

FILED

AUG 08 2011

KIM TURNER
Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: M. Murphy, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MARIN

In the Matter of the Application of:
INEZ TITO LUGO [JERRY
RUTHERFORD] *et al.*,
Petitioner,
for a Writ of *Habeas Corpus*.

Case No.: SC135399A

ORDER ON RESPONDENTS' MOTION
TO DISMISS

On May 26, 2004, Petitioner Jerry Rutherford filed his petition for a writ of *habeas corpus* in this case. The court certified the matter as a class action by order filed November 29, 2004 and granted the application by order filed February 15, 2006.

The issue in this matter is whether and to what extent Respondents are furnishing members of the Petitioner class with a parole eligibility hearing that is timely within the meaning of Penal Code §3041.5(b)(2). At the time the application was granted, in 2006, Respondents admitted that they were failing to furnish timely parole eligibility hearings to prisoners serving indeterminate sentences. At the time the application was granted, the court found that the backlog of overdue hearings was 3,200.¹ According to the

¹ Order filed February 19, 2006, page 3:11-12.

1 Office of the Inspector General, in 2004 Respondents actually conducted 2,844 parole
2 eligibility hearings,² while accumulating the backlog of 3,200 overdue hearings.

3 During the intervening seven plus years, a great deal of work has been done.
4 Respondents' system for tracking and scheduling parole hearings, politely described by
5 the Office of the Inspector General in 2000-2005 as antiquated, inefficient, and
6 ineffective,³ has been overhauled. Respondents developed and deployed a new
7 computerized system, LSTS (Lifer Scheduling and Tracking System), pertinent
8 regulations have been redrafted, and the procedures for obtaining psychological
9 evaluations where appropriate have been streamlined.

10 According to Respondents, the backlog as of May 2011 has been reduced to 25—
11 an impressive accomplishment. During the twelve month period ended May 31, 2011,
12 the average monthly backlog number is 45.⁴ Petitioners do not dispute the backlog
13 numbers.

14 Citing their accomplishments, on June 21, 2011, Respondents filed their second
15 motion⁵ to dismiss the petition for *habeas corpus*.

16 Petitioners oppose the motion to dismiss. They point out that Respondents may
17 be doing better, but they still have not met the goal set forth in Paragraph 10 of the
18 parties' stipulated procedures, filed March 23, 2006. In that agreement the parties stated
19 that:

20
21 When the backlog has been reduced to not more than five
22 percent (05%) of the monthly hearings and remains at
23 that level or less continuously for 12 consecutive months,
24 Respondents will be considered in compliance with this
25 remedial plan and the Court will order this matter
26 dismissed.

27 ² See Exhibit C, page 2 of 3, attached to McClain declaration filed June 21, 2011.

28 ³ See Exhibits A, B, and C to McClain declaration filed June 21, 2011.

⁴ Maciel declaration filed June 21, 2011, page 2:3-4.

⁵ Their first motion was denied by order filed August 20, 2010.

1 Respondents admit that they have not met the 5% goal. Respondents argue that
2 the 5% agreement set forth in paragraph 10 of the March 23, 2006 stipulation “is not
3 necessary to protect the interest of life inmates or to ensure that the Board provides
4 timely parole hearings on a consistent basis.”⁶ Respondents cite their progress in
5 improving procedures and reducing the backlog and state that “...these accomplishments
6 have not enabled the Board to satisfy the stipulated procedures’ five-percent
7 requirement. This fact alone constitutes a substantial change because at one time, the
8 Board believed that such significant improvements would enable it to meet all of the
9 stipulated procedures’ requirements for dismissal. The Board now knows that is not the
10 case.”⁷

11 Petitioners ask the court to deny this motion because Respondents have not yet
12 met the requirements of ¶10 of the March 23, 2006 stipulated procedures; because the
13 passage of Proposition 9 (Marsy’s Law) has reduced the number of lifer hearings, but
14 Marsy’s Law is under Constitutional attack in the courts; and because Petitioners believe
15 that if this court is no longer supervising the situation, the backlog will spike again.

16 The court has concluded that after seven years of court supervision, Respondents
17 have substantially complied with the requirements of the stipulated procedures filed
18 March 23, 2006 and that this petition for a writ of *habeas corpus* should be dismissed. It
19 is true that Respondents have not attained the 5% goal set forth in ¶10 of the March 23,
20 2006 stipulation. However, they have reduced the backlog from 3,200 cases to 25.
21 Neither side has ever told the court how the 5% goal to which the parties stipulated in
22 2006 was calculated; with hindsight, it appears to the court that it may have been more
23 aspirational than realistic.

24 If Proposition 9 is invalidated or if for any other reason the lifer hearing backlog
25 increases unreasonably, Petitioners can and no doubt will bring the problem to the
26 court’s attention.

27
28 ⁶ Memorandum of Points and Authorities filed June 21, 2011, page 4:8-9.

⁷ *Ibid.*, page 5:10-14.

1 This court can end a consent decree when the essential purpose of the decree is
2 achieved and the situation has greatly improved (Labor/Community Strategy Center v.
3 L.A. County Metropolitan Transportation Authority (9th Cir. 2009) 564 F.3^d 1115,1123).
4 Especially in cases dealing with governmental institutional reform, the court should take
5 a flexible approach to the issue of substantial compliance (Horne v. Flores (2009) 129
6 S.Ct. 2579, 2594-95).

7 For the foregoing reasons, Respondents' motion to dismiss is granted.
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9 Dated: August 8, 2011
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Verna A. Adams
11 Verna A. Adams
12 Judge of the Superior Court
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STATE OF CALIFORNIA)
COUNTY OF MARIN)

IN RE: **INEZ TITO LUGO [JERRY RUTHERFORD], ET AL**

ACTION NO.: **SC135399A**

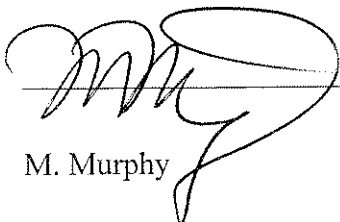
(PROOF OF SERVICE BY MAIL – 1013A, 2015.5 C.C.P.)

I AM AN EMPLOYEE OF THE SUPERIOR COURT OF MARIN; I AM OVER THE AGE OF EIGHTEEN YEARS AND NOT A PARTY TO THE WITHIN ABOVE-ENTITLED ACTION; MY BUSINESS ADDRESS IS CIVIC CENTER, HALL OF JUSTICE, SAN RAFAEL, CA 94903. ON **August 9, 2011** I SERVED THE **ORDER ON RESPONDENTS' MOTION TO DISMISS** IN SAID ACTION TO ALL INTERESTED PARTIES, BY PLACING A TRUE COPY THEREOF ENCLOSED IN A SEALED ENVELOPE WITH POSTAGE THEREON FULLY PREPAID, IN THE UNITED STATES POST OFFICE MAIL BOX AT SAN RAFAEL, CA ADDRESSED AS FOLLOWS:

<i>DONALD SPECTER, ESQ. PRISON LAW OFFICE 1817 FIFTH STREET BERKELEY, CA 94710</i>	<i>KEITH WATTLEY, ESQ. UNCOMMON LAW 220 4TH STREET, #103 OAKLAND, CA 94607</i>
<i>ANYA BINSACCA, ESQ. ATTORNEY GENERAL'S OFFICE WRITS & APPEALS SECTION 455 GOLDEN GATE AVENUE, #11000 SAN FRANCISCO, CA 94102-7004</i>	<i>WARDEN SAN QUENTIN STATE PRISON SAN QUENTIN, CA 94974</i>

I CERTIFY (OR DECLARE), UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING IS TRUE AND CORRECT.

DATE:

8/9/11 
M. Murphy