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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re KIRN KIM

on Habeas Corpus.

G046677

(Super. Ct. Nos. M-14102 & 93ZF0012)

OPINION

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

Michael Evan Beckman for Petitioner.

Kamala D. Harris, Attorney General, Jennifer A. Neill, Assistant Attorney General, Julie A. Malone and Jennifer O. Cano, Deputy Attorneys General, for Respondent.

Petitioner Kim Kim challenges the Governor's reversal of the parole board's 2011 decision to grant him parole. He contends that ruling was erroneous as a matter of law and must be reversed. However, because the Governor has recently let stand a 2012 decision granting Kim parole, Kim's challenge to the Governor's earlier reversal is now moot. We therefore dismiss his petition.

DISCUSSION

In 1995, Kim was convicted of first degree murder for his role in the beating death of Stuart Tay. The beating occurred on New Year's Eve 1992, at which time Kim was 16 years old. It is undisputed that Kim did not personally participate in the beating. However, there was evidence showing that he knew Tay was going to be attacked and that he acted as a lookout during the beating. Found vicariously liable for the murder, he was sentenced to 25 years to life in prison with the possibility of parole.

Prior to Tay's murder, Kim had no criminal record. He was raised in a stable home, received good grades in school and was not involved with gangs, drugs or alcohol. And since his incarceration in 1995, Kim has been a model prisoner; he has worked hard to further his education, remained free of any disciplinary problems and received many positive commendations from correctional officers and staff.

Kim's first request for parole was turned down in 2008. But three years later, in 2011, the parole board determined he was suitable for parole and set a release date for him. At that hearing, Kim presented psychological reports indicating he was a very low risk for reoffending. He also told the board he was fairly convicted and accepted responsibility for his actions. Nonetheless, believing Kim had still not come clean about his role in Tay's murder, the Governor reversed the board's decision to grant him parole.

After Kim's request for relief was denied in the superior court, he challenged the Governor's decision by way of a petition for writ of habeas corpus in this court. While that petition was pending, another parole hearing was held for Kim in July

2012. Again, the board found Kim was suitable for parole. However, this time the Governor did not exercise his constitutional authority to review the board's decision. Instead, he took no action during the statutorily prescribed period for him to do so, thus allowing the parole board's decision to become effective. (See Pen. Code, § 3041.2; *In re Tokhmanian* (2008) 168 Cal.App.4th 1270, 1275-1277.)

As the parties admit, that means Kim's challenge to the Governor's reversal of the parole board's 2011 decision is now moot. (See *In re Miranda* (2011) 191 Cal.App.4th 757, 762-764.) We therefore grant the parties' request to dismiss Kim's petition on that basis. (*Ibid.*)

DISPOSITION

The petition for writ of habeas corpus is dismissed as moot.

BEDSWORTH, ACTING P. J.

WE CONCUR:

MOORE, J.

FYBEL, J.