

CASE NOTE

California Supreme Court Strips Governor of the Right to Prevent Lifer's Parole

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I. Introduction

In re Lawrence meaningfully changes how a life term prisoner's petition for parole is judged.¹ The denial of parole must be based on "some evidence" that the prisoner remains a threat to public safety.² The nature and gravity of the commitment offense alone is not enough to meet this legal standard.³ Denying parole, based on the immutable facts of the commitment offense, violates an inmate's due process liberty interests.⁴

The California Supreme Court upheld the decision of the California Court of Appeal in favor of the petitioner, Sandra Lawrence.⁵ The court concluded that the Board of Parole Hearings (hereinafter "Board") and the Governor must determine whether an inmate poses a current threat to public safety.⁶ The court uses the standard of review described as whether "some evidence" supports the conclusion that the inmate is not fit for parole because she is currently dangerous to the public's safety.⁷ In applying the "some evidence" standard, this court agreed with the California Court of Appeal in its conclusion that petitioner, Sandra Lawrence (hereinafter "Lawrence"), did not present a danger to the public safety.⁸

The facts of this case are unique. The evidence significantly supported the conclusion that this petitioner no longer posed a threat to public safety. Lawrence presented an incontrovertible case evidencing her full and com-

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1. *In re* Lawrence, 44 Cal. 4th 1181, 1212 (2008).

2. *Id.*

3. *Id.* at 1214, 1219.

4. *Id.* at 1191.

5. *Id.* at 1229.

6. *Id.* at 1212.

7. *Id.*

8. *Id.*

plete rehabilitation.⁹ The decision provides hope and an attainable goal for life prisoners such as Lawrence. It builds incentive for rehabilitation. The Board and the Governor cannot rely on the circumstances of the commitment offense alone to deny parole.

II. Statement of Facts

A. Family Background

Sandra Lawrence, the youngest of twelve children, was born and raised in Birmingham, Alabama.¹⁰ She spent most of her young life caring for her disabled sister and her older siblings' children.¹¹ After graduating from high school, she moved to Chicago to live with one of her brothers and his wife.¹² While living there, Sandra met and married William Lawrence.¹³ The couple had two sons during their brief marriage.¹⁴ They divorced after William returned to his previous girlfriend.¹⁵

Sandra packed up her sons and moved to Los Angeles where another one of her brothers and a sister lived.¹⁶ Her brother owned a dental practice and worked with another dentist, Robert Williams.¹⁷ Shortly after Sandra began working as a receptionist in the dental office, she and Mr. Williams started an intense sexual relationship.¹⁸ Mr. Williams was married to Rubye Williams at the time.¹⁹

During the affair, Mr. Williams rented Lawrence an apartment and bought her a car.²⁰ He spent many nights with her in the apartment.²¹ Rubye became aware of the relationship between Lawrence and Robert and began to threaten her husband with the loss of his children if he did not end it.²² Robert continually told Lawrence that he would leave his wife for her, but failed to do so.²³ In late 1970, Lawrence ended the affair.²⁴

On February 10, 1971, Lawrence celebrated her twenty-fourth birthday with her family.²⁵ During the party, Robert Williams arrived uninvited.²⁶

9. *In re* Lawrence, 44 Cal. 4th 1181, 1223 n.23 (2008).

10. *Id.* at 1192.

11. *In re* Lawrence, 59 Cal. Rptr. 3d 537, 539 (2007), *depublished by* 67 Cal. Rptr. 3d 1 (2007).

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. *In re* Lawrence, 59 Cal. Rptr. 3d at 540.

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. *In re* Lawrence, 59 Cal. Rptr. 3d at 540.

He professed his love for Lawrence and his intention to finally leave his wife for her.²⁷ They spent the next few days renewing their relationship and making plans for their future together.²⁸ After a long weekend, Robert went home promising again to ask Rubye for a divorce.²⁹

Later that day, Robert called Lawrence and explained that he could not keep his promise to her.³⁰ He did not want to lose his children and he would stay with his wife to prevent jeopardizing his custody rights.³¹ During the conversation, Robert told Lawrence that Rubye was waiting at his new dental office for a delivery.³²

Lawrence, incensed by another rejection, grabbed a potato peeler from her kitchen and drove to the dental office to confront Mrs. Rubye Williams.³³ She stopped off at her sister's house and took a loaded gun that she knew her sister kept under a mattress.³⁴ The two women engaged in a physical fight when Lawrence arrived at the dental office.³⁵ Lawrence shot Mrs. Williams during the altercation, wounding her in the hand, arm, leg and neck.³⁶ She then stabbed her repeatedly with the potato peeler.³⁷ Lawrence returned the gun to her sister's home, then went to her brother's house and collapsed.³⁸

Lawrence's sister reported to police that Lawrence told family members she killed Mrs. Williams as a birthday present to herself.³⁹ Her sister also reported her gun had been fired and neither she nor anyone in the house had fired it.⁴⁰

A few weeks later, Lawrence was in Chicago, when her family informed her that the FBI issued a fugitive warrant for her arrest in connection with Mrs. Williams' murder.⁴¹ During the flight back to Los Angeles, Lawrence decided not to turn herself in and fled to Las Vegas on a bus.⁴² She remained there for a few months, then moved to Puerto Rico and worked as a real estate agent.⁴³ Next, she moved to New York City and

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. *In re* Lawrence, 59 Cal. Rptr. 3d at 540.

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

38. *In re* Lawrence, 59 Cal. Rptr. 3d at 540.

39. *Id.*

40. *Id.*

41. *Id.*

42. *In re* Lawrence, 59 Cal. Rptr. 3d at 541.

43. *Id.*

sold television ads.⁴⁴ After two years, she moved to Pennsylvania and worked as a hairdresser and eventually a salon manager.⁴⁵

Finally, after eleven years, Lawrence returned to California to face the homicide charges.⁴⁶ She hired an attorney and surrendered to police.⁴⁷ At the time of her arrest, she suggested that Mr. Williams was responsible for his wife's murder.⁴⁸ According to a probation report, Lawrence was offered a two year sentence in return for a guilty plea.⁴⁹ She rejected the offer and went to trial.⁵⁰

A jury convicted Lawrence of first degree murder.⁵¹ The judge imposed the statutory penalty for murders committed prior to 1978, seven years to life in prison.⁵² The judge made these comments at the time of sentencing:

Defendant presented herself as an intelligent, articulate, and thoughtful woman who stands convicted of a premeditated murder which occurred 12-and-a-half years ago. Defendant fled the jurisdiction of the court and has now surrendered herself to the court and has been found guilty by a jury of the crime. . . . [¶] . . . It is undoubtedly true that defendant is not now the same person she was when the crime was committed and it is not expected that defendant would be involved in another similar crime. However, given that defendant has been convicted of first degree murder, probation does not appear to be an appropriate recommendation.⁵³

B. Lawrence's Psychological Evaluations

Lawrence's initial psychological evaluation in 1984 characterized her as narcissistic, explosive and emotionally repressed.⁵⁴ The evaluation also identified her as a high flight risk.⁵⁵ However, at no time did Lawrence escape or attempt to escape during the ensuing twenty-three years in prison.⁵⁶

In a psychological evaluation completed in October of 1989, Lawrence showed marked improvement.⁵⁷ While in prison, Lawrence became a plumber, a tennis coach to other inmates, and earned a Bachelor of Science in computer science.⁵⁸ While the examining psychologist "found she ex-

44. *Id.*

45. *Id.*

46. *Id.*

47. *In re Lawrence*, 59 Cal. Rptr. 3d at 541.

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

53. *In re Lawrence*, 44 Cal. 4th 1181, 1193-1194 (2008) (quoting probation department report).

54. *In re Lawrence*, 59 Cal. Rptr. 3d 537, 541 (2007).

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.*

hibited some indicia of an 'avoidant personality disorder' he noted she had 'much to offer any community.'"⁵⁹ Significantly, the psychologist noted she did not represent a danger to society.

Over the next three years, Lawrence showed notable improvement.⁶⁰ Psychologists reported that Lawrence recognized the enormity of her crime. She understood her psychological motivation: she killed her lover's wife for revenge.⁶¹ In 1990, another psychologist evaluated Lawrence. The psychologist concluded that her violence potential at the time of the crime was greater than the average person; however, her violence potential appeared substantially decreased at the time of his evaluation.⁶² Similar conclusions made in a 1993 evaluation led to a recommendation for parole.⁶³

In 1994, the examining psychologist found no pathology of any kind. Rather, the psychologist found she would not have turned herself in back in 1982, if the earlier diagnoses had been correct.⁶⁴ The psychologist concluded Lawrence's violence potential outside the institution identical to that of an average citizen.⁶⁵

III. Procedural History

In 1993, the Board made its first of four recommendations to grant parole to Lawrence.⁶⁶ The Board reasoned that Lawrence had committed the crime as a result of significant stress. She showed signs of remorse and a reduced risk of further violence.⁶⁷

The Board used a matrix applicable to first-degree murderers who committed their crime before 1978.⁶⁸ It assigned her the maximum term available under that matrix, based on the extreme violence involved in the murder she committed combined with her having fled prosecution for over eleven years.⁶⁹

In March 1994, "Governor Pete Wilson reversed the Board's recommendation," citing two reasons: 1) he opined that "'public safety' may require a longer incarceration;" 2) he stated "the Board had given inadequate consideration to the 'public interest in a punishment proportionate to the seriousness of the crime.'"⁷⁰ Wilson based his findings on the early psychological reports.⁷¹

59. *In re* Lawrence, 59 Cal. Rptr. 3d at 542.

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

64. *In re* Lawrence, 59 Cal. Rptr. 3d at 543.

65. *Id.*

66. *In re* Lawrence, 44 Cal. 4th 1181, 1195 (2008).

67. *Id.* at 1195-1196.

68. *Id.* at 1196.

69. *Id.*

70. *Id.*

71. *Id.*

In November 2002, the Board recommended Lawrence be granted parole.⁷² The reasons given mirrored the rationale of the 1993 Board recommendation, with even more evidence that she had taken responsibility for her crime. The Board again found she would not be a danger to public safety.⁷³ However, in April 2003, Governor Gray Davis vetoed Lawrence's second parole recommendation.⁷⁴

In May 2004, the Board recommended granting parole to Ms. Lawrence, citing virtually the same list of factors as the previous two recommendations for her release.⁷⁵ A month later, Governor Schwarzenegger reversed this third positive parole recommendation. He reasoned Lawrence's release would represent an "unreasonable risk of danger to public safety."⁷⁶ He reported, "the murder was a vicious crime committed for an 'incredibly petty' reason."⁷⁷

In 2005, the Board again recommended parole.⁷⁸ The Board considered Lawrence's own testimony, her prison record, twenty-four letters from Lawrence's family and supporters, the Governor's report of 2004, and arguments from the District Attorney.⁷⁹ The Board noted her participation in a job fair, charitable work, and her completion of a Masters in Business Administration.⁸⁰ Only the District Attorney argued in opposition to Lawrence's release.⁸¹ After reviewing all the evidence, the Board announced its decision, once again recommending Lawrence's parole.⁸²

In 2006, for a fourth time, the California Governor reversed the Board's recommendation for Lawrence's release.⁸³ Governor Schwarzenegger cited the egregious nature of Lawrence's crime as the factor that provided evidence that she continued to pose a threat to public safety.⁸⁴

The Governor acknowledged that Ms. Lawrence made "credible gains" during her incarceration.⁸⁵ However, he found that the gravity of her commitment offense indicated Lawrence remained unsuitable for parole.⁸⁶

In August 2006, the California Court of Appeal considered Lawrence's petition for a writ of habeas corpus and issued an order to show cause (here-

72. *Id.*

73. *Id.*

74. *Id.* at 1197.

75. *Id.*

76. *Id.*

77. *In re Lawrence*, 59 Cal. Rptr. 3d 537, 544 (2007).

78. *In re Lawrence*, 44 Cal. 4th 1181, 1197 (2008).

79. *Id.* at 1197.

80. *Id.* at 1197-1198.

81. *Id.* at 1198.

82. *Id.*

83. *In re Lawrence*, 44 Cal. 4th at 1199.

84. *Id.* at 1200.

85. *Id.*

86. *Id.*

inafter “OSC”).⁸⁷ Lawrence’s petition represents the first instance this court issued an OSC to examine a Governor’s reversal of a Board grant of parole.⁸⁸

Finding the Governor lacked “some evidence” upon which to conclude, consistently [sic] with state and federal constitutional standards, that petitioner’s release on parole would represent an “unreasonable risk” of danger to the community, the Court of Appeal issued a writ vacating the Governor’s reversal and reinstating the Board’s 2005 grant of a parole.⁸⁹

On appeal, the Supreme Court of California affirmed the issuance of a writ and reinstated the grant of parole.⁹⁰

IV. Redefining the Standard of Review

In this case, the court set forth the “some evidence” standard which the Governor must use when reviewing Board decisions. Before coming to this conclusion, the court first examined its authority to review the Governor’s ruling. The court referred to previous decisions in *In re Rosenkrantz*⁹¹ and *In re Dannenberg*⁹² to provide a basis for review. In *Rosenkrantz*, the court considered whether it held jurisdiction to review the merits of a Governor’s decision affirming, reversing, or modifying a parole decision of the Board.⁹³ The court held that due process requires both the Board and the Governor to consider the statutory factors set forth in California Penal Code section 3041 and Board Regulations section 2230 *et seq.*, which require that there be “some effort” in the record to support the decision.⁹⁴

Further, the court ruled the Governor’s decision must be subject to judicial review in order to ensure compliance with the U.S. Constitution and the California Constitution.⁹⁵ The court stated “a petitioner is entitled to a constitutionally adequate and meaningful review of a parole decision, because an inmate’s due process right ‘cannot exist in any practical sense without a remedy against its abrogation.’”⁹⁶ Therefore, the court has the power to review a Board or gubernatorial decision to guarantee that the decision is not arbitrary.⁹⁷

The Board’s interpretation of the evidence and its application to the statutory factors is nearly unlimited. This level of discretion also extends to

87. *In re Lawrence*, 44 Cal. 4th at 1201.

88. *Id.*

89. *Id.* at 1190.

90. *Id.* at 1191.

91. *In re Rosenkrantz*, 29 Cal. 4th 616 (2002).

92. *In re Dannenberg*, 34 Cal. 4th 1061 (2002).

93. *In re Lawrence*, 44 Cal. 4th 1181, 1203 (2008) (citing *In re Rosenkrantz*, 29 Cal. 4th 616, 682 (2002)).

94. *In re Lawrence*, 44 Cal. 4th 1181, 1203-1204 (2008) (citing *In re Rosenkrantz*, 29 Cal. 4th 616, 654-655, 664 (2002)).

95. *Id.* at 1205.

96. *In re Lawrence*, 44 Cal. 4th 1181, 1205 (2008) (quoting *In re Rosenkrantz*, 29 Cal. 4th 616, 664 (2002)).

97. *In re Rosenkrantz*, 29 Cal. 4th 616, 677 (2002).

the Governor.⁹⁸ The Governor undertakes his review independently and without consideration of the Board's findings.⁹⁹ Therefore, the exact way in which the Governor applies the evidence and factors relevant to parole is entirely within his discretion.¹⁰⁰ However, the Governor must use the specified factors relevant to parole suitability. The court's review of the Governor's decision must focus on determining whether there is "some evidence" in the record that supports his conclusion.¹⁰¹

Both the Governor and the Board must consider, among other statutory factors, whether the inmate shows signs of remorse, has formulated a realistic plan following release, has developed marketable skills that can be used upon release, and whether institutional activities reflect an ability to function within the law when released.¹⁰² In addition, both the Governor and the Board must weigh the inmate's past and present mental state and past and present attitude toward their crime.¹⁰³

These suitability factors evidence the importance of the inmate's rehabilitation as an essential element of a parole determination.¹⁰⁴ An evaluation of an inmate's current threat to public safety must incorporate post conviction choices, behavior, and mental state as they relate to the inmate's ability to function in society if released.¹⁰⁵

The assertion that the circumstances of the commitment offense are egregious and that those circumstances will provide some evidence of current dangerousness in perpetuity is contradicted.¹⁰⁶ It is clear that the Legislature considered the passage of time, the inmate's rehabilitation, and the inmate's mental state essential to the determination of a prisoner's current threat to public safety.¹⁰⁷

The United States Court of Appeals for the Ninth Circuit noted in *Biggs v. Terhune*¹⁰⁸ that to guarantee the parole scheme created by the Legislature in fact furthers the public interest of rehabilitation of prisoners and deterrence of future crime. The Board and the Governor must consider not only the statutory factors regulating determination for release, but also the Constitution and due process of law.¹⁰⁹ Due process is not "mechanical" or a "yard stick" but a delicate procedure to be applied with judgment by those

98. *Id.* at 664.

99. *Id.*

100. *Id.* at 677.

101. *Id.* at 655.

102. *In re Lawrence*, 44 Cal. 4th 1181, 1220 n.19 (2008).

103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.*

108. *Biggs v. Terhune*, 334 F.3d 910 (9th Cir. 2003).

109. *Id.* at 916.

entrusted by the Constitution to apply the process.¹¹⁰ Reliance on unchanging factors such as commitment offense or pre-conviction conduct results in a violation of due process.¹¹¹

Furthermore, the California Supreme Court distinguished its decisions in *Rosenkrantz* and *Dannenberg* with regard to consideration of the commitment offense.¹¹² The court stated that those two cases have been interpreted to mean that an especially brutal commitment offense will always provide the requisite evidence supporting the Board's or the Governor's decision to deny parole.¹¹³ Such an assumption runs contrary to the statutory directive that the Board and the Governor consider all relevant statutory factors when evaluating an inmate's suitability for parole.¹¹⁴ In addition, such an interpretation impairs the inmate's due process liberty interest in parole recognized in *Rosenkrantz* and *Dannenberg*.¹¹⁵

Thus, the Governor and the Board may determine that an inmate's crime is particularly callous or vicious and base the decision to deny parole on such immutable factors. However, "some evidence" will only support such a decision if those facts bolster the ultimate conclusion that an inmate continues to pose a threat to public safety.¹¹⁶ The relevant inquiry for a reviewing court lies not in whether the initial crime was shockingly vicious, but in "whether the identified facts are *probative* to the central issue of *current* dangerousness when considered in light of the full record"¹¹⁷

The *Dannenberg* court again pointed out the primary consideration of the Board in making parole suitability decisions must center on current dangerousness and must be supported by some evidence.¹¹⁸ In the years since the *Dannenberg* decision, a tension arose between the "some evidence" test and one of the statutory factors to determine suitability for parole.¹¹⁹ In several subsequent cases, the Board and/or the Governor relied on the factor that identifies "a finding that the inmate committed the offense in an especially heinous, atrocious or cruel manner" in the decision to deny parole.¹²⁰ The commitment offense alone will rarely provide evidence of a current dangerousness as enough time passes and the prisoner has shown more recent signs of rehabilitation. A strictly procedural interpretation of the statu-

110. *In re Lawrence*, 44 Cal. 4th 1181, 1220 n.20 (2008) (citing *Biggs v. Terhune*, 334 F.3d 910, 916-917 (9th Cir. 2003)).

111. *In re Lawrence*, 44 Cal. 4th 1181, 1220 (2008).

112. *Id.* at 1191.

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.* at 1221.

118. *In re Lawrence*, 44 Cal. 4th 1181, 1221 (2008); *In re Dannenberg*, 34 Cal. 4th 1061, 1082 (2002).

119. *In re Lawrence*, 44 Cal. 4th 1181, 1221 (2008).

120. CAL. CODE REGS. tit. 15, §§ 2281(c)(1), 2402(c)(1) (2008); see *In re Bettencourt*, 156 Cal. App. 4th 780, 791 (2007); *In re Roderick*, 154 Cal. App. 4th 242, 260 (2007); *In re Gray*, 151 Cal. App. 4th 379, 396 (2007).

tory factors runs the serious risk of a violation of the inmate's constitutional rights to due process.¹²¹ “[U]nder the statute and the governing regulations, the circumstances of the commitment offense (or any of the other factors related to unsuitability) establish unsuitability if, and only if, those circumstances are probative to the determination that a prisoner remains a danger to the public.”¹²² Current dangerousness is the fundamental and overriding factor for the determination of suitability for parole regardless of whether the Board, the Governor, or the court renders the decision.¹²³

The relevant inquiry for the reviewing entity centers on the satisfaction of the “some evidence” test that the inmate remains a threat to society.¹²⁴ The test applies to determining a current risk to public safety.¹²⁵ The Legislature and the Supreme Court of California have emphasized the determination of risk to public safety as the paramount concern when determining an inmate's suitability for parole.

V. Conclusion

The court concluded that in Lawrence's case, evidence clearly established her rehabilitation, insight, remorse, and psychological health, and that there was not sufficient evidence to support a finding that she continued to pose a threat to public safety.¹²⁶ Lawrence's due process and statutory rights were violated by the Governor's reliance upon the immutable and unchangeable circumstances of her commitment offense in reversing the Board's decision to grant parole.¹²⁷ Both the governing statutes and constitutional due process principles require the Governor to base a decision to set aside a grant of parole on “some evidence” of current dangerousness.¹²⁸ The evidence relied upon by the Governor in this case—the egregiousness of the commitment offense—does not provide “some evidence” that petitioner remains a threat to public safety.¹²⁹ “Accordingly, the Governor's decision is not supported by ‘some evidence’ of current dangerousness and is properly set aside by this court.”¹³⁰

This landmark decision offers hope to life term prisoners and secures their due process right to parole. Award of parole to these inmates is hard won, but now, not impossible. The ‘some evidence’ test provides a fair and measurable evaluation of suitability for parole.

121. CAL. CODE REGS. tit. 15, §§ 2281(c)(1), 2402(c)(1) (2008); see *In re Bettencourt*, 156 Cal. App. 4th 780, 791 (2007); *In re Roderick*, 154 Cal. App. 4th 242, 260 (2007); *In re Gray*, 151 Cal. App. 4th 379, 396 (2007).

122. *In re Lawrence*, 44 Cal. 4th 1181, 1212 (2008).

123. *Id.*

124. *Id.*

125. *Id.* at 1212-1213.

126. *Id.* at 1222-1223.

127. *Id.* at 1236-1237 (Chin, J., dissenting).

128. *Id.* at 1212 (majority opinion).

129. *Id.* at 1226.

130. *Id.* at 1227.