

**SUPREME COURT MINUTES
TUESDAY, AUGUST 6, 2019
SAN FRANCISCO, CALIFORNIA**

S255392**BURTON (SUSAN H.) ON
CLEMENCY**

Letter sent to Governor with the recommendation required by article V, section 8 of the California Constitution for the Governor to grant a pardon

(Including statement by Liu, J.)

August 6, 2019

The Honorable Gavin Newsom
Governor, State of California
State Capitol Building
Sacramento, CA 95814

Re: Susan H. Burton
Legal Affairs File No.: D-8408-04
Case Number: S255392
Executive Clemency Number: 1185

Dear Governor Newsom:

On the application of Susan H. Burton for pardon, the court, with at least 4 judges concurring,* hereby makes the recommendation required by Article V, section 8 of the California Constitution for the Governor to grant a pardon.

Sincerely,

Tani G. Cantil-Sakauye

* Please see the attached separate statement by Justice Goodwin Liu.

Separate Statement of Reasons by Justice Goodwin Liu

Article V, section 8 of the California Constitution provides that the Governor may not grant a pardon or commutation to a twice-convicted felon “except on recommendation of the Supreme Court, 4 judges concurring.” This provision, we have explained, “does not require the justices of

this court to determine whether, in the view of each justice, an applicant deserves clemency, whether based on claimed innocence of the crime, rehabilitation, mercy, or other grounds. We instead interpret it as calling for a more conventionally judicial judgment: Does the claim have sufficient support that an act of executive clemency, should the Governor decide to grant it, would not represent an abuse of that power? The recommendation called for by article V, section 8, in other words, is not a recommendation that the Governor grant the application; it is merely an acknowledgment that the Governor may legitimately consider granting the application in the exercise of the power conferred on him by article V.” (*Procedures for Considering Requests for Recommendations Concerning Applications for Pardon or Commutation* (2018) 4 Cal.5th 897, 902 (*Procedures*).)

Under any reasonable interpretation of the abuse of power standard that we have described, the pardon application before us merits a favorable recommendation from this court. We have no occasion here to decide questions concerning the circumstances in which this court may decline to provide a favorable recommendation on the ground that a pardon or commutation would constitute an abuse of power.

Those questions include: Apart from considerations of improper bias, corruption, self-dealing, nepotism, or other conflict of interest, on what grounds, if any, may we circumscribe the Governor’s clemency power? Are there discernible standards, amenable to consistent judicial application, for limiting the Governor’s exercise of mercy, for rejecting the Governor’s determination of an applicant’s character or the extent of an applicant’s rehabilitation, or for countermanding the Governor’s judgment as to the injustice of a particular conviction or penalty? How do separation of powers concerns inform or constrain our role in the clemency process? Does the Governor’s authority to grant clemency to persons who are not twice-convicted felons have any bearing on the nature of this court’s review in cases involving twice-convicted felons? Does a decision by members of this court in a clemency matter result in a conventional legal judgment rendered by a court of record? (Cal. Const., art. VI, § 1; see *Procedures, supra*, 4 Cal.5th at p. 902 [abuse of power inquiry “does not require [us] to determine whether ... an applicant deserves clemency” but rather “call[s] for a more conventionally judicial judgment”].)

Further, in what circumstances may the Governor submit a renewed application on behalf of an individual for whom the court previously declined to issue a favorable recommendation? And what standards should guide this court’s evaluation of any such submission? Some instances of renewed application appear in the historical records of our clemency docket, publicly accessible in this court.

In light of the substantial individual and institutional interests at stake, an examination of these and other questions may be required in the context of an appropriate application.

LIU, J.

S257281 A157859 First Appellate District, Div. 1

**MASSEY (JOHN EDWARD) v.
S.C. (MEDICAL BOARD OF
CALIFORNIA)**

Petition for review & application for stay denied