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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re BRIAN JAMES SPARKES,

on Habeas Corpus.

H037962
(Santa Clara County
Super. Ct. No. 160145)

Brian James Sparkes is serving a sentence of 28 years to life for first degree murder. In 2009, the Board of Parole Hearings (Board) found Sparkes suitable for parole in 2018. It used a base term of 30 years and, after accounting for certain credits, arrived at a term of 308 months (25.67 years). Former Governor Arnold Schwarzenegger reversed the Board, and Sparkes filed a petition for writ of habeas corpus challenging the Governor's decision and the Board's calculation of his release date. In 2010, the Board again found Sparkes suitable for parole and calculated a similar release date after accounting for four months annual good conduct credit. The Governor again reversed the Board, and Sparkes filed the instant petition challenging the Governor's decision. The superior court granted Sparkes's 2009 petition. It reversed the Governor's decision and reinstated the Board's decision (2009 judgment). But it did not rule on Sparkes's calculation challenge. The Governor did not appeal from the 2009 judgment, and the Board's decision became final. The superior court then found the instant petition moot, but issued an order to show cause regarding the Board's calculation of Sparkes's release date. Over the People's objection that the instant petition did not present a challenge to the Board's release date, the superior court ordered the Board to recalculate Sparkes's release date "in accordance with due process" (2010 judgment). The People appeal from

the 2010 judgment and reiterate their argument that the petition is entirely moot. We agree, reverse the judgment, and direct dismissal of the petition.

MOOTNESS

“The duty of this court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it.” (*Mills v. Green* (1895) 159 U.S. 651, 653; *Consol. etc. Corp. v. United A. etc. Workers* (1946) 27 Cal.2d 859, 863.) On appeal, a question becomes moot when “events transpire that prevent the appellate court from granting any effectual relief.” (*Gonzalez v. Munoz* (2007) 156 Cal.App.4th 413, 419.)

MOOTNESS OF THE APPEAL

Sparkes urges that this appeal is moot and should be dismissed. He offers that the Board has already complied with the 2010 judgment by recalculating his release date using a 29-year base term (presumably to Sparkes’s satisfaction).

Sparkes, however, will be in custody at least until 2017. And a reversal of the 2010 judgment simply recognizes the reality that, because the 2009 judgment is operative, the 2010 judgment must be treated as having never occurred. Since the 2009 judgment did not address the release-date issue and the release date is fluid and administrative (*In re Johnson* (1992) 8 Cal.App.4th 618, 623 [“the actions of the Board, including the granting of parole and the setting of a release date are purely administrative decisions, and any administrative agency has the inherent power to reconsider ‘unless reconsideration is precluded by law’ ”]), a reversal of the instant 2010 judgment frees the Board to administer the 2009 calculation if it believes that calculation to be correct, the 2010 calculation if it believes that calculation to be correct, or any other calculation that may be available to it in the administration of release dates for inmates granted parole (*In*

re Powell (1988) 45 Cal.3d 894, 903 [“A prison inmate has no vested right in his prospective liberty on a parole release date.”]).

MOOTNESS OF THE PETITION

Sparkes argues that the petition is not moot because he could (and did) receive a favorable recalculation of his release date.

But it is axiomatic that the pleadings in a habeas corpus proceeding define the issues and issues not raised in the pleadings need not be addressed. (*Board of Prison Terms v. Superior Court* (2005) 130 Cal.App.4th 1212, 1235.)

Here, Sparkes did not plead for relief because of the Board’s release-date calculation. One sentence in the body of his 58-page petition/authorities mentions the issue (“The Panel calculated his release date but, once again, miscalculated his release date”), but the remaining content simply challenges the Governor’s decision on several grounds and makes nine specific requests for relief, none of which pertains to the release date.

It is true that the rules of habeas corpus procedure provide the superior court with the power to ensure that a habeas corpus claim is properly pleaded. “[T]he superior court has the authority to invite amended or supplemental habeas corpus petitions in the interests of justice. We also recognize that the superior court in crafting the order to show cause has the power to explain its preliminary assessment of the petitioner’s claims, restate inartfully drafted claims for purposes of clarity, and limit the issues to be addressed in the return to only those issues for which a prima facie showing has been made. Our Supreme Court has emphasized that the goal of ‘the procedures that govern habeas corpus is to provide a framework in which a court can discover the truth and do justice in [a] timely fashion.’ ” (*Board of Prison Terms v. Superior Court, supra*, 130 Cal.App.4th at p. 1239.)

But we need not examine whether the superior court’s order to show cause on the release-date issue comports with this power so as to consider whether the petition is not

moot because the superior court granted Sparkes actual relief in the 2010 judgment. Again, an inmate’s Board-fixed release date is fluid and administrative. And, indeed, it is arguable whether the superior court granted Sparkes actual relief given that it did no more than direct the Board to make another fluid, administrative decision (“in accordance with due process”).

A reversal of the instant judgment will necessarily result in some ambiguity about Sparkes’s release date and require the Board’s clarification. Sparkes is free to administratively challenge any adverse decision and, if necessary, pursue a habeas corpus remedy upon exhaustion of his administrative remedies.

DISPOSITION

The judgment is reversed. The superior court is directed to dismiss the petition as moot.

Premo, Acting P.J.

WE CONCUR:

Mihara, J.

Márquez, J.