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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re G.B. on Habeas Corpus.

D059171

(Super. Ct. No. HSC11048)

APPEAL from an order of the Superior Court of San Diego County, Ana L. España, Judge. Reversed.

G.B., a prison inmate, filed a petition for writ of habeas corpus in the superior court challenging the California Department of Corrections and Rehabilitation's (CDCR) decision to remove his single cell housing status and instead place him in a double cell with another inmate. The superior court granted the petition, concluding that the CDCR's decision to alter G.B.'s housing classification "was arbitrary and capricious, and unsupported by some competent, credible evidence."

The prison warden appeals, contending: (1) G.B.'s dissatisfaction with his housing classification is not cognizable on habeas corpus, and (2) even if housing classification decisions are reviewable by habeas corpus, the court erred in finding the decision was

arbitrary and capricious. We conclude the housing classification decision is reviewable through habeas corpus proceedings and reverse the trial court's order because some evidence in the record supports the CDCR's decision.

FACTUAL AND PROCEDURAL BACKGROUND

In 1998, G.B. was sentenced to a 23-year prison term for assault with a deadly weapon, plus various enhancements. During his initial prison screening, the CDCR documented that G.B. had a possible thought disorder and major depression. Subsequent evaluations indicated that G.B. was paranoid and had a fear of being attacked by other inmates, especially a cellmate. G.B. alleged that around 1999 or 2000, a former cellmate sexually abused him. Various CDCR medical reports referenced the abuse.

From 2001 until early 2009, G.B. was predominantly classified as an inmate requiring single cell status due to mental health reasons. In February 2009, a prison psychologist (the Psychologist) reviewed G.B.'s Unit Health Record and met with him twice regarding his housing status. The Psychologist noted that G.B. was stable without psychiatric medication and concluded that he did not need a single cell for mental health reasons. Thereafter, the prison's Unit Classification Committee (the Committee) determined that G.B. was appropriate for double cell housing and removed his single cell status. After the Committee's decision, another staff psychologist concluded that G.B. did not have a mental health need that warranted single cell classification.

G.B. appealed the Committee's decision through the prison's administrative appeal process. He claimed that the Psychologist was not aware of his single cell status, did not review his medical files and only interviewed him for five minutes through his cell door.

During the interview, G.B. informed the Psychologist that he would not discuss his confidential mental health issues with others around to hear. G.B.'s multiple administrative appeals were denied.

G.B. then filed a habeas corpus petition in the superior court alleging the CDCR improperly removed his single cell classification. After reviewing the parties' written submissions and prison records, the court concluded that the CDCR's decision to alter G.B.'s housing classification and its interpretation of applicable regulations was arbitrary and capricious. Thus, the court granted the petition and ordered the CDCR to vacate its decision to house G.B. in a double cell. This appeal followed.

DISCUSSION

I. *Request to Seal Opinion*

G.B. requested that we seal this opinion because he fears being beaten or killed if other inmates find out that he reported a prison assault. He asserts that certain inmates may discover the reported assault because they have access to published and unpublished appellate court opinions through the Internet. The warden opposed the request, asserting that G.B. did not justify a need to seal the opinion.

"Unless confidentiality is required by law, court records are presumed to be open." (Cal. Rules of Court, rule 2.550(c).) Before ordering a record sealed, the court must "expressly find[] facts that establish: (1) [t]here exists an overriding interest that overcomes the right of public access to the record; (2) [t]he overriding interest supports sealing the record; (3) [a] substantial probability exists that the overriding interest will be prejudiced if the record is not sealed; (4) [t]he proposed sealing is narrowly tailored; and

(5) [n]o less restrictive means exist to achieve the overriding interest." (Cal. Rules of Court, rules 2.550(d), 8.46(e)(6); see *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178.)

Here, G.B. argues that his personal safety constitutes an overriding interest that supports sealing the court's opinion and that no less restrictive means, including referring to him by another name, are available to protect that interest because inmates have access to opinions through the Internet. We conclude the proposed sealing is not narrowly tailored and less restrictive means exist to protect G.B.'s safety. While we are aware of Penal Code sections 950, 953 and 959, regarding the identification of criminal defendants, given the highly unusual circumstances of this case, we have used a protective nondisclosure caption. Thus, although we deny G.B.'s request to seal the opinion, we omit his name and certain identifying facts from it, measures we find sufficient to address his concerns.

II. *G.B.'s Housing Classification is Subject to Habeas Corpus Review*

The warden argues that housing classification decisions are not reviewable through a petition for writ of habeas corpus. We disagree.

"The right to file a petition for writ of habeas corpus is guaranteed by the state Constitution [citation], and regulated by statute [citation].' [Citation.] . . . 'The function of the writ of habeas corpus is solely to effect "discharge" from unlawful restraint, though the illegality in respect to which the discharge from restraint is sought may not go to the fact of continued detention but may be simply as to the circumstances under which the prisoner is held. . . .' [Citation.]" (*In re Estevez* (2008) 165 Cal.App.4th 1445, 1460-

1461.) Circumstances that impose an "atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life" implicate the protections of the Due Process Clause. (*Sandin v. Conner* (1995) 515 U.S. 472, 484.)

Here, G.B. challenged the change in his housing classification, a circumstance under which he was being held. Although prison administrators are accorded substantial deference in classification decisions, those decisions are reviewable by way of habeas corpus and judicial intervention is appropriate for "'actions by prison officials that are arbitrary, capricious, irrational, or an abuse of the discretion granted those given the responsibility for operating prisons.'" (*In re Jenkins* (2010) 50 Cal.4th 1167, 1175-1176 [reviewing trial court's grant of habeas corpus petition challenging prison's reduction of inmate's classification score for work performance]; *In re Rhodes* (1998) 61 Cal.App.4th 101, 108 [reviewing trial court's grant of habeas corpus petitions challenging housing location].)

The warden argues that G.B.'s claims cannot be asserted through a petition for writ of habeas corpus because they amount to merely a "dissatisfaction" with the Committee's housing decision and G.B.'s preference to be in a single cell does not constitute a significant hardship in relation to the ordinary incidents of prison life. We disagree with this characterization. G.B.'s claims are more than a mere preference to be in a single cell; rather, he is challenging a decision that implicates his mental health needs. (See Cal. Code Regs., tit. 15, §§ 3269, subds. (b), (d) [mental health issues and history of abuse considered in inmate's housing placement], 3377.1, subd. (c) ["S" suffix affixed to inmate's custody designation if he cannot be "safely housed in a double cell or dormitory

situation based on recommendation by custody staff or health care clinician"].) Prison decisions involving an inmate's mental health may impact the inmate's liberty interest and require procedural protections. (See *Vitek v. Jones* (1980) 445 U.S. 480, 491-494 [transfer to a mental hospital]; *Washington v. Harper* (1990) 494 U.S. 210, 221-222 [involuntary administration of antipsychotic medication].) Accordingly, given the implication on G.B.'s mental health, we conclude that the Committee's housing classification decision is reviewable through habeas corpus proceedings.

III. "Some Evidence" Supports the CDCR's Decision

The warden contends the superior court erred when it independently reviewed the record and did not give proper deference to the factual findings of prison authorities. We agree and conclude that although the Committee erred in failing to consider G.B.'s history of sexual abuse, there is some evidence in the record to support its decision.

"Judicial review of a CDC[R] custody determination is limited to determining whether the classification decision is arbitrary, capricious, irrational, or an abuse of the discretion granted those given the responsibility for operating prisons. [Citation.] 'While we must uphold the [CDCR's] classification action if it is supported by "'some evidence'" [citation], and we must afford great deference to an administrative agency's expertise [citation,] . . . "where the agency's interpretation of the regulation is clearly arbitrary or capricious or has no reasonable basis, courts should not hesitate to reject it" [citation].'" (*In re Farley* (2003) 109 Cal.App.4th 1356, 1361-1362.) Under the "some evidence" standard, we do not engage in an "examination of the entire record, independent assessment of the credibility of witnesses, or weighing of the evidence. Instead, the

relevant question is whether there is *any* evidence in the record that could support the [CDCR's] conclusion." (*In re Wilson* (1988) 202 Cal.App.3d 661, 667, fn. 5.)

California Code of Regulations, title 15, section 3269, subdivision (d), regarding an inmate's housing classification provides: "Single cell status shall be considered for those inmates who demonstrate a history of in-cell abuse, significant in-cell violence towards a cell partner, verification of predatory behavior towards a cell partner, or who have been victimized in-cell by another inmate. Staff shall consider the inmate's pattern of behavior, not just an isolated incident." After an inmate is designated as needing single cell housing, "[a] classification committee may consider whether [the] inmate . . . has since proven capable of being double-celled." (Cal. Code Regs., tit. 15, § 3269, subd. (e).)

Here, in changing G.B.'s housing status, the Committee disregarded G.B.'s prior in-cell rape and noted that G.B. did not "meet departmental criteria for single-cell." The decision indicated that the Committee reviewed G.B.'s file and his housing classification history. However, despite multiple references in CDCR medical reports to G.B.'s prior in-cell rape, the Committee concluded that G.B.'s "central file does not reflect any in-cell violence in a double-cell setting." While the rape may not be documented in G.B.'s "central file," the Committee abused its discretion by disregarding it, especially because the in-cell rape was previously treated as genuine and used to recommend G.B. for single cell classification. Thus, we conclude the Committee should have considered that information in reviewing G.B.'s housing classification. (Cal. Code Regs., tit. 15, § 3269, subd. (d).)

Despite our conclusion that the Committee should have considered G.B.'s history of sexual abuse, we nevertheless conclude there was "some evidence" in the record to support its housing classification decision. The Psychologist met with G.B. twice and stated that he reviewed G.B.'s Unit Health Record, which included his medical records. Thereafter, the Psychologist concluded G.B. did not need single cell classification. We presume the Psychologist was aware of the prior sexual abuse because it was documented in various medical reports and the Psychologist stated that he reviewed those records. Additionally, mental health staff participated in the housing classification hearing by describing G.B.'s mental health status and treatment needs and ultimately concurred with the Committee's decision. The Psychologist's recommendation and mental health staff's concurrence constitutes "some evidence" supporting the Committee's decision.

G.B. argues that the Committee should not have relied on the Psychologist's recommendation because it was not supported by facts and was contrary to the opinions of other mental health professionals over the preceding ten years. An inmate's housing classification is not permanent; rather, it is subject to review by "[a] classification committee [who] may consider whether [the] inmate . . . has since proven capable of being double-celled." (Cal. Code Regs., tit. 15, § 3269, subd. (e).) When G.B.'s housing status was up for review, the Psychologist met with him, evaluated his health record, and consulted with a senior psychologist before determining that G.B. did not need to be housed in a single cell. The Psychologist also explained that G.B. was stable without the aid of psychiatric medications. Based on this evidence, we disagree with G.B.'s argument that the Psychologist's opinion was unsupported. Further, the fact that the Psychologist's

opinion was contrary to the opinion of other mental health professionals over the years does not discount its value. The Psychologist's evaluation was the most current recommendation available to the Committee and was based on personal contact with G.B., a review of health records and consultation with another psychologist.

Although we may have reached a different conclusion if we independently weighed the totality of the evidence, we are constrained by the "some evidence" standard and must give great deference to the prison's classification decisions. (*In re Wilson*, *supra*, 202 Cal.App.3d at p. 667.) Under these standards, the Committee's decision must be upheld because the record contains "'a modicum of evidence'" establishing that the classification decision had "'some basis in fact.'" (*Id.* at pp. 666-667.)

DISPOSITION

The order is reversed.

McINTYRE, J.

WE CONCUR:

McCONNELL, P. J.

AARON, J.