No. S173260

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re

MIGUEL MOLINA

on Habeas Corpus.

No. B208705

ANSWER TO PETITION FOR REVIEW AND OPPOSITION TO REQUEST FOR JUDICIAL NOTICE

Appeal from the Judgment of the Superior Court
San Luis Obispo County, State of California
No. CR13298 (HC-2)

HONORABLE MICHAEL L. DUFFY, JUDGE

MICHAEL SATRIS
State Bar # 67413
Post Office Box 337
Bolinas, CA. 94924
Telephone: (415) 868-9209
Fax: (415) 868-2658
Email: satris@sbcglobal.net

Attorney for Petitioner-Respondent
MIGUEL MOLINA

By appointment of the Court of
Appeal under the California Appellate
Project's independent case system

TOPICAL INDEX

TABLE OF AUTHORITIES

Federal Cases

State Cases

California Statutes

California Rules of Court

No. S173260

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re MIGUEL MOLINA on Habeas Corpus.	No. B208705

ANSWER TO PETITION FOR REVIEW AND OPPOSITION TO REQUEST FOR JUDICIAL NOTICE

TO THE HONORABLE RONALD M. GEORGE, CHIEF JUSTICE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

COMES NOW PETITIONER MIGUEL MOLINA, through his counsel, in Answer to the Petition for Review dated April 27, 2009, by respondent warden representing the State of California, and states:

The State seeks review of the unpublished decision of the Second District, Division Six, of the Court of Appeal filed April 16, 2009, affirming the trial court's grant of habeas relief that entitled Molina to a parole grant and release on parole accordingly. (Typ. opn. 1 & 13.) The petition for review should be denied, as should be the State's accompanying request for judicial notice of material on which the petition depends.

STATEMENT OF THE CASE AND FACTS

Molina committed a second-degree murder a quarter century ago, pleaded no contest, and was committed to prison accordingly for a term of 15 years to life. (Typ. opn. 2.)

In 2002, the Board of Parole Hearings "found Molina was suitable for parole and 'would not pose an unreasonable risk of danger to society,'" fixing a term of imprisonment for him of 216 months (12 years and 4 months) — a term that now is approximately half as long as the term he has actually served. (Typ. opn. 2; 1 CT 140.) Molina has remained incarcerated because the Governor reversed that date and the Board has since denied him parole.[1]

On Molina's challenge to the Board's 2006 denial of parole, the trial court again granted him relief, finding the Board's denial violative of due process in the most fundamental and substantive way: "In granting the writ, the superior court found, among other things, that the Board made findings about the commitment that were not supported by any evidence and that there was no evidence that Molina was a current threat to public safety." (Typ. opn. 3.)

The Court of Appeal majority found that the trial court grant of relief was fully in accord with this Court's decision in *In re Lawrence* (2008) 44 Cal.4th 1181:

---

[1] Though the trial court had granted Molina relief on his challenge to the constitutionality of the Governor's reversal, the Court of Appeal pre-*Lawrence* (*In re Lawrence* (2008) 44 Cal.4th 1181) reversed that judgment. (Typ. opn. 2-3.)

- "The Warden's argument here is essentially the same argument the Governor unsuccessfully advanced in *Lawrence*." (Typ. opn. 10.)
- "Here the result reached by the trial court is consistent with *Lawrence*. There is no medical evidence or psychological assessments that support a finding that Molina poses a current danger to society if released on parole." (Typ. opn. 11.)
- "Molina claims that the board's own findings showed that he was a model prisoner who had rehabilitated himself. We agree." (Typ. opn. 11.)
- "In contrast to the petitioner in *Lawrence*, Molina is a more suitable candidate for parole. Molina's offense was less egregious, he was convicted of second degree murder, and *all* his psychological reports were favorable." (Typ. opn. 12; italics in original.)

In rejecting the State's "claim[] that the trial court erred by ordering Molina to be released from prison ... [and] should have remanded the matter to the Board for another hearing" (typ. opn. 12), the Court of Appeal stated: "[T]here is no evidence that Molina is currently dangerous. [Citation.] The Board initially granted parole in 2002. Any further delay is unwarranted." (Typ. opn. 12.)

ARGUMENT

THE COURT SHOULD DENY THE STATE'S PETITION FOR REVIEW.

Wisely, the State does not seek review of the findings of the lower courts that the Board arbitrarily and capriciously deprived him of his substantive right to a grant of parole.[2] Rather, the State seeks review only of the remedy the courts ordered to cure that substantive due process injury; namely, Molina's release on parole. (Ptn. Rev. pp. 1-2.)

The first problem with the State's petition for review is that it relies on unpublished appellate court opinions in other parole cases that it requests this Court judicially notice in a motion filed with the petition for review. (See Ptn. Rev. pp. 5-8, and request for judicial notice filed with the petition for review.) The Court should deny the State's request that for judicial notice of those cases, as those unpublished decisions are irrelevant.

California Rules of Court, rule 8.500, subdivision (b)(1) provides that a basis for granting a petition for review is to secure uniformity of decision in the lower courts. Rule 8.500, subdivision (b)(1)'s reference to uniformity of decision obviously has in mind the published opinions in the courts of appeal, for those are the only

---

[2] The grant of relief did not concern denial of a procedural right attendant to parole consideration, but denial of the substantive right to parole under the law. (See, e.g., *In re Lawrence*, *supra*, 44 Cal.4th at p 1210 ["We ... have emphasized that under the some evidence standard, a reviewing court reviews the *merits* of the [parole] decision, which assumes that the authority "has adhered to all procedural safeguards."].) (Italics in original.)

decisions that are precedential and can be followed in any court or disputed by other courts of appeal. (See Cal. Rules of Court, rules 8.1105 and 8.1115; *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.) The State does not cite any authority for offering unpublished decisions as evidence for a grant of review by this Court in order to secure uniformity of decision in the courts below pursuant to California Rules of Court, rule 8.500 subdivision (b)(1). The only authority the State cites in this regard is authority that permits a court to take judicial notice of court records. (Motion for Judicial Notice, p. 1.) While court records are a type of document that may be judicially noticed, judicial notice is proper only if the matter is relevant. There is no relevance to these unpublished opinions because such opinions are not authority that may be followed or cited; thus, they do not create a conflict in the law or otherwise implicate the Court's interest in clarifying the law.

Indeed, in the great majority of those decisions the State did not even petition for review of them. (See Court of Appeal dockets for these unpublished cases.) The State should be estopped from claiming the need to secure uniformity of decision by reference to unpublished decisions that it never even sought review of.

In any event, the Court just last year decided the important parole questions in the companion cases of *In re Lawrence, supra,* 44 Cal.4th 1181 and *In re Shaputis* (2008) 44 Cal.4th 1241 that required its attention. The Courts of Appeal should be given an opportunity in their published decisions to sort out implementation of *Lawrence* and

Shaputis before this Court weighs in, should those published decisions eventually show the need to clarify the law.

The varying remedies in those cases that the State here relies on to assert the need for this Court to review this case may well be explained by their individual facts. For example, here there was a finding of no evidence to support denial of parole, so that Molina was entitled to a parole grant as a matter of law — the only action the parole authority could have taken in accordance with due process of law was to grant him parole. (See, e.g., typ. opn. at 12 ["The superior court properly granted the writ because there is no evidence that Molina is currently dangerous."].)

In addition, there was no need to remand the matter to the Board to fix Molina's prison term to provide for uniform punishment and to establish a parole date, for the Board had already once done so — resulting in a term that long ago was served. Indeed, Molina has twice served the term that was fixed for him to provide uniform and proportionate punishment, for he has been incarcerated already for nearly 25 years.

Just as the majority said in affirming the order providing for Molina's release on parole, "Any further delay is unwarranted." (Typ. opn. 12.)[3] Penal Code section 1484 grants broad powers and flexibility to the courts to fashion an effective remedy should it find entitlement to habeas relief, authorizing the court "to dispose of such

---

[3] Molina will be released on parole only figuratively: He is a Mexican citizen with an immigration hold, and will be released to federal custody for prompt deportation. (2 CT 319.)

party as the justice of the case may require ...." "The Penal Code thus contemplates that a court, faced with a meritorious petition for a writ of habeas corpus, should consider factors of justice and equity when crafting an appropriate remedy." (*In re Harris* (1993) 5 Cal.4th 813, 850.) "The very nature of the writ demands that it be administered with the initiative and flexibility essential to insure that miscarriages of justice within its reach are surfaced and corrected." (*Harris v. Nelson* (1969) 394 U.S. 286, 290-291.)

Liberty is precious, and its loss can never be restored. Indeed, the need for a prompt and effective remedy for the grave and irreparable injury of wrongful imprisonment is the animating force of the writ of habeas corpus:

> [The] Great Writ['s] ... function has been to provide a prompt and efficacious remedy for whatever society deems to be intolerable restraints. Its root principle is that in a civilized society, government must always be accountable to the judiciary for a man's imprisonment: if the imprisonment cannot be shown to conform with the fundamental requirements of law, the individual is entitled to his immediate release.

(*Fay v. Nona* (1963) 372 U.S. 391, 401-402, 83 S.Ct. 822; see also *Peyton v. Rowe* (1968) 391 U.S. 54, 63-64, 88 S.Ct. 1549, 1554 ["a principal aim of the writ is to provide for swift judicial review of alleged unlawful restraints on liberty"].)

This Court, too, has noted that "the high purpose of the writ of habeas corpus" is to provide "an efficacious means of vindicating an individual's fundamental rights." (*In re Crow* (1971) 4 Cal.3d 613,

623.) It has acknowledged the storied pedigree of the writ of habeas corpus in our State to free an individual from unlawful imprisonment:

> The rules governing postconviction habeas corpus relief recognize the importance of the "Great Writ," an importance reflected in its constitutional status, and in our past decisions. Indeed, the writ has been aptly termed "the safe-guard and the palladium of our liberties" [citation] and is "regarded as the greatest remedy known to the law whereby one unlawfully restrained of his liberty can secure his release ...." [citation].) The writ has been available to secure release from unlawful restraint since the founding of the state. [Citations.]

(*In re Clark* (1993) 5 Cal.4th 750, 763-764.)

The release of Molina after authorities have acted arbitrarily to deny him parole is in accordance with the letter and spirit of the Great Writ. As stated in *In re Rosenkrantz* (2000) 80 Cal.App.4th 409, 428:

> At some point, a failure to follow the law, or the continued application of an arbitrary and irrational standard, will rise to the level of a substantive due process violation. [Citation.].... [W]e flatly reject the Board's contention that (a) Rosencrantz's only remedy is the continuing charade of meaningless hearings, and (b) that the superior court lacks the power to compel the Board to follow the law.

Imprisonment for twice as long as the Legislature and the Board contemplated when it enacted the statutes and regulations that control here is enough; it is more than enough. Every day that Molina remains unlawfully confined he pays for the State's lawlessness "in a coin that the state cannot refund." (*Brown v. Poole* (9th Cir. 2003)

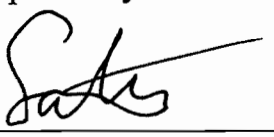
337 F.3d 1155, 1161.) This Court's grant of review of this case would only add to the State's debt.

CONCLUSION

For the foregoing reasons, this Court should deny the warden's petition for review.

DATED: June 8, 2009

Respectfully submitted,



MICHAEL SATRIS

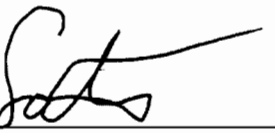
Attorney for Petitioner
MIGUEL MOLINA

Court of Appeal, Second Appellate District, Div. Six, No. B208705
San Luis Obispo County Superior Court No. CR13298 (HC-2)
In re Miguel Molina

CERTIFICATE OF APPELLATE COUNSEL

I, Michael Satris, appointed counsel for Petitioner Miguel Molina, hereby certify, pursuant to rule 8.504 (d)(1) of the California Rules of Court, that I prepared the foregoing answer to petition for review on behalf of my client, and that the word count for this answer, including footnotes, is 2014 words. This answer to petition for review therefore complies with the rule, which limits a petition for review or answer to petition for review to 8400 words. I certify that I prepared this document in Microsoft Word 2002, and that this is the word count Microsoft Word generated for this document.

Dated: June 9, 2009



MICHAEL SATRIS

Attorney for Petitioner
Miguel Molina

Court of Appeal, Second Appellate District, Div. Six, No. B208705
San Luis Obispo County Superior Court No. CR13298 (HC-2)
In re Miguel Molina

PROOF OF SERVICE

I am a citizen of the United States and a resident of Marin County. I am over the age of eighteen years and not a party to the within above entitled action. My business address is P.O. Box 337, Bolinas CA.

On June 9, 2009, I served the within **ANSWER TO PETITION FOR REVIEW** on the interested parties in said action causing to be placed a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in a United States Post Office box addressed to the parties as follows:

Gregory J. Marcot
Supervising Deputy Attorney General
State of California
110 West "A" Street, Suite 1100
P.O. Box 85266
Sacramento, CA 92186-5266
(Counsel for Appellant)

Mr. Miguel Molina, D-21051
CMC - East
P.O. Box 8103
San Luis Obispo, CA 93403-0005
(Petitioner-Respondent)

Clerk, Superior Court
County of San Luis Obispo
1050 Monterey Street, Room 220
San Luis Obispo, CA 93408

James B. Maguire III
Maguire & Ashbaugh
991 Osos Street, Suite A
San Luis Obispo, CA 93401
(Trial counsel)

California Appellate Project
520 Grand Avenue, 4th Floor
Los Angeles, CA 90017

Clerk, Court of Appeal
Second Appellate District, Div. Six
200 E. Santa Clara Street
Ventura, CA 93001

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed in Bolinas, California, on June 9, 2009.

Sabine Jordan