

United States District Court
Eastern District of California

DAVID EUGENE LANCASTER,

Petitioner,

v.

ATTORNEY GENERAL FOR THE
STATE OF CALIFORNIA, *et al.*,

Respondents.

CV 06-1008 TJH

Order

The Court has considered Petitioner's petition for *habeas corpus*, together with the moving and opposing papers.

After the California Board of Prison Terms ("Board") found Petitioner unsuitable for parole in 2004, Petitioner filed a petition for *habeas corpus* claiming insufficient evidence for the decision.

A parole board determines whether a prisoner is too dangerous for parole by applying factors set forth in the California Code of Regulations. *Hayward v. Marshall*, 512 F.3d 536, 543 (9th Cir. 2008). The factors tending to show

1 unsuitability for parole include: (1) The prisoner committed the offense in a particular
2 heinous, atrocious, or cruel manner; (2) The prisoner has a previous record of
3 violence; (3) The prisoner has an unstable social history; (4) The prisoner has
4 committed sadistic sexual offenses; (5) The prisoner has a history of mental or
5 psychological problems; and (6) The prisoner has engaged in serious misconduct
6 while in prison. *Hayward*, 512 F.3d at 543. The factors tending to show suitability
7 for parole include: (1) The prisoner has no juvenile record; (2) The prisoner has a
8 stable social history; (3) The prisoner has shown signs of remorse; (4) The prisoner
9 was motivated to commit the crime out of stress; (5) The prisoner suffered from
10 Battered Woman Syndrome; (6) The prisoner lacks a significant criminal history; (7)
11 The prisoner's age reduces the probability of recidivism; (8) The prisoner has realistic
12 plans for release; and (9) The prisoner's behavior in prison indicates an ability to
13 function within the law upon release. *Hayward*, 512 F.3d at 543.

14 The Ninth Circuit clarified the applicable standard in parole cases in *Hayward*
15 *v. Marshall*, 512 F.3d 536, 543 (9th Cir. 2008), explaining that "some evidence of the
16 existence of a particular factor does not necessarily equate to some evidence the
17 parolee's release unreasonably endangers the public safety." The Board complied
18 with *Hayward* in finding that Petitioner posed an unreasonable danger to public
19 safety based on several factors.


20 The Board's decision listed several reasons for denying Petitioner parole. First,
21 the commitment offense demonstrated a disregard for human life and was carried out
22 in an exceptionally violent and brutal manner. After a verbal exchange, Petitioner
23 went to a park in anticipation of a fight and pulled out a gun firing multiple shots at
24 two individuals. Second, Petitioner has a prior criminal record. Petitioner received
25 three years probation for grand theft auto and was on probation at the time of the
26 commitment offense. Third, Petitioner's psychological evaluation was somewhat

1 inconclusive, stating: "Violence potential for inmate Lancaster appears lower than the
2 average inmate but lower than in free society." The Board found another
3 psychological evaluation was necessary to evaluate Petitioner's dangerousness
4 because the most recent evaluation was ambiguous. Fourth, Petitioner committed a
5 serious disciplinary violation of mutual combat on August 24, 2003. Finally, the
6 Board found that Petitioner did not have suitable plans for parole in California.

7 The Board's decision indicates that it considered many factors in finding that
8 Petitioner posed an unreasonable danger to public safety if released on parole.

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10 It is Ordered that the petition be, and hereby is, Denied.

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12 Date: September 10, 2009

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14 Terry J. Hatter, Jr.
15 Senior United States District Judge
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