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

In re DAVID EARL POOL,
on Habeas Corpus.

H039715
(Santa Clara County
Super. Ct. No. 81925)

The Attorney General, on behalf of the Department of Corrections and Rehabilitation, appeals from the superior court's grant of a writ of habeas corpus to respondent David Earl Pool. The Board of Parole (the Board) found Pool suitable for parole only after the superior court twice found the Board's denial of parole erroneous. In his habeas petition, Pool claimed he should be excused from serving his full, determinate period of parole because the Board's erroneous denials of parole caused him to be imprisoned unlawfully. The superior court granted the habeas petition and gave Pool credit against his term of parole for the time he spent in prison after he would have been released had the Board not erred when it denied his parole in 2009.

The Attorney General argues that the superior court erred in two respects. First, the Attorney General contends the court granted relief based on an issue not raised in the habeas petition. Second, she contends the court erred in granting credit against Pool's term of parole because he was never unlawfully imprisoned—that is, Pool was lawfully imprisoned until he was properly released as a result of the Board's ultimate finding of suitability.

After the parties filed their briefs in this matter, the California Supreme Court decided the second issue in a case largely indistinguishable from Pool's case. (*In re Lira* (2014) 58 Cal.4th 573 [parolee not entitled to credit against his parole term for time in prison following erroneous reversal of grant of parole].) We conclude that *Lira* requires us to reverse the judgment.¹

I. FACTUAL AND PROCEDURAL BACKGROUND

In 1983, Pool was convicted of second degree murder with use of a firearm. The trial court sentenced him to a total term of 17 years to life in prison, followed by a three-year term of parole.

After his initial parole hearing in 1990, the Board found Pool suitable for parole and calculated his release date as June 15, 1995. However, the Board rescinded this release date in 1994. Between 1995 and 2009, Pool was repeatedly denied parole at eight more hearings.

Pool sought a writ of habeas corpus challenging the Board's denial of parole in 2009. In 2010, the superior court granted Pool's habeas petition based on a finding that the Board had "failed to draw a nexus between [Pool's] commitment offense and his present state" in violation of his due process rights. Accordingly, the superior court ordered the Board "to vacate its decision denying parole and conduct another hearing in accordance with due process of law."

On October 14, 2010, the Board held another hearing as ordered, and again denied Pool parole. Pool then filed a second petition for writ of habeas corpus in the superior court challenging the Board's denial. The court found that the Board applied the wrong standard of proof by relying on static factors to deny Pool's parole, and the court remanded the matter back to the Board for a new hearing.

¹ Because we will reverse the judgment based on the second argument raised by the Attorney General, we need not reach the first argument raised by her regarding Pool's failure to include the claim in his habeas petition.

On November 9, 2011, the Board again held another hearing as ordered. This time, the Board found Pool suitable for parole. On April 7, 2012, the Governor's 30-day review period expired, and the decision became effective. Pool was released from prison on April 14, 2012.

On November 30, 2012, Pool filed the petition for writ of habeas corpus at issue here. Pool argued that he was entitled to release without parole because his period of incarceration was greater than the sum of his parole term and the base term calculated by the Board. The superior court issued an order to show cause requiring the Attorney General to show why Pool should not be granted relief. The order noted that "it preliminarily appear[ed]" Pool was entitled to credit from the time of his unlawful parole denial, citing *In re Lira* (2012) 207 Cal.App.4th 531, revd. 58 Cal.4th 573. The Attorney General filed a return in opposition to the petition, and Pool filed a traverse setting forth the argument noted by the superior court regarding his right to credit for time served after the unlawful parole denial. On April 4, 2013, the superior court granted the petition, finding Pool was entitled to credit toward his parole term "as of the finality of his 2009 hearing."

The Attorney General filed a notice of appeal from the grant of the petition on May 30, 2013.

II. DISCUSSION

The California Supreme Court recently held that a parolee is not entitled to credit against the term of parole for time the parolee spends in prison after the date the parolee would have been released had parole been properly granted. (*In re Lira, supra*, 58 Cal.4th 573.) Like Pool, Lira was convicted of second degree murder with a firearm enhancement, and the trial court sentenced him to a term of 17 years to life. The Board repeatedly denied Lira parole. After the Board denied him parole for the ninth time in 2005, Lira petitioned the superior court for a writ of habeas corpus. The superior court granted the petition and ordered a new parole hearing, which the Board conducted in

2008. At the new hearing, the Board found Lira suitable for parole, but then-Governor Schwarzenegger reversed the decision in 2009. Lira then filed a second petition for habeas corpus challenging the Governor's reversal. While the petition was pending, the Board held another hearing and again found Lira suitable for parole. This time, the Governor declined to review the decision, and Lira was paroled in 2010.

Lira then filed a supplemental habeas corpus petition seeking credit against his parole term for the time he spent in prison after the Board's erroneous denial of parole in 2005. The superior court granted relief, finding the Board and the Governor had unlawfully denied him parole. The court ordered that Lira receive credit against his parole term for the time he spent in prison after the date on which he would have been released had the Board found him suitable for parole at the 2005 hearing.

On appeal, this court rejected Lira's argument that he was entitled to credit for the time he spent in prison following the Board's erroneous finding in 2005 (*In re Lira, supra*, 207 Cal.App.4th 531), but affirmed the superior court's conclusion that the Governor's reversal of the Board's 2008 parole grant was not supported by "some evidence" as required by law. Accordingly, the order granting relief was modified to provide credit only for the period between the Governor's 2009 reversal and Lira's actual release in 2010. (*Id.* at p. 557.) But the California Supreme Court reversed this court's decision. And in doing so, our high court specifically rejected the arguments Pool raises here.

Pool's argument that he is entitled to credit against his parole term relies principally on *In re Bush* (2008) 161 Cal.App.4th 133 (*Bush*) (prisoner was not entitled to have parole period reduced by time spent in custody that exceeded base term set by Board) and Penal Code section 2900.5 (governing credit for time spent in custody during term of imprisonment). The California Supreme Court in *Lira*, however, held that neither authority supported Lira's position. (*In re Lira, supra*, 58 Cal.4th at pp. 577-578.) As to *Bush*, the court agreed that the superior court in that case had ordered that the prisoner

receive credit against his parole period for time spent in prison custody after the last date he could have been lawfully held. However, the court further noted that “because the Attorney General did not challenge that order, the Court of Appeal had no occasion to address its propriety; *Bush* therefore is not authority for the proposition that a parolee is entitled to credit against his or her parole term for excess time in custody.” (*Id.* at p. 581.)

The only pertinent procedural difference between *Lira* and this case is that Lira’s term of imprisonment was extended by the Governor’s reversal of the Board’s finding of suitability, whereas Pool’s term of imprisonment was extended solely through the Board’s denials. While the court’s analysis in *Lira* did consider the Governor’s constitutional authority to review parole suitability as a factor in rejecting Lira’s position, this factor was not dispositive in its analysis. The court relied principally on the authority granted the Board under Penal Code sections 3000 and 3001, subdivision (b). “As the applicable statutes make clear, whether a period of parole is to be required and, if so, its duration and conditions are matters for the Board.” (*In re Lira, supra*, 58 Cal.4th at p. 584.) “A court’s general authority, on habeas corpus, to craft a remedy ‘ “as the justice of the case may require” ’ [citations], cannot license it to interfere with the Board’s control over the length of a prisoner’s parole term in the absence of specific statutory authorization not present here.” (*Ibid.*)

This holding controls the issue presented in this appeal. Accordingly, we conclude that the superior court erred in granting Pool’s petition for a writ of habeas corpus. We will therefore reverse and order the superior court to vacate its judgment.

III. DISPOSITION

The judgment is reversed, and the matter is remanded to the superior court. On remand, the superior court shall vacate the judgment, discharge the order to show cause, and deny the petition for habeas corpus.

Márquez, J.

WE CONCUR:

Bamattre-Manoukian, Acting P.J.

Grover, J.