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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re RONALD MARTIN,  
on Habeas Corpus.

A133749

(Contra Costa County  
Super. Ct. No. 05-10063-1)

**I. INTRODUCTION**

Petitioner Ronald Martin has been imprisoned since 1995 for a number of felony convictions arising from a carjacking spree. Pursuant to a plea agreement, he received an indeterminate life sentence for one kidnapping charge and an eight-year aggregate determinate sentence for his other crimes—all sentences to run concurrently with one another.<sup>1</sup>

After petitioner had been imprisoned for 14 years, the Board of Parole Hearings (Board) found him suitable for release on parole. It then fixed the term of imprisonment for his life crime and his release date in accordance with its regulations. The Board selected a “base” term of imprisonment of 12 years and then added term “enhancements”—largely for the nonlife crimes—resulting in a total term of imprisonment, with credits, of 34 years 4 months. Thus, while petitioner has been determined to not “pose an unreasonable risk of danger to society if released from prison”

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<sup>1</sup> A number of the sentences were stayed pursuant to Penal Code section 654.

(Cal. Code Regs., tit. 15, § 2281, subd. (a))<sup>2</sup> and currently suitable parole, he will, under the term of imprisonment set by the Board, remain in prison for nearly two more decades.

Petitioner contends the term of imprisonment set by the Board effectively vitiates the superior court's decision to impose concurrent sentences, violating the separation of powers doctrine. He specifically challenges section 2286, one of the Board's term enhancement regulations, which instructs the Board to disregard whether the superior court imposed concurrent or consecutive sentences, specifies the Board should increase the term of imprisonment for each additional crime of which the prisoner is convicted, and refers the Board to Penal Code section 1170.1. (Cal. Code Regs., tit. 15, § 2286, subd. (b)(1).) Petitioner similarly challenges enhancements added pursuant to section 2285 for use of a firearm. He contends these term enhancements were improper because the superior court struck the correlative firearm sentencing enhancement allegations from the complaint. Petitioner also contends the term of imprisonment fixed by the Board violates his plea agreement, in which he gave up trial and appellate rights for the promise of concurrent sentencing.

We conclude the Board's regulations do not violate the separation of powers doctrine, nor do they compromise petitioner's plea bargain.

## **II. FACTUAL AND PROCEDURAL BACKGROUND**

We recount only the facts relevant to the term of imprisonment issues presented in this habeas proceeding. On the night of February 18, 1995, petitioner embarked on a carjacking spree. At approximately 8:00 p.m., petitioner took a semi-truck at gunpoint located at the Unicoal Company. The truck driver fled, and petitioner drove the truck to a condominium complex, where he abandoned it. Petitioner then demanded car keys from a resident, again at gunpoint. While attempting to drive off with the car, petitioner accidentally fired his gun and flattened one of the car's tires. Petitioner then confronted a neighbor responding to the noise, placing his gun under the neighbor's throat. After a struggle, the neighbor fled. Petitioner ran off and attempted to forcibly enter two homes.

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<sup>2</sup> All further section references are to title 15 of the California Code of Regulations unless otherwise specified.

At one of them, he tried to shoot his way in, and flying debris caused a two year old to suffer a minor scratch. Petitioner next confronted a taxi driver and his wife, carjacked the driver's taxi, and drove it half a mile before abandoning it. On the morning of February 20, 1995, petitioner stole another vehicle and was arrested after a police pursuit.

On August 1, 1995, a jury convicted petitioner of 21 criminal charges related to these events, including kidnapping in commission of carjacking (Pen. Code, § 209.5), kidnapping for robbery (Pen. Code, § 209, subd. (b)), three counts of carjacking (Pen. Code, § 215), attempted carjacking (Pen. Code, §§ 215, 664), and counts for burglary, robbery, use and possession of a deadly weapon, and evading a peace officer. The jury also found petitioner used a firearm while committing each crime (see Pen. Code, § 12022.5, subd. (a)).

Following the guilty verdict, a separate jury trial began on petitioner's insanity defense. When the jury deadlocked, petitioner and the prosecutor reached a negotiated disposition. Petitioner would drop his insanity defense, change his plea to guilty and forfeit his appellate rights. The prosecutor would ask the court to dismiss the weapon enhancements on the two kidnapping counts and run sentences on all counts concurrently. The express terms of the plea agreement did not address the manner in which the Board would ultimately calculate petitioner's term of imprisonment.

Sentencing occurred on September 25, 1995. The court dismissed the two firearm enhancements on the kidnapping counts. It then, for kidnapping in commission of carjacking, imposed an indeterminate sentence of life with possibility of parole, and stayed, under Penal Code section 654, a second indeterminate sentence of life with possibility of parole for kidnapping for robbery. The longest determinate sentence the court imposed was eight years for first degree robbery—a four-year base term, plus a four-year firearm enhancement. The court ordered all determinate sentences to run

concurrently with each other and with the life sentence, leaving petitioner with, essentially, a life sentence running concurrently with an eight-year determinate sentence.<sup>3</sup>

The state prison system took custody of petitioner on October 11, 1995. His minimum eligible parole date was October 18, 2002.<sup>4</sup>

On September 2, 2009, approximately seven years after his minimum eligibility date and 14 years after he had been imprisoned, the Board found petitioner suitable for parole—that is, found he no longer posed “an unreasonable risk of danger to society.”

The Board then, in accordance with its regulations, determined petitioner’s term of imprisonment and release date. Using the matrix at section 2282, subdivision (c), the Board selected 12 years as the “base” term of imprisonment for petitioner’s life offense (kidnapping in commission of carjacking). Stating “[t]his is where it gets complicated,” the Board next observed petitioner “had concurrent sentences, and it’s our understanding

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<sup>3</sup> The court’s full sentencing was as follows: count 1, kidnapping for carjacking (Pen. Code, § 209.5), life term/firearm enhancement struck; count 2, kidnapping for robbery (Pen. Code, § 209, subd. (b)), life term stayed/firearm enhancement struck; count 3, carjacking (Pen. Code, § 215), stayed; count 4, second degree robbery (Pen. Code, §§ 211, 212.5, subd. (c)), stayed; count 5, first degree robbery (Pen. Code, §§ 211, 212.5, subd. (a)), four years, four-year enhancement; count 6, attempted carjacking (Pen. Code §§ 215, 664), stayed; counts 7 and 9, first degree burglary (Pen. Code, §§ 459-460, subd. (a)), stayed; count 8, assault with deadly weapon (Pen. Code, § 245, subd. (a)(2), three years/four-year enhancement; count 10, attempted burglary (Pen. Code, §§ 459, 664), stayed; count 11, shooting at occupied building (Pen. Code, § 246), three years/four-year enhancement; counts 12 and 13, carjacking (Pen. Code, § 215), three years/five-year enhancement; counts 14 and 15, second degree robbery (Pen. Code, §§ 211, 212.5, subd. (c)), stayed; count 16, firearm possession (former Pen. Code, § 12021, subd. (a)(1)), stayed; count 17, first degree burglary (Pen. Code, §§ 459-460, subd (a)), four years/one-year enhancement; count 18, vehicle taking (Veh. Code, § 10851, subd, (a)), two years/one-year enhancement; count 19, evading peace officer (Veh. Code, § 2800.2), two years/one-year enhancement; count 20, firearm possession (former Pen. Code, § 12021, subd. (a)(1)), two years; count 21, receiving stolen property (Pen. Code, § 496, subd. (a)), two years.

<sup>4</sup> While both parties state his “minimum eligible parole release date” was October 18, 2001, they are apparently referring to the date of his first eligibility hearing, which is held one year prior to a prisoner’s minimum parole date, which in this case was seven years after petitioner’s incarceration. (Pen. Code, §§ 3041, 3046, subd. (a)(1).)

that based on each of those concurrent sentences, that we can assess half of that particular time.” However, the Board did not fully apply a “half-time” formula. Instead, the Board, ostensibly pursuant to its regulations at sections 2400-2411—pertaining to life terms for murders—added to petitioner’s 12-year base term, the full terms the court had imposed for petitioner’s non-stayed, nonlife crimes (another 12 years), half of all of the non-stayed weapons enhancements (another 10.5 years), subtracted time for postconviction credits (42 months), added time for disciplinary violations, and arrived at a term of imprisonment of 374 months, or 31 years 2 months.

Petitioner asked the Board to reconsider his term of incarceration and release date, in part, on the ground the Board had effectively run the terms on his nonlife crimes consecutively, when the sentencing court had ordered them to run concurrently. The Board denied his request, and petitioner filed a petition for writ of habeas corpus in the superior court raising, among other issues, a separation of powers challenge. The court granted his petition, but on the ground the Board had applied the wrong regulations—those concerning the term of imprisonment for murders, not kidnapping—and directed the Board to recalculate petitioner’s term of imprisonment and release date under the applicable regulations.

The Board did so in January 2011, applying the regulations at sections 2280-2292, generally applicable to life crimes. The Board again selected a 12-year base term (citing § 2282, subd. (c)) and added a two-year firearm enhancement (citing § 2285). It then—stating the court had imposed 53 years (not eight years) of concurrent sentences for the nonlife crimes—added consecutive enhancements for the nonlife crimes. These enhancements included an eight-year term for first degree robbery (including the weapon enhancement), plus one-third of the terms the court had set on the non-stayed, nonlife crimes, treating them as subordinate offenses to the first degree robbery (citing § 2286). The Board also added six months for each of petitioner’s two prior felonies (citing § 2286, subd. (c)) and subtracted 48 months of postconviction credit (see § 2290). The total term of imprisonment under the general regulations was 412 months, or 34 years, 4

months, a longer term than the Board had calculated in 2009 under the regulations applicable to murders.

Petitioner again asked the Board to reconsider, contending it had effectively run his concurrent determinate sentences consecutively, and had also added time for a firearm enhancement the sentencing court had struck. The Board declined, stating the longer term was the result of applying the “less discretionary . . . regulations” generally applicable to life crimes, which gave greater weight to petitioner’s “53 years of concurrent sentences.” Petitioner then filed the instant petition for writ of habeas corpus directly in this court.

### III. DISCUSSION

#### A. *Habeas Jurisdiction*

We first address whether petitioner should have sought habeas relief in the trial court prior to filing the instant petition directly in this court. Article VI, section 10 of the California Constitution provides, “ ‘ “The Supreme Court, courts of appeal, superior courts, and their judges have original jurisdiction in habeas corpus proceedings.” This provision grants original subject matter jurisdiction over habeas corpus proceedings concurrently to the superior court, the Court of Appeal, and [the Supreme Court].’ ” (*In re Darlice C.* (2003) 105 Cal.App.4th 459, 465; see also *In re Roberts* (2005) 36 Cal.4th 575, 593-594 (*Roberts*).

While “in most instances, a habeas corpus petition ‘should’ be filed in the superior court,” the “language in *Roberts* does not divest the Courts of Appeal of original jurisdiction in petitions for writ of habeas corpus, as granted by article VI, section 10 of the California Constitution. Nor does it dictate that in all cases such habeas corpus petitions must be filed in the superior court—only that challenges to parole ‘should’ first be filed in the superior court [citation] unless ‘extraordinary reason exists for action by’ the appellate court in the first instance [citation].” (*In re Kler* (2010) 188 Cal.App.4th 1399, 1402-1404, italics omitted.)

The instant petition presents such an “ ‘extraordinary’ situation justifying the exercise of our constitutional prerogative.” (*Kler, supra*, 188 Cal.App.4th at p. 1404.)

The petition follows a prior habeas challenge by petitioner which resulted in the issuance of a writ, but on further consideration by the Board, resulted in a longer term of imprisonment than originally imposed. The issues presented here were raised previously but not addressed by the trial court, and present questions of law as to the validity of the Board's regulations. We therefore choose to exercise our original habeas jurisdiction and address the merits of the instant petition. (See *ibid.*)

### **B. General Overview of Sentencing of Life and Nonlife Crimes**

“For decades before 1977, California employed an ‘indeterminate’ sentencing for felonies. The court imposed a statutory sentence expressed as a range between a minimum and maximum period of confinement—often life imprisonment—the offender must serve. An inmate’s actual period of incarceration within this range was under the exclusive control of the parole authority, which focused, primarily, not on the appropriate punishment for the original offense, but on the offender’s progress toward rehabilitation. During most of this period, parole dates were not set, and prisoners had no idea when their confinement would end, until the moment the parole authority decided they were ready for release. (See *People v. Jefferson* (1999) 21 Cal.4th 86, 94-95 (*Jefferson*); Cassou & Taugher, *Determinate Sentencing in California: The New Numbers Game* (1978) 9 Pacific L.J. 5, 6-16 (Cassou & Taugher).)” (*In re Dannenberg* (2005) 34 Cal.4th 1061, 1077 (*Dannenberg*).)

Under this regime, “court[s] had little control over the length of the sentence” while the parole authority had “virtually total discretion.” (Cassou & Taugher, *supra*, 9 Pacific L.J. at pp. 8-9; see *Jefferson, supra*, 21 Cal.4th at p. 94 [“A trial court would simply sentence a defendant to prison for ‘the term prescribed by law,’ while the actual length of a defendant’s term, within the statutory maximum and minimum, was determined by the Adult Authority.”]; *People v. West* (1999) 70 Cal.App.4th 248, 256 [the indeterminate sentencing law (ISL) “‘divested the trial judge of power to fix the term of imprisonment for offenses punishable by imprisonment in a state prison, and gave this power to the Adult Authority’ ”]; see also *In re Morganti* (2012) 204 Cal.App.4th 904, 934 (*Morganti*) (conc. & dsn. opn. of Kline, P.J.) [under the ISL, an “ ‘inmate’s

actual period of incarceration within this range was under the exclusive control of the parole authority' ” which enjoyed “relative immunity from judicial review”].)

In 1976, the Legislature made a sea change in sentencing by enacting the determinate sentencing law (DSL). (*Dannenberg, supra*, 34 Cal.4th at p. 1078.) “The DSL implemented the Legislature’s finding that ‘the purpose of imprisonment for crime is punishment,’ a goal ‘best served by terms proportionate to the seriousness of the offense,’ with provision for sentence ‘uniform[ity]’ for similar offenses. ([Pen. Code,] § 1170, subd. (a)(1).)” (*Ibid.*)

“Under the DSL, most felonies are now subject, in the alternative, to three precise terms of years (for example, two, three, or four years, or three, five, or seven years). The court selects one of these alternatives (the lower, middle, or upper term) when imposing the sentence. ([Pen. Code,] § 1170, subs. (a)(3), (b); see *Jefferson, supra*, 21 Cal.4th 86, 95.) The offender must serve this entire term, less applicable sentence credits, within prison walls, but then must be released for a further period of supervised parole. ([Pen. Code,] § 3000, subd. (b); see *Cassou & Taugher, supra*, 9 Pacific L.J. 5, 26.)” (*Dannenberg, supra*, 34 Cal.4th at p. 1078.)

Thus, under the DSL, the courts were given new and significant authority over sentencing. (See *People v. West, supra*, 70 Cal.App.4th at p. 257 [the DSL “returns the sentencing power to the courts”]; *People v. Martinez* (1979) 88 Cal.App.3d 890, 895 [the DSL’s triad approach “returns the sentencing power to the courts”].)

“However, certain serious offenders, including ‘noncapital’ murderers (i.e., those murderers not punishable by death or life without parole)” and kidnappers, “remain subject to indeterminate sentences. These indeterminate sentences may serve up to life in prison, but they become eligible for parole consideration after serving minimum terms of confinement. (See *Jefferson, supra*, 21 Cal.4th 86, 92-93.)” (*Dannenberg, supra*, 34 Cal.4th at p. 1078; see also *People v. Neely* (2009) 176 Cal.App.4th 787, 797 (*Neeley*).)

“Thus, two different sentencing schemes coexist today: one determinate, the other indeterminate.” (*People v. Felix* (2000) 22 Cal.4th 651, 654 (*Felix*).)

Sentencing increases in complexity when a defendant is convicted of multiple crimes, particularly where one or more of the crimes is a life crime subject to indeterminate sentencing and the others are nonlife crimes subject to determinate sentencing. The superior court begins by imposing sentences, separately, for the nonlife and life crimes, including any enhancements. (See generally *Neely, supra*, 176 Cal.App.4th at p. 797 [sentencing judge must compute the determinate and indeterminate sentences “separately and independently of each other”].)

With respect to nonlife crimes, the superior court is first “required to select a base term—either the statutory low, middle or upper term—for each of the crimes. (§ 1170; Cal. Rules of Court, rule 4.405(2).)” (*Neely, supra*, 176 Cal.App.4th at pp. 797-798.) Second, the court designates one crime for the “principal term,” leaving the others for “subordinate terms.” (*Ibid.*) “The principal term shall consist of the greatest term of imprisonment imposed by the court for any of the crimes, including any term imposed for applicable specific enhancements.” (Pen. Code, § 1170.1, subd. (a); *Neely, supra*, 176 Cal.App.4th at pp. 797-798.) Each subordinate term “shall consist of one-third of the middle term of imprisonment prescribed for” each “felony conviction for which a consecutive term of imprisonment is imposed, and shall include one-third of the term imposed for any specific enhancements applicable to those subordinate offenses.” (Pen. Code, § 1170.1, subd. (a); *Neely, supra*, 176 Cal.App.4th at pp. 797-798; see also *Felix, supra*, 22 Cal.4th at pp. 655-656 [discussing enhancements in more detail].)

“Offenses for which an indeterminate sentence of life imprisonment or death can be imposed are not subject to section 1170.1. Consequently there are no principal and subordinate terms to be selected. ([Pen. Code,] § 1168, subd. (b).) The court simply imposes the statutory term of imprisonment . . . .” (*Neely, supra*, 176 Cal.App.4th at p. 798.)

The sentencing court must next decide, under Penal Code section 669, whether the sentences are to be served concurrently or consecutively, or in some combination thereof. Section 669 specifies: “When any person is convicted of two or more crimes” the judgment “shall direct whether the terms of imprisonment or any of them . . . shall run

concurrently or consecutively.” (Pen. Code, § 669.) This is a “sentencing choice” for the court. (See *People v. Sandoval* (2007) 41 Cal.4th 825, 850 [trial courts have “discretion to make numerous other sentencing choices, such as whether to grant or deny probation, impose consecutive sentences, or strike the punishment for an enhancement”].)

A court’s power under Penal Code section 669 is not confined to nonlife crimes. The court can not only order sentences for nonlife crimes to run concurrently or consecutively, but also order sentences for nonlife crimes to run concurrently or consecutively with one or more life sentences. Similarly, “[l]ife sentences, whether with or without the possibility of parole, may be imposed to run consecutively with one another, with any term imposed for applicable enhancements, or with any other term of imprisonment for a felony conviction.” (Pen. Code, § 669<sup>5</sup>; see Cal. Rules of Court, rule 4.425 [setting forth criteria superior courts are to consider in choosing between concurrent and consecutive sentencing].)

### **C. *Term of Imprisonment and Parole of Life Prisoners***

As discussed, under the DSL, certain serious offenders still receive indeterminate life sentences. (*Dannenberg, supra*, 34 Cal.4th at p. 1078.) Often, these sentences are reflected as some number of years “to life,” as in “fifteen years to life.” (See *In re Dayan* (1991) 231 Cal.App.3d 184, 187.) As they were under the prior ISL, “life inmates’ actual confinement periods within the statutory range are decided by an executive parole agency. This agency, an arm of the Department of Corrections, is now known as the [Board of Prison Terms]. (See [Pen. Code,] § 3040.)” (*Dannenberg, supra*, 34 Cal.4th at p. 1078.)

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<sup>5</sup> The pre-DSL version of Penal Code section 669 also allowed for concurrent and consecutive sentencing. (Stats.1941, c. 742, p. 2262, § 1.) However, if one of the convictions resulted in “life imprisonment, then the terms of imprisonment on the other convictions, whether prior or subsequent, [were] . . . merged and [ran] concurrently with such life term.” (*Ibid.*) Thus, under the ISL and prior version of section 669, the superior court did not have the power to choose between concurrent and consecutive sentencing in dealing with multiple crimes that included a life crime.

A life prisoner is not eligible for consideration for parole until he or she has served at least seven calendar years in prison, or any mandatory minimum term, if greater. (Pen. Code, § 3046, subd. (a); see *People v. Jenkins* (1995) 10 Cal.4th 234, 250-251.) Moreover, “[w]henver a person is committed to prison on a life sentence which is ordered to run consecutive to any determinate term of imprisonment, the determinate term of imprisonment shall be served first and no part thereof shall be credited toward the person’s eligibility for parole as calculated pursuant to Section 3046 or pursuant to any other section of law that establishes a minimum period of confinement under the life sentence before eligibility for parole.” (Pen. Code, § 669.)

Under Penal Code section 3041, “one year before the prisoner’s minimum eligible parole date, a Board panel shall meet with the inmate” and assess his or her suitability for parole. (*Dannenberg, supra*, 34 Cal.4th at p. 1078, citing Pen. Code, § 3041, subd. (a).) The statutory scheme envisions the Board “ ‘shall normally set a parole release date,’ and shall do so ‘in a manner that will provide uniform terms for offenses of similar gravity and magnitude in respect to their threat to the public.’ ” (*Dannenberg*, at p. 1078.) However, the Board does not set a life prisoner’s period of imprisonment and parole date until the Board determines he or she is suitable for parole.<sup>6</sup> (Pen. Code, § 3041, subd. (b))

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<sup>6</sup> In *In re Rodriguez* (1975) 14 Cal.3d 639, 650-651, 654, footnote 18, the Supreme Court sustained a cruel and unusual punishment challenge to delayed term-fixing under the ISL, holding the parole authority had to promptly fix a prisoner’s “primary” term of imprisonment upon his or her arrival to the prison system. The Board (then, the Adult Authority) therefore issued directive No. 75/30, establishing a method for calculating the primary term of imprisonment and providing ranges for various offenses. (See generally Cassou & Taugher, *supra*, 8 Pacific L.J. at p. 15; *In re Williams* (1975) 53 Cal.App.3d 10, 13-14 & fn. 3; *In re Stanley* (1976) 54 Cal.App.3d 1030, 1034.) Similar concern has been expressed about the provisions of the DSL specifying that a prisoner’s term of imprisonment will not be set until after he or she is found suitable for parole, resulting in vastly disparate terms of incarceration for prisoners convicted of the same crime. (*Morganti, supra*, 204 Cal.App.4th at p. 941 (conc. & dis. opn. of Kline, P. J.) However, in *Dannenberg, supra*, 34 Cal.4th at page 1084, the Supreme Court stated, “[s]o long as the Board’s finding of unsuitability flows from pertinent criteria, and is supported by ‘some evidence’ in the record before the Board [citation], the overriding statutory concern for public safety in the individual case trumps any expectancy the

[suitability]; Cal. Code Regs., tit. 15, § 2280 [“a parole date shall be denied if the prisoner is found to be unsuitable”].)

A prisoner is not suitable for parole if “the gravity of the current convicted offense or offenses, or the timing and gravity of current or past convicted offense or offenses, is such that consideration of the public safety requires a more lengthy period of incarceration for this individual.” (Pen. Code, § 3041, subd. (b).)

The Board’s regulations instruct the Board to consider “[a]ll relevant, reliable information available . . . in determining suitability for parole.” (§ 2281, subd. (b).)<sup>7</sup> Its regulations also enumerate factors indicating suitability and unsuitability. For instance, the Board considers whether the convicted offense was particularly heinous or occurred because of external pressures on the prisoner, and considers the prisoner’s history for violence, criminal record, level of remorse, mental and social history, prison behavior, age, and postrelease plans.<sup>8</sup> (§ 2281; see also *In re Rosenkrantz* (2002) 29 Cal.4th 616, 654 (*Rosenkrantz*) [discussing the Board’s suitability regulations].)

Once the Board determines a life prisoner is suitable for parole, i.e., that he no longer presents an unreasonable risk to public safety, it determines his term of imprisonment and sets a release date. (Pen. Code, § 3041, subd. (a).) Penal Code section 3052 directs the Board to “ ‘establish criteria for the setting of parole release

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indeterminate life inmate may have in terms of comparative equality with those served by other similar offenders.”

<sup>7</sup> The Board has enacted four different sets of regulations for four different classes of life crimes. (§§ 2280-2292 (life crimes generally), 2400-2411 (murders), 2420-2429.1 (habitual offenders), 2430-2439.1 (sex offenders).) While the sets of regulations share the same framework and contain a number of duplicative provisions, they are not identical. We are concerned here with, and therefore cite only to, the set of regulations generally applicable to life crimes, sections 2280-2292, which was adopted before adoption of the remaining three sets of regulations.

<sup>8</sup> While the Board’s discretion to consider these factors is great, it is not without limitation. The Supreme Court has explained, for instance, that because the circumstances of an offense are immutable, a particularly heinous offense supports the denial of parole only if over time it continues to have some rational tendency to show that the prisoner is currently dangerousness. (*In re Lawrence* (2008) 44 Cal.4th 1181, 1212.)

dates.’ ” (*Dannenberg, supra*, 34 Cal.4th at p. 1078.) The Board has done so through the adoption of an extensive set of regulations. (Cal. Code Regs., tit. 15, §§ 2280-2292.)

The regulations generally provide a parole date “shall be set in a manner that provides uniform terms for offenses of similar gravity and magnitude in respect to the threat to the public. In setting the parole date, the panel shall consider the Sentencing Rules for the Superior Courts as they specifically relate to life prisoners. The panel shall also consider the criteria and guidelines set forth in this article for determining the suitability for parole and the setting of parole dates, considering the number of victims of the crime for which the prisoner was sentenced and any other circumstances in mitigation or aggravation.” (§ 2280.)

The Board first fixes a “base term” of imprisonment. (§ 2282, subd. (a).) Generally, “[t]he base term shall be established solely on the gravity of the base offense”—that is, “the most serious of all life offenses for which the prisoner has been committed to prison.” (§ 2282, subd. (a).)

The regulations contain matrices of base terms for several life crimes. (§ 2282, subds. (b)-(c) [matrices for first degree murder and kidnapping for robbery or ransom].) The Board selects the row and column in the appropriate matrix best corresponding to the circumstances of the base offense. For example, the horizontal rows of the kidnapping matrix account for harm to the victim and its vertical columns account for the nature of the detention (minor movement, hostage taking, intricately planned). (§ 2282, subd. (c).) Each row and column combination points to an entry in the matrix with three numbers, a lower, middle and upper base term. (See *ibid.*)

The Board selects the middle base term unless it finds circumstances in aggravation or mitigation set forth in section 2283 (aggravating factors) or 2284 (mitigating factors). (§ 2282, subd. (a).) “In considering crimes for which no matrix is provided, the panel shall impose a base term by comparison to offenses of similar gravity and magnitude in respect to the threat to the public, and shall consider any relevant Judicial Council rules and sentencing information as well as any circumstances in aggravation or mitigation of the crime.” (§ 2282, subd. (d).)

Once the Board selects the base term of imprisonment, its regulations require it to consider a number of term “enhancements.” (§§ 2285-2286.) The regulations “make certain enhancements mandatory unless the panel gives adequate reasons for not doing so.”<sup>9</sup> (*In re Stanworth* (1982) 33 Cal.3d 176, 185 (*Stanworth*).)

In this case, we are concerned principally with section 2286, entitled “Additional Terms for Other Offenses,” and specifically, with subdivision (b), pertaining to “Multiple Commitments.” (§ 2286, subd. (b).) This subdivision specifies: “An enhancement should be added to the base term if the prisoner has been committed to prison for more than one offense, regardless of whether the sentences are to be served concurrently or consecutively with the life sentence or each other.” (*Id.*)<sup>10</sup>

Section 2286, subdivision (b), classifies “Multiple Commitments” as either “Nonlife Offenses,” “Life Sentence Offenses,” or “Nonlife 1168 Offenses.” (§ 2286, subd. (b)(1)-(3).) It specifies “[t]he enhancement for each life sentence offense in addition to the base term should be seven years.”<sup>11</sup> (§ 2286, subd. (b)(2).) “The enhancement for each nonlife 1168 offense should be six months.” (§ 2286, subd. (b)(3).)

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<sup>9</sup> While the Attorney General’s return dwells on the word “mandatory,” the quoted statement from *Stanworth* and the regulations, themselves, make clear the Board is to consider whether aggravating or mitigating factors warrant departure from the specified enhancements.

<sup>10</sup> The latter phrase, specifying the superior court’s sentencing choice is of no consequence, did not appear in the regulation as initially promulgated and was added several years later, in 1980. (Register 80, No. 6.) We have not been provided, nor have we been able to locate, any regulatory history as to who sought this addition, whether anyone opposed it, and what comments were made regarding it. Notably, the Board’s later-enacted sets of regulations pertaining to murderers, habitual offenders and sex offenders all contain a different regulation governing “adjustments” for multiple convictions. (See §§ 2407, 2427, 2437.) These regulations acknowledge the superior court’s sentencing authority under Penal Code section 669 and instruct the Board to “consider the court’s action in determining the adjustment pursuant to this section.” (§§ 2407, subd. (a), 2427, subd. (a), 2437, subd. (a).)

<sup>11</sup> As we have indicated, seven years is also the minimum time a life prisoner must serve before being eligible for parole. (Pen. Code, § 3046, subd. (a)(1).)

The enhancement for other nonlife offenses is not similarly fixed. Rather, the regulation directs the Board to refer to Penal Code Section 1170.1. (§ 2286, subd. (b)(1).) “The panel shall select a principal term and subordinate terms based on the nonlife offenses and add the total term to the term established for the life offense. The term for the nonlife offense shall be the term in effect at the time the prisoner committed the offense.” (§ 2286, subd. (b)(1).) Thus, subdivision (b)(1) essentially directs the Board to act like a superior court that has chosen to impose consecutive sentences.

While section 2286 states, “[t]he panel shall impose enhancements as provided in this section” (§ 2286, subd. (a)), other language in the regulation makes clear this is not a mandatory directive. The regulation further provides, “[i]f the panel finds circumstances in aggravation or mitigation as provided in §§ 2287<sup>[12]</sup> or 2288<sup>[13]</sup>, the panel may impose

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<sup>12</sup> Section 2287 provides: “Circumstances which may justify imposition of a term for another crime higher than that suggested in Section 2286 include:

“(a) Pattern of Violence. A victim was seriously injured or killed in the course of the other crime, or there was a substantial likelihood of serious injury or death resulting from the acts of the prisoner.

“(b) Numerous Crimes. The other crime was part of a series of crimes which occurred during a single period of time, show a pattern of similar conduct, and resulted in convictions, but have not resulted in enhancement under Section 2286.

“(c) Crimes of Increasing Seriousness. The other crime, when considered with the principal crime, indicates a significant pattern of increasingly serious criminal conduct.

“(d) Independent Criminal Activity. The other crime and its objective were independent of the life crime or the other crime was committed at a different time and place, indicating a significant pattern of criminal behavior rather than a single period of aberrant behavior.

“(e) Status. The prisoner was on probation or parole or was in custody or had escaped from custody when the crime was committed.

“(f) Other. The other crime involved any of the circumstances in aggravation enumerated in the Sentencing Rules for the Superior Courts.”

<sup>13</sup> Section 2288 provides: “Circumstances which may justify imposition of a term for another crime lower than that suggested in Section 2286, or which may justify imposition of no enhancement, include:

“(a) Minor Punishment for Other Crime. The period of incarceration imposed for the other crime as a condition of probation or as the sentence for the other crime is equal to or less than the additional term provided by Section 2286.

a higher or lower enhancement, or may impose no enhancement . . . .” (§ 2286, subd. (a).)

The regulations also provide for a term “enhancement of two years if the prisoner personally used a firearm in the commission of any life crime unless the panel states specific reasons for not adding the enhancement.” (§ 2285.)

After adding all enhancement periods to the base term of imprisonment, the Board subtracts time for applicable credits and thus arrives at the term of imprisonment and final release date. (§§ 2289-2290.)

**D. *The Sentencing Authority of the Superior Courts and the DSL Term Enhancement Regulations***

“Article III, section 3 of the California Constitution provides that the powers of state government are divided into the legislative, executive, and judicial branches, and persons charged with the exercise of one power may not exercise either of the others, except as permitted by the state Constitution. (*Rosenkrantz, supra*, 29 Cal.4th at p. 662.)” (*In re Copley* (2011) 196 Cal.App.4th 427, 435.) The separation-of-powers doctrine is violated when the actions of one branch “defeat or materially impair the inherent functions of another branch.” (*Rosenkrantz*, at p. 662.)

“The imposition of sentence and the exercise of sentencing discretion are fundamentally and inherently judicial functions.” (*People v. Navarro* (1972) 7 Cal.3d 248, 258; *People v. Burke* (1956) 47 Cal.2d 45, 52.) Thus, it is the sentencing judge who wields the “discretion to make . . . sentencing choices, such as whether to . . . impose

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“(b) Successful Completion of Probation or Parole. The prisoner’s performance on probation or parole for the other crime was good, and the prisoner was free of criminal convictions for a reasonable period of time following probation or parole.

“(c) Insignificant Prior Record. The other crime is unrelated to the principal offense in time, or in the kind of criminal conduct involved, or in the apparent motivation or cause of the criminal conduct indicating an insignificant pattern of criminal behavior.

“(d) Probation. The prisoner was granted probation after conviction of the other offense.

“(e) Other. The other crime involved any of the circumstances in mitigation enumerated in the Sentencing Rules for the Superior Courts.”

consecutive sentences, or strike the punishment for an enhancement.” (*People v. Sandoval, supra*, 41 Cal.4th at pp. 850-851; see also *In re Patton* (1964) 225 Cal.App.2d 83, 87-88 [parole authority “does not have jurisdiction to determine whether a second sentence shall be consecutive or concurrent” which “is a judicial function, clearly set out in [Penal Code] section 669”]; *In re Sandel* (1966) 64 Cal.2d 412, 415-417 [selecting consecutive or concurrent terms is a judicial function, and parole authority violates separation of powers by attempting to “correct” a sentence to make terms run consecutively.]

On the other hand, the “[Board’s] discretion in parole matters has been described as “great” [citation] and “almost unlimited” [citation].’ [Citation.]” (*Rosenkrantz, supra*, 29 Cal.4th at p. 655.) “The executive branch has “inherent and primary authority” over parole matters. . . .’ (*In re Roberts* (2005) 36 Cal.4th 575, 588 . . . .) ‘By its nature, the determination whether a prisoner should be released on parole is generally regarded as an executive branch decision. [Citations.] The decision, and the discretion implicit in it, are expressly committed to the executive branch. [Citations.] It is not a judicial decision.’ (*In re Morrall* (2002) 102 Cal.App.4th 280, 287 . . . .)” (*In re Copley, supra*, 196 Cal.App.4th at pp. 435-436.) “ ‘Intrusions by the judiciary into the executive branch’s realm of parole matters may violate the separation of powers.’ ” (*In re Prather* (2010) 50 Cal.4th 238, 254.)

What petitioner’s separation of powers argument fails to appreciate is that even under the DSL, the Legislature left intact the Board’s power to decide when a life prisoner is eligible for parole, and thus to determine his length of imprisonment and release date. (*Dannenberg, supra*, 34 Cal.4th at pp. 1097-1098.) In this case, the Board did not purport to alter the superior court’s determinate sentencing choices as to petitioner’s nonlife crimes. Rather, the Board determined solely the length of time petitioner will serve for his indeterminate life crime, pursuant to the authority that has been, and remains, invested in the executive branch.

The gist of petitioner’s argument is that section 2286, subdivision (b), accomplishes indirectly what the Board cannot do directly, i.e., transmute concurrent

determinate sentences into consecutive ones. As petitioner points out, he received concurrent determinate sentences on all his nonlife crimes, resulting in an eight-year aggregate determinate sentence. However, rather than adding eight years to his base term of imprisonment, the Board added over 22 years, essentially the period of time he would have served on his nonlife crimes had he been consecutively sentenced. This does not mean, however, that section 2286, subdivision (b), is constitutionally infirm and the Board impermissibly impinged on the superior court’s sentencing authority.

As we have discussed, the Legislature empowered the Board to adopt regulations to determine parole eligibility and the term of imprisonment. (Pen. Code, § 3041, subd. (a).) Thus, the Legislature, itself, has specified the bounds of the Board’s authority.

Further, section 2286, subdivision (a), expressly states “If the panel finds circumstances in aggravation or mitigation as provided in §§ 2287 or 2288, the panel may impose a higher or lower enhancement, or may impose no enhancement . . . .” (§ 2286, subd. (a).) One circumstance justifying a reduced term enhancement, or no enhancement, for example, is when “[t]he period of incarceration imposed . . . as the sentence for the other crime is equal to or less than the additional term provided by Section 2286.” (§ 2288, subd. (a).) Thus, section 2286, subdivision (b), does not mandate a particular result, but leaves it to the Board to exercise its discretion as to the appropriate term of imprisonment for a life offender convicted of additional crimes. The regulation, by referencing section 2288, also acknowledges the sentencing authority of the superior court and makes a court’s sentencing choices a matter for the Board to consider in determining the term of imprisonment for the life crime. That the Board may, in exercising its discretion, conclude the period of incarceration for an indeterminate life crime should be lengthened in light of other crimes the prisoner committed, does not compromise the determinate sentence for those crimes the superior court imposed years earlier.<sup>14</sup>

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<sup>14</sup> As we have noted, the Board’s other sets of regulations—pertaining murderers, habitual offenders, and sex offenders—each include a regulation parallel to section 2286, entitled “Adjustments for Other Offenses.” (§§ 2407, 2427, 2437.) In contrast to the

The Board’s great discretion in parole matters arises not only from the statutory framework delegating it broad powers in that area (e.g., Pen. Code, §§ 3040-3041, 3052), but also from the fact a life term is truly a life term, with only the *possibility*, not the guarantee, of parole. “ [T]raditionally “one who is legally convicted has no vested right to the determination of his sentence at less than maximum” [citation]. Moreover, “a defendant under an indeterminate sentence has no ‘vested right’ to have his sentence fixed at . . . ‘or any other period less than the maximum sentence provided by statute.’ ” [Citations.] “It has uniformly been held that the indeterminate sentence is in legal effect a sentence for the maximum term” [citation], subject only to the ameliorative power of the [parole authority] to set a lesser term. [Citations.]’ [Citation.] Indeed, ‘ “it is fundamental to [an] indeterminate sentence law that every such sentence is for the [statutory] maximum unless . . . the [parole] authority acts to fix a shorter term. The authority may act just as validly by considering the case and then declining to reduce the term as by entering an order reducing it . . . .” ’ [Citations.]” (*Dannenberg, supra*, 34 Cal.4th at pp. 1097-1098.)

Applying these principles during the early transition from the ISL to the DSL, the Courts of Appeal rejected arguments similar to that made by petitioner here—that the Board was impinging on the authority granted to the courts under the DSL by adding other crime enhancements in calculating postulated DSL release dates in cases where the courts had imposed concurrent sentences. (*In re Thoren* (1979) 90 Cal.App.3d 704, 710; *In re Gray* (1978) 85 Cal.App.3d 255, 262-263 (*Gray*)). These cases dealt specifically with Penal Code section 1170.2, which provides a bridge between the ISL and the DSL. The statute authorizes the Board “to translate” a prisoner’s ISL term “into a retroactive

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language of section 2286, subdivision (b), providing for a term enhancement “regardless of whether the sentences are to be served concurrently or consecutively with the life sentence or each other” (§ 2286, subd. (b)), the more-recent regulations acknowledge the superior courts’ “discretion to order that the sentences for more than one crime be served consecutively” and provide that “the board shall consider the court’s action in determining the adjustment . . . .” (§§ 2407, subd. (a), 2427, subd. (a), 2437, subd. (a).) Thus, these regulations more clearly acknowledge the sentencing authority accorded to the superior courts.

term” under the DSL, and sets forth factors the Board is to consider in determining the postulated DSL release date. (*In re Olson* (2007) 149 Cal.App.4th 790, 793; Pen. Code, § 1170.2, subd. (a); see also *Gray, supra*, 85 Cal.App.3d at p. 260 [“Subdivision (a) of section 1170.2 directs the [Board] to determine what sentence an ISL offender would have received had he been sentenced under the [DSL] . . . .”].) The statute further requires the Board to compare the ISL release date with the postulated DSL release date and to use the latter if it is earlier, unless two commissioners determine, based on specified factors, the prisoner should serve a longer term (a “serious offender” determination). (Pen. Code, § 1170.2, subd. (b); *In re Olson, supra*, at p. 793; *In re Thoren, supra*, at p. 710.)

For “serious offenders” (see Pen. Code, § 1170.2, subd. (b)), the Board has employed a policy of treating concurrent sentences as consecutive sentences in arriving at the postulated DSL release date. (See *In re Thoren, supra*, 90 Cal.App.3d at pp. 709-710; *Gray, supra*, 85 Cal.App.3d at pp. 258, 261-262.) *Gray* expressly approved this policy, explaining that calculating a prison release date “is not a resentencing” and that the “original indeterminate sentence ‘for the term provided by law’ remains valid.” (*Gray, supra*, at pp. 262-263.)

Although *Gray* arose in the context of Penal Code section 1170.2, its reasoning—that calculating a term of imprisonment is an administrative action, not a resentencing, that does not alter the life prisoner’s maximum sentence—is independent of that particular statute. *Gray*’s rationale, which has never been questioned, applies to the present case, as well. Petitioner’s sentence was, and still remains, a life sentence, and the Board, in determining the term of his imprisonment and setting his release date, was exercising its own administrative power to grant parole and reduce the life term petitioner was sentenced to serve.

The Attorney General points out petitioner received the benefit of concurrent sentencing that is statutorily mandated by Penal Code section 669. Under that code section, as we have discussed, a concurrently sentenced prisoner starts serving his indeterminate life term and determinate terms at the same time, making him eligible for

consideration for parole after serving the longest of the minimum parole eligibility periods, whereas a consecutively sentenced prisoner must serve each of the minimum parole eligibility periods before he is eligible for consideration for parole. (Pen. Code, § 669.)

For reasons similar to those discussed, we also conclude section 2285, which provides for a two-year enhancement to the base term of imprisonment for the use of a firearm, does not impermissibly infringe on the superior courts' sentencing authority. In accordance with the terms of the agreed-to disposition, the prosecution asked the court to dismiss the firearm sentencing enhancement allegations in the criminal complaint (Pen. Code, § 12022.5, subd. (a)) and the court did so. Petitioner contends the Board's regulation effectively nullifies the court's striking of the sentencing enhancement allegations. It is well established, however, that the Board may enhance the term of imprisonment for a life crime on the basis of facts that are not pleaded or proven in the superior court. (*In re Neal* (1980) 114 Cal.App.3d 141, 145-146 ["The aggregate term . . . is the result of the added 2-year component based upon defendant's use of a firearm in the commission of a 'life crime' . . . (Cal. Admin. Code, tit. 15, § 2285.) Such additional term neither extended the statutory period of parole ineligibility (§ 3046) nor carried beyond defendant's ability to serve it during his lifetime (see §§ 3000, subd. (b), 3001, subd. (b)) and was properly considered by the Board in calculating defendant's period of actual confinement prior to release on parole, notwithstanding the absence of an express finding at the time of sentencing.'], fn. omitted; *In re Dexter* (1979) 25 Cal.3d 921, 928-929; cf. *Rosenkrantz, supra*, 29 Cal.4th at pp. 678-679 [jury's failure to find a fact beyond a reasonable doubt does preclude use of fact by Board].)

We see no practical distinction between a sentencing allegation not having been pleaded or proved, and such allegation having been struck. The result is the same—there is no superior court predicate for the prison term enhancement. The regulations and the availability of court review, however, ensure due process before the Board can impose a term enhancement on the basis of factors not determined by the court. (*In re Dexter, supra*, 25 Cal.3d at p. 930 ["if the inmate claims the enhancement is not justified by a

trial court finding, he has recourse to” procedures in the regulations and to judicial review]; see also *Rosenkrantz, supra*, 29 Cal.4th at p. 655 [parolee’s right to due process]; *In re Prewitt* (1972) 8 Cal.3d 470, 476 [same].)

**E. *Petitioner’s Plea Bargain and the DSL Term Enhancement Regulations***

Petitioner also contends the enhancements to his term of imprisonment violate the terms of his plea deal, wherein he agreed to waive trial and appellate rights in exchange for concurrent sentencing. As we have discussed, in determining petitioner’s eligibility for parole in connection with his life crime, and setting the term of his imprisonment and release date, the Board acted within the bounds of its administrative authority and did not impermissibly impinge on the superior court’s sentencing authority. The Board likewise did not impermissibly interfere with the plea agreement struck by petitioner and the prosecution, in accordance with which the superior court sentenced petitioner to up to life in prison for kidnapping in commission of carjacking.

Indeed, the term enhancement regulations the Board applied in this case have been part of the Code of Regulations for some 30 years, since before 1980. Thus, they had long been in effect at the time petitioner agreed to the negotiated disposition. Both petitioner and the superior court must be presumed to have been conversant with the law as it existed at that time. The plea agreement also did not purport to alter the way in which the Board would calculate petitioner’s indeterminate term.<sup>15</sup> Thus, it should have come as no surprise to petitioner that, with respect to the indeterminate sentence for his life crime, the Board would set the term of his imprisonment and would do so in accordance with its regulations providing for a base term of imprisonment augmented by

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<sup>15</sup> This distinguishes petitioner’s case from *Brown v. Poole* (9th Cir. 2003) 337 F.3d 1155, in which the state was ordered to honor its promise—made on the record during a plea colloquy—that the defendant would actually be released from prison after a fixed term of seven and a half years. (See *id.* at pp. 1158-1159 [“Now, if you behave yourself at the state prison, as most people do, and I am inclined to believe that you will, you are going to get out in half the time.”].) The state made no such promise here. (See *In re Lowe* (2005) 130 Cal.App.4th 1405, 1425 [distinguishing *Brown* and holding Governor’s new statutory authority to reverse Board’s parole suitability determination did not violate terms of petitioner’s plea bargain].)

term enhancements, including for additional convictions and use of a firearm. (See *People v. Heitzman* (1994) 9 Cal.4th 189, 200 [we “ ‘require citizens to apprise themselves not only of statutory language, but also of legislative history, subsequent judicial construction, and underlying legislative purposes’ ”]; *People v. Haney* (1989) 207 Cal.App.3d 1034, 1038, fn. 3 [“no authority requires a trial court to advise a defendant who pleads guilty that uncharged prior prison terms can be used to aggravate his prison sentence”].)

**F. *Alleged Vindictiveness in Second Term Fixing***

Petitioner additionally contends that even if the Board’s term enhancement regulations are valid, the Board acted “vindictively” in violation of double jeopardy protections when it set a longer term of imprisonment—by approximately three years—after remand following petitioner’s first habeas petition.

The prohibition on increased punishment following sentencing after retrial and the concerns about double jeopardy at issue in cases such as *Alabama v. Smith* (1989) 490 U.S. 794, do not apply to the Board’s recalculation, in accordance with the applicable regulations, of petitioner’s term of imprisonment for his life crime. Petitioner’s sentence and punishment—life with possibility of parole—remained the same. The Board’s determination of petitioner’s eligibility for parole, term of imprisonment and release date, as we have discussed, are not “sentencing.” (*Dannenbergs, supra*, 34 Cal.4th at pp. 1097-1098; *Gray, supra*, 85 Cal.App.3d at pp. 262-263.)

The courts also explicitly held under the ISL that the Board could recalculate terms of imprisonments without running afoul of double jeopardy constraints on resentencing. As the court of appeal explained in *In re Korner* (1942) 50 Cal.App.2d 407, 411, “what was done by the Board of Prison Terms and Paroles was not judicial in its nature. The judicial proceedings were terminated by the pronouncement of judgment by the trial court. That court, in legal effect, sentenced the petitioner to imprisonment for the maximum term prescribed by the statute, which is life. [Citations.] Thereupon he was turned over to an administrative board which was empowered to determine how long he should be kept in prison.” Accordingly, the court upheld the statutory scheme that

allowed the Board to re-fix an indeterminate term. (*Ibid.*; see also *In re Etie* (1946) 27 Cal.2d 753, 758-760 [re-fixing term to maximum upon violation of parole similarly upheld]; *People v. Tenorio* (1970) 3 Cal.3d 89, 95 [Board is “empowered to determine and redetermine sentences—within limits imposed by the exercise of judicial power . . . .”].)

A term of imprisonment set by the Board for an indeterminate life sentence thus does not have the finality of a *sentence* imposed by a court, and re-fixing a term of imprisonment for an indeterminate life sentence does not raise the same double jeopardy concerns as sentencing following retrial after a successful appeal.

Still, the Board cannot act vindictively, for if it did so, its actions would be arbitrary and capricious, constituting an abuse of its discretion. (See, e.g., *In re Montgomery* (2012) 208 Cal.App.4th 149, 161.) We see no record evidence of actual vindictiveness here. The error leading to the granting of petitioner’s first habeas petition was the Board’s application of the wrong set of regulations, those pertaining to murderers, rather than those applicable generally to life crimes, including kidnapping. The Board subsequently applied the correct set of regulations, as instructed by the superior court. In applying these regulations, the Board applied the term enhancements specified by section 2286, subdivision (b), and section 2285. The specified enhancements added up to a slightly longer term of imprisonment than the Board had calculated under the inapplicable regulations.<sup>16</sup>

#### IV. DISPOSITION

The petition for writ of habeas corpus is denied.

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<sup>16</sup> As we have noted, the newer sets of regulations, including those applicable to murders, have an “[a]djustment” regulation that specifies different adjustment periods for different additional crimes and depending on whether the superior court imposed concurrent or consecutive sentencing. (§§ 2407, 2427, 2437.)

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Banke, J.

We concur:

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Marchiano, P. J.

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Dondero, J.