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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re WILLIAM E. HAYS,
on Habeas Corpus.

A142316

(Napa County
Super. Ct. No. HC1689)

Petitioner William E. Hays challenges a decision of the Board of Parole Hearings (Board) finding him unsuitable for parole at his sixth parole suitability hearing. The Board concluded that Hays lacked insight into the causative factors that led him to commit the life offense. Among other things, the Board cited the fact that Hays believed he did not necessarily need further treatment for post-traumatic stress disorder (PTSD) but would undergo treatment if necessary. And, while acknowledging that Hays identified causative factors that led to the life offense, the Board concluded that Hays failed to understand the “combination” of those factors. Hays contends the Board’s decision that he presents an unreasonable danger to the public is not supported by some evidence in the record. We agree with Hays and shall direct the Board to conduct a new parole suitability hearing.

FACTUAL AND PROCEDURAL BACKGROUND

Life Offense

On October 21, 1980, Robert Allen Brady, Randolph R. Leister, Jr., and Edward Maloney arrived at Hays’s residence in Napa. They drank beer and ate. At around 6:30 p.m., they left together in a van and drove toward Vallejo, where they hoped to sell

two trailer tires in exchange for methamphetamine. Brady also wanted to trade the van for methamphetamine because it was going to be repossessed. Hays's dog was in the van with the four men. The men ended up in Fairfield looking for a woman that Hays believed would help them dispose of the van, but they could not find the woman's residence. Brady was irritated and began driving erratically. The men had to stop and allow Hays to clean out the van after his dog got sick. Brady got angry and kicked the dog, leading to an argument over the dog. The men stopped at a number of liquor stores along the way and continued to drink beer and vodka. All of the men were intoxicated.

After the men were unsuccessful in their attempt to acquire methamphetamine, they returned to Napa. Brady, who was driving the van, appeared to be angry and at times was racing other vehicles and traveling at approximately 90 miles per hour. Hays lay down in the van and basically passed out. After a thumping noise awoke him, Hays got out of the van in Napa because he was concerned about Brady's driving. He dove into some bushes when it appeared to him that Brady was driving towards him.

Brady, Leister, and Maloney returned to Brady's home. Brady's wife took the keys and gave two of the men blankets so that they could sleep in the van.

Meanwhile, Hays returned to his home. His housemate reported that Hays was very drunk and acting crazy. According to the housemate, Hays told him that the other men kept his dog and that he was going to beat them up. A neighbor tried to retrieve the dog from the men in the van but told Hays that the men would not give up the dog. As Hays was telling the housemate that he knew how to make Molotov cocktails from his time in Vietnam, he was siphoning gas from his car into a coke bottle. The housemate intervened, emptied the coke bottle, and took Hays's car keys, but then went to a party and left Hays alone.

At approximately 12:30 a.m. on October 22, 1980, Napa firefighters responded to a vehicle fire. The van Brady had been driving was engulfed in flames. Brady and Leister, along with Hays's dog, perished in the fire. Maloney had returned to the house before the fire started and survived. In the van, fire officials found a beer bottle

containing a wick in the front seat. An investigation revealed that the fire was caused by a flammable liquid.

One of Hays's housemates reported that she heard Hays bragging that "he was going to fire up a van to get even with some friends." The housemate saw Hays again at about 1:00 a.m. on October 22. Hays was sweaty and told the housemate in response to questioning about what had happened, " 'You will read about it in the morning paper. It should hit the front page.' "

When he was interviewed by police the following evening, Hays admitted that he had been with Brady, Leister, and Maloney the previous evening and that they had traveled to Vallejo and Fairfield in an attempt to sell some tires. Hays told the police he got out of the vehicle when they returned to Napa and walked home, where he joined a party in progress. According to Hays, he did not think about his dog and had told his girlfriend the dog was staying with Brady. He also claimed that he did not know about the van fire until 5:00 p.m. on October 22 when he read about the incident in the paper.

In May 1981, Hays was convicted of two counts of second degree murder following a court trial in Napa County. The court sentenced Hays to serve consecutive terms for each of the murder counts, resulting in a sentence of 30 years to life in state prison.

Criminal and Social History

Hays was born and raised in Napa County as the youngest of three children in a working class family. He reported that there was no family history of criminal behavior, substance abuse issues, or mental illness. He graduated from high school and attended junior college for one year.

In 1970, Hays was drafted into the Army and sent to Vietnam at the age of 20. He was honorably discharged in January 1972. While in Vietnam, Hays began using marijuana, methamphetamine, and heroin. He recalls ingesting up to three bottles of methamphetamine a week in order to stay awake. He smoked heroin approximately four times per week to allow him to sleep. Although he consumed alcohol in excess before his military service, he reportedly drank even more after his service in Vietnam

concluded. He typically drank two six packs of beer per day, and then began drinking hard liquor around 1975 or 1976. The Veterans' Administration determined that injuries Hays suffered in Vietnam to his legs and back entitled him to a 30 percent disability rating.

After he served in the military, Hays gained skills as a journeyman carpenter and certified welder. He had a varied employment history before he committed the life crime but denied engaging in any illegal occupations. He last worked at a tannery but lost his job shortly before the date of the commitment offense as a result of poor attendance at work.

Hays had no juvenile record and, before serving in Vietnam, had been arrested on one occasion when he was found to be in possession of alcohol. After returning from Vietnam, he was arrested on several occasions during the period from 1971 through 1978. He received probation, fines, and some jail time following arrests for resisting arrest, battery, contributing to the delinquency of a minor, and drunk driving. After 1978, Hays was not arrested until October 1980, when he committed the offense for which he is currently incarcerated.

Hays got married in 1972 and had three children with his first wife. They separated in 1978 and ultimately divorced. All three of the children moved to Idaho to stay with their mother. Hays was married a second time while in prison. That marriage ended amicably after about four years.

Conduct and Programming in Prison

Hays had an initial spate of disciplinary problems after he first arrived in prison, including violations involving drug possession and physical altercations. Since 1985, he has remained discipline-free, a record he attributes to his religious beliefs and working with Alcoholics Anonymous (AA) and Narcotics Anonymous (NA) programs. He remains committed to his Catholic faith, has participated in a number of spirituality groups and prayer programs, and continues to attend a meditation group as well as Catholic mass on a weekly basis.

Over the years he has been incarcerated, Hays has participated in various programs to address his substance abuse. He began attending AA/NA in 1992 and has attended consistently since 1998. At the time the comprehensive risk assessment was prepared for the most recent parole suitability hearing, Hays was the chairman of AA/NA at the prison where he was housed. He has been sober and drug-free since the mid-1980's.

Hays has participated in self-help programming throughout the course of his incarceration. He has been active in a military veterans group since its inception in 2007. In that group he worked on post-traumatic stress he experienced after returning from Vietnam. He was commended in 2010 and 2011 for his excellent attitude and involvement in the group, and his participation continues to this day. In 2011, he joined a PTSD group after he was encouraged to seek more formal therapy for the disorder following a 2010 parole suitability hearing. His participation ended in 2012 after the group was discontinued due to budget cuts, although he thereafter joined a life prisoners' existential therapy group.

Throughout his prison term, Hays has worked at a variety of job assignments, where his performance ratings have ranged from satisfactory to exceptional. At the time of the parole suitability hearing, he was serving as a maintenance painter and continued to be lauded for his outstanding work ethic. He also completed 35 units from Sacramento City College and earned an A.A. degree in social behavioral sciences from Coastline Community College in 2013.

Remorse and Insight

Hays has expressed remorse for taking the lives of two people. He admits that he did not initially feel remorse until he got sober and started a process of self-examination. He accepts full responsibility for the crime even though he does not remember the details.

In response to a question about what led him to commit the life crime, Hays stated that he had been suffering from PTSD since Vietnam, which was aggravated by his abuse of drugs and alcohol. Further, he had recently separated from his wife and had lost his family. He was extremely intoxicated on the night of the offense and had an

“overwhelming sense of doom” as Brady was driving recklessly and at a high rate of speed. He passed out but awoke to noises he thought were explosions. His mind went back to the time he spent in Vietnam, and he escaped through the van’s window. When the van came toward him, he jumped into nearby bushes because he thought Brady was trying to kill him. He described the vehicle as a “capture van” in that it had no interior handles that would allow someone to get out. He was concerned and angry that there may have been an intent to “capture” some girls in the van. He does not remember much after diving into the bushes, although he acknowledges that he was angry about Brady kicking his dog and allegedly trying to run him over.

Despite his inability to recall what happened after he left the van, Hays accepts responsibility for his actions and believes the testimony of the witnesses who describe his behavior that night. He acknowledges that he was so overcome with anger that he made a bomb and placed it in the van.

Hays attributed his actions to drugs and alcohol that aggravated his PTSD, although he did not blame his behavior on those factors. He stated that he “chose to [use] drugs and alcohol” and did not have the necessary coping skills to handle the situation and control his anger. He claimed he was able to deal with his substance abuse with AA/NA and that he dealt with his anger and PTSD in a veterans’ group as well as in PTSD and existential group therapy. He still has memories of Vietnam but no longer describes them as nightmares.

Psychological Evaluations

Since 1998, multiple Board-appointed psychologists or psychiatrists have evaluated Hays before his parole suitability hearings. In general, his potential for violence has been rated as “low” or “very low range” throughout the years.

In 2013, Dr. Jacqueline Caoile conducted an evaluation for the Board in which she considered Hays’s entire institutional record, his attitude toward the crime, his insight, and his sense of responsibility and remorse. Dr. Caoile’s evaluation was the one used by the Board to assess Hays’s current dangerousness. Dr. Caoile concluded that Hays poses a low risk on every risk instrument used by Board-appointed psychologists to predict

future violence, except the risk assessment in the Historical, Clinical, Risk Management–20 (HCR–20), for which historical violence is a significant part of the assessment. She opined that he represents a low risk of violence and “presents with non-significant risk factors,” concluding that “specialized intervention or risk reduction strategies appear unwarranted.” Dr. Caoile included a diagnosis of PTSD that was in remission.

2013 Parole Hearing

In May 2013, the Board found Hays unsuitable for parole at his sixth parole suitability hearing. The Board began by noting that the commitment offense was “especially atrocious” but also acknowledged that after a significant passage of time the life crime, by itself, may not support a continued denial of parole absent other factors demonstrating a lack of suitability for parole. The Board noted that Hays understood the magnitude of the crime and was remorseful but believed he had “not fully addressed the causative factors[] which led to the life crime.” More specifically, the Board stated: “You have identified posttraumatic stress syndrome, PTSD. You’ve identified factors of your divorce and your loss of your family and children. You’ve identified factors of your drug and alcohol use. And what was lacking to this Panel was your fully understanding of the combination of those.” The Board went on to note that Hays had addressed “pieces of it” with drug and alcohol counseling as well as self-help programming, but that with respect to PTSD, which was identified as a significant causative factor, Hays indicated to the Board that he “didn’t necessarily need further treatment[] in that area,” although he agreed to pursue such treatment if necessary. The Board concluded that Hays remained a threat to public safety because of his continued “lack [of] insight into those causative factors.”

The Board issued a three-year denial of parole.

Habeas Corpus Petition

Hays filed a petition for a writ of habeas corpus in the Napa County Superior Court challenging the Board’s May 2013 parole denial. The court denied the petition, reasoning that “at least some evidence” supports the Board’s decision that releasing Hays on parole “would unreasonably endanger public safety.” The court cited the Board’s

rationale that Hays had “only addressed pieces” of the causative factors that led him to commit the life offense.

Hays thereafter filed a habeas corpus petition in this court challenging the Board’s 2013 denial of parole. His petition also purports to challenge Marsy’s Law, otherwise known as the Victims’ Bill of Rights Act of 2008, which increases the period of time between parole hearings but also allows the Board under specified circumstances to advance the date of a parole hearing. (See *In re Vicks* (2013) 56 Cal.4th 274, 278.) He claims Marsy’s Law violates the constitutional proscription against ex post facto laws. After receiving informal opposition to the petition, we issued an order to show cause and directed the parties to file a formal return and traverse.

Although our order to show cause was not limited to a specific claim, we conclude that the Marsy’s Law claim contained in the petition does not set forth a prima facie case for relief. (See *In re Vicks, supra*, 56 Cal.4th at pp. 278–279 [rejecting ex post facto challenge to Marsy’s Law].) Accordingly, the petition is summarily denied as to that claim, and the order to show cause is limited to Hays’s challenge to the 2013 denial of parole.

DISCUSSION

Penal Code section 3041, subdivision (b) mandates that the Board “shall set a [parole] release date unless it determines that the gravity of the current convicted offense or offenses, or the time 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” “Regardless of the length of time served, a life prisoner shall be found unsuitable for and denied parole if in the judgment of the panel the prisoner will pose an unreasonable risk of danger to society if released from prison.” (Cal. Code Regs., tit. 15, § 2402, subd. (a).) In making its determination, the Board must conduct an individualized inquiry into the inmate’s suitability for parole and consider the entire record, including the commitment offense, the inmate’s progress while

incarcerated, and the insight he has developed into his past conduct. (*In re Shaputis* (2011) 53 Cal.4th 192, 219–221 (*Shaputis II*).

Upon review of a Board decision denying parole, we assess whether there is “some evidence” to support the Board’s decision that the inmate constitutes a current threat to public safety. (*Shaputis II, supra*, 53 Cal.4th at p. 209.) “[U]nder the ‘some evidence’ standard, ‘[o]nly a modicum of evidence is required. Resolution of any conflicts in the evidence and the weight to be given the evidence are matters within the authority of [the Board] It is irrelevant that a court might determine that evidence in the record tending to establish suitability for parole far outweighs evidence demonstrating unsuitability for parole. As long as the . . . decision reflects due consideration of the specified factors as applied to the individual prisoner in accordance with applicable legal standards, the court’s review is limited to ascertaining whether there is some evidence in the record that supports the . . . decision.’ ” (*Id.* at p. 210.) Although the “some evidence” standard is highly deferential, it “ ‘certainly is not toothless’ ” (*Id.* at p. 215.) It “ ‘must be sufficiently robust to reveal and remedy any evident deprivation of constitutional rights’ ” (*Ibid.*) The Board’s analysis cannot be based on “mere guesswork.” (*Id.* at p. 219.)

An inmate’s insight into the commitment offense is a significant factor in determining whether the inmate continues to pose a threat to public safety, and the Board may properly deny parole based upon an inmate’s “lack of insight.” (*Shaputis II, supra*, 53 Cal.4th at pp. 218–219.) However, our Supreme Court has emphasized “that lack of insight, like any other parole unsuitability factor, supports a denial of parole only if it is rationally indicative of the inmate’s current dangerousness.” (*Id.* at p. 219.) Courts “may properly be skeptical of stated reasons [by the Board] that appear to be unsupported by the record.” (*Id.* at p. 218.)

In this case, the Board based its parole denial on Hays's lack of insight into the causative factors that led him to commit the life offense.¹ The Board expressed concern that, although Hays was remorseful and had identified the factors that led him to commit the life offense, he failed to understand the "combination" of those factors. Taken in isolation, this explanation offers little to justify a conclusion that Hays remains a danger to public safety. However, when the statement is considered in context, it is apparent that the Board's concern was that Hays had not assigned enough significance to PTSD as a causative factor. More specifically, the Board stated it was "troubling to the panel" that Hays indicated he did not necessarily need further treatment for PTSD but acknowledged he would pursue it if necessary. As we explain, the Board's stated concern does not provide the required nexus to establish that Hays remains a threat to public safety.

As an initial matter, the Board's statement finds no support in the record to the extent it suggests Hays would not be amenable to further therapy that might include treatment for PTSD. During the course of the parole suitability hearing, Hays repeatedly acknowledged the role that PTSD played in the antisocial behavior that led up to him committing the life offense. He worked on PTSD issues in a veterans' group as well as in PTSD and life prisoner therapy groups. He was specifically asked what type of therapy he would pursue if released. He responded: "I have two different places here in Sacramento, the Sacramento Resource Center and the Vet Center, which is psychiatrist/psychologist, Sandra Merino. I've talked to her a couple of times. Or any other – wherever I'm located, I will seek out a Veterans Service Center." A Board member later asked Hays whether he thought he would need any assistance with PTSD. Hays stated: "I don't believe so, but I will be working with Sandra [Merino], if I'm

¹The Board began its decision by emphasizing the "especially atrocious" nature of the crime but properly recognized that the aggravated nature of the commitment offense "does not in and of itself provide some evidence of *current* dangerousness" unless the record also establishes some basis to believe a prisoner remains a continuing threat to public safety. (*In re Lawrence* (2008) 44 Cal.4th 1181, 1214.)

paroled here to Sacramento. *So, I'd have direct contact with her PTSD Group.*" (Italics added.)

There is nothing in the record to suggest that Hays discounted the significance of PTSD as a causative factor for his antisocial behavior or that he would fail to pursue appropriate therapy that might include further treatment for PTSD. Further, Hays's belief that he does not necessarily require further therapy for PTSD is not indicative of a lack of insight into the causative factors that led to the life crime. The Board's conclusion that Hays lacks insight rests upon the premise that he requires further PTSD therapy and has failed to accept that fact. But there is no recent psychological evidence in the record supporting a conclusion that Hays requires further therapy for PTSD. In the most recent comprehensive risk assessment, Dr. Caoile stated that Hays's PTSD is in remission and that "specialized intervention or risk reduction strategies appear unwarranted."

Of course, the Board was not obligated to accept Dr. Caoile's conclusion that Hays would present a low risk of violent recidivism if released. (Cf. *In re Rozzo* (2009) 172 Cal.App.4th 40, 62 [parole authority has broad discretion to disagree with forensic psychologists].) However, while the Board had broad authority to assess for itself whether Hays remains a danger to the public, it was not competent or empowered to decide what type of therapy Hays requires in the absence of psychological evidence supporting its conclusion. Because there is no competent, recent evidence establishing that Hays requires ongoing treatment for PTSD, the record does not support a conclusion that Hays lacks insight due to his failure to acknowledge the need for such treatment. Moreover, Hays's belief concerning the need for further PTSD treatment does not reflect a lack of insight into the role PTSD played as a causative factor. Not only has he consistently acknowledged that PTSD played a significant role in the antisocial behavior that led him to commit the life offense, but he has also indicated he will pursue appropriate therapy upon release that may include treatment for PTSD. The stated basis for denying parole does not rest on even a modicum of evidence suggesting that Hays will present a danger to public safety if released.

In its return to this court's order to show cause, the People did not defend the stated rationale for the Board's parole denial—i.e., that Hays lacked insight due to his failure to acknowledge the necessity of further PTSD therapy. Instead, the People searched the record to come up with alternative theories to support a conclusion that Hays lacks insight into the causative factors leading to the commitment offense. First, the People claim Hays lacks insight because he continues to deflect blame for criminal behavior that predates the commitment offense. Second, the People point out that Hays has failed to explain why his drug and alcohol use increased after he returned from Vietnam. Third, the People claim that Hays has failed to “explicitly tie” any of the stressors he identified, such as alcohol abuse and PTSD, to the murders themselves. Finally, the People argue that Hays's inability to recall the commitment offense itself—despite his otherwise “remarkable recall” of events leading up to it—bolsters the Board's conclusion that he lacks insight and presents an unreasonable risk of danger to the public. None of these claims passes muster under the “some evidence” standard of review.

The record belies the claim that Hays denied responsibility for criminal behavior that preceded the commitment offense. Although in some cases he explained that he engaged in violent behavior as a result of being provoked, he acknowledged he was getting into a lot of fights and had learned to resort to violence in response to stressful situations. He attributed his early criminal behavior to some of the same factors that led him to commit the life offense. Further, he did not deny responsibility for the life offense or seek to excuse his behavior.

The record is replete with evidence explaining why Hays's alcohol and drug use increased in the years leading up to the murders. Among other things, there was evidence he was suffering from PTSD, was concerned about the disintegration of his marriage and the loss of his family, and had a sort of “ ‘death wish’ ” following his return from Vietnam. Moreover, Hays has been free of alcohol and drugs since 1985, has consistently participated in AA/NA, and plans to continue participating in those recovery programs after his release. Consequently, a purported failure to explain the reasons why

his drug and alcohol use increased after returning from Vietnam does not constitute “some evidence” supporting the denial of parole.

The People’s contention that Hays failed to tie the stressors in his life to the murders somewhat mirrors the Board’s statement that Hays lacked insight into the “combination” of causative factors he identified. At oral argument on appeal, the People expanded upon this argument, explaining that it is not enough for Hays to simply identify various factors that may have caused him to commit the life offense without specifying the particular motivating factors that led him to take two lives. The People also point out that Hays has been inconsistent throughout the years in describing the factors that led to his actions. We are mindful of the deference we must give to the Board but are not persuaded that the People’s contention is supported by the required modicum of evidence to establish that Hays would pose an unreasonable risk of danger to the public if released.

It is not surprising that Hays has been inconsistent over the years when describing the factors that led him to commit the life crime. After all, he initially denied involvement in the crime and only later accepted full responsibility for his actions. He cannot be faulted for making an effort to identify every factor that may have played a role in his actions. Further, his inability to recall the precise circumstances of the life offense necessarily impairs his ability to identify with specificity what was going through his mind at the time, as Dr. Caoile explained in the most recent comprehensive risk assessment: “Although Mr. Hays only has a partial memory of the events of the crime, based on his version of the crime, it seems that there were a number of factors that collectively contributed to his actions. In addition to the emotions surrounding his divorce and loss of his children, Mr. Hays identified the role of drugs and alcohol in intensifying his fear and sense of impending doom (and possibly distorted perceptions), which when coupled with flashbacks of traumatic experiences from his past—ultimately led to the commission of the crime. Thus, while these aforementioned factors very likely played a cumulative role in Mr. Hays’ behavior in the life crime, his inability to recall the key components of the crime continues to create some ambiguity in terms of identifying all of the motivating factors for the crime.” Hays’s inability to recall certain aspects of

the life offense understandably prevents him from stating with precision what motivated him in the final moments before he committed the life offense, but it does not prevent him from having insight into the combination of factors that collectively contributed to his actions.

As for the contention that Hays lacks insight because he could not recall the circumstances of the murders themselves, we are not convinced that his claimed lack of recall amounts to “some evidence” that he would present an unreasonable risk to public safety if released. Hays explained that he had been drinking heavily and had no specific recall of events after he left the van and jumped into some bushes. Even if the Board had some concern about Hays’s failure to recall the circumstances of the murders—a concern the Board did not articulate when it announced its decision—that concern would not necessarily reveal that Hays lacks insight into the causative factors leading to the commitment offense. Hays has accepted full responsibility for the murders, and he has accepted as true the statements made by various witnesses about his behavior on the night of the murders. There is no reason to believe his inability to recall the commission of the life offense impairs his understanding of the factors that caused him to commit the crime. (See *In re Stoneroad* (2013) 215 Cal.App.4th 596, 630.) “No evidence in the record supports the purely speculative proposition—i.e., ‘guesswork’—that a person who does not remember committing a crime cannot understand the factors that caused him to commit the offense regardless of whether he accepts full responsibility and is genuinely remorseful.” (*Id.* at p. 629.) While we can easily conceive of a situation in which a prisoner’s claimed inability to recall the circumstances of the life crime raises valid questions about whether the prisoner lacks insight or is trying to evade responsibility for his crimes, we are not presented with such a scenario on the record before us now.

The cases relied upon by the People do not change our analysis. In one of those cases, *In re Montgomery* (2012) 208 Cal.App.4th 149, 162, the court noted that the life prisoner minimized his culpability for the crime over time by blaming it on “drug-induced paranoia,” an explanation the Board did not find credible. Here, by contrast, Hays accepts full responsibility for the crime, has identified the causative factors that led

to the life offense, and does not deflect personal responsibility by suggesting the murders were simply the consequence of being intoxicated and suffering from PTSD. In another case relied upon by the People, *In re LeBlanc* (2014) 226 Cal.App.4th 452, 457, the court rejected the life prisoner's explanations for killing a two-year-old child, which consisted of saying there was no reason to kill the child and, alternatively, explaining that the prisoner had suffered abuse as a child and was simply treating the victim the same way. The court rejected the first explanation as a truism and concluded that the second explanation rang false given that the murder—an unprovoked and sudden stabbing—bore little relation to the type of abuse the prisoner claimed to have suffered as a child. Unlike in *LeBlanc*, the causative factors identified by Hays bear directly on the violent acts in which he engaged. Although the Board may have questioned whether Hays had adequately addressed the causative factors that led to the life offense, there was no suggestion the factors identified by Hays rang false.

We conclude that, even under the deferential “some evidence” standard of review, the Board's decision denying parole cannot withstand scrutiny. The life offense was undoubtedly an “atrocious” crime, as the Board recognized. But it was also committed over three decades ago, and Hays was first eligible to be considered for parole in 1999. By itself, the aggravated nature of the crime does not provide evidence of current dangerousness unless there is some evidence to believe Hays remains a threat to public safety. (*In re Lawrence, supra*, 44 Cal.4th at p. 1214.) That evidence is lacking here.

As explained more fully in *In re Prather* (2010) 50 Cal.4th 238, 244, the Board must conduct a new parole suitability hearing on remand in accordance with due process principles and this court's decision. The Board is not limited to the evidence it may consider but is bound by this court's findings and conclusions with respect to the evidence presented in this proceeding. (*Id.* at pp. 257–258.)

DISPOSITION

The petition for a writ of habeas corpus is granted, and the matter is remanded to the Board to conduct a new parole suitability hearing in light of the views expressed in this opinion.

McGuiness, P.J.

We concur:

Pollak, J.

Siggins, J.