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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

In re EDWARD RENTERIA,

on Habeas Corpus.

H036864

(Santa Clara County
Super. Ct. No. 166167)

INTRODUCTION

Edward Renteria was convicted after jury trial in 1994 of the second degree murder of his first wife, Valerie, in 1980 (Pen. Code, § 187),¹ and possession of a controlled substance in 1993 (Health & Saf. Code, § 11377, subd. (a)), and was sentenced to prison for 17 years to life. Following a subsequent parole hearing on February 3, 2010, the Board of Parole Hearings (the Board) found Renteria not suitable for parole. On March 10, 2011, the superior court granted Renteria’s petition for writ of habeas corpus and directed the Board to conduct a new parole hearing within 100 days. The warden where Renteria is incarcerated (the Warden) filed an appeal and a petition for writ of supersedeas requesting a stay of the superior court’s order. On May 31, 2011, we granted the Warden’s petition for writ of supersedeas. For the reasons stated below, we will reverse the superior court’s March 10, 2011 order and remand the matter to the superior court with directions to deny the petition for writ of habeas corpus.

¹ All further unspecified statutory references are to the Penal Code.

BACKGROUND

Renteria's Social and Criminal History

Renteria, who was 54 years old at the time of the 2010 Board hearing, had four brothers and two sisters, and he used to “get in fights” while growing up. His father worked two jobs and was a “loving father.” His mother stayed at home and took care of the children.

Renteria started drinking around age 10, and by age 17 or 18 he was “always drinking.” He joined the Marine Corps in January 1973. During his service he was a truck driver in Okinawa. He married Valerie and they had two sons. When he was honorably discharged in 1977, he found out that Valerie was seeing another man. Although Renteria told the Board that “we had fights[, a]nd yes, I did push her around a little bit[, b]ut I never hit her,” Valerie had reported that Renteria beat her after an argument when she was pregnant.

Renteria started using methamphetamine after his discharge from the Marines, while he was working double shifts as a supervisor first at Ford Motor Company and then at FMC Corporation. He told the Board that he could become violent when he was under the influence of methamphetamine, but that he did not use methamphetamine when he was with his sons. Renteria sees his older son on a regular basis, but he does not have a relationship with his younger son.

While Renteria and Valerie were separated and before Valerie's murder, Renteria met and started dating his second wife. They married after Valerie's murder but divorced in 2007 without having any children.

Renteria spent time “in the brig for fighting” “a couple times” while in the Marines. In May 1977, after his discharge, Renteria was charged with assault and battery, disturbing the peace, and misdemeanor DUI. He pleaded guilty to misdemeanor DUI. In July 1984, he was charged with assault to commit rape and sexual battery with serious bodily injury, after he knocked a woman down on the street in front of her child

and fondled the woman's breasts while straddling her. He was convicted by plea of false imprisonment (§§ 236, 237) and assault with a deadly weapon not a firearm (§ 245, subd. (a)(1)). In April 1988, he was charged with two counts, and convicted of one count, of misdemeanor battery (§ 242).

The Commitment Offense

In 1980, Renteria and Valerie were separated and she and their sons were living with her parents. On Friday, March 7, 1980, Valerie went out to lunch with her friends and she told them and family members that she was going to spend the weekend with Renteria, and that there was a possibility that she and he were going to reconcile. She dropped her sons off at her aunt's home for the weekend. On March 8, 1980, Renteria picked up the boys and took them to his parents' home. He returned the boys to Valerie's parents' home on the evening of March 9, 1980. A missing person's report was filed on Valerie on March 10, 1980, when she did not return home.

Defendant told police that he went out with Valerie on the afternoon of March 7, 1980, and he provided an alibi for that night, which his brother verified. In late March 1980, the police learned that two checks from Valerie's checking account had been returned with irregular signatures. Both checks were made out to cash, they were dated around the time of Valerie's disappearance, Renteria had cashed both checks at a liquor store, and he had signed the checks. In June 1980, Valerie's skull and jawbone were separately found in the backyard of a residence. In August 1980, her headless body was discovered near Highway 101. The cause of her death could not be determined. In May 1993, detectives reopened the unsolved case. At that time, Renteria's brother admitted that Renteria's alibi for the night of March 7, 1980, was false. Renteria was arrested at his home. At the time of his arrest, he was in possession of methamphetamine.

Renteria was convicted after jury trial in 1994 of the second degree murder of Valerie (§ 187), and possession of a controlled substance (Health & Saf. Code, § 11377,

subd. (a)), and was sentenced to prison for 17 years to life. This court affirmed his conviction in an unpublished decision. (*People v. Renteria* (June 20, 1996, H013515).)

Renteria's Conduct While Incarcerated

Renteria remained “disciplinary free” throughout his incarceration and he had been assigned as a clerk in the Catholic chapel. He had participated in various self-help groups, including two separate veterans groups; Narcotics Anonymous; a 25-week Getting Out by Going In, Freedom Before Release program; the Preventing Relapse program; and The Saving Power of Nonviolence study program. He also received numerous “laudatory chronos” from prison staff and volunteers.

Renteria's Parole Plans

Renteria expected to live at the Veterans Residential Housing in Menlo Park. He also had housing offers from the Salvation Army's Harbor Light, from his father and a brother in San Jose, and at Options Recovery Services. He had been offered a full-time job with the St. Vincent de Paul Society, a job as a driver or mechanic with an uncle's company in Visalia, and a job as an administrative manager with a nonprofit executive search firm. Additional letters of general support were submitted by Renteria's older son, his sister, her husband, a retired correctional lieutenant, and the San Quentin Catholic Services.

Renteria's Psychological Evaluation

Renteria's most recent psychological evaluation was conducted in September 2009 by Roberto Montalvo, PhD. The Board noted that Dr. Montalvo stated in his report that, although a friend of Valerie's reported that Renteria had beaten Valerie after an argument when she was pregnant, Renteria admitted sometimes pushing her but he denied that he ever hit her. The Board noted that Dr. Montalvo also reported that although Renteria attended many self-help programs while incarcerated, and he strengthened his Catholic faith, “[a]n important missing element in this self-exploration is any expression of insight he may have gained regarding his life crime. If he has begun to understand what caused

him to commit the crime or even if he has simply admitted to himself that he committed the crime[, e]vidence of this [is] entirely absent due to his unwillingness to discuss his life crime.” “It is important to note that after his conviction, he denied committing the offense and he expressed certainty that he would be found innocent on an appeal. Failing this, he has chosen to declare that he has accepted responsibility for his offense and he feels remorse for all the consequences of his behavior, yet he seems to avoid saying that he committed the crime, that he murdered his wife. It is certainly possible that Mr. Renteria silently continues to deny that he murdered his wife. In choosing not to discuss his life crime, it is not possible to gauge whether he has gained any insight into his commitment offense or whether he has come to terms with the underlying cause.”

Dr. Montalvo asked defendant if he was ever addicted to a drug. Defendant acknowledged having been addicted to alcohol. He reported that he has attended AA “off and on” over the years since his 1984 arrest and in prison. Dr. Montalvo asked Renteria whether alcohol or other drugs played a part in the commitment offense. Renteria acknowledged that they played a minor part, but he was unwilling to explain in what way. During his 2004 psychological evaluation, Renteria denied being under the influence of any “mind-altering substance” at the time the commitment offense was committed.

Dr. Montalvo used the Psychopathy Check List-Revised (PCL-R) and the Historical-Clinical-Risk-Management-20 (HCR-20) to help estimate Renteria’s risk for future violence in the community, and the Level of Service/Case Management Inventory (LS/CMI) to assess his general risk for recidivism. Renteria’s PCL-R score placed him in the low range when compared to other male offenders. His HCR-20 score placed him in the low risk category for violent recidivism. His overall LS/CMI scored indicated that he is in the moderate category of incarcerated male offenders.

After weighing all the data available from Renteria’s records, the clinical interview, and the risk assessment data, it was Dr. Montalvo’s opinion that Renteria

represented a low-to-moderate risk for violent recidivism in the free community.

“Although Mr. Renteria is not legally required to talk about the details of his offense or discuss his motives for committing his offense, his choice not to do so suggests a lack of insight into his life crime and an unwillingness to explore the source of his rage toward his victim, which in turn raises his risk of violent recidivism. [¶] Mr. Renteria’s risk of violent recidivism would likely *increase* if he were to lose his sobriety and resume his consumption of alcohol or his abuse of methamphetamine. His risk would also increase if he were unable to secure employment and move toward independent living within one year. [¶] He could *decrease* his risk of violent recidivism if he were to gain an understanding of what led him to take a life and to mutilate in such a savage manner. Understanding the source of such anger can decrease the risk of its repeated expression.”

The Board’s Hearing and Decision

Renteria informed the Board at the outset of the hearing that he was asserting a claim of factual innocence and that he would have nothing to say about the commitment offense. The Board read into the record a letter defendant wrote, which stated in part: “In accepting responsibility for my offense, I no longer dispute the facts no matter how the Panel views them. Whether certain facts are true or not doesn’t lessen my guilt or responsibility one bit. So instead of discussing or arguing about the facts further, I simply accept whatever version the Panel adopts and you’re free to consider the facts as you may. I can never express enough remorse for the murder of Valerie or for the pain and suffering which [Valerie’s next of kin] have endured over the years that have lost the chance of growing older with their daughter and sister. Also, my two sons, . . . who never had the chance of knowing the love of their mother, warmth and tenderness to guide them and protect them and who still have this emptiness in their hearts and who miss their mother dearly. . . . I would be remiss if I did not mention my family or the many relatives, friends, co-workers, and community who still have fond, loving memories of Valerie.”

The Board asked Renteria what he was accepting responsibility for, and he responded, “If I hadn’t left, we would have probably stayed together. If I would have worked harder at working through this infidelity, we would have been together. And none of this – she’d probably still be here today with us and I wouldn’t be sitting here.” The Board asked him what he was remorseful for, and he responded, “For the kids. For my kids not having a dad and mother together. To grow up with.” The Board asked, “No remorse for Valerie?” Renteria responded, “Oh, there’s plenty there. There’s a lot there also.”

The Board noted that Renteria stated that he never hit Valerie, and asked him if he had ever hit a woman. Renteria initially answered no. When the Board then asked about the 1984 charges, Renteria said that he did hit that woman “[t]wice – several times. Several times. I was drunk.” But he stated that that was the first time he ever hit a woman like that. The Board asked Renteria, “if you didn’t do this crime, [the commitment offense,] do you have any opinion about who may have done it?” Renteria responded, “I have no opinion at all.”

Renteria told the Board: “Everything that I have done to this date has been geared toward helping people. That’s what I want to do. I’m 54 years old. It’s not like anybody’s going to hire me to go out there and build cars again or do any type of construction work. I’ve completed a course, a three-month course in alcohol, drug counselor training. I need to go to my practicum so I can start the process of getting certified in that and through the Veterans Administration at Menlo Park, I can do that. . . . But everything I’ve done, I’ve done so that I can better myself.”

Jeanette Standridge, Valerie’s younger sister, spoke about her family and asked that the Board again deny Renteria parole. Orville Richards, Jr., Valerie’s brother, also spoke and stated that he believed that Renteria “should serve life in prison.”

The Board found Renteria not yet suitable for parole “because he currently poses an unreasonable risk of danger if released from prison.” In making its determination, the

Board considered Renteria's history of crime and violence; his statements that he did not murder his wife, which were in direct conflict with the record; the "cruel, dispassionate, [and] callous" facts of the murder; and his lack of remorse. "Mr. Renteria's mental state does not lend itself to suitability at this time. He did invoke his not speaking about the crime, which is certainly his right. He continues to state he did not commit this murder of his wife, which is in direct conflict with the record. He does not take responsibility for the murder in the face of evidence that convicted him of this crime. He continues to minimize his behavior and contradicts himself stating that he takes responsibility and does not dispute the facts, but I didn't do it. He appears as an individual who believes that he can program his way out of prison, yet over the years the record would indicate no real insight into the causative factors of the murder. He did identify a couple of triggers into his violent tendencies of the past but showed no depth of understanding."

"This was a cruel, dispassionate, callous murder in the second degree. . . . Certainly, the victim was abused and mutilated, having her head severed. Mr. Renteria had a previous violent record and had an assault to commit rape four years after his wife's murder. . . . His remorse does appear to be manufactured and would sound like what he thinks others would like to hear. He had a criminal history that included violence. His insight is pretty much nonexistent and he minimizes this murder of his wife, stating he did not do it in the face of some pretty substantial evidence to the contrary. Mr. Renteria has programmed extensively, yet a closer look at that programming finds he's doing program in things that he wants to do, not necessarily in things that he needs to do and I think he said it best stating earlier that he decided he was going to do his time, not let his time do him. So his substance abuse programming is not consistent and he was unable to advise steps in that very program. Alcohol and drugs were prevalent with him and this was a concern with the last Hearing Panel and continues to be a concern today."

The Board also found that Renteria had been “disciplinary free” during his incarceration, that he had participated in numerous self-help programs, that his parole plans were “outstanding,” and that he had marketable skills and “a multitude” of support. It noted that the Santa Clara County District Attorney and Valerie’s next of kin opposed parole. The Board recommended that Renteria participate in additional substance abuse programs, and programs on alternatives to domestic violence and having healthy relationships with women, and that he “develop the insight and develop those areas that are very significant and are linked directly to the life crime as it relates to insight and minimization and remorse that we did not see substantially today.”

The Superior Court Proceedings

On October 28, 2010, Renteria filed a petition for writ of habeas corpus in the superior court. He contended that the Board’s finding of parole unsuitability was not supported by “some evidence” of current dangerousness. Specifically as relevant here, Renteria argued that the Board’s finding that he does not accept responsibility and lacks insight does not provide some evidence of current dangerousness. The court issued an order to show cause on November 18, 2010, stating that the Board violated section 5011, subdivision (b) “by denying [Renteria] parole because he would not admit his guilt.” “The Board in this case felt entitled to require a showing of ‘insight and remorse’ which could only be made if [Renteria] relinquished his right not to admit guilt or discuss the crime.” “For any inmate who exercises the rights of PC § 5011, . . . it could be said that he consequently has not articulated his ‘insight and remorse’ to the Board’s satisfaction. The Board may not punish [people] for exercising their rights.”

On or about January 20, 2011, the Warden filed a return to the order to show cause, arguing in part that, “[a] review of the record shows that the Board’s decision was based on an individualized and thorough review of the evidence regarding [Renteria’s] previous record of violence, inconsistent statements regarding his level of responsibility and remorse, and lack of insight into his relationship with women, a causative factor of

his violent behavior. . . . [Renteria's] decision not to discuss the crime and his claims of innocence per se were not factors relied upon by the Board to find him unsuitable for parole.”

Renteria filed his denial (traverse) on March 7, 2011, contending that “[i]n finding [he] lacked insight, the Board relied heavily on [his] refusal to discuss the commitment offense, which it cannot do. . . . [His] history of violence and the circumstances of the commitment offense have no current relevance to a finding he would be a danger to the public if released given the passage of time, [his] extensive programming and his exemplary record while incarcerated. More fundamentally, the Board fails to explain any nexus between its findings and the conclusion [he] would be a danger to the public if released. Therefore, the Board’s decision violated [his] Due Process rights.”

On March 10, 2011, the superior court filed its order granting Renteria’s petition for writ of habeas corpus and ordering that he be afforded a new hearing within 100 days. “Penal Code § 5011, *In re McDonald* (2010) 189 Cal.App.4th 1008, *In re Palermo* (2009) 171 Cal.App.4th 1096, 1110, and *In re Aguilar* (2008) 168 Cal.App.4th 1479, 1491 [are] controlling law which the Board is mandated to honor. As quasi judicial decisionmakers, [citation] the Board is required to respect and uphold the controlling law and to look past its limitations in an effort to render a just and honest decision on the merits of the evidence before it. It is noteworthy that at the trial court level cases like *Griffin v. California* (1965) 380 U.S. 609 and *Doyle v. Ohio* (1976) 426 U.S. 610 provide similar rights to Defendants. Neither subtle resistance, nor even grudging acceptance, is an appropriate response to the applicable law by a quasi judicial decisionmaker.”

The Warden filed a notice of appeal from the superior court’s order of March 10, 2011, on May 4, 2011. On May 31, 2011, we granted the Warden’s petition for writ of supersedeas and stayed, pending this appeal, enforcement of the superior court’s order.

DISCUSSION

The Parties' Contentions

The Warden contends that “the Board properly denied parole based, in part, on Renteria’s lack of insight into the murder of his [first] wife and his violence toward women.” “Because Renteria’s representations contradict the known facts, and because he was not forthcoming about his prior violence against women, there is ‘evidence in the record sufficient to at least raise an inference’ that Renteria lacks insight.” “In addition to lacking insight into his violent acts against women, Renteria also failed to address his substance-abuse-problem. . . . As a result, there is some evidence of his current dangerousness.” The Warden additionally contends that the superior court erroneously held that the Board violated section 5011. “[S]ection 5011 does not require the [Board] to accept as true anything the prisoner says about the crime. Thus, while an inmate cannot be compelled to talk about the crime, if he opts to discuss the commitment offense, or explicitly denies ever[] committing the crime (as Renteria did here), the [Board] must consider his version of the offense to assess the extent of his ‘personal culpability.’ (Cal. Code Regs., tit. 15, § 2236.) And, in evaluating a prisoner’s parole worthiness, the Board has the authority to assess credibility, weigh evidence, and draw reasonable inferences from the record.”

Renteria contends that, “[i]n concluding [he] lacked insight, the Board indirectly relied on [his] refusal to discuss the commitment offense, which was improper. . . . Furthermore, in the light of [his] exemplary record while incarcerated, the Board never explained any nexus between [his] history of prior violence and the conclusion ‘he currently poses an unreasonable risk of danger if released from prison.’ . . . Finally, the finding [he] has failed to address his substance abuse problem is contrary to the evidence in the record.”

Judicial Review of Parole Unsuitability Decisions

“The granting of parole is an essential part of our criminal justice system and is intended to assist those convicted of crime to integrate into society as constructive individuals *as soon as possible* and alleviate the cost of maintaining them in custodial facilities. [Citations.] Release on parole is said to be the rule, rather than the exception [citations] and the Board is required to set a release date unless it determines that ‘the gravity of the current convicted offense . . . is such that consideration of the public safety requires a more lengthy period of incarceration’ (Pen. Code, § 3041, subd. (b).)” (*In re Vasquez* (2009) 170 Cal.App.4th 370, 379-380.)

The general standard for a parole suitability decision is that “a life prisoner shall be found unsuitable for and denied parole if in the judgment of the [Board] the prisoner will pose an unreasonable risk of danger to society if released from prison.” (Cal. Code Regs., tit. 15, § 2402, subd. (a).)² “[T]he judicial branch is authorized to review the factual basis of a decision of the Board denying parole in order to ensure that the decision comports with the requirements of due process of law, but . . . in conducting such a review, the court may inquire only whether some evidence in the record before the Board supports the decision to deny parole, based upon the factors specified by statute and regulation. If the decision’s consideration of the specified factors is not supported by some evidence in the record and thus is devoid of a factual basis, the court should grant the prisoner’s petition for writ of habeas corpus and should order the Board to vacate its decision denying parole and thereafter to proceed in accordance with due process of law.” (*In re Rosenkrantz* (2002) 29 Cal.4th 616, 658 (*Rosenkrantz*); *In re Dannenberg* (2009) 173 Cal.App.4th 237, 246 (*Dannenberg*).)

² All further regulation references are to title 15 of the California Code of Regulations.

“When a superior court grants relief on a petition for [writ of] habeas corpus without an evidentiary hearing, as happened here, the question presented on appeal is a question of law, which the appellate court reviews de novo. [Citation.] A reviewing court independently reviews the record if the trial court grants relief on a petition for writ of habeas corpus challenging a denial of parole based solely upon documentary evidence. (*In re Rosenkrantz, supra*, 29 Cal.4th at p. 677.)” (*In re Lazor* (2009) 172 Cal.App.4th 1185, 1192; *In re Criscione* (2009) 180 Cal.App.4th 1446, 1458.)

In making a determination of parole suitability, the Board must consider “[a]ll relevant, reliable information,” such as the nature of the commitment offense including behavior before, during, and after the crime, and the prisoner’s social history, mental state, criminal record, attitude towards the crime, and parole plans. (Regs., § 2402, subd. (b).) Circumstances tending to indicate unsuitability include that the inmate:

- (1) committed the offense in an especially heinous, atrocious or cruel manner;
- (2) has a previous record of violence or assaultive behavior;
- (3) has an unstable social history;
- (4) has previously 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 incarcerated.

(*Id.*, subd. (c).) A factor that alone might not establish unsuitability for parole may still contribute to a finding of unsuitability. (*Id.*, subd. (b).)

Circumstances tending to indicate suitability for parole include that the inmate:

- (1) does not have a juvenile record;
- (2) has a stable social history;
- (3) has shown signs of remorse;
- (4) committed his or her crime as a result of significant stress in his life, especially if the stress had built up over a long period of time;
- (5) committed the crime 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; and
- (9) has participated in institutional activities that indicate an enhanced ability to function within the law upon release.

(Regs., §2402, subd. (d).)

“[T]he foregoing circumstances ‘are set forth as general guidelines; the importance attached to any circumstance or combination of circumstances in a particular case is left to the judgment of the [Board].’ ” (*Rosenkrantz, supra*, 29 Cal.4th at p. 654; Regs., § 2402, subds. (c), (d).) “[P]arole release decisions concern an inmate’s anticipation or hope of freedom, and entail the Board’s attempt to predict by subjective analysis whether the inmate will be able to live in society without committing additional antisocial acts.” (*Rosenkrantz, supra*, at p. 655.) “ ‘Although a prisoner is not entitled to have his term fixed at less than maximum or to receive parole, he is entitled to have his application for these benefits “duly considered” ’ based upon an individualized consideration of all relevant factors.” (*Ibid.*) “Under the ‘some evidence’ standard of review, [the Board’s] interpretation of the evidence must be upheld if it is reasonable, in the sense that it is not arbitrary, and reflects due consideration of the relevant factors. [Citations.]” (*In re Shaputis* (2011) 53 Cal.4th 192, 212 (*Shaputis II*).)

Section 5011, subdivision (b) provides that the Board “shall not require, when setting parole dates, an admission of guilt to any crime for which an inmate was convicted.” “The facts of the crime shall be discussed with the prisoner to assist in determining the extent of personal culpability. The [B]oard shall not require an admission of guilt to any crime for which the prisoner was committed. A prisoner may refuse to discuss the facts of the crime in which instance a decision shall be made based on the other information available and the refusal shall not be held against the prisoner.” (Regs., § 2236; *Shaputis II, supra*, 53 Cal.4th at p. 211.) Thus, an inmate need not admit his guilt or change his story to be found suitable for parole by the Board. (*In re Aguilar, supra*, 168 Cal.App.4th at p. 1491.) However, the Board may consider the inmate’s failure to take full responsibility for past violence and his lack of insight into his behavior when determining that the circumstances of the inmate’s commitment offense and violent background continue to be probative to the issue of his current dangerousness. (*In re Shaputis* (2008) 44 Cal.4th 1241, 1261, fn. 20 (*Shaputis I*).) “In determining whether an

inmate may safely be paroled, it is legitimate for the Board to take into account that the record pertaining to the inmate's current state of mind is incomplete, and to rely on other sources of information. An inmate who refuses to interact with the Board at a parole hearing deprives the Board of a critical means of evaluating the risk to public safety that a grant of parole would entail. In such a case, the Board must take the record as it finds it.” (*Shaputis II, supra*, 53 Cal.4th at p. 212.)

“[T]he fundamental consideration in parole decisions is public safety [citations]” (*In re Lawrence* (2008) 44 Cal.4th 1181, 1205 (*Lawrence*)). “[T]he core determination of ‘public safety’ . . . involves an assessment of an inmate’s *current* dangerousness.” (*Ibid.*) “[U]nder the some evidence standard, a reviewing court reviews the *merits* of the Board’s . . . decision, and is not bound to affirm a parole decision merely because the Board . . . has adhered to all procedural safeguards. . . . This standard is unquestionably deferential, but certainly is not toothless, and ‘due consideration’ of the specified factors requires more than rote recitation of the relevant factors with no reasoning establishing a rational nexus between those factors and the necessary basis for the ultimate decision—the determination of current dangerousness.” (*Id.* at p. 1210; see also *Shaputis II, supra*, 53 Cal.4th at p. 214.)

“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.” (*Lawrence, supra*, 44 Cal.4th at p. 1212.) “Accordingly, when a court reviews a decision of the Board . . . , the relevant inquiry is whether some evidence supports the *decision* of the Board . . . that the inmate constitutes a current threat to public safety, and not merely whether some evidence confirms the existence of certain factual findings. [Citations.]” (*Ibid.*; see also *Shaputis II, supra*, 53 Cal.4th at p. 209-210.)

“[A]lthough the Board . . . may rely upon the aggravated circumstances of the commitment offense as a basis for a decision denying parole, the aggravated nature of the

crime does not in and of itself provide some evidence of *current* dangerousness to the public unless the record also establishes that something in the prisoner's pre- or postincarceration history, or his or her current demeanor and mental state, indicates that the implications regarding the prisoner's dangerousness that derive from his or her commission of the commitment offense remain probative of the statutory determination of a continuing threat to public safety." (*Lawrence, supra*, 44 Cal.4th at p. 1214.) "In some cases, such as those in which the inmate has failed to make efforts toward rehabilitation, has continued to engage in criminal conduct postincarceration, or has shown a lack of insight or remorse, the aggravated circumstances of the commitment offense may well continue to provide 'some evidence' of current dangerousness even decades after commission of the offense." (*Id.* at p. 1228.) "Absent affirmative evidence of a change in the prisoner's demeanor and mental state, the circumstances of the commitment offense may continue to be probative of the prisoner's dangerousness for some time in the future." (*Id.* at p. 1219.)

"[T]he relevant inquiry is whether the circumstances of the commitment offense, when considered in light of other facts in the record, are such that they continue to be predictive of current dangerousness many years after commission of the offense. This inquiry is, by necessity and by statutory mandate, an individualized one, and cannot be undertaken simply by examining the circumstances of the crime in isolation, without consideration of the passage of time or the attendant changes in the inmate's psychological or mental attitude." (*Lawrence, supra*, 44 Cal.4th at p. 1221; *Shaputis I, supra*, 44 Cal.4th at pp. 1254-1255.) "In sum, the Board . . . may base a denial-of-parole decision upon the circumstances of the offense, . . . but some evidence will support such reliance *only* if those facts support the ultimate conclusion that an inmate *continues* to pose an unreasonable risk to public safety. [Citation.] Accordingly, the relevant inquiry for a reviewing court is not merely whether an inmate's crime was especially callous, or shockingly vicious or lethal, but whether the identified facts are *probative* to the central

issue of *current* dangerousness when considered in light of the full record before the Board” (*Lawrence, supra*, 44 Cal.4th at p. 1221; *Shaputis I, supra*, 44 Cal.4th at p. 1255.)

Neither section 3041, nor the governing regulations specifically list “lack of insight” as an unsuitability factor. However, the Board may consider an inmate’s lack of insight in determining unsuitability for parole. (*Shaputis II, supra*, 53 Cal.4th at p. 218; *Shaputis I, supra*, 44 Cal.4th at p. 1260; *In re Lazor, supra*, 172 Cal.App.4th at p. 1202.) “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’ (Regs., § 2402, subd. (b)) and ‘the presence of remorse,’ expressly including indications that the inmate ‘understands the nature and magnitude of the offense’ (Regs., § 2402, subd. (d)(3)). These factors fit comfortably within the descriptive category of ‘insight.’ ” (*Shaputis II, supra*, 53 Cal.4th at p. 218.)

“In *Lawrence*, we observed that ‘changes in a prisoner’s maturity, understanding, and mental state’ are ‘highly probative . . . of current dangerousness.’ [Citation.] In *Shaputis I*, we held that [the] petitioner’s failure to ‘gain insight or understanding into either his violent conduct or his commission of the commitment offense’ supported a denial of parole. [Citation.] Thus, we have expressly recognized that the 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.]” (*Shaputis II, supra*, 53 Cal.4th at p. 218.)

As *Shaputis I* illustrates, a “lack of insight” into past criminal conduct can reflect an inability to recognize the circumstances that led to the commitment offense; and such an inability can imply that the inmate remains vulnerable to those circumstances and, if confronted by them again, would likely react in a similar way. (*Shaputis I, supra*, 44 Cal.4th at pp. 1260, 1261, fn. 20; *Lawrence, supra*, 44 Cal.4th at pp. 1214, 1218.) Thus, the Board is entitled to look beyond an inmate’s expressions of remorse and

willingness to be accountable and examine the inmate's mental state and attitude about the commitment offense to determine whether there is a truthful appreciation for the wrongfulness of the act. (*Shaputis II, supra*, 53 Cal.4th at p. 218.)

Nevertheless, the fact that an inmate has not gained sufficient insight into the circumstances of the commitment offense can be a proper basis for denying parole only if it is supported by some evidence on which the Board is entitled to rely. In *In re Palermo, supra*, 171 Cal.App.4th 1096 (*Palermo*), one of the factors the Board cited when denying the inmate parole was his lack of insight into his behavior that led to the commitment offense. In his habeas petition before the appellate court, the inmate asserted, and the People conceded, that this factor was based on the inmate's continued insistence that the offense was the unintentional result of an accidental shooting, and thus constituted manslaughter rather than second degree murder. (*Id.* at p. 1110.) The appellate court held that the decision to deny parole was erroneous and rejected the argument that "the Board's concerns about [the inmate's] insight were appropriate and were not an indirect requirement he admit he is guilty of second degree murder." (*Id.* at pp. 1110-1111.)

In reaching its decision, the *Palermo* court examined other cases in which the inmate maintained his innocence, stating: "Here, in contrast to the situations in *Shaputis* and [*In re*] *McClendon* [(2003) 113 Cal.App.4th 315], [*Palermo's*] version of the shooting of the victim was not physically impossible and did not strain credulity such that his denial of an intentional killing was delusional, dishonest, or irrational. And, unlike the [inmates] in [*In re*] *Van Houten* [(2004) 116 Cal.App.4th 339], *Shaputis*, and *McClendon*, [*Palermo*] accepted 'full responsibility' for his crime and expressed complete remorse; he participated effectively in rehabilitative programs while in prison; and the psychologists who evaluated him opined that he did not represent a risk of danger to the public if released on parole. Under these circumstances, his continuing insistence that the killing was the unintentional result of his foolish conduct (a claim which is not

necessarily inconsistent with the evidence) does *not* support the Board's finding that he remains a danger to public safety." (*Palermo, supra*, 171 Cal.App.4th at p. 1112.)

In *In re McDonald, supra*, 189 Cal.App.4th 1008 (*McDonald*), the inmate had been convicted of second degree murder even though he denied responsibility for killing the victim. (*Id.* at p. 1013.) At his parole hearing, the inmate denied involvement in planning or carrying out the murder and claimed that a secret group called the Aces of Spades, of which the inmate was a member, had killed the victim. (*Id.* at pp. 1016-1017.) Even so, the inmate said that "he felt responsible for [the victim's] death because the Aces of Spades used him to get [the victim] to let his guard down." (*Id.* at p. 1016.) Although the Board found the inmate suitable for parole, the Governor reversed its decision in part because of the inmate's "lack of insight based on his claim of limited responsibility." (*Id.* at p. 1017.) The appellate court vacated the Governor's decision on the ground that there was no evidence that the inmate posed a current danger to public safety. (*Id.* at pp. 1023, 1026.)

In reaching its decision, the *McDonald* court stated: "[L]ack of insight into the nature and magnitude of the offense, is, without question, a proper factor for the Governor's consideration in determining whether the inmate poses a current threat to public safety. [Citation.] However, the conclusion that there is a lack of insight is not some evidence of current dangerousness unless it is based on evidence in the record before the Governor, evidence on which he is legally entitled to rely. That evidence is lacking here, as the Governor cannot rely on the fact that the inmate insists on his innocence; the express provisions of Penal Code section 5011 and section 2236 of title 15 of the California Code of Regulations prohibit requiring an admission of guilt as a condition for release on parole. [¶] The Governor's finding in this case is phrased in terms of McDonald's denial of involvement in the crime; he suggests no other basis on which to find a lack of insight. Were this sufficient, however, it would permit the Governor to accomplish by indirection that which the Legislature has prohibited. Had his

statement of reasons indicated that the Governor believed the inmate would pose a threat to public safety so long as the inmate continued to assert that he had not participated in the crime, reversal would be certain. The use of more indirect language, yielding the same result, cannot compel a different conclusion.” (*McDonald, supra*, 189 Cal.App.4th at p. 1023.)

Analysis of the Board’s Decision

Here, the Board concluded that Renteria remained a threat to public safety, relying on his history of crime and violence, his commitment offense, his lack of insight into the commitment offense, and his lack of remorse. “Thus, applying the legal principles set forth above, we must decide whether ‘some evidence’ supports the Board’s reliance on these factors to deny [Renteria] parole. (*In re Shaputis [I], supra*, 44 Cal.4th at p. 1255.)” (*In re Shippman* (2010) 185 Cal.App.4th 446, 456.)

We find that 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 denying Renteria parole. (*Lawrence, supra*, 44 Cal.4th at p. 1214; see also *In re Morrall* (2002) 102 Cal.App.4th 280, 301-302 [upon individualized consideration, the particular circumstances of an inmate’s commitment offense may be a basis for finding the inmate unsuitable for parole].) The record shows that Renteria not only murdered his wife, the mother of his two young sons, he mutilated and decapitated her and left her skull and jaw in different places in the backyard of a residence, and her body underneath a sheet of plastic near a highway.

However, even if there is some evidence to support the finding that Renteria’s murder of his wife was committed in a cruel and callous manner (Regs., § 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 the inmate’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.

The Board found that Renteria’s lack of insight and his current mental state regarding his crime, in conjunction with the aggravated circumstances of the offense, indicated that he remained a current danger to the public. The Board found that defendant lacks credibility because he continues to minimize his behavior, he contradicts himself by stating that he takes responsibility and does not dispute the facts but he claims factual innocence, and his remorse “appears to be manufactured.” Some evidence in the record supports these findings. Renteria initially told the Board that he never hit any woman. When asked about the 1984 incident, he admitted that he hit that woman but he did so when he was drunk. He also stated that he had never hit a woman before then, even though Valerie had reported that he had beaten her while she was pregnant. Although Renteria admitted that he could become violent when he used alcohol and methamphetamine, he used his substance abuse as an excuse for his assaultive behavior. He did not state that he had addressed the issues underlying his substance abuse and his violence against women in the numerous programs he had participated in during his incarceration. On this record, the Board could properly find that Renteria needed to develop insight into the issues underlying his substance abuse and his violence against women in order to decrease his risk of further violent recidivism.

The Board did not require that Renteria admit guilt, nor did the Board hold his refusal to discuss the facts of the commitment offense against him. (§ 5011, Regs., § 2236.) Rather, the Board looked beyond Renteria’s expressions of remorse and willingness to be accountable, and examined his mental state and attitude about the commitment offense, in order to determine whether Renteria demonstrated a truthful appreciation for the wrongfulness of the act. That Renteria stated in his letter that he is

accepting responsibility for his offense does not lessen the fact that he refused to discuss the role his alcohol and drug abuse and his history of violence against women played. Renteria's statements to the Board, considered together with evidence of his history of violence against woman and his recent psychological report reflecting that he has not gained insight into the source of that violence despite years of programming while incarcerated, all provide some evidence in support of the Board's conclusion that Renteria remains dangerous and is unsuitable for parole. (*Shaputis I, supra*, 44 Cal.4th at p. 1260.)

In addition, contrary to Renteria's contentions, this case is more like *Shaputis I*, than it is like *Palermo* and *McDonald*. In *Shaputis I*, the court found that the facts of the commitment offense, the inmate's history of domestic abuse, and his psychological report reflecting his inability to gain insight into his behavior despite years of programming while incarcerated, supported the conclusion that the inmate remained dangerous and unsuitable for parole. (*Shaputis I, supra*, 44 Cal.4th at p. 1260.) In this case, the Board discussed the facts underlying the commitment offense in order to support the finding that the offense was cruel, dispassionate, and callous, and Renteria insisted on his factual innocence without discussing the facts underlying the commitment offense. Renteria also had a history of violence against women and his psychological report reflected that he had not shown that he had gained insight into his violent behavior despite years of programming while incarcerated. Additionally, unlike in *McDonald*, Renteria's denial of responsibility for the commitment offense was only one of several factors that the Board relied on. Here, the interrelation of Renteria's failure to address his admitted substance abuse and the impact it had on his violent tendencies, the circumstances of his commitment offense, and his most recent psychological assessment, which stated that his unwillingness to discuss the source of his rage increased his otherwise low-to-moderate risk of violent recidivism, provide some evidence supporting the Board's decision, even if we do not consider the Board's finding of Renteria's lack of insight into the

commitment offense. On this record, we find that the Board's conclusion that Renteria lacks credibility because he denied responsibility for the commitment offense in the face of the other facts in the record was not unlawful or in violation of section 5011.

Accordingly, we conclude that some evidence supports the decision of the Board to deny Renteria parole because he constitutes a current threat to public safety. (*Lawrence, supra*, 44 Cal.4th at p. 1212; *Shaputis II, supra*, 53 Cal.4th at p. 218.)

DISPOSITION

The order of March 10, 2011, granting the petition for writ of habeas corpus is reversed, and the matter is remanded to the superior court with directions to deny the petition.

BAMATTRE-MANOUKIAN, J.

WE CONCUR:

ELIA, ACTING P. J.

WALSH, J.*

*Judge of the Santa Clara County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.