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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re JAMES ROVIDA, JR.

on Habeas Corpus.

G045598

(Super. Ct. No. C-76285)

O P I N I O N

Original proceedings; petition for a writ of habeas corpus. Petition denied.

James Rovida, Jr., in pro. per.; and Steve M. Defilippis, under appointment by the Court of Appeal, for Petitioner.

Kamala D. Harris, Attorney General, Jennifer A. Neill, Assistant Attorney General, and Phillip Lindsay, Gregory J. Marcot, and Kim Aarons, Deputy Attorneys General, for Respondent.

The Board of Parole Hearings (the Board) may grant an inmate parole if the inmate does not pose an unreasonable risk of danger to society if released from prison. If the Board grants an inmate parole, the matter is sent to the Governor for review, and the Governor may affirm, modify, or reverse the Board's decision. If the Board, however, denies an inmate parole in the first instance, the inmate may seek redress in the judicial system.

Here, at a subsequent parole consideration hearing, the Board denied James Rovida, Jr., parole, finding he would pose an unreasonable risk of danger to society or a threat to public safety if released from prison. Rovida filed a petition for writ of habeas corpus in the Orange County Superior Court. The trial court denied the petition finding there was "some evidence" supporting the Board's decision. Rovida filed a petition for writ of habeas corpus with this court. He argues there is no rational nexus between the evidence that was before the Board and the Board's determination he is currently dangerous. We disagree.

### FACTS<sup>1</sup>

After nine years of marriage, Rovida's daughter, Cathy Brock (Cathy), and Robert Brock had two children and an unstable marital relationship. The couple separated numerous times, and Cathy would take her children to her parents' house, infuriating Brock. Brock threatened Cathy many times and once hit her on the head with an ashtray. Brock told Cathy that he would hurt her parents and twice tampered with Rovida's truck and mailbox. Rovida tried to stay out of the marital dispute, but he warned Brock to not harass him or damage his property.

In June 1989, Cathy took her children and went to stay at her parents' house. The family had planned a vacation to begin the next day. Cathy wanted her

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<sup>1</sup> The facts of the case are taken from our previous nonpublished case *People v. Rovida* (Dec. 23, 1991, G009997).

children to go on the trip, but Brock was opposed. Brock told Cathy that he would burn down her parents' house. Rovidia was unaware of this threat.

The next day, the family left for their vacation. Brock was waiting for them at a freeway emergency exit. He drove beside them, cut in front of Rovidia's truck and the boat he was pulling, and shouted they would never get to the river and that he would burn down their house. In response, Rovidia fired his .22 caliber handgun twice through the passenger windows of Brock's car. Brock left the freeway, and Rovidia and his family continued to their vacation destination.

A week later, Brock worked the evening shift and got off work at 3:00 a.m. Fifty-five-year-old Rovidia waited in the parking lot, and when Brock got off work, Rovidia chased Brock in his car to Brock's sister's house. Rovidia shot Brock twice, the first shot behind the right earlobe and the second in the left anterior chest wall, killing him. The murder weapon, a .38 caliber handgun, was never found. However, Rovidia was known to have owned a .38 caliber handgun, and police recovered .38 and .22 caliber ammunition from his home.

A jury convicted Rovidia of first degree murder and attempted voluntary manslaughter and found true firearm enhancements. In August 1990, a trial court sentenced Rovidia to prison for 27 years to life with the possibility of parole. The following year, another panel of this court affirmed Rovidia's conviction.

Fifteen years later, on March 29, 2007, the Board held an initial parole consideration hearing.<sup>2</sup> The Board advised Rovidia to be completely honest because the initial hearing serves as "the foundation for all future hearings." The Board relied on the factual summary from our prior nonpublished opinion detailed above. Rovidia admitted that when Brock followed him onto the freeway, he shot at the rear passenger window

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<sup>2</sup> Although we are not reviewing the Board's denial of parole at the *initial* consideration hearing, we provide a brief discussion as it relevant to the Board's decision at the *subsequent* consideration hearing.

because he wanted to scare Brock. As to the night of the incident, Rovida stated he went to Brock's work to speak with him but Brock drove to his sister's house. Rovida claimed Brock got out of his car and had something shiny in his hand; Rovida claimed Brock was known to carry a knife. Rovida said Brock moved towards him and tried to grab the gun. Rovida conceded he pulled the trigger twice. When the Board informed Rovida the first shot hit Brock behind the right earlobe, which suggested Rovida shot him from behind, Rovida insisted he was standing in front of Brock.

As to his parole plans, Rovida stated he planned to live with another daughter, Susan, and son-in-law, Tom, and work in the family business. Although Rovida was eligible for social security, he planned to work. Rovida had no prior criminal record and he was discipline free in prison. Rovida recently earned his GED and had various jobs in prison including, mechanic, yard crew, clothing worker, and porter. Although Rovida did not have a substance abuse problem, he attended Alcoholic Anonymous (AA) meetings in prison. He attended an anger management program, personal improvement course, bridging program, and self-confrontation program. The Board noted the most recent psychological report indicated Rovida's insight concerning the offense was limited and inadequate and he was a low risk of violence if released. After the Board heard from the various witnesses and deliberated, the Board denied Rovida parole, finding he posed an unreasonable risk of danger to society or a threat to public safety if released from prison. The Board reasoned Rovida followed, confronted, and executed Brock. The Board opined Rovida was not remorseful and did not have insight into why he killed Brock. The Board explained that although Rovida earned a GED, he did not develop a marketable skill and did not sufficiently participate in self-help programs, specifically an anger management class such as Breaking Barriers.

In the Fall of 2009, a forensic psychiatrist, Dr. K. Kropf, interviewed Rovida and prepared a comprehensive risk assessment (the Report). The Report

indicated Kropf had interviewed Rovida and reviewed his prior mental health evaluations. The Report stated Rovida did not have a criminal record other than the life offense and he remained discipline free while in prison. The Report said Rovida earned a GED in 2005 and he was assigned to masonry and earned a sanitation engineer certificate. Rovida informed Kropf he planned to live with his daughter and work at the family business. The Report indicated that although Rovida had no substance abuse history, he participated in AA since he was imprisoned. The Report added that he had participated in various self-help programs, including anger management, bridging, and alternative to violence. The Report stated that when asked whether he has any remorse, Rovida replied, “I never shot an animal, yet I did something like this. That scares me. I’m sorry I did it. But Cathy will be there. I wish I never did that.” Rovida stated he would call the police if given another chance. Rovida explained the freeway incident caused him to “snap” and he felt his sentence was appropriate. When asked if there was any additional information he wanted the Board to know, Rovida replied, “I want them to know about me and the family I have and the business I have. These things keep me going.” When asked whether he had changed, Rovida responded, “I am the same person.” The Report opined Rovida’s remorse “seems genuine[]” and he “has some insight” into what led him to commit the life offense. Like Rovida’s 2007 mental health evaluation, the Report concluded Rovida was a low risk for future violence.

On March 25, 2010, the Board held a subsequent parole consideration hearing. Rovida’s attorney informed the Board that she advised Rovida to not speak about the life crime as he had done so at his initial parole suitability hearing. With respect to the facts of the crime, the Board relied on our prior nonpublished opinion detailed above and Rovida’s probation report. In response to questions from the Board, Rovida stated he did not think his trial was fair but he said he committed the crime and he has “to pay for it.” When asked if he had remorse, he replied, “Yes, I am. I know what it’s like to lose somebody you love. I lost my wife and my mother . . . . My wife and I

had been together since we were 14, so I know what it's like to lose a loved one.”

Rovida admitted he was afraid of Brock, but he thought he could speak with him about what happened on the freeway. He said, “But still maybe I shouldn't have got involved the first time. I should have let the police handle it the first -- I should have never went over there and talked to them.”

The Board discussed briefly Rovida's personal history and family. Rovida stated his wife and mother passed away while he was in prison. Rovida stated he has five children, 12 grandchildren, and three great-grandchildren.

Since his initial parole suitability hearing, Rovida earned sanitation engineer and masonry vocation certificates. He also participated in Alternatives to Violence and Breaking Barriers. With respect to Alternatives to Violence, Rovida stated he learned how to control his anger. Rovida was a tutor in the literacy program and he mentored and instructed other inmates in trucking. He remained discipline free since his first hearing. The Board read portions of the Report into the record, including the portion where Kropf opined Rovida was a low risk of future violence.

When the Board asked Rovida whether his conduct was right or wrong, Rovida answered, “I would do things right, but I wouldn't repeat the same thing. I would have to do it different.” Rovida stated Brock's conduct towards Cathy did not justify his death. The Board asked Rovida whether he felt he was forced to handle the situation, Rovida repeated he went there to speak with Brock and he then digressed into speaking about how well his family and the business were doing.

The Board asked Rovida about the freeway shooting, and Rovida explained, as he had done before, that Brock drove in front of him and applied the brakes and then slowed down and was so close to Rovida's truck and the boat he was pulling that Rovida could reach out the window and touch Brock's car. Rovida explained he was scared Brock was going to cause an accident so he decided to shoot into Brock's rear

passenger window.<sup>3</sup> Rovidia understood it did not make sense, but he insisted that because he was in a truck that sat higher than Brock's car and was so close to Brock, he shot downward and was only trying to scare Brock.

When the Board asked Rovidia about the life offense, Rovidia responded, "[He] fe[lt] bad about it." Rovidia explained he felt bad because someone lost his life and he would like to apologize to the family because it should not have happened. When the Board asked Rovidia about a response he provided at his mental health evaluation, Rovidia changed his previous response that there was no other way to handle the situation. Rovidia stated there was another way, let the police take care of the situation. Rovidia again stated he planned to live with his daughter and son-in-law and work in the family business, although he is eligible for social security benefits. Rovidia explained that in his Alternatives to Violence class, he learned to think before he acts, count to 10, and other techniques to remain calm. When Rovidia's attorney asked him whether if faced with the same circumstances would he act similarly, he responded he would not because his family is more important to him "than anything that goes on in here."

After closing and witness statements, the Board concluded Rovidia was unsuitable for parole and required an additional three years of incarceration. Although Rovidia earned his GED, had various jobs, participated in self-help programs, and remained discipline free, the Board found he poses an unreasonable risk of danger to society if released. The Board reasoned there was no evidence Rovidia acted in self-defense and the shooting was premeditated, calculated, and for a trivial motive. The Board stated Rovidia lacks insight into his conduct and what insight he does have, he justifies his action and minimizes his responsibility. The Board opined it made no sense that someone who claimed he was trying to avoid a freeway collision would then fire a gun into a moving car on the freeway. The Board also stated it was unbelievable Rovidia

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<sup>3</sup> Rovidia's wife, Kathy, and two grandchildren were also in the truck. In the back of the truck was an aluminum gas tank.

went to Brock's work at 3:00 a.m. armed with a gun for the sole purpose of speaking with him. The Board did not believe Rovidia would act differently if faced with a similar situation. The Board stated Rovidia did not show true remorse because his comments were limited to him and his family; there was no remorse for Brock being gone. The Board concluded by saying it was not concerned with Rovidia's parole plans but encouraged him to continue with self-help and anger management courses because the Board felt Rovidia does not understand what drove him to commit the crimes. The Board noted Rovidia repeatedly stated his family is more important to him than anything else. The presiding commissioner stated, "If we released you today and similar circumstances occurred with perhaps one of your grandchildren would you do anything different, . . . I can tell you I don't think you would. I think that you would do exactly the same thing if that's all you felt you could do."

In June 2011, the Orange County Superior Court filed an order denying Rovidia's petition for writ of habeas corpus. The trial court concluded there was some evidence in the record supporting the Board's decision Rovidia was unsuitable for parole because he poses an unreasonable risk of danger if released from prison.

On August 3, 2011, 76 year-old Rovidia, in propria persona, filed a petition for writ of habeas corpus. The Attorney General filed an informal response. Rovidia, in propria persona, responded. The Attorney General filed a return. Rovidia, now represented by appointed counsel, filed a traverse.

#### DISCUSSION

We need not restate the suitability and unsuitability factors that the Board must consider in determining whether an inmate is suitable for parole or our standard of review. These legal principles have been discussed in numerous Supreme Court and Courts of Appeal opinions. (*In re Shaputis* (2008) 44 Cal.4th 1241, 1254-1255 (*Shaputis I*); *In re Lawrence* (2008) 44 Cal.4th 1181, 1214 (*Lawrence*); *In re Moses* (2010) 182 Cal.App.4th 1279, 1297-1300.) We will discuss, however, the California

Supreme Court's most recent articulation of, and approach to, judicial review of parole decisions.

In *In re Shaputis* (2011) 53 Cal.4th 192 (*Shaputis II*), the court explained the “essential question in deciding whether to grant parole is whether the inmate currently poses a threat to public safety.” (*Id.* at p. 220.) That essential question “is posed first to the Board and then to the Governor, who draw their answers from the entire record, including the facts of the offense, the inmate’s progress during incarceration, and the insight he or she has achieved into past behavior” (*id.* at p. 221), and judicial review “is conducted under the highly deferential ‘some evidence’ standard [which requires the decision be] upheld unless it is arbitrary or procedurally flawed [based on a review of] the entire record to determine whether a modicum of evidence supports the parole suitability decision.” (*Ibid.*) *Shaputis II* instructs that a reviewing court may not reweigh the evidence but must instead “consider[] whether there is a rational nexus between the evidence and the ultimate determination of current dangerousness” (*ibid.*), and “[o]nly 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 . . . [because] [i]n that circumstance the denial of parole is arbitrary and capricious, and amounts to a denial of due process.” (*Id.* at p. 211.) The *Shaputis II* court concluded by saying that although the Board’s decision on parole suitability is of course subject to judicial review, that review is limited and narrower in scope than appellate review of a lower court’s decision. (*Id.* at p. 215.)

The *Shaputis II* court also clarified that although numerous Courts of Appeal had expressed concerns about the expanded focus by the parole authority on an inmate’s lack of insight into his or her criminal behavior as a factor to deny parole, these concerns were misplaced because the parole authority properly considers an inmate’s “insight” when evaluating whether the inmate currently poses a threat to public safety. As the court explained, “[c]onsideration 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.) Indeed, *Shaputis II* noted even if “insight” could not be tethered to a specific regulation, consideration of “insight” would be proper because “it is difficult to imagine that the Board . . . should be required to ignore the inmate’s understanding of the crime and the reasons it occurred, or the inmate’s insight into other aspects of his or her personal history relating to future criminality. Rational people, in considering the likely behavior of others, or their own future choices, naturally consider past similar circumstances and the reasons for actions taken in those circumstances.” (*Id.* at p. 220.)

Because *Shaputis II* reaffirmed *Lawrence*’s admonition the “some evidence” standard for judicial review is “highly deferential” (*Shaputis II, supra*, 53 Cal.4th at p. 221), the determination to deny parole based on the inmate’s lack of insight must be affirmed if there is some modicum of evidence to support the finding the inmate in fact lacked “insight.” The *Shaputis II* court explained the term “insight” encompasses the inmate’s ““past and present attitude toward the crime,”” his or her ““presence of remorse,”” the inmate’s ““understand [ing of] the nature and magnitude of the offense,”” and his or her “understanding of the crime and the reasons it occurred.”” (*Id.* at pp. 218, 220.) With this guidance, a court may meaningfully review whether there is some evidence to support a determination of current dangerousness when lack of insight is the basis for parole denial.

The *Shaputis II* court provided five considerations in parole suitability determinations: “1. The essential question in deciding whether to grant parole is whether the inmate currently poses a threat to public safety. 2. That question is posed first to the Board and then to the Governor, who draw their answers from the entire record, including

the facts of the offense, the inmate's progress during incarceration, and the insight he or she has achieved into past behavior. 3. The inmate has a right to decline to participate in psychological evaluation and in the hearing itself. That decision may not be held against the inmate. Equally, however, it may not limit the Board or the Governor in their evaluation of all the evidence. 4. Judicial review is conducted under the highly deferential some evidence standard. The executive decision of the Board or the Governor is upheld unless it is arbitrary or procedurally flawed. The court reviews the entire record to determine whether a modicum of evidence supports the parole suitability decision. 5. The reviewing court does not ask whether the inmate is currently dangerous. That question is reserved for the executive branch. Rather, the court considers whether there is a rational nexus between the evidence and the ultimate determination of current dangerousness. The court is not empowered to reweigh the evidence.” (*Shaputis II, supra*, 53 Cal.4th at pp. 220-221.)

Here, in both the petition for writ of habeas corpus and the response to the Attorney General's informal response that Rovidia filed in propria persona, Rovidia concedes “the egregiousness of the commitment offense[.]” In his traverse, filed by appointed counsel, Rovidia makes no such concession. Although Rovidia recognizes the Board “*must* consider the statutory factors [and the regulations] concerning parole suitability,” Rovidia fails to address the circumstances of the commitment offense.

We conclude there is some evidence to support the Board's reliance, in part, on the “aggravated circumstances of the commitment offense” as a basis for its decision Rovidia poses a *current* danger to society. (*Lawrence, supra*, 44 Cal.4th at p. 1214.) We recognize Rovidia felt Brock posed a threat to him and his family, but there is evidence in the record from which the Board could reasonably conclude the circumstances of the offense were especially heinous, atrocious, and cruel. Although Brock did lie in wait on the freeway for Rovidia and his family, Rovidia's actions on the freeway demonstrate a callous disregard for human life. Rovidia insisted Brock's unsafe

and erratic driving posed a threat to Rovidia and his family. Rovidia asserted that because he was concerned Brock would cause an accident, Brock fired two gunshots into Brock's rear passenger window. Needless to say, Rovidia's justification for firing a gun into another car on what was likely a busy Southern California freeway is absurd. Rovidia's conduct endangered everyone on that freeway, including the family members he claimed he was trying to protect. The tragedy that could have befallen innocent bystanders is unthinkable. But this was not the commitment offense.

The evidence established that a week later, Rovidia armed himself with a gun and went to Brock's work to wait for him, until 3:00 a.m. When Brock refused to speak with him, Rovidia followed Brock to his sister's house where Rovidia confronted Brock, who was not armed. The forensic evidence established Rovidia shot Brock first from behind (the first shot struck Brock behind the right earlobe) and then in the chest, the fatal shot. Rovidia fled and did not call for emergency personnel. The Board was free to disbelieve Rovidia that he merely wanted to speak with Brock about the freeway incident and he acted in self-defense based on what the Board considered an improbable story. (*In re Pugh* (2012) 205 Cal.App.4th 260, 273 (*Pugh*) [where inmate's version of events inherently improbable establishes a nexus to current dangerousness because indicates inmate hiding truth and has not been rehabilitated sufficiently to be safe in society].) If Rovidia wanted to speak with Brock, why did he confront Brock at three in the morning armed with a gun? And if Rovidia was truly afraid of Brock, why did he confront him at all? There was a modicum of evidence in the record from which the Board could reasonably conclude Rovidia acted dispassionately and in a calculated manner to execute Brock and escape detection based on a trivial motive. Thus, there is a rational nexus between the evidence of the commitment offense and the Board's determination Rovidia is currently dangerous.

Instead of focusing on the circumstances of the commitment offense, Rovidia asserts the commitment offense is temporally remote and his substantial

rehabilitation efforts weigh against the Board's finding he is currently dangerous. First, we agree the commitment offense is temporally remote—most offenses that result in a life with the possibility of parole sentence are temporally remote. The issue is whether the circumstances of the commitment offense demonstrate the inmate is currently dangerous. As we explain above, there is a nexus. Second, we disagree with Rovidá's claim the Board did not consider and recognize his rehabilitative successes. The Board commended Rovidá on his earning a GED in 2005, his vocational training, his participation on self-help programs, his discipline-free record while incarcerated, and his parole plans. The Board noted he had a stable social history, had no mental health problems, had no substance abuse problems, and had no criminal history before the commitment offense. We remind Rovidá our review of the Board's decision is limited, and we may not reweigh the evidence. (*Shaputis II, supra*, 53 Cal.4th at pp. 215, 221 [when Board declines to give credence to certain evidence, a reviewing court may not interfere unless that determination lacks any rational basis and is merely arbitrary].)

However, even if there is some evidence to support the finding Rovidá's murder of Brock was committed in a cruel and callous manner (Cal. Code Regs., tit. 15, § 2402, subd. (c)(1)(D)), such reason would provide "some evidence" to support the ultimate conclusion and denial of parole here if there were other facts in the record, such as Rovidá's current demeanor and mental state, to provide a "rational nexus" for concluding his offense continues to be predictive of current dangerousness. (*Lawrence, supra*, 44 Cal.4th at p. 1213.) As the *Lawrence* court stated, "the mere existence of a regulatory factor establishing unsuitability does not necessarily constitute 'some evidence' that the parolee's release unreasonably endangers public safety." (*Id.* at p. 1225.) Accordingly, we must examine the other factors the Board relied upon: Rovidá's lack of insight and lack of remorse.

Section 2402(d) states: “Circumstances Tending to Show Suitability.

[¶] . . . [¶] (3) Signs of Remorse. The prisoner performed acts which tend to indicate the presence of remorse, such as attempting to repair the damage, seeking help for or relieving suffering of the victim, or indicating that he understands the nature and magnitude of the offense.” As the *Shaputis II* court explained, “[c]onsideration 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.)

We conclude there is some evidence to support the Board’s reliance, in part, on Rovidia’s lack of insight and lack of remorse as a basis for its decision Rovidia poses a *current* danger to society. Although Rovidia declined to speak about the offenses as was his right, there was evidence he failed to understand the danger he created by firing a weapon on the freeway. The Board opined “[i]t makes absolutely no sense[.]” that someone trying to avoid an unsafe driver would fire a weapon at the unsafe driver. The Board found it telling Rovidia failed to understand he placed his family and innocent bystanders in danger. More importantly, there was evidence he lacked insight into the commitment offense. The evidence demonstrated Rovidia camped at Brock’s work armed with a gun and then chased him down and shot him twice, once behind the right ear. The Board relied on this evidence to conclude Rovidia shot Brock from behind and then shot him in the chest. This was some evidence from which the Board could reasonably conclude Rovidia did not act in self defense and his version of the events was inherently improbable. (*Pugh, supra*, 205 Cal.App.4th at p. 273 [where inmate’s version of events inherently improbable establishes a nexus to current dangerousness because indicates inmate hiding truth and has not been rehabilitated sufficiently to be safe in society].)

Finally, Rovidá's statements at the hearing indicate his remorse was limited and insincere. Although Rovidá acknowledged he should have called the police and he was sorry, many of his statements were directed at the remorse he felt towards his family. Rovidá often spoke of how Brock terrorized him and his family, and this led the Board to conclude that despite Rovidá's protestations to the contrary, the Board felt that if Rovidá faced a similar situation, he would act the same way. Rovidá continued to blame Brock and minimized his own conduct. In other words, based on its observations of Rovidá during the hearing, the Board did not believe Rovidá was truly remorseful. (*Lawrence, supra*, 44 Cal.4th at p. 1213 [Board may consider current attitude]; *In re Bettencourt* (2007) 156 Cal.App.4th 780, 806 [Board may consider inmate's behavior at parole hearing].) Thus, there is a rational nexus between the evidence of Rovidá's lack of insight and lack of remorse and the Board's determination Rovidá is currently dangerous.

In arguing the Board erred in concluding he lacked insight into the commitment offense, Rovidá relies on the Report, his rehabilitative efforts, and the regulation that prohibits a Board from requiring an inmate to admit guilt.

Both in 2007 and 2010, Rovidá was judged to be a low risk of future violence. In the Report, Kropf stated that when asked whether he felt remorse, Rovidá replied he was sorry. Kropf opined "His remorse seems genuine." Kropf opined, "Rovidá has *some* insight into the factors that led him to commit his controlling offense." (Italics added.) Yet when asked whether he had changed since his imprisonment, Rovidá replied, "I am the same person." Although Rovidá was twice judged to be a low risk of violence, the Report alone does not establish Rovidá had insight into his crime and was truly remorseful. After attending numerous self-help programs, Rovidá said he was the same person pre- and post-incarceration. That does not inspire confidence Rovidá understood why he committed the life offense or that he would act differently if presented with a similar situation. Rovidá's attitude has not evolved in a positive manner that supports parole. (*Pugh, supra*, 205 Cal.App.4th at p. 268.)

With respect to Rovidá's rehabilitative efforts, we too commend him on his substantial accomplishments. That he obtained his GED when he was approximately 70 years old, continued to develop vocational skills, and mentor other inmates is commendable. Also commendable is the fact he remained discipline free for over 20 years. We are particularly impressed he volunteered over 200 hours as a literacy program tutor. But as we explain above, when the Board declines to give credence to certain evidence, we may not interfere unless that determination lacks any rational basis and is merely arbitrary. (*Shaputis II, supra*, 53 Cal.4th at pp. 215.) The Board's decision was not arbitrary as there was a modicum of evidence the commitment offense and Rovidá's lack of insight and lack of remorse demonstrate he was currently dangerous.

Finally, the Board did not require Rovidá to admit guilt, nor did the Board hold against him his refusal to discuss the facts of the commitment offense. (Pen. Code, § 5011, Cal. Code Regs., tit. 15, § 2236.) Rather, the Board looked beyond his expressions of remorse and willingness to be accountable, and examined his mental state and attitude about the commitment offense, to determine whether he demonstrated a truthful appreciation for the wrongfulness of the act. As we explain, there is some evidence Rovidá did not.

One final thought. Because of the lengthy prison sentences in parole suitability cases, the inmate's age could be a factor in determining whether an inmate poses a *current* danger to society. That is no different here—Rovidá is now 77 years old. Does Rovidá's advanced age demonstrate he is no longer a danger to society despite the Board's decision the commitment offense and his lack of remorse and insight establish he is currently dangerous? Rovidá testified he wears glasses and uses eye drops but is otherwise in good health. We cannot say that an inmate no longer poses a current danger to society based only on the fact he is in his mid-70s without evidence the inmate is physically incapacitated. (See *In re Morganti* (2012) 204 Cal.App.4th 904.)

DISPOSITION

The petition for writ of habeas corpus is denied.

O'LEARY, P. J.

I CONCUR:

IKOLA, J.

MOORE, J., Dissenting.

I respectfully dissent. James Rovida, Jr., a 77-year old man who lived a crime free life for 55 years before committing a murder that sent him to prison, and who in the more than 22 years since has led an exemplary life with absolutely no write-ups or discipline in prison, was denied parole for the second time because the Board of Parole Hearings found Rovida was not remorseful and did not have insight into why he killed his son-in-law, Robert Brock. I have no dispute with the announced very deferential standard of review. (*In re Shaputis* (2011) 53 Cal.4th 192, 209-210.) I just do not find a “modicum of evidence” (*id.* at p. 210) in this case supporting the conclusion on the part of the Board that the 77-year old Rovida, given the facts of this case, would pose an “unreasonable” risk to public safety. (Cal. Code Regs., tit. 15, § 2402.)

Brock had abused Rovida’s daughter, Cathy. When the Rovidas gave Cathy and the children shelter, Brock threatened to burn down their house. He tampered with the Rovidas’ truck and mailbox, and was laying in wait on an emergency freeway exit knowing the family was going on vacation. Rovida fired two shots after Brock cut in front of the family’s truck shouting they would *never* get to their destination. With regard to this incident, the jury convicted Rovida of attempted voluntary manslaughter, a result the jury would not have reached unless it found Rovida lacked malice as the result of sudden quarrel or heat of passion. More than likely the jury’s verdict indicated it believed Rovida had a good faith, albeit unreasonable belief, in the need for self-defense. (See *People v. Blacksher* (2011) 52 Cal.4th 769, 832-833.) The next week, however, Rovida went to Brock’s workplace, followed him home and shot and killed him. For this crime, he was convicted of first degree murder.

At his parole hearing, Rovidia expressed remorse and apologized to Brock's family. A psychiatrist's report states Rovidia's remorse "seems genuine." Assessment evaluations report he poses a low risk for future violence. He said he plans to live with another daughter and her husband, and work in the family business, even though he is eligible to collect social security benefits.

Needless to say, the nature of the commitment offense will rarely provide a basis for finding current dangerousness when there is no other evidence of current dangerousness and strong evidence of rehabilitation (*In re Lawrence* (2008) 44 Cal.4th 1181, 1211), and I find no evidence of a lack of insight. Because such evidence is lacking and Rovidia meets *all* applicable circumstances tending to show suitability for release listed in the California Code of Regulations, title 15, section 2402, subdivision (d), I cannot join my colleagues in upholding the Board's denial of parole.

MOORE, J.