's confinement"), thus ignoring the statement in *Griggs* that "There will be, of course, petitions filed in which the relief sought does not fall within either of the above categories. We do not attempt herein to state a general rule or all-

inclusive specific rules which direct the proper procedural disposition in each instance." (*Ibid*.)

The technical points relied upon in *In re Sena, supra*, 94 Cal.App.4th at 839 (that parole is an integral component of felony sentences, and that "a parole decision flows from and relates to the sentence initially imposed" and affects the length of the sentence) do not justify the conclusion that petitions challenging a denial of parole suitability "challenge … a particular judgment or sentence" within the contemplation of *Griggs (Ibid)*. The broad standard set by *In re Sena* would support the conclusion that severe restrictions upon an inmate's liberty ("conditions of confinement") due to placement in a high security prison "flows from and is related to" the sentence initially imposed for a grave offense. Instead, we read the *Griggs* discussion of challenges "to a particular judgment or sentence" as referring only to claims that the sentence initially imposed is unlawful or an abuse of sentencing discretion.

We view denials of parole suitability as falling within a venue category other than the two identified in *Griggs*. Decisions denying parole suitability have nothing to do with the lawfulness or appropriateness of the underlying sentence or where it was imposed. Neither do such decisions affect the inmate's "conditions of confinement" in the sense indicated in *Griggs, supra*, 16 Cal.3d at page 347. Rather, denials of parole suitability are exclusively "prison based" determinations made by the Board of Prison Terms concerning the inmate's continued incarceration. The determinations follow hearings conducted by a parole board panel at the prison where the inmate is confined and are based upon the circumstances of the inmate's offenses, criminal record, prison conduct and readiness for parole, and potential danger to the community if released. (See Penal Code section 3041; 15 California Code of regulations, sections 2281 and 2402.) Thus, as with challenges to an inmate's "conditions of confinement," the

proper venue for a petition challenging a denial of parole suitability is in the county in which the inmate is confined and the parole denial occurred.

California Standards of Judicial Administration, section 6.5 (adopted in 1985, but not addressed in *In re Sena*) supports our conclusions in two respects. First, section 6.5 describes the *Griggs* "challenge … to a particular judgment or sentence" venue category as referring to "(1) the *validity* of judgments or orders of trial courts." (Italics added.) This is consistent with our reading of the *Griggs* venue category as concerning only the lawfulness of the sentence imposed. Second, section 6.5 follows *Griggs, supra*, 16 Cal.3d at page 347, by identifying a third venue category. It identifies challenges to "…(2) conditions of confinement *or the conduct of correctional officials…"* (Italics added.) Section 6.5's disjunctive juxtaposition of "conditions of confinement" with "conduct by correctional officials" indicates the intention that "conduct by correctional officials" encompasses conduct unrelated to "conditions of confinement" because otherwise "conduct by correctional officials" –which is always the target of a complaint concerning "conditions of confinement"-- would be surplusage. We believe that denials of parole suitability fall within the broad section 6.5 category of "conduct by correctional officials" and that proper venue for challenges thereto lies where such conduct primarily occurred.

In the present matter, petitioner properly first obtained habeas corpus review on the merits in San Diego Superior Court, as he was confined in San Diego County when the parole decision was made and when he filed the petition. It would thus have been more appropriate for the Court of Appeal in the Fourth Appellate District, Division One, to have reviewed this petition. (See Government Code section 69100; Penal Code section 1508, subdivision (b); *People v. Garrett* (1998) 67 Cal.App.4th 1419, 1423.)

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* EPSTEIN, Acting P. J., HASTINGS, J., CURRY, J.