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United States District Court
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JORGE SANCHEZ,

No C 07-3599 VRW (PR)

Petitioner,

v

ORDER GRANTING PETITION FOR
WRIT OF HABEAS CORPUS

BEN CURRY, Warden,

Respondent.

_____ /

Petitioner Jorge Sanchez, a state prisoner incarcerated at the Correctional Training Facility in Soledad, California, seeks a writ of habeas corpus under 28 USC § 2254 challenging the denial of parole by the California Board of Parole Hearings ("BPH"). BPH's denial of parole challenged here followed the governor's reversal of BPH's earlier decision that found petitioner suitable for parole. Following the governor's reversal, BPH held petitioner's third parole suitability hearing and found him unsuitable for parole. Doc #6-2 at 2, 94-100. Petitioner unsuccessfully challenged BPH's decision in the state superior and appellate courts. Doc #6-4 at 2-3; Doc #6-5 at 2. After the Supreme Court of California denied

1 his petition for review, Doc #6-6 at 2, petitioner filed the instant
2 federal petition for writ of habeas corpus. Doc #1.

3 The court found petitioner's claim that BPH violated his
4 due process rights, when liberally construed, colorable under 28 USC
5 § 2254 and ordered respondent to show cause why a writ of habeas
6 corpus should not be granted. Doc #2. Respondent filed an answer,
7 Doc #6; petitioner did not file a traverse.

8 On April 28, 2009, while the instant petition was pending,
9 petitioner had a subsequent parole suitability hearing at which time
10 BPH again found petitioner suitable for parole. Doc #7-2 at 2. And
11 again the governor subsequently reversed and denied petitioner a
12 parole date. Doc #7-3 at 2-6.

13 On April 22, 2010, the Ninth Circuit issued its decision
14 in Hayward v Marshall, 603 F3d 546 (9th Cir 2010) (en banc), which
15 addressed important issues relating to federal habeas review of BPH
16 decisions denying parole to California state prisoners. On May 6,
17 2010, the court ordered the parties to file supplemental briefing
18 explaining their views of how the Hayward en banc decision applies
19 to the facts presented in petitioner's challenge to BPH's decision
20 denying him parole. Doc #8. Respondent filed supplemental briefing
21 on May 28, 2010; petitioner filed his briefing on June 25, 2010.
22 Doc ## 9 & 10.

23 For the reasons set forth below, the court finds that the
24 state courts' endorsements of BPH's decision denying petitioner
25 parole at his September 2005 parole suitability hearing "was an
26 'unreasonable application' of the California 'some evidence'
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1 requirement and was 'based on an unreasonable determination of the
2 facts in light of the evidence.'" See Hayward, 603 F3d at 562-63
3 (citations omitted). The petition will be granted.

4
5 I

6 On January 13, 1990, petitioner, while driving at a high
7 rate of speed in Los Angeles County, failed to stop for a red light,
8 swerved through an intersection and hit two pedestrians as they were
9 crossing the street. Doc #6-2 at 10. One of the victims at the
10 scene died and the other suffered major injuries. Id at 10-11.
11 Petitioner's blood alcohol level was .24 percent. Id at 11.
12 Petitioner pled guilty to second degree murder in Los Angeles County
13 Superior Court and, on August 3, 1990, was sentenced to fifteen-
14 years-to-life in state prison. Doc #6-1 at 2.

15
16 II

17 The Ninth Circuit's recent en banc decision in Hayward
18 clarified the scope of federal habeas review of BPH decisions
19 denying parole to California state prisoners. Hayward, 603 F3d 546.
20 The court first explained the law in California as it relates to
21 parole suitability determinations:

22 The California parole statute provides that
23 the Board of Prison Terms "shall set a release
24 date unless it determines that the gravity of
25 the current convicted offense or offenses, or
26 the timing and gravity of current or past
27 convicted offense or offenses, is such that
28 consideration of the public safety requires a
more lengthy period of incarceration for this
individual." The crucial determinant of
whether the prisoner gets parole in California

1 is "consideration of the public safety."

2 In California, when a prisoner receives an
3 indeterminate sentence of fifteen years to life,
4 the "indeterminate sentence is in legal effect a
5 sentence for the maximum term, subject only to
6 the ameliorative power of the [parole authority]
7 to set a lesser term." Under the California
8 parole scheme, the prisoner has a right to a
9 parole hearing and various procedural guarantees
10 and rights before, at, and after the hearing; a
11 right to subsequent hearings at set intervals if
12 the Board of Prison Terms turns him down for
13 parole; and a right to a written explanation if
14 the Governor exercises his authority to overturn
15 the Board of Prison Terms' recommendation for
16 parole. Under California law, denial of parole
17 must be supported by "some evidence," but review
18 of the [decision to deny parole] is "extremely
19 deferential."

20 Hayward, 603 F3d at 561-62 (footnotes and citations omitted).

21 The court further explained that:

22 [s]ubsequent to Hayward's denial of parole,
23 and subsequent to our oral argument in this
24 case, the California Supreme Court established
25 in two decisions, In re Lawrence [190 P 3d 535,
26 549 (Cal 2008)] and In re Shaputis, [190 P 3d
27 573, 582 (Cal 2008)] that as a matter of state
28 law, "some evidence" of future dangerousness is
indeed a state *sine qua non* for denial of parole
in California. We delayed our decision in this
case so that we could study those decisions and
the supplemental briefs by counsel addressing
them. As a matter of California law, "the
paramount consideration for both the Board [of
Prison Terms] and the Governor under the
governing statutes is whether the inmate
currently poses a threat to public safety."
[Lawrence, 190 P 3d at 552.] There must be
"some evidence" of such a threat, and an
aggravated offense "does not, in every case,
provide evidence that the inmate is a current
threat to public safety." [Id at 554.] The
prisoner's aggravated offense does not establish
current dangerousness "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" supports

1 the inference of dangerousness. [Id at 555.]
2 Thus, in California, the offense of conviction
3 may be considered, but the consideration must
address the determining factor, "a current
threat to public safety." [Id at 539.]

4 Hayward, 603 F3d at 562 (footnotes omitted).

5 After providing this background on California law as it
6 applies to parole suitability determinations, the court then
7 explained the role of a federal district court charged with
8 reviewing the decision of either BPH or the governor in denying a
9 prisoner parole. According to the Ninth Circuit, this court must
10 decide whether a decision "rejecting parole was an 'unreasonable
11 application' of the California 'some evidence' requirement, or was
12 'based on an unreasonable determination of the facts in light of the
13 evidence.'" Hayward, 603 F3d at 562-63 (citations omitted); see
14 also Cooke v Solis, 606 F3d 1206, 1208, n 2 & 1216 (9th Cir 2010)
15 (applying Hayward and explicitly rejecting the state's argument that
16 "the constraints imposed by [the Antiterrorism and Effective Death
17 Penalty Act ("AEDPA")] preclude federal habeas relief" on
18 petitioner's claim; noting that in Hayward, the court "held that due
19 process challenges to California courts' application of the 'some
20 evidence' requirement are cognizable on federal habeas review under
21 AEDPA").

22
23 III

24 When assessing whether California parole board's
25 suitability determination was supported by "some evidence," the
26 court's analysis is framed by the "regulatory, statutory and
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1 constitutional provisions that govern parole decisions in
2 California." Cooke, 606 F3d at 1213 (citing In re Rosenkrantz, 29
3 Cal 4th 616 (2002)); see Hayward, 603 F3d at 561-62. Under
4 California law, prisoners serving indeterminate life sentences, like
5 petitioner, become eligible for parole after serving minimum terms
6 of confinement required by statute. In re Dannenberg, 34 Cal 4th
7 1061, 1069-70 (2005). Regardless of the length of the time served,
8 "a life prisoner shall be found unsuitable for and denied parole if
9 in the judgment of the panel the prisoner will pose an unreasonable
10 risk of danger to society if released from prison." Cal Code Regs
11 tit 15, § 2402(a). In making this determination, BPH must consider
12 various factors, including the prisoner's social history, past and
13 present mental state, past criminal history, the base and other
14 commitment offenses, including behavior before, during and after the
15 crime, past and present attitude toward the crime and any other
16 information that bears on the prisoner's suitability for release.
17 See Cal Code Regs tit 15, § 2402(b)-(d).

18 In considering the commitment offense, BPH must determine
19 whether "the prisoner committed the offense in an especially
20 heinous, atrocious or cruel manner." Cal Code Regs tit 15, §
21 2402(c)(1). The factors to be considered in making that
22 determination include: "(A) Multiple victims were attacked, injured
23 or killed in the same or separate incidents; (B) The offense was
24 carried out in a dispassionate and calculated manner, such as an
25 execution-style murder; (C) The victim was abused, defiled or
26 mutilated during or after the offense; (D) The offense was carried

1 out in a manner which demonstrates an exceptionally callous
2 disregard for human suffering; (E) The motive for the crime is
3 inexplicable or very trivial in relation to the offense." Id.

4 According to the California Supreme Court, "the core
5 statutory determination entrusted to the Board and the Governor [in
6 determining a prisoner's parole suitability] is whether the inmate
7 poses a current threat to public safety * * *." In re Lawrence, 44
8 Cal 4th 1181, 1191 (2008). And, "the core determination of 'public
9 safety' under the statute and corresponding regulations involves an
10 assessment of an inmate's current dangerousness." Id at 1205
11 (emphasis in original) (citing Rosenkrantz, 29 Cal 4th 616 &
12 Dannenberg, 34 Cal 4th 1061). The court further explained that:

13 a parole release decision authorizes the Board
14 (and the Governor) to identify and weigh only
15 the factors relevant to predicting "whether the
16 inmate will be able to live in society without
17 committing additional antisocial acts." * * *
18 These factors are designed to guide an
19 assessment of the inmate's threat to society, if
20 released, and hence could not logically relate
21 to anything but the threat currently posed by
22 the inmate.

23 Lawrence, 44 Cal 4th at 1205-06 (citations omitted). The relevant
24 inquiry, therefore, is:

25 whether the circumstances of the commitment
26 offense, when considered in light of other facts
27 in the record, are such that they continue to be
28 predictive of current dangerousness many years
after commission of the offense. 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.

1 Shaputis, 44 Cal 4th 1241, 1254-55 (2008).

2 Under California law, the evidence of current
3 dangerousness "must have some indicia of reliability." In re Scott,
4 119 Cal App 4th 871, 899 (2004) (Scott I). Indeed, "the 'some
5 evidence' test may be understood as meaning that suitability
6 determinations must have some rational basis in fact." In re Scott,
7 133 Cal App 4th 573, 590, n 6 (2005) (Scott II).

8 Subsequent to Hayward, the Ninth Circuit issued decisions
9 in Cooke, 606 F3d 1206, and Pirtle v California Board of Prison
10 Terms, No 07-16097, 2010 WL 2732888 (9th Cir July 12, 2010), both of
11 which focused on the notion that the "some evidence" of current
12 dangerous must be reliable. In Cooke, the court ultimately reversed
13 the district court's denial of Cooke's challenge to BPH's decision
14 denying him parole finding that BPH's stated reasons for denying
15 parole did not support the conclusion that Cooke posed a current
16 threat to public safety. Cooke, 606 F3d at 1216. Specifically, the
17 court stated:

18 [E]ach of the Board's findings * * * lacked any
19 evidentiary basis. Nothing in the record
20 supports the state court's finding that there
21 was "some evidence" in addition to the
22 circumstances of the commitment offense to
23 support the Board's denial of Petitioner's
24 parole. The Parole Board's findings were
25 individually and in toto unreasonable because
26 they were without evidentiary support. When
27 habeas courts review the "some evidence"
28 requirement in California parole cases, both the
subsidiary findings and the ultimate finding of
some evidence constitute factual findings.
Here, there was no evidence that reasonably
supports either the necessary subsidiary
findings or the ultimate "some evidence"
finding. Accordingly, we hold that the state
court decision was "based on an unreasonable

1 determination of the facts in light of the
2 evidence.'" Hayward, 603 F3d at 563 (quoting 28
3 USC § 2254(d)(2)). Cooke is entitled to a writ
4 of habeas corpus.

5 Id; see also Pirtle, 2010 WL 2732888 at *8 (affirming the district
6 court's decision to grant habeas relief, concluding: "[i]n sum,
7 there is no evidence in the record to support the Board's finding
8 that Pirtle poses a current threat to public safety. The Board's
9 stated reasons for the denial of parole either lacked evidentiary
10 support, had no rational relationship to Pirtle's current
11 dangerousness, or both").

12 IV

13 Petitioner initially sought federal habeas corpus relief
14 from BPH's September 2005 decision finding him unsuitable for parole
15 and denying him a subsequent hearing for one year on the ground that
16 the decision did not comport with due process. Doc #1. In his
17 supplemental post-Hayward briefing, petitioner argues that under the
18 California "some evidence" standard noted in Hayward and as set
19 forth in the California Supreme Court decision in Lawrence, he is
20 entitled to federal habeas relief from this court. Doc #10. The
21 court agrees.

22 A

23 A review of the September 2005 parole suitability hearing
24 transcript shows that most of BPH's comments reflected in the seven-
25 page decision were laudatory of petitioner, as was the evidence
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1 submitted to assist BPH in determining petitioner's parole
2 suitability. Indeed, in its decision, BPH noted that petitioner was
3 a "good candidate" for parole and concluded with an acknowledgment
4 that he was "doing all the right things." Doc #6-2 at 99-100.

5 During the evidentiary portion of the hearing, BPH
6 reviewed numerous letters from petitioner's family and community
7 documenting widespread support of his release, a review which
8 comprised seventeen pages of the parole suitability hearing
9 transcript. BPH noted that petitioner's wife and children and other
10 close relatives say that [he was] always a great father and a great
11 provider," and concluded that there "is no doubt [petitioner has]
12 quite a bit of family and community support." Doc #6-2 at 34, 51.
13 BPH acknowledged that petitioner was gainfully employed in a trade
14 before entering prison, that he had three offers of employment
15 awaiting him upon his parole, that he has a "marketable skill" and
16 that he has a "backup trade" of auto body. Id at 51-53, 94. BPH
17 noted petitioner had "acceptable employment plans" and "viable
18 residential plans." Id at 97.

19 BPH also observed that petitioner's remorse for what he
20 had done was "genuine" and concluded that he was "going to be an
21 excellent advocate for people not to use alcohol and not to abuse
22 alcohol and the consequences that they incur to many parties when it
23 happens." Doc #6-2 at 95. Petitioner admitted that he had a
24 problem with alcohol and took responsibility for his crime. Id at
25 71. When asked "[a]re you in any way trying to minimize your own
26 responsibility for your actions?" petitioner replied "[n]o, I am
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1 responsible." Id. Petitioner also expressed a desire to "be active
2 and share with those that have the same problems." Id at 75. BPH
3 found petitioner's answers regarding what he had learned about
4 himself and his commitment offense since coming to prison as
5 "impressive" and commended him on "actually learning" and
6 understanding "the difference between someone being here for 25
7 years and not changing, and someone being here for 10 years and
8 changing." Id at 76.

9 Notwithstanding BPH's clear recognition of an reliance on
10 this favorable body of evidence, BPH concluded that petitioner was
11 "not suitable for parole and pose[d] an unreasonable risk of danger
12 to society * * * if [he were to be] released from prison." Doc #6-2
13 at 94. In reaching that decision, BPH relied heavily on the
14 circumstances of the commitment offense, noting:

15 multiple victims were injured and killed in the
16 same incident. There is one deceased victim,
17 Nicholas Ruiz, and an injured victim, Ms.
18 Roasaura Martinez, was seriously injured needing
19 much medical care after the crime. The offense
20 was carried out in a manner which demonstrates
21 an exceptionally callous disregard for human
22 suffering and that the inmate had a alcohol
23 blood level of .24 and proceeded to get into his
24 vehicle after being discouraged from his other
25 passengers on a Saturday afternoon, and
26 proceeded to drive the car and subsequently
27 causing the murder and injury of the two
28 victims. The motive for the crime is
inexplicable and very trivial in relation to the
offense. I'm not quite sure how to reconcile
these, but there's not [sic] explanation for
feeling that after you had been drinking all day
long that you can get into a car and drive
safely home. It's very trivial in that you
could have easily, I think, called for another
relative to come and pick you and the other
passengers up from the bar and drive you home if
they were indeed as intoxicated as you were,

1 none of you should have been driving.

2 Id at 94-95.

3 BPH also noted that petitioner's criminal history included
4 failing conditional probation three times related to his arrests for
5 driving while intoxicated on August 15, 1980, October 27, 1980 and
6 December 19, 1987. Doc #6-2 at 96. Finally, BPH stated petitioner
7 had "failed to upgrade educationally and vocationally as previously
8 recommended by the Board" and that petitioner's "gains are recent
9 and he must demonstrate an ability to maintain these gains over an
10 extended period of time." Id at 96 & 97. Specifically, BPH stated:

11 We do recognize that there are some language
12 difficulties with the English and Spanish, but
13 we would definitely encourage you to try to
14 upgrade educationally * * *

* * * *

15 My observation is that you're intelligent
16 enough. (indiscernible) 15 years and you've
17 never made an attempt to get a GED, which will
18 give you a better chance of getting to bigger
19 things. In vocation, I believe you had two
20 years of hands-on experience here when it comes
21 to you autobody, but 15 years is a lot of time.
22 You could have gotten some more. Try to get
23 your GED. I think you can do it.

24 Id at 96, 99-100 (emphasis added).

25 BPH further noted that petitioner needed therapy to cope
26 with stress in a non-distractive manner, and that "[u]ntil progress
27 is made, the inmate continues to be unpredictable and a threat to
28 others." Doc #6-2 at 94.

Petitioner unsuccessfully challenged BPH's decision
denying him parole in state superior court. Doc #6-4 at 2-3. The

1 court determined BPH's decision denying petitioner parole was
2 supported by "some evidence," and explained as follows:

3 The Board based its decision on several factors,
4 including [petitioner's] commitment offense.
5 There is some evidence that petitioner is
6 unsuitable for parole based on the finding that
7 there [were] multiple victims injured or killed
8 in the same incident. (See Cal Code Regs, tit
9 15, § 2402, subd (c)(1)(A)).

10 The record further reflects that the Board
11 also relied on several additional factors in
12 denying petitioner parole at this time, and
13 there is some evidence to support that decision.
14 The Court finds that there is some evidence that
15 petitioner is unsuitable due to petitioner's
16 failure to upgrade in vocational programming
17 while in prison. (See Cal Code Regs, tit 15,
18 subd (d)(9)).

19 Id at 3.

20 Petitioner then filed a petition for a writ of habeas
21 corpus in the state appellate court, which that court denied in a
22 decision that read in its entirety:

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

25 The petition is denied for failure to state
26 sufficient facts or to provide an adequate
27 record or legal authority demonstrating
28 entitlement to the relief requested. There is
"some evidence" to support the findings of the
Board of Parole [Hearings]. (See *In re*
Dannenberg (2005) 34 Cal 4th 1061, 1071).

Doc #6-5 at 2.

In its decision denying petitioner relief the state
appellate court provided only a legal conclusion and unexplained
case citations and further lacked any legal analysis. The court
therefore will analyze under AEDPA the decision of the superior

1 court, which addressed the merits of petitioner's claim in a
2 reasoned decision. See LaJoie v Thompson, 217 F3d 663, 669 n 7 (9th
3 Cir 2000); Williams v Rhoades, 354 F3d 1101, 1106 (federal court may
4 look to any lower state court decision that was examined, and whose
5 reasoning was adopted, by the highest state court to address the
6 merits of a petitioner's claim). As explained below, the court
7 finds that the state courts' endorsements of BPH's decision to deny
8 petitioner parole were an unreasonable application of the California
9 "some evidence" standard, and were based on an unreasonable
10 determination of the facts in light of the evidence presented in the
11 state courts. See Hayward, 603 F3d at 562-63. After careful review
12 of the law and the factual record now before the court, it is
13 difficult, if not impossible, to reconcile BPH's decision to deny
14 petitioner parole with the evidence upon which it relied to make
15 that decision. There simply was no reliable evidence to suggest
16 that if released on parole, petitioner would pose an unreasonable
17 and current risk of danger to society or threat to public safety if
18 released from prison. Cal Code Regs tit 15, § 2402(a); Lawrence, 44
19 Cal 4th at 1205-06. As a result, petitioner is entitled to federal
20 habeas relief.

21
22 B

23 In addition to relying on petitioner's commitment offense
24 and his three prior arrests for driving while intoxicated to
25 conclude that he "pose[d] an unreasonable risk of danger to society"
26 and therefore was not suitable for parole, BPH cited several other
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1 factors, including his failure to "upgrade educationally and
2 vocationally as previously recommended by the Board" and his
3 inability to cope with "stress in a non-distractive [sic] manner."
4 Doc #6-2 at 96 & 97.

5 An examination of the record shows these findings are not
6 only unsupported by any reliable evidence, but are, in fact,
7 blatantly contradicted by it. As explained in detail below, this
8 case presents a scenario strikingly similar to that presented in
9 Pirtle, where BPH's "stated reasons for the denial of parole either
10 lacked evidentiary support, had no rational relationship to
11 [petitioner's] current dangerousness, or both"). Pirtle, 2010 WL
12 2732888 at *8 Indeed, when stripped of its factually
13 unsubstantiated conclusions, BPH's decision to deny petitioner
14 parole rests solely on the nature of his commitment offense and
15 prior offenses, which were committed fifteen to twenty-five years
16 before his 2005 parole suitability hearing. This result is wholly
17 incompatible with California's "some evidence" standard set forth in
18 Lawrence, 44 Cal 4th at 1205-06, as well as California's mandate
19 that the inquiry into petitioner's current dangerous not focus on
20 "the circumstances of the crime in isolation, without consideration
21 of the passage of time or the attendant changes in the inmate's
22 psychological or mental attitude." Shaputis, 44 Cal 4th at 1255.

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25 One reason BPH gave in support of its September 2005
26 decision denying petitioner parole was his failure to "upgrade
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1 educationally and vocationally as previously recommended by the
2 Board." Doc #6-2 at 96 (emphasis added). But at petitioner's prior
3 parole suitability hearing held in September 2004, rather than
4 recommend that he upgrade educationally and vocationally, BPH
5 actually commended petitioner's efforts in these areas:

6 Certainly, we feel that the prisoner has
7 participated in educational programs and self-
8 help programs. Now education programs, and as
9 my colleague put on the record, you can go back
10 and track the prisoner's progress as it relates
11 to his grade point level. He's raised his grade
12 point level to a 6.2, with English being a
13 second language. And what was really compelling
14 about this, there's a letter in the file, my
15 colleague read into the record from R Dixon, who
16 is an English teacher at the institution, and
17 she noted that [petitioner] has constantly been
18 a part of (inaudible) clearly very intelligent,
19 eager and willing to learn. In Mexico,
20 [petitioner] earned the equivalent of a GED, and
21 if he were able to take the test in Spanish
22 today, I have no doubt that he would pass it
23 * * * So the point of putting that on the
24 record is that maybe the prisoner has
25 (inaudible) English as a second language, but
26 certainly he's very gifted in his native
27 language. That has precluded him from upgrading
28 vocationally and we note that, in prison.

18 See Sanchez v Curry, No C-06-3438-VRW (PR) (ND Cal filed May 26,
19 2006) Doc #4, Ex D at 57-58.¹

20 BPH further noted at the 2004 hearing:

21 Institutional job assignments, if one reviews
22 the record, you'd see that the prisoner has

23
24 ¹ The court takes judicial notice of the court file in Sanchez
25 v Curry, No C-06-3438-VRW (PR) (ND Cal filed May 26, 2006),
26 petitioner's challenge to his 2004 parole denial. See Bias v
27 Moynihan, 508 F3d 1212, 1225 (9th Cir 2007) (a district court "may
28 take judicial notice of proceedings in other courts, both within and
without the federal judiciary system, if those proceedings have a
direct relation to matters at issue") (internal quotation marks and
citations omitted).

1 received outstanding work reports from his
2 educational endeavors. And when he's worked
3 he's also received outstanding work reports.
4 But most telling is his institutional job
5 assignments have (inaudible) quest to advance
6 educationally. And, certainly, one would have
7 to take their hat off to [petitioner] in his
8 persevering in trying to get a GED in using
9 English as a second language."

6 Id at 58.

7 In the 2005 decision denying petitioner parole, BPH noted
8 that petitioner had been in prison for "15 years and [he's] never
9 made an attempt to get a GED * * *." Doc #6-2 at 99. But again,
10 this statement is contradicted by the evidence. At petitioner's
11 2004 hearing, BPH noted:

12 You've been involved for a number of years in
13 Adult Basic Education, the Literacy Lab. * * *
14 You went from a basic non-reader when you came
15 to prison, that you've increased your reading
16 level * * *. There are a great number of
17 chronos in your file indicating that you're
18 cooperative with the teacher, that you're a
19 great assistance [sic] with other students, that
20 you have a natural ability to teach and to
21 encourage other students.

* * * *

22 You're progressing now at a rate in Adult Basic
23 Education where the goal that you had mentioned
24 very early on of obtaining a GED is closer.

21 See Sanchez v Curry, No C-06-3438-VRW (PR) (ND Cal filed May 26,
22 2006) Doc #4, Ex D at 25-26 (emphasis added). Even the governor, in
23 reversing petitioner's 2004 parole grant, noted: "[Petitioner], who
24 mostly spoke only Spanish upon entering prison, has improved his
25 English-speaking skills by taking adult basic-education classes and
26 participating in the Literacy Lab. He also has taken classes in

1 pursuit of a GED." See id, Doc #4, Ex E at 2 (emphasis added).
2 Further, during the evidentiary portion of petitioner's 2005 parole
3 suitability hearing, BPH noted that he had been "going to school"
4 and that the only reason petitioner failed to complete the body shop
5 vocation program was because he was transferred from one part of the
6 prison to another. Doc #6-2 at 52-53.

7 Further, even assuming there was evidence that petitioner
8 failed to upgrade vocationally while in prison, other reliable
9 evidence submitted at the hearing completely neutralized that
10 failure as justification to deny petitioner a parole date.
11 Specifically, the evidence showed that prior to entering prison,
12 petitioner was gainfully employed in a trade and that he had three
13 offers of employment awaiting him should he be granted parole. Doc
14 #6-2 at 51-53, 94. Simply put, BPH's conclusion that petitioner
15 failed to "upgrade educationally and vocationally as previously
16 recommended by the Board" "either lacked evidentiary support, had no
17 rational relationship to [petitioner's] current dangerousness, or
18 both". Pirtle, 2010 WL 2732888 at *8.

19
20 2

21 Another reason BPH cited in support of its conclusion that
22 petitioner "continues to be unpredictable and a threat to others"
23 was his need for "therapy" and his lack of psychological "progress."
24 Doc #6-2 at 97. Specifically, BPH concluded that "the inmate needs
25 therapy in order to face, discuss, understand, and cope with stress
26 in a non-distractive [sic] manner. * * * The inmate's gains are
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1 recent and he must demonstrate an ability to maintain these gains
2 over an extended period of time."

3 Id.

4 But even a cursory examination of the record shows BPH's
5 conclusion that petitioner needed therapy to cope with stress in a
6 healthy manner is simply unsupported by any reliable evidence. In
7 its September 2005 decision denying petitioner parole, BPH cited
8 petitioner's May 14, 2003 psychological evaluation, which "was
9 supportive" and "state[d] that [petitioner] has no more risk [of
10 violence] than the average citizen." Doc. #6-2 at 97. At
11 petitioner's 2004 hearing, BPH summarized that evaluation as
12 follows:

13 in consideration of several factors that include
14 [petitioner's] lack of violent criminal history,
15 his absence of 115 violations, or his
16 disciplinary action and insight demonstrated
17 regarding his lack of alcohol abuse history, his
18 violence potential within a controlled setting
19 is estimated to be below average relative to
20 this Level II population. If released to the
21 community, his violence potential is estimated
22 to be no more than the average citizen in the
23 community.

19 Sanchez v Curry, No C-06-3438-VRW (PR) (ND Cal filed May 26, 2006)
20 Doc #4, Ex D at 61-62. The report further noted that petitioner
21 "does not appear to have any history of being violent, even when
22 under the influence of alcohol. It does not appear that the use of
23 alcohol in the future would necessarily lead to violent acts." Id
24 at 62. Finally, as petitioner's attorney noted - without objection
25 - his psychological evaluations from 1996, 1999, and 2003 each
26 supported his release. Id at 51.

1 Further, at the 2005 hearing, BPH commended petitioner for
2 having no disciplinary history during his fifteen years of
3 imprisonment, noting that was "indeed * * * a significant
4 accomplishment." Doc. #6-2 at 97-98. BPH commended petitioner for
5 "participating and obviously being a strong member of the Alcoholics
6 Anonymous group as well as completing Anger Management[] * * * [and
7 for his] involvement and work with the Spanish ministry and securing
8 two [Alcoholics Anonymous] sponsors who are available to [him] upon
9 [his] release * * *." Id. Further, when specifically asked at the
10 hearing whether he had used alcohol when "under stress anymore than
11 when you would drink when you were not under stress," petitioner
12 responded "I didn't drink * * * when I was under stress, or when I
13 had problems." Id at 75.

14 Again, simply put, BPH's conclusion that petitioner
15 "continues to be unpredictable and a threat to others" and needed
16 "therapy in order to face, discuss, understand, and cope with stress
17 in a non-distractive [sic] manner" either lacked evidentiary
18 support, had no rational relationship to [petitioner's] current
19 dangerousness, or both". Pirtle, 2010 WL 2732888 at *8.

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22 The remaining factor BPH cited in support of its decision
23 denying petitioner parole was his three failed conditional probation
24 terms related to his arrests for driving while intoxicated on August
25 15, 1980, October 27, 1980 and December 19, 1987. But two of the
26 three arrests occurred twenty-five years before the 2005 hearing;

1 the most recent arrest was eighteen years prior. Doc #6-2 at 96.
2 These prior arrests - especially when viewed in conjunction with
3 petitioner's current and consistent avid participation in Alcoholics
4 Anonymous while in prison, the fact that he secured two sponsors in
5 anticipation of his release and his strong desire to prevent others
6 from making the same grave costly mistake he did - simply are too
7 stale to be considered reliable evidence that petitioner posed a
8 current threat to public safety in 2005. Shaputis, 44 Cal 4th at
9 1255; Pirtle, 2010 WL 2732888 at *8 (because BPH's stated reasons
10 for denying petitioner parole had "no rational relationship to
11 [petitioner's] current dangerousness" petitioner was entitled to
12 federal habeas relief.

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15 For the foregoing reasons, the petition for a writ of
16 habeas corpus is GRANTED. Within thirty (30) days from the date of
17 this order, BPH must set a parole date for petitioner. See Pirtle,
18 2010 WL 2732888 at *8. Within ten (10) days of petitioner's
19 release, respondent must file a notice with the court confirming the
20 date on which petitioner was paroled.

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The clerk of the court shall terminate all pending motions, enter judgment in accordance with this order and close the file.

IT IS SO ORDERED.



VAUGHN R WALKER
United States District Chief Judge