

NOT TO BE PUBLISHED

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sutter)

In re HARJOT SINGH TAKHAR
on Habeas Corpus.

C068467

(Super. Ct. No.
CR-HC-93-9600760)

Petitioner Harjot Singh Takhar has been incarcerated since 1993 for two second degree murders. In 2010, the Board of Parole Hearings (Board) denied parole, finding that Takhar is currently dangerous. Takhar filed a petition for writ of habeas corpus, and the trial court, after reweighing the evidence, granted the petition.

We reverse because the Board properly relied on evidence that Takhar is currently dangerous.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Takhar met Manpareet Gill when Takhar was 14 years old, and within a year Takhar was relying on Gill as his "emotional

crutch," to deal with the emotional fallout of Takhar's sister having been raped. They became close, did drugs together and committed crimes together. In 1992, when Takhar was 20 years old, they got together to celebrate Gill's birthday. They smoked marijuana and planned their evening.

Gill wanted to get revenge on James and Barbara Bono, because he thought they had stolen his dog. He suggested they go to the Bonos' home and scare them by "making noises, banging windows, and things to that effect." Takhar thought it was weird, but otherwise did not think too much about it. Gill and Takhar drove towards the home and parked in a nearby orchard, at which point Gill revealed he had a handgun. Gill told Takhar he was going to shoot the gun in the air to scare the Bonos. Takhar knew Gill's possession of the gun was illegal. Takhar also knew when he saw the gun, "that should have been the first light to go off in my head. I should have laid into him about it, but I didn't." Instead, Takhar "decided, ok, fine" just shoot the gun off in the air "and let's get to the party." They went to the Bonos' home, and began making noises to "spook" the Bonos. They found a key to the home and Gill said he was going to use it and rob the Bonos. Takhar knew "red flag number two should have gone off at that point, but it didn't." Takhar tried to talk Gill out of the plan, but Gill went inside and Takhar heard shots being fired. When he went inside, he saw Gill had killed the Bonos.

Takhar covered the bodies with a blanket, and at Gill's suggestion they staged the scene to make it appear to have been

a burglary. They emptied a purse, took a wallet, burned something and, after leaving the scene, attempted to use one of the stolen credit cards to further the cover up. Takhar knew he "could have run and notified the authorities, but I allowed [Gill] to dictate to me." Takhar and Gill then went to their friend's house for a party. By that time, Takhar had "already started the process of blocking it out, legitimizing what [he] was doing, telling [him]self 'I didn't do this. . . . I lived my life for the next year like nothing had happened.'" The Bonos lived in a secluded part of the county and there were no leads in the murders for over a year. Ultimately, an anonymous tip led to Takhar's and Gill's arrests.

Takhar pleaded no contest to two counts of second degree murder. He was sentenced to two concurrent terms of 15 years to life with the possibility of parole. Gill proceeded to trial and was acquitted.

Takhar explained to the Board that his mental state at the time of the murders was that he was "[t]aking the easy way out" of things, avoiding responsibility and avoiding pain. The murders occurred because he had "failed as a moral being" and because of his bad choices, in both action and inaction.

Takhar's prior criminal record included a conviction for theft in 1990, when he and a friend ran into a store and stole beer. After serving some time in jail, he was released on probation. In 1991, Takhar pleaded guilty to trespassing and was placed on probation. Later in 1991, he was convicted of making a false report to the police regarding a hit-and-run

accident which occurred when he had been drinking. He was again placed on probation. In 1991, he was also convicted of theft and malicious mischief. At the time the murders were committed, Takhar was on probation.

Takhar was denied parole in 2002 and in 2006. In 2006, the Board recommended he get "self-help, stay disciplinary-free, earn positive chronos."

While in prison, Takhar participated in numerous self-help programs including Alternatives to Violence, Principles of Affirmation and Cooperation and bereavement training. Through those courses, he was instructed on the importance of community-building, how to communicate based on needs without blame or judgment and empathy. Takhar also began participating in an interfaith 12-step program in January 2009. He volunteered in hospice care.

Vocationally, Takhar obtained a certificate in radiologic technology, as an x-ray technician, as well as clerical and administrative skills. He learned auto mechanic skills and conducted literacy tutor training. Upon his release, he intended to continue working in hospice care, and was already in contact with an organization. He also had a job offer to work with his cousin as an assistant project manager.

Takhar's file contained numerous laudatory chronological reports, in particular with respect to his participation in self-help programming and his numerous volunteer activities. Takhar claimed because of the self-help programming, he was better able to make good decisions, as he now paid attention to

the consequences of his actions, including unintended consequences.

While in custody, Takhar committed several rules violations. He had four minor write-ups:¹ one in 1996 for not obeying an order and one in 2002 for ignoring a code one announcement and being unable to produce his identification. The most recent minor write-up occurred in April 2007. Takhar used canteen ducats to purchase a large amount of food he knew had been stolen from the main kitchen, including "a rectangular block of frozen stew meat, milk, eggs, pastry goods and cheese" and 10 pounds of chicken because he was cooking food in his cell. He explained he "saw an opportunity. [He] was being selfish, and [he] just told [him]self it was only food." Eleven months later, in March 2008, he got another minor write-up for the "[s]lame type behavior." Takhar had again used ducats to pay for 10 pounds of frozen chicken. He reported he was thinking "it was only food. The consequences of this would not be severe."

Two months later, in May 2008, Takhar got a more serious write-up,² when he was found in possession of approximately 180

¹ A "128," a minor write-up, is a "Custodial Counseling Chrono. When similar minor misconduct recurs after verbal counseling or if documentation of minor misconduct is needed, a description of the misconduct and counseling provided shall be documented on a CDC Form 128-A, Custodial Counseling Chrono. . . ." (Cal. Code Regs. tit. 15, § 3312, subd. (a)(2).)

² A 115, a more serious write-up, is a "Rules Violation Report. When misconduct is believed to be a violation of law

canteen ducats. Prisoners are only allowed to have 50 ducats. Because they were out of sequence and over his allotted amount, the ducats were considered contraband. Takhar knew he was not supposed to have the canteen ducats, but since he had previously only received minor write-ups for possessing excess food, he was more relaxed with himself about requiring compliance with the rules. Nineteen days later, in June 2008, Takhar received another more serious write-up for disobeying a direct order by a corrections officer to return to his housing unit.

In explaining these rules violations, Takhar claimed he was not engaging in willful criminal behaviors. He made mistakes, but he had not "gotten to the point where [he was] trying to commit criminal acts of any type." He acknowledged, however, that by knowingly purchasing stolen food from the kitchen, he had committed criminal type thinking and he had purchased stolen property. He told the Board he had learned his lesson and his criminal thought process had stopped after his last serious write-up.

Dr. Thacker conducted a psychological evaluation of Takhar in March 2009 and concluded he was a low risk for violence. The evaluation did not mention Takhar's most recent serious write-up. It also relied, in part, on the conclusion that "Takhar did not express overt criminally-minded thinking during the

or is not minor in nature, it shall be reported on a CDC Form 115. . . ." (Cal. Code Regs. tit. 15, § 3312, subd. (a)(3).)

interview and his history does not suggest that he led a criminally minded lifestyle."

The Board acknowledged Takhar's outstanding work history, educational efforts, participation in self-help programs and his exemplary volunteer work with the supportive care services. However, the Board found Takhar's mental state and current attitude toward the murders weighed against finding him suitable for parole. Takhar continued to display a pattern of willfully violating rules consistent with his pattern of willfully violating the law prior to the murders. The Board noted his violations were within a relatively short period of time and involved similar behavior. The Board also found Takhar lacked sufficient insight into the causative factors of his criminal conduct, including his unwillingness to see the parallels between his self-justification of both the rules violations and the events leading up to the murders. The Board found the March 5, 2009, report by Dr. Thacker was favorable but inconclusive, in that it did not address the second serious write-up Takhar received and "did not address what appears in this case to be a fairly recently demonstrated propensity to violate institutional regulations in serial fashion." The Board expressly noted that Takhar had received two serious write-ups, the most recent in 2008 and four minor write-ups, also most recently in 2008. The Board found Takhar's behavior "evidence[d] a pattern of conduct related to an inability to follow lawful orders and/or take direction or comply with the law as you know it and explained it . . . today." The Board also found Takhar's past criminality

involved alcohol and narcotics violations, included multiple failed grants of probation, at the time of the murders Takhar was on probation for offenses which involved alcohol or narcotics, and the murders were especially heinous and committed for a trivial purpose.

Takhar filed a petition for writ of habeas corpus challenging the Board's decision. The trial court granted the petition, finding there was "insufficient evidence to support the Parole Board's decision to deny parole"

In its order to show cause, the court noted that Takhar has committed no violent acts while in prison. As to the Board's concern that Takhar's pattern of misbehavior in prison was evidence that Takhar would be unable to be a law-abiding citizen, the court stated Takhar's willingness to break rules to please others was irrelevant because Takhar did not know Gill intended to murder the Bonos.

Having decided that there was no connection to be made between the murders and Takhar's rule violations in prison, the court stated that the rule violations were nonviolent and relatively minor.

Finally, the court listed several positive factors that the Board failed to mention in its order: (1) an "impressive" letter to the family of the victims, (2) remorse and acceptance of responsibility, (3) involvement in the prison's hospice program, (4) completion of a vocational certificate in radiologic technology, as well as training as an auto mechanic, and (5) viable exit strategies.

The court concluded: "In the opinion of this Court, the factors in favor of granting [Takhar] parole far outweigh the reasons for denying it. The Board did not give due consideration to all the relevant legal factors. Considering all relevant legal factors, this Court can find no evidence that [Takhar] is a current threat to public safety."

The trial court vacated the Board's June 2010 denial of parole and "remanded to the Board to hold a new hearing within 30 days and to find Takhar suitable for parole unless new and additional evidence shows that Takhar is a current threat to public safety."³

This court granted a stay of the trial court's order on June 27, 2011.

DISCUSSION

Penal Code section 3041, subdivision (b) "provides that the Board must grant parole unless it determines that public safety requires a lengthier period of incarceration for the individual

³ Because we find there was some evidence supporting the Board's decision, we need not address the warden's argument regarding the propriety of the remedy. Nonetheless, to provide guidance to the trial court, we note the Supreme Court made clear in *In re Prather* (2010) 50 Cal.4th 238, that the remedy imposed by the trial court here is not the appropriate remedy upon a finding that there is not some evidence to support the Board's decision. (*Id.* at pp. 254-256.) Rather, the appropriate remedy is generally to "direct the Board to conduct a new parole-suitability hearing in accordance with due process of law and consistent with the decision of the court" (*Id.* at p. 244.) The order "should not place improper limitations on the type of evidence the Board is statutorily obligated to consider." (*Ibid.*)

because of the gravity of the offense underlying the conviction."⁴ (*In re Rosenkrantz* (2002) 29 Cal.4th 616, 654; *In re Lawrence* (2008) 44 Cal.4th 1181, 1203.) The courts, both trial and appellate, review the Board's decision for "some evidence" demonstrating the prisoner remains a current threat to public safety. (*In re Lawrence, supra*, at p. 1191.) We must adopt the Board's interpretation of the evidence if the interpretation is reasonable and reflects consideration of the statutory factors. (See *In re Shaputis* (2008) 44 Cal.4th 1241, 1258 (*Shaputis I*).) "[T]he precise manner in which the specified factors relevant to parole suitability are considered

⁴ The factors tending to show unsuitability for parole are that the prisoner: (1) committed the offense in an especially heinous, atrocious, or cruel manner; (2) possesses a previous record of violence; (3) has an unstable social history; (4) previously has sexually assaulted another individual in a sadistic manner; (5) has a lengthy history of severe mental problems related to the offense; and (6) has engaged in serious misconduct while in prison. (Cal. Code Regs., tit. 15, § 2402, subd. (c).)

The factors tending to show suitability for parole are that the prisoner: (1) does not possess a violent juvenile record; (2) has a reasonably stable social history; (3) has shown signs of remorse; (4) committed the crime as the result of significant stress in his life, especially if the stress has built over a long period of time; (5) committed the criminal offense as a result of Battered Woman Syndrome; (6) lacks any significant history of violent crime; (7) is of an age that reduces the probability of recidivism; (8) has made realistic plans for release or has developed marketable skills; and (9) has engaged in institutional activities indicating an enhanced ability to function within the law upon release. (Cal. Code Regs., tit. 15, § 2402, subd. (d).)

and balanced lies within the discretion'" of the Board. (*Id.* at p. 1260.)

"[T]he court may inquire only whether some evidence in the record before the Board supports the decision to deny parole, based on the factors specified by statute and regulation." (*In re Rosenkrantz, supra*, 29 Cal.4th at p. 658.) "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." (*Id.* at p. 677.)

"It is not the existence or nonexistence of suitability or unsuitability factors that forms the crux of the parole decision; the significant circumstance is how those factors interrelate to support a conclusion of current dangerousness to the public. [¶] Accordingly, when a court reviews a decision of the Board or the Governor, the relevant inquiry is whether some evidence supports the decision of the Board or the Governor that the inmate constitutes a current threat to public safety, and not merely whether some evidence confirms the existence of certain factual findings. [Citations.]" (*In re Lawrence, supra*, 44 Cal.4th at p. 1212, italics omitted.)

Recently, in *In re Shaputis* (2011) 53 Cal.4th 192 (*Shaputis II*), the Supreme Court reaffirmed the limited scope of judicial review and the deferential nature of the "some evidence" standard for reviewing parole suitability determinations. The court explained: "While the evidence supporting a parole unsuitability finding must be probative of the inmate's current dangerousness, it is not for the reviewing court to decide *which*

evidence in the record is convincing. [Citation.] Only when the evidence reflecting the inmate's present risk to public safety leads to but one conclusion may a court overturn a contrary decision by the Board or the Governor. In that circumstance the denial of parole is arbitrary and capricious, and amounts to a denial of due process. [Citation.]" (*Id.* at p. 211, original italics.)

"[A] court must consider the whole record in the light most favorable to the determination before it, to determine whether it discloses some evidence -- a modicum of evidence -- supporting the determination that the inmate would pose a danger to the public if released on parole. [Citations.] . . . Any relevant evidence that supports the parole authority's determination is sufficient to satisfy the 'some evidence' standard. [Citation.]" (*Shaputis II, supra*, 53 Cal.4th at p. 214, fn. omitted.)

"Consideration of an inmate's degree of insight is well within the scope of the parole regulations. The regulations do not use the term 'insight,' but they direct the Board to consider the inmate's 'past and present attitude toward the crime' [citation] and 'the presence of remorse,' expressly including indications that the inmate 'understands the nature and magnitude of the offense' [citation]. These factors fit comfortably within the descriptive category of 'insight.'" (*Shaputis II, supra*, 53 Cal.4th at p. 218.) "[T]he presence or absence of insight is a significant factor in determining whether there is a 'rational nexus' between the inmate's

dangerous past behavior and the threat the inmate currently poses to public safety. [Citations.]” (*Ibid.*)

A. *Some Evidence to Support Parole Denial*

Here, in concluding Takhar was currently dangerous, the Board relied on: (1) Takhar’s current mental state and attitude toward the crime; (2) his lack of insight into the causative factors of his criminal conduct, including his unwillingness to draw “obvious parallels” between his past criminal conduct and current institutional violations; (3) his continuing pattern of violating rules within a relatively short period of time; (4) the inconclusive nature of the psychologist’s report; (5) Takhar’s prior criminality and previous failures on probation; and (6) the heinous nature of, and trivial motive for, the murders.⁵

Takhar takes issue with each factor relied upon by the Board individually. We need not resolve each individual

⁵ We note that the trial court, in granting the petition for writ of habeas corpus, relied, in part, on the finding that “[t]he Board did not give due consideration to all the relevant legal factors.” The court noted that the Board, in its decision, did not mention several favorable factors, such as Takhar’s “impressive” letter to the family of the victims. Takhar does not, on appeal, assert this reasoning concerning due consideration of factors as support for affirming the court’s order. In any event, there is no basis in the Board’s decision for a conclusion that the Board failed to consider the relevant factors. There is no requirement that every relevant factor be mentioned in the Board’s decision. The favorable factors cited by the trial court were part of the evidence in the record, and we must presume the Board considered them because we presume official duty has been performed (Evid. Code, § 664), and there is no evidence here that it was not.

challenge, as “[w]e may uphold [the Board’s] decision, despite a flaw in its findings, if the [Board] has made clear it would have reached the same decision even absent the error.

[Citation.]” (*In re Dannenberg* (2005) 34 Cal.4th 1061, 1100.)

Here, the Board’s decision makes clear the primary bases for the denial of parole were Takhar’s current mental state and attitude toward the murders, his lack of insight into the causative factors of his criminal conduct, including his unwillingness to see parallels between his institutional misconduct and the events leading up to the murders, and his inability to follow lawful orders or comply with the law or rules as he knows them. The Board’s references to the commitment offense and the inconclusive nature of the psychological evaluation were “peripheral to [the Board’s] decision and did not affect the outcome.” (*In re Reed* (2009) 171 Cal.App.4th 1071, 1087, quoting *In re Dannenberg, supra*, 34 Cal.4th at p. 1099.) Accordingly, we will focus our analysis on the reasoning and factors critical to the parole denial.

The inmate’s understanding, current mental state and insight into factors leading to the murders are highly probative “in determining whether there is a ‘rational nexus’ between the inmate’s dangerous past behavior and the threat the inmate currently poses to public safety.” (*Shaputis II, supra*, 53 Cal.4th at p. 218; *In re Lawrence, supra*, 44 Cal.4th at p. 1227.)

With respect to the murders, Takhar and Gill went to the Bonos’ house “only” to play a prank. Takhar did not think about

what they were doing. Even after he learned Gill had a firearm, he thought Gill would "only" shoot in the air. Takhar knew Gill's possession of the firearm was illegal and that he was violating his probation just by being with an illegally armed Gill. Also, Gill said he was going to use the gun to rob the Bonos. Nonetheless, Takhar did not think about any consequences, and he ignored the "red flags" that should have prompted him to prevent further criminal conduct. He just wanted to get to a party. By Takhar's own account, "there were several events in which 'red flags should have been going off for me and they didn't.'"

Similarly, with respect to his institutional misconduct, Takhar knew his conduct was wrong and a violation of the rules. But, since it was "only food", he did not think the consequences would be severe. In fact, he thought "if I get caught with this, the worst thing that's going to happen is, I'm going to get another 128." So, when he saw opportunities to violate the rules, he took them. Even after two violations, Takhar "didn't give too much thought as to" the amount of ducats he had accumulated, almost four times more than he was permitted to have. As with the events leading up to the murders, despite warnings about his misconduct, no "red flags" went off. As to both the murders and the institutional violations, Takhar knew his conduct was wrong and either illegal or in violation of rules. In spite of that knowledge, he chose to proceed and satisfy his own desires, irrespective of the consequences of his behavior.

There are other parallels between Takhar's past criminal history and his current institutional misconduct. Over the course of about two years, in violation of the law and conditions of probation, he engaged in a number of theft and property crimes. In the course of committing one of those crimes, Takhar's friend murdered two people, resulting in Takhar's no contest plea to two second degree murders. After the murders, he rationalized and minimized his behavior, telling himself he did not do anything.

Now, while in prison, over the course of two years, Takhar has again engaged in theft and property type offenses with a similar disregard for rules. He acknowledged his thinking in committing these violations was criminal thinking and that he had knowingly purchased stolen property. Nonetheless, he insisted he had not committed willful criminal behavior. Rather, he had "only" made mistakes. But buying stolen goods is, in fact, willful criminal behavior. (Pen. Code, §§ 7, 496.) Takhar's prison conduct demonstrates he continues to act without considering the consequences of his action or inaction, and minimizes his misconduct. This type of thinking, or lack of thought, contributed significantly to the murders. Contrary to Takhar's claims, there are parallels between his recent institutional misconduct and his past criminal history and these parallels support the Board's conclusion that he lacks insight into the causative factors leading to the life offense. Moreover, there is a rational nexus between Takhar's lack of insight and minimization of both his criminal misconduct and his

rules violations and his current dangerousness. (See *In re Lazor* (2009) 172 Cal.App.4th 1185, 1203.)

It is difficult to comprehend the point made by the trial court in its order that Takhar's inability to obey the rules in prison is irrelevant to his ability to obey the laws on parole. The court stated: "The Board expressed concern that [Takhar's] food infractions suggest a tendency to please his friends even when it requires him to break the rules. The Board extrapolates that this behavior is akin to [Takhar's] behavior on the night of the murders, when he accompanied his friend to the victims' home. Yet, as articulated by the original prosecutor, there is no evidence to suggest [Takhar] had reason to believe his friend was planning to commit murder."

It appears the court did not see that Takhar's breaking of rules in prison he deemed unimportant is a moral defect and character deficiency that was also manifest in Takhar's aiding and abetting Gill to commit an armed robbery and, ultimately, murder against two people Takhar knew Gill held a grudge. Takhar admitted to the Board that there were "red flags" that should have stopped him from aiding Gill, yet he continued to aid Gill. Likewise, in prison, he is willing to break rules -- that is, commit crimes -- he deems less important even though he knows the rules.

To use Takhar's term, that is a "red flag" that he is currently dangerous.

A parole suitability determination, and assessment of the current risk to public safety, includes an analysis by the Board

of whether "the inmate will be able to live in society without committing additional antisocial acts." (*In re Rosenkrantz, supra*, 29 Cal.4th at p. 655; *In re Roberts* (2005) 36 Cal.4th 575, 590; *In re Sturm* (1974) 11 Cal.3d 258, 266.) For a life prisoner on parole, the inability "to comply with the reasonable controls imposed by the parole agent is an antisocial act." (*In re Reed, supra*, 171 Cal.App.4th at p. 1085.) There is a rational nexus between a demonstrated unwillingness or inability to adhere to the reasonable conditions of parole and a current threat to public safety. (*Id.* at p. 1075.) Thus, "where the Board's denial-of-parole decision rests on identified facts probative of a current unreasonable risk that the inmate will not adhere to these [parole] conditions, we must uphold it." (*Id.* at p. 1082.) This is particularly true where, as here, the murders were committed when the inmate was on probation.

Takhar's misconduct within prison, his own relaxed sense of self-discipline, and repeated tendency not to think about the consequences of his action and inaction "undermin[e] confidence in his ability to follow the reasonable directions of his parole agent." (*In re Reed, supra*, 171 Cal.App.4th at p. 1085.) When combined with Takhar's past history of probation violations and the circumstances of the murders, these factors are some evidence of an unwillingness or inability to comply with rules and laws and provide a rational nexus to a finding that Takhar is a current threat to public safety.

B. *Takhar's Due Process Argument*

Takhar contends that the Board violated his constitutional right to due process because it required him to admit guilt in violation of Penal Code section 5011, subdivision (b). The contention is without merit.

Penal Code section 5011, subdivision (b) states: "The Board of Prison Terms [now, Board of Parole Hearings] shall not require, when setting parole dates, an admission of guilt to any crime for which an inmate was committed."

In its decision, the Board stated: "In this case, the motive for the crime appears to be trivial. In fact, you [referring to Takhar] even suggested yourself that you regarded it as trivial. You didn't use that word, but you clearly indicated that you did not believe these two people needed to die that evening. The Panel was left at the conclusion of today's hearing with [sic] still lacking an understanding of why these two victims were killed during this murder, during this double murder."

Takhar claims that this statement means that the Board denied parole because he did not admit to a greater role in the deaths of the Bonos. That proposition simply does not follow from the Board's statement. In context, this is nothing more than a statement concerning the senselessness of the brutal murders.

C. *Assertedly New Argument Supporting Denial of Parole*

Takhar also claims that whether he minimized his responsibility for the murders was not considered by the Board and should not be considered by this court. To the contrary, even though it may be true that the Board did not use the word "minimize" in its decision, it clearly based its decision on Takhar's current "mental state" and "attitude" concerning the murders. In its discussion concerning the parallels between the events leading up to the murders and the rule violations in prison, the Board relied on the fact that Takhar is unable to come to terms with what the Board referred to as the "slippery slope of criminal misconduct." In other words, the Board found that Takhar was minimizing his misconduct, both as to the events leading up to the murders and his prison rule violations.

DISPOSITION

The trial court's order granting Takhar's petition for writ of habeas corpus is reversed and the court's order setting aside the Board's order of June 8, 2010, is vacated. The cause is remanded with directions to deny the petition for writ of habeas corpus.

NICHOLSON, Acting P. J.

We concur:

ROBIE, J.

BUTZ _____, J.