No. B315914

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLANT DISTRICT, DIVISION FOUR

IN RE RENE ENRIQUEZ,
ON HABEAS CORPUS.

Los Angeles County Superior Court, Case No. BH013600
The Honorable William C. Ryan, Judge

APPELLANT'S OPENING BRIEF

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INTRODUCTION

Rene Enriquez is serving three concurrent life terms for two counts of second degree murder and assault with a firearm. Enriquez appeared before the Board of Parole Hearings in 2020 and was found suitable for parole. Governor Gavin Newsom reviewed the Board's decision and determined that Enriquez posed a current unreasonable risk of danger and was thus unsuitable for release on parole.

Enriquez successfully challenged the Governor's decision in the Los Angeles County Superior Court, which found that the Governor's decision violated Enriquez's due process rights because it was not supported by some evidence. This timely appeal follows. This Court should reverse the superior court. Due process is satisfied so long as some evidence—even a modicum of evidence—supports the Governor's conclusion, such that the Governor's conclusion is neither arbitrary nor capricious. There is at least—if not more than—a modicum of evidence to support the Governor's decision: Enriquez, a former shot caller for the Mexican Mafia, has "extensive history of violent and manipulative behavior" and exhibits other risk factors indicating that he is still dangerous. Therefore, the Governor's decision was neither arbitrary nor capricious; accordingly, it must be upheld.

ISSUE PRESENTED

A gubernatorial parole denial complies with due process so long as the Governor's conclusion that the inmate continues to pose a current unreasonable risk of danger is supported by some evidence in the record. Is Enriquez entitled to habeas corpus

relief when he has an extensive history of violent and manipulative behavior, and evidence in the record demonstrates that he exhibits other risk factors indicating that he still remains a threat to public safety?

STATEMENT OF THE CASE

A. The Commitment Offenses.[1]

In 1985, while serving a prior prison term for forcible rape and armed robbery, Enriquez joined the Mexican Mafia. Over time, Enriquez became a leader in the gang. In 1989, while in the community, Enriquez came to believe that a woman named Cynthia Galvadon, who worked for him as a drug dealer, was stealing from him. Enriquez armed a fellow gang member with a gun and instructed him to kill Galvadon. On Enriquez's orders, the gang member executed her, shooting her once in the head and once in the chest.

A week after the murder of Galvadon, Enriquez attempted to kill David Gallegos, a Mexican Mafia member who had fallen into disfavor with the gang, by injecting him with heroin multiple times in an attempt to cause an overdose. When this was unsuccessful, Enriquez drove Gallegos to an industrial area and shot him numerous times, killing him.

In 1991, Enriquez, Benjamin Peters, and Salvador Buenrostro were handcuffed together in an attorney room at the

[1] The recitation of facts regarding Enriquez's criminal convictions is taken mostly verbatim from the superior court's August 31, 2021 order granting his petition for writ of habeas corpus. (See CT, Vol. 3, pp. 697-698.)

Los Angeles County Jail. Enriquez and Peters used makeshift keys to remove their handcuffs. They then used metal shanks to repeatedly stab Buenrostro until officers were able to subdue them. Buenrostro was stabbed 26 times but survived.

B. Enriquez's Relevant Parole Proceedings.

Enriquez appeared before the Board for a Subsequent Life Prisoner Parole Consideration Hearing on May 6, 2020. (CT, Vol. 1, pp. 278-300; CT, Vol. 2, pp. 302-420.) The Board found Enriquez suitable for parole. (CT, Vol. 2, pp. 409-418.)

On September 18, 2020, the Governor exercised his statutory and constitutional authority to review the parole suitability of a convicted murderer sentenced to an indeterminate life term and found Enriquez unsuitable for parole. (Pen. Code, § 3041.2; Cal. Const., art. V, § 8, subd. (b); CT, Vol. 3, pp. 657-659.) The Governor based his decision on Enriquez's "extensive history of violent and manipulative behavior" and other risk factors, including his lack of credibility and mental state and the 2020 comprehensive risk assessment. (CT, Vol. 3, pp. 657-659.)

C. Superior Court Proceedings.

Enriquez challenged the Governor's decision in a petition for writ of habeas corpus filed in the Los Angeles County Superior Court. (CT, Vol. 1, pp. 6-54.) On August 31, 2021, after the superior court issued an order to show cause and received briefing from the parties, the court granted Enriquez's petition, concluding that the Governor's decision was not supported by any evidence of Enriquez's current dangerousness. (CT, Vol. 2, pp. 491-493, 501-506; CT, Vol. 3, pp. 696-709.) The court ordered the

Board's 2020 decision reinstated and directed the Board "'to proceed in accordance with its usual procedures for release of an inmate on parole unless within 30 days of the finality of this decision the Board determines in good faith that cause for rescission of parole may exist and initiates appropriate proceedings to determine that question.'" (CT, Vol. 3, p. 708.)

Appellant requested this Court stay its order pending appeal. (See Docket at https://appellatecases.courtinfo.ca.gov.) This Court "temporarily stayed [the order] pending further order of this court." (*Ibid.*)

Appellant filed a timely notice of appeal on October 26, 2021. (CT, Vol. 3, pp. 710-711.)

STATEMENT OF APPEALABILITY

The superior court's order is appealable under Penal Code section 1507, as a final order granting habeas corpus relief to a non-criminal defendant. (Pen. Code, § 1507.) The order is final because it granted the relief sought in the petition.

STANDARD OF REVIEW

Because the superior court based its decision solely on documentary evidence, this Court's review is de novo. (*In re Rosenkrantz* (2002) 29 Cal.4th 616, 677.)

SUMMARY OF ARGUMENT

This Court should reverse the superior court's order granting Enriquez's petition because at least a modicum of evidence supports the Governor's conclusion that Enriquez posed an unreasonable risk of danger to society. Indeed, the Governor's

decision finding Enriquez unsuitable for parole is supported by some evidence and thus comports with due process. Enriquez has an "extensive history of violent and manipulative behavior." Moreover, although he has made positive strides in prison, the record demonstrates he exhibits other current risk factors indicating that he still remains an unreasonable risk to public safety. The Governor's careful consideration of the factors, including his weighing of any mitigating factors in favor of Enriquez's release, reflects a thorough review of the record that more than comports with the some-evidence standard. The superior court erred in finding otherwise.

ARGUMENT

I. THE GOVERNOR'S DECISION IS SUPPORTED BY SOME EVIDENCE

A. Governing Legal Principles.

It is well established that the power to grant and revoke parole is vested exclusively in the executive branch. (Cal. Const., art. V, § 8, subd. (b); Pen. Code §§ 3040-3041.2, 5054, 5077; *In re Rosenkrantz*, *supra*, 29 Cal.4th at p. 659.) Like the Board, the Governor is constitutionally and statutorily authorized to identify and weigh all "factors relevant to 'predicting whether the inmate will be able to live in society without committing additional antisocial acts.'" (*In re Lawrence* (2008) 44 Cal.4th 1181, 1205-1206, quoting *In re Rosenkrantz*, *supra*, at p. 655.) Although the Governor must consider the same factors as the Board, "[t]he Governor has the authority to weigh suitability factors differently from the Board." (*In re Prather* (2010) 50 Cal.4th 238, 257 fn. 12.) This de novo review allows the Governor the "discretion to

be 'more stringent or cautious' in determining whether a defendant poses an unreasonable risk to public safety." (*Ibid.*, quoting *In re Shaputis* (2008) 44 Cal.4th 1241, 1258 (*Shaputis I*).) Indeed, the "fundamental consideration in parole decisions is public safety." (*In re Lawrence*, *supra*, 44 Cal.4th at p. 1212, citing Pen. Code, § 3041, subd. (b)).

When reviewing a gubernatorial parole denial, "the applicable standard of review is extremely deferential to the Governor." (*In re Rosenkrantz*, *supra*, 29 Cal.4th at p. 679.) Judicial review is limited to whether "some evidence" supports the parole authority's conclusion that the inmate is unsuitable for parole because he currently poses an unreasonable risk of danger to the public. (*In re Lawrence*, *supra*, 44 Cal.4th at pp. 1191, 1214, 1221; *Shaputis I*, *supra*, 44 Cal.4th at pp. 1254-1255.) The Governor's "interpretation of the evidence must be upheld if it is reasonable, in the sense that it is not arbitrary, and reflects due consideration of the relevant factors. (Citations.)" (*Id.* at p. 212.) This is true even if "a court might determine that evidence in the record tending to establish suitability for parole far outweighs evidence demonstrating unsuitability for parole." (*Id.* at p. 210.) Under this extraordinarily deferential standard, only "when the evidence reflecting the inmate's present risk to public safety leads to but one conclusion may a court overturn a contrary decision by the Board or the Governor." (*In re Shaputis* (2011) 53 Cal.4th 192, 211 (*Shaputis II*).)

The court is not limited to reviewing only the evidence relied on or cited by the Governor, but may consider the *entire* record

for *any* evidence that could support the parole denial. (*Id*. at p. 214, fn. 11.) Moreover, the "court must consider the whole record in the light most favorable to the determination before it." (*Id*. at p. 214.)

As explained more fully below, the record demonstrates there is at least a modicum of evidence supporting the Governor's conclusion that Enriquez is unsuitable for parole. For this reason, the superior court erred by vacating the Governor's decision.

B. Analysis.

The Governor's conclusion that Enriquez poses a current unreasonable risk to the public is supported by some evidence. In finding Enriquez unsuitable for parole, the Governor first considered Enriquez's extensive criminal history, which includes "several armed robberies, gang rape and sodomy of a young woman, sexual assault against another inmate, and multiple murders and assaults." (CT, Vol. 3, pp. 657-658.) Enriquez joined the Artesia street gang at the age of 12 or 13. (CT, Vol. 1, p. 291.) In 1985, while serving a prison term, Enriquez became a member of the Mexican Mafia. (CT, Vol. 3, p. 657.) Upon his release from prison, Enriquez carried out the commitment offenses by ordering Cynthia Galvadon's murder, killing David Gallegos, and stabbing another inmate in the county jail 26 times. (*Ibid.*; CT, Vol. 3, pp. 697-698.) Once he returned to prison, Enriquez rose in the ranks of the gang. (CT, Vol. 3, pp. 657-658.) As the Governor noted, "[a]s a high-ranking member of the Mexican Mafia" Enriquez "ordered attacks on other gang

members, manufactured and distributed weapons, trafficked drugs, and recruited and trained new members." (*Id.* at p. 658.)

While immutable factors (such as the commitment offense), standing alone, may no longer indicate a current risk of danger to society in light of a lengthy period of incarceration (*Lawrence*, *supra*, 44 Cal.4th at p. 1211), here, the Governor reasonably concluded that Enriquez's "extensive history of violent and manipulative behavior elevates his current risk level," in combination with other risk factors, indicates that he remains an unreasonable risk to public safety. (CT, Vol. 3, pp. 657-658; see Cal. Code Regs., tit. 15, § 2402, subd. (b) [parole authority must consider "[a]ll relevant, reliable information," including "past and present mental state" and "past and present attitude toward the crime"]; *In re Lawrence*, at pp. 1221, 1228-1229 [commitment offense in light of other facts in record may continue to be predictive of current danger many years after offense; combination of circumstances provides evidence of current danger].) Indeed, as the Governor noted, Enriquez's "violent conduct for his personal gain continued until he began assisting law enforcement, which resulted in favorable treatment." (CT, Vol. 3, p. 658.)

Further still, the Governor's weighing and consideration of Enriquez's most current risk assessment supports the Governor's decision. For example, the psychologist who evaluated Enriquez in 2020 opined that "because of Mr. Enriquez's 'ingrained patterns of antisocial and narcissistic thinking and behavior. . . some of the prosocial changes he has made may not have been

altruistic.'" (CT, Vol. 3, p. 658.) The psychologist further concluded that Enriquez "'tends to present as a 'smooth talker' who is facile with communication. He is bright and has adequate resources to research what he believes is expected of him and address the issues the parole board and the governor have raised in the past.'" (*Ibid.*)

Besides reasonably questioning the sincerity of Enriquez's prosocial conduct, the Governor was also concerned about several of Enriquez's other risk factors for violence. (CT, Vol. 3, p. 658.) Notably, the psychologist found "'significant personality disorder traits, substance abuse issues, extremely negative/violent attitudes, involvement with antisocial individuals, and limited insight into these issues.'" (*Ibid.*) And "the psychologist categorized Mr. Enriquez as representing an above-average risk of sexual offense reconviction" and determined that, "despite the mitigating factors of Mr. Enriquez's age and the absence of information that Mr. Enriquez has sexually offended for more than 30 years, this categorization only 'slightly' overstates his current risk level." (*Ibid.*) In view of these findings and Enriquez's "extensive history of violent and manipulative behavior," it was not unreasonable to the point of arbitrariness for the Governor to conclude that Enriquez poses a current unreasonable risk to public safety and "must do more to demonstrate that his desistence from misconduct represents an authentic and enduring transformation in thought and conduct, and not merely an attempt to game the system for his needs." (*Id.* at pp. 657-658.)

In sum, because there is at least "a modicum of evidence" supporting the Governor's decision, the superior court erred in granting the petition. (*Shaputis II*, *supra*, 53 Cal.4th at pp. 214-215.) Accordingly, the superior court's order should be reversed.

II. THE SUPERIOR COURT ERRED BY REWEIGHING THE EVIDENCE, DISCOUNTING THE LIFE CRIMES AND ENRIQUEZ'S VIOLENT AND MANIPULATIVE CONDUCT, AND SUBSTITUTING ITS CREDIBILITY DETERMINATION FOR THE GOVERNOR'S

Despite the confines of the some-evidence standard of review, the superior court impermissibly reweighed the evidence and discounted the circumstances of Enriquez's life crimes and history of violent and manipulative conduct. The superior court also impermissibly substituted its own credibility determination for that of the Governor.

In vacating the Governor's decision, the superior court improperly reweighed the evidence. The court highlighted the positive factors in the record, including Enriquez's participation in self-help programming, educational improvements, and assistance to law enforcement, and faulted the Governor for failing to properly consider these factors. (CT, Vol. 3, pp. 700-707.) The superior court also found that the Governor "took the psychologist's statements out of context and failed to note the psychologist's ultimate determination that Petitioner represents a low risk of violence." (*Id.* at p. 706.) Finally, the superior court took issue with the Governor's characterization of the risk factors in the comprehensive risk assessment as "current." (*Id.* at p. 702.)

This was error for two reasons. First, the Governor's consideration of the comprehensive risk assessment is not limited to the assessment's "ultimate determination" regarding Enriquez's risk of violence; nor is the Governor bound by it. (See *Shaputis II*, *supra*, 53 Cal.4th at p. 214; *In re Rosenkrantz*, *supra*, 29 Cal.4th at p. 677; *In re Dannenberg* (2005) 34 Cal.4th 1061, 1082.) Moreover, the Governor is not limited to considering only Enriquez's current risk factors. Here, the Governor considered both current and historical risk factors, including "'significant personality disorder traits, substance abuse issues, extremely negative/violent attitudes, involvement with antisocial individuals, and limited insight into these issues'" as well as Enriquez's "above-average risk of sexual offense reconviction." (CT, Vol. 3, p. 658.) And "there is always some risk Mr. Enriquez could slip back into maladaptive patterns." (CT, Vol. 2, p. 444.) In any event, the Governor is well within his discretion to consider all information contained in the risk assessment, including historical risk factors, and draw reasonable inferences about how that information bears on Enriquez's suitability. (*In re Bettencourt* (2007) 156 Cal.App.4th 780, 805-806 [upholding Board's view of psychological evaluation as indicative of unsuitability despite overall low risk of future violence]; *In re Lazor* (2009) 172 Cal.App.4th 1185, 1202 [risk assessment is information to be considered but does not dictate parole decision]; Cal. Code of Regs., tit. 15, § 2402 [parole authority must consider all relevant information, including psychological factors].) Here, the lower court's rejection of the Governor's reasonable concerns

about information documented in the risk assessment because of the assessment's ultimate rating or because the Governor considered historical risk factors is contrary to well-settled principles.

Second, the lower court erred by independently weighing the evidence regarding Enriquez's suitability. "The Governor has the authority to weigh suitability factors differently from the Board," and has the "discretion to be 'more stringent or cautious' in determining whether a defendant poses an unreasonable risk to public safety." (*In re Prather* (2010) 50 Cal.4th 238, 257, fn. 12.) Even if a court "might determine that evidence in the record tending to establish suitability for parole far outweighs evidence demonstrating unsuitability for parole[,]" "the precise manner in which the specified factors relevant to parole suitability are considered and balanced lies within the discretion of [the Board or] the Governor." (*Shaputis II*, *supra*, 53 Cal.4th at p. 210.) Here, the Governor considered the totality of the evidence, including Enriquez's extensive criminal history, his conduct while incarcerated, both positive and negative, and reasonably weighed the evidence to conclude Enriquez poses a current unreasonable risk to the public if released—a decision supported by at least a modicum of evidence. That the court (or the Board) may have weighed the evidence differently and reached a different conclusion is of no relevance.

Courts have upheld similar gubernatorial decisions. In *Tripp*, the Governor reversed Tripp's parole grant despite viable parole plans and considerable rehabilitative efforts during her 23

years in prison, including participating in numerous therapeutic and educational programs, maintaining a good disciplinary record for more than 16 years, and establishing solid relationships with her mother and daughter. (*In re Tripp* (2007) 150 Cal.App.4th 306, 314, 320.) The *Tripp* court recognized the positive factors in the record and acknowledged that the Governor had not overlooked these factors suggesting suitability, and found that Tripp's "real disagreement is with the weight [the Governor] attached in 2004 to her 1979 behavior [in helping plan the kidnap/murder]." (*Id.* at p. 320.) In denying Tripp's petition for habeas corpus, the *Tripp* court concluded, "we cannot say due process required the Governor to strike a different balance." (*Ibid.*)

Here, like in *Tripp*, the Governor did not overlook the positive factors in Enriquez's record; indeed, the Governor commended Enriquez for his "positive steps" and "efforts to improve himself in prison." (CT, Vol. 3, p. 657.) Nevertheless, the Governor found that the negative factors, including Enriquez's "extensive history of violent and manipulative behavior" and other risk factors, including his lack of credibility, his mental state, and the 2020 comprehensive risk assessment, outweighed the positive factors and amount to evidence that Enriquez remains a current danger to public safety. (*Id.* at pp. 657-657.) Such a finding was not arbitrary and was well within the Governor's discretion. (See *Shaputis II*, 53 Cal.4th at p. 211.)

The superior court also failed to give due deference to the Governor's credibility findings as required by law. Rather, the

superior court disagreed with the Governor's assessment by finding that the *psychologist* and the *Board* made contrary findings. (CT, Vol. 3, p. 707.) But the Governor's credibility determination—even if different than a psychologist's or the Board's—was not arbitrary, is supported by the record, and is therefore entitled to deference. (See *Shaputis II*, *supra*, 53 Cal.4th p. 214 [a court may not "substitute its own credibility determination" for that of the Governor]; *In re Tripp*, *supra*, 150 Cal.App.4th at p. 318 [same]; *In re Rozzo* (2009) 172 Cal.App.4th 40, 62 ["'the Governor ... has broad discretion to disagree with his State's forensic psychologists....'"].)

Here, it was not unreasonable for the Governor to question Enriquez's credibility in light of Enriquez's life crime and violent past behavior, Enriquez's "ingrained patterns of antisocial and narcissistic thinking," and risk factors, including "'significant personality disorder traits, substance abuse issues, extremely negative/violent attitudes, involvement with antisocial individuals, and limited insight into these issues.'" (See Arg. I, *supra*.) Under a proper some-evidence review, the superior court was not free to disregard the Governor's determination in favor of the Board, psychologists, or anyone else. (*Shaputis II*, at p. 211 [weighing of the evidence is reserved for the Governor].) The superior court erred in finding otherwise.

As discussed in detail above, a review of the entire record in the most favorable light, giving deference to the Governor's determination regarding Enriquez's credibility, reveals that it was not unreasonable to the point of arbitrariness for the

Governor to conclude that Enriquez remains a current unreasonable risk to public safety and "must do more to demonstrate that his desistence from misconduct represents an authentic and enduring transformation in thought and conduct, and not merely an attempt to game the system for his needs." (CT, Vol. 3, pp. 662-663; *Shaputis II*, *supra*, 53 Cal.4th at p. 212; *In re Pugh* (2012) 205 Cal.App.4th 260, 273.) Therefore, it cannot be said that the evidence reflecting Enriquez's public safety risk leads to but *one* conclusion. (*Shaputis II*, at p. 211.) Because the superior court did not properly review the Governor's decision, and because there is at least a modicum of evidence supporting it, the superior court erred in granting the petition.

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CONCLUSION

For the foregoing reasons, appellant respectfully requests the Court to find that the Governor's 2020 decision satisfies due process, and reverse the superior court's order granting Enriquez's petition.

Respectfully submitted,

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March 1, 2022

CERTIFICATE OF COMPLIANCE

I certify that the attached **APPELLANT'S OPENING BRIEF** uses a 13 point Century Schoolbook font and contains **3,498** words.

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March 1, 2022

LA2021602111

DECLARATION OF ELECTRONIC SERVICE AND SERVICE BY U.S. MAIL

Case Name: In re Rene Enriquez Case No.: B315914

I declare:
I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collecting and processing electronic and physical correspondence. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically. Participants in this case who are not registered with TrueFiling will receive hard copies of said correspondence through the mail via the United States Postal Service or a commercial carrier.

On March 1, 2022, I electronically served the attached APPELLANT'S OPENING BRIEF by transmitting a true copy via this Court's TrueFiling system. Because one or more of the participants in this case have not registered with the Court's TrueFiling system or are unable to receive electronic correspondence, on March 1, 2022, a true copy thereof enclosed in a sealed envelope has been placed in the internal mail collection system at the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA 90013-1230, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on March 1, 2022, at Los Angeles, California.

J. Garcia	*/s/ J. Garcia*
Declarant for eFiling	Signature

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on March 1, 2022, at Los Angeles, California.

D. Beltoya	*/s/ D. Beltoya*
Declarant for U.S. Mail	Signature