In re Carron

2005 | Cited 0 times | California Court of Appeal | May 31, 2005

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Terry Corron has been incarcerated since November 1987 for attempted first degree murder (Pen. Code, §§ 664/187).[1] In April 2002, a panel of the Board of Prison Terms (Board) concluded that he was suitable for parole and set a parole date. After the Governor referred the matter back to the Board to review its decision en banc, a different panel of the Board rescinded Corron's parole date. Corron filed a petition for writ of habeas corpus in which he alleged that the decision was not supported by any evidence. The superior court granted the writ and issued an order directing Corron's release. On appeal, the Board contends that there is some evidence to support its decision to rescind parole.[2] For the reasons stated below, we reverse.

I. Statement of Facts

In November 1987, Corron was convicted of attempted first degree murder with a great bodily injury enhancement after he tried to kill Judy Evans, his co-worker, at a hospital in Monterey. Corron strangled her with his bare hands, threw her to the floor, and continued strangling her until she lost consciousness. After the attack, he went home and waited for the police. Following his conviction, the minimum parole date was set at February 16, 1994.

On April 24, 2002, Corron appeared before the Board for a parole consideration hearing. During the hearing, Corron was questioned about various aspects of his case. The Board then found him suitable for parole, stating "[t]he Panel has reviewed all information received from the public and relied on the following circumstances in concluding that the prisoner is suitable for parole and would pose a - would not pose an unreasonable risk of danger to society or a threat to public safety if released from prison. One, the prisoner has no juvenile record of assaulting others. He has a stable social history, as exhibited by reasonable, stable relationships with others. While imprisoned, has enhanced his ability to function within the law upon release through participation in educational programs - or strike that, self-help and therapy, vocational programs, and institutional job assignments. He lacks a history of violent crime. Because of maturation, growth, greater understanding and/or advanced age, has reduced probability of recidivism. Has realistic parole plans, which include a job offer and/or family support. Has maintained close family ties while imprisoned via letters and/or visits. Has

maintained positive institutional behavior which indicates significant improvement in self-control. The prisoner has received no 115s or 128s in his entirety of incarceration. Showed signs of remorse. He indicates - indicated that he understands the nature and the magnitude of the offense and accepts responsibility for the criminal behavior and has a desire to change towards good citizenship. The psychosocial factors, the report dated 12/13/99, authored by . . . J.C. Detota . . . also on the August 22nd of 2000 report as well, it is favorable in that the prisoner has no mental defects, has good insight, feelings - feels a great deal of remorse and empathy. There are no overt elements present that would create a situation of dangerousness."

On August 21, 2002, the Governor informed Corron that he had reviewed the parole decision pursuant to Penal Code section 3041.1, and was referring the matter back to the Board so that it could review its decision en banc.[3] The Governor expressed his concern that Corron's release would pose a risk of danger to public safety, and that the gravity of the offense had been given inadequate consideration.

On September 11, 2002, after conducting this review, the Board voted to schedule a parole rescission hearing for Corron. The Board directed the rescission hearing panel to consider the following factors: (1) the gravity of the commitment offense; (2) his minimization of his culpability for the crime; (3) the impact of the offense on the victim; (4) his unstable social history; (5) his substance abuse history; (6) his recent psychological evaluation; (7) his recent life prisoner evaluations; and (8) opposition to parole from the Monterey County District Attorney.

On November 19, 2002, the rescission hearing was held. The Board found good cause to rescind Corron's parole date on the grounds that the granting panel had inadequately considered the first, third, fourth, and eighth factors. The Board's decision states: "The panel finds the granting panel did not explore all elements of the commitment offense including causative factors, sexual implications, and aggravating factors sufficiently. The panel was silent on the fact the prisoner used his position of trust and authority as a security officer to facilitate his criminal intent. . . . The panel finds the granting panel gave inadequate weight to the trauma sustained by the victim as indicated by her testimony at the hearing on 10-1-97. The victim articulated physical problems exacerbated by the assault and continued fear for her safety. . . . The panel finds the granting panel concluded the prisoner had a stable social history which is contrary to the facts available indicating a traumatic childhood. . . . The panel finds the granting panel gave inadequate consideration to the letter in opposition to parole by D.D.A. Aleire, DTD 4-22-02. Disposition: The panel finds the cumulative gravity of the issues raised warrant rescission of the parole date granted on 4-24-02." The Board dismissed the remaining grounds due to lack of evidence.

After exhausting his administrative remedies, Corron filed a petition for writ of habeas corpus in which he alleged that there was no factual basis for the rescinding panel's findings of good cause.[4] On March 16, 2004, the superior court granted the petition for writ of habeas corpus, and ordered that Corron be released.[5]

II. Discussion

The Board contends that the superior court erred, because there was some evidence to support its decision to rescind Corron's parole date.

A. Standard of Review

Where the superior court's findings were based on documentary evidence, this court must independently review the record to determine whether the superior court properly granted the writ. (In re Rosenkrantz (2002) 29 Cal.4th 616, 677.)

B. Board's Authority to Rescind Parole

The Board is authorized to grant parole and set release dates. (Pen. Code, § 3040.) The Board is also authorized to rescind a parole date upon a showing of good cause. (Cal. Code Regs., tit. 15, § 2450; In re Fain (1976) 65 Cal.App.3d 376, 393-394.)[6] Good cause for rescission may exist where the prisoner has engaged in disciplinary misconduct subsequent to the parole grant; the prisoner's mental state has deteriorated; fundamental errors occurred, resulting in the improvident granting of a parole date; or any new information indicating that parole should not occur. (Regs., tit. 15, § 2451; In re Powell (1988) 45 Cal.3d 894, 901.) The Board may also find good cause based on matters other than those enumerated in the regulations. (In re Johnson (1995) 35 Cal.App.4th 160, 168-169.) "Cause for rescission may exist if the [Board] reasonably determines, in its discretion, that parole was `improvidently granted' under the circumstances that appeared at the time of the grant, or that may have appeared since." (In re Powell, supra, 45 Cal.3d at p. 902.) While the Board has broad discretion to rescind a parole grant, it is not absolute. (Ibid. at p. 902.) The Board's determination "must have a factual basis, and may not be based on `whim, caprice or rumor.'" (Ibid., quoting In re McLain (1960) 55 Cal.2d 78, 87.) Thus, there must be "some evidence" to support the Board's decision. (Id. at pp. 904-906.)

At issue in the instant case is whether the Board may rescind its decision to grant parole on the ground that the granting panel inadequately considered the evidence before it. Corron argues that the instant case is governed by In re Caswell (2001) 92 Cal.App.4th 1017, while the Board contends that the Caswell court improperly restricted the holding in In re Powell, supra, 45 Cal.3d 894.

In In re Powell, supra, 45 Cal.3d 894, the Board granted the prisoner a release date of 1982 after holding hearings in 1977 and 1979. However, in 1980, a counselor indicated concern about his suitability for parole. The Board subsequently scheduled a rescission hearing at which it considered, among other things, three psychological reports that had been prepared after a parole date had been set. Two of the reports supported the grant of parole, while one report supported the rescission of parole. (Id. at pp. 898-901.) The Board rescinded parole based on evidence that there was a substantial likelihood that the prisoner would pose a danger to others if released and that the prior panels had

not adequately considered his escape attempts. Our Supreme Court concluded that the negative aspects of the psychological reports constituted "some evidence" to support the Board's rescission of parole. The court did not resolve whether the Board properly rescinded parole based on the adequacy of the prior panels' consideration of the prisoner's case. (Id. at p. 906, fn. 12)

Two subsequent cases have considered application of the "some evidence" standard where the Board based its decision to rescind on the granting panel's inadequate consideration of evidence. In In re Johnson, supra, 35 Cal.App.4th 160, the granting panel found the prisoner suitable for parole. After the Governor requested the Board to review its decision en banc, the Board held a rescission hearing. The rescission panel rescinded the prisoner's parole based on the granting panel's failure to give adequate weight to a psychological report and to adequately consider the gravity of the crimes. (Id. at p. 168.) The appellate court concluded that "[r]easonable minds could differ as to whether the granting panel of the Board in 1981 gave adequate consideration to the gravity of Johnson's offenses. Reasonable minds could also differ as to whether Johnson's release would pose a danger to public safety and as to whether in that regard adequate consideration was given to the clinical evaluation report by Jean-Jacques. Because the Board's discretion in parole matter is "`great,' `absolute,' and `almost unlimited'" (In re Fain, supra, 65 Cal.App.3d at p. 394), it is certainly broad enough to permit the Board to make the findings herein." (Id. at p. 169.) Thus, the court held that there was sufficient evidence to support the Board's decision to rescind the prisoner's parole. (Id. at p. 170.)

In In re Caswell, supra, 92 Cal.App.4th 1017, the Board found good cause to rescind the grant of parole based on the gravity of the offense and the prisoner's minimization of his role in the offense. (Id. at pp. 1024-1025.) Though the Caswell court recognized that the Board might rescind parole based on these grounds, it emphasized that the rescission panel may not find good cause based upon its disagreement with the granting panel's assessment of the facts. (Id. at p. 1027.) Instead, "the proper focus is on the findings and conclusions that were central to the original panel's ultimate decision to grant parole. When these findings or conclusions cannot be reconciled with the evidence before the granting panel, or when the granting panel misstated facts or explicitly declined to consider information germane to the gravity of the crimes, it can fairly be said that reasonable minds could differ on whether the panel gave adequate consideration to the severity of the crimes. In those instances, `some evidence' of the panel's failure to adequately consider the gravity of the prisoner's offense(s) would exist, thereby justifying rescission of the parole release date." (Id. at p. 1029.)

We disagree with the Board's claim that Caswell improperly limits the Powell holding that due process requires some evidence to support the decision to rescind parole. Caswell, as here, is factually distinguishable from Powell. The basis for rescission in Powell was new evidence, not the inadequate consideration of evidence by the granting panel. (Id. at p. 1028.)

The Caswell court also discussed the analysis in Johnson, stating that "Johnson could be read-incorrectly-to uphold the rescission of a parole release date merely because `reasonable minds could differ' as to the panel's determination of the prisoner's suitability for parole. That is, as long as

there had been `some evidence' before the granting panel that could have reasonably justified a finding of unsuitability, a subsequent panel would have carte blanche to rescind the parole, decades later, for no reason other than its conclusory disagreement with the granting panel's ultimate decision, or mere political aversion to the concept of parole in general. Notwithstanding the nearly absolute discretion of the Board, we find this interpretation of the standard untenable, and not in line with what our Supreme Court had in mind when it decided Powell. Indeed, `some evidence' of unsuitability for parole would exist in virtually every parole hearing, exposing every grant of parole to a Board's subsequent change of heart or political whim." (Id. at p.1029; McQuillion v. Duncan (2002) 306 F.3d 895, 905-906.) We agree with the Caswell court's discussion of Johnson.

C. Gravity of the Crime

The Board contends that the granting panel failed to adequately discuss the gravity of the offense, thereby constituting some evidence to rescind the grant of parole. The Board claims that the granting panel did not discuss the specifics of Corron's fantasy of becoming a serial killer, including that Corron repeatedly watched and was sexually aroused by pornographic movies in which women were sexually assaulted and strangled, that he hid his fantasy of becoming a serial killer from his wife, that he had a list of things to do when murdering a woman, and that he was fascinated by the Boston Strangler and his methods. The Board further asserts that the granting panel did not address the details of the crime, that is, that Corron stayed on duty after his regular shift ended "for the purpose of taking a human life along with a sexual assault," that Corron locked the doors behind him after the attack, thus forcing the victim to crawl several feet while severely injured, that Corron had an elevated blood alcohol level at the time of the offense, and that Corron had black gloves and a 24-inch chain rigged with loops on each end in his car.

Here the granting panel stated at the beginning of the hearing that it would consider Corron's crime, his prior criminal and social histories, and his behavior since his commitment. The granting panel also stated that it had reviewed his central file and his prior transcript.[7] Presiding Commissioner Moore briefly summarized Corron's attack on Evans, and then asked whether Corron fled the scene because he "had done the job." Corron replied, "No, Sir. At that point, from the time that I started the attack until the time that I stopped it, it became a confrontation between the hate and anger I had towards women and my conscience and reality. My conscience and reality won out between point A and point B and I stopped the attack. When I stopped the attack and I left, Ms. Evans was still breathing and still moving around." Corron then thoroughly discussed his motivation for the crime, explaining that he developed hatred towards women at that time due to childhood experiences.

In addition, the granting panel considered the circumstances of the crime during its discussion of a letter from David Alkire, a deputy in the Monterey County District Attorney's Office. Deputy Commissioner Stevenson asked Corron about a statement given to the police in which he stated that he quit choking Evans because he thought that she was dead. Corron responded that he did not remember giving that statement, noting that he knew she was still breathing when he stopped the

attack. Deputy Commissioner Stevenson then stated: "Information also included in the file indicates that this crime may have been the culmination of a fantasy that you were having about murdering a woman. Let me go on, so that you can address the totality of the comments. And the District Attorney notes that your victim here was deliberately selected, because of her isolation in the - in the facility. That you left her alone until another individual, who I guess was present, vacated the area so that you were sure to be alone. It also says that, with regard to the fantasy, that you characterized your fantasy as one of wanting to become a serial killer. That you hid this from your then wife. She was totally unaware that you maintained a secret collection of photographs that showed assaults on women. And that you sexually mutilated pictures of naked women. That you also were found to possess a list of things to do when murdering a woman. And I won't go into that list, but you characterize this as a rage built up because of observations you made as a young child of your father and mother fighting." Corron then explained that he decided within 48 hours of the offense to reveal everything relating to his fantasy to a psychiatrist provided by the district attorney.

As previously noted, the granting panel also considered the probation officer's report that summarized the circumstances of the offense in some detail. This report further concluded that the victim was "particularly vulnerable," the crime was planned," Corron "took advantage of a position of trust or confidence to commit the crime," and "the planning, sophistication or professionalism with which the crime was carried out, or other facts, indicate premeditation." The granting panel indicated its understanding of the circumstances of the offense, stating that "[t]he attempt involved infliction of serious trauma due to strangulation." Though the granting panel failed to discuss the gravity of the offense when it stated its decision to grant parole, it assessed an aggravated term, because "during the commission of the crime, the prisoner had a clear opportunity to cease but instead ... continued" and because Corron "inflicted great bodily injury."

We agree with the Board that the granting panel did not articulate every aspect of the commitment offense either during the hearing or in its decision. However, this court presumes that the granting panel considered the evidence presented to it. (Evid. Code, § 664.) Thus, the record establishes that the granting panel was very familiar with the facts of the commitment offense based on the documents before it. Moreover, the granting panel discussed the offense, questioned Corron about various aspects, and considered the circumstances of the offense before reaching its decision to grant parole. As the trial court stated, "[t]he record clearly demonstrates the exact opposite of what the rescission panel concluded. Indeed, the granting panel's questions focused on the very elements of the crime the rescission panel found were so lacking." Thus, there was insufficient factual support in the record to justify rescission on this ground.

D. Impact of the Offense on the Victim

The Board next argues that the granting panel ignored the impact of the crime on the victim in its decision and did not discuss it.

Here the transcript of the 1997 hearing at which the victim testified as well as the probation officer's report was presented to the granting panel. Again, we must presume that the granting panel considered this evidence. (Evid. Code, § 664.) The probation officer's report summarized the victim's statement regarding the impact on her life. "[A]s a result of the attempt on her life, she suffered a broken shoulder, broken nose, a fractured arm, and cuts and bruises around her face. According to the victim she had to undergo plastic surgery for the cuts and bruises on her face. . . . She further stated that since the attempt on her life she has been having a difficult time communicating to people. . . . Needless to say, she suffered a great deal of mental anguish and for quite some time had problems sleeping at night. Since the offense, Ms. Evans has seen several doctors and psychologists to help her deal with the trauma of her experience. [¶] Financially, Ms. Evans has suffered a substantial loss of income due to her fear of working nights. She is [losing] approximately $125.00 per month from hospital employment. The victim was working at a second job, but was advised by her doctor not to continue with it, thereby losing additional income. . . . [¶] It is obvious that the victim's life has been drastically changed because of the attempt on her life." Moreover, Corron acknowledged at the hearing that the victim suffered both physically and emotionally as a result of his conduct, and that she would never completely recover.

The Board contends, however, that "the fact that the granting panel had the central file containing the relevant victim's testimony does not replace the granting panel's need to articulate what it did and did not consider relevant in reaching its decision." The Board seems to be arguing that the granting panel must state for the record each fact that it has considered to support its decision. There is no such requirement under any statute or administrative regulation. Moreover, here the granting panel did refer to victim impact in its decision, stating that "[t]he attempt involved infliction of serious trauma due to strangulation" and Corron "inflicted great bodily injury." Thus, there was insufficient factual support in the record to justify rescission on the ground that the granting panel ignored the impact of the offense on the victim.

E. Social History

The Board also contends that the granting panel erroneously found that Corron had a stable social history. We agree that the record does not support this finding.

Corron had a significant history of substance abuse. Corron smoked about 20 marijuana cigarettes a day. He was also a chronic, severe alcoholic, and frequently experienced blackouts. Prior to committing the commitment offense, he drank beer and a fifth of vodka. Corron's parents were alcoholics, and his father was physically abusive to his mother. According to Corron, his fantasy of becoming a serial killer and his fascination with the methods of the Boston Strangler stemmed from his childhood observations of his parents' relationship. Based on his childhood experiences, he also had a history of blaming women when his relationships with them were unsuccessful. His animosity towards women was expressed through his secret collection of photographs that depicted assaults on women. Corron also "sexually mutilated pictures of naked women," and possessed a list of things to

do when murdering a woman. Corron conceded at the hearing that when he committed the crime he was a "sick pup" and that his "social history at that point was definitely shaky." The finding that Corron had a stable social history "cannot be reconciled with the evidence before the granting panel," and thus "`some evidence' of the panel's failure to adequately consider the gravity of the prisoner's offenses . . . exist[s], thereby justifying rescission of the parole release date." (In re Caswell, supra, 92 Cal.App.4th at p. 1029.)

Corron argues, however, that this factor was not central to the granting panel's decision to grant parole. We disagree. As Corron conceded at the hearing, his social history, including his motivation and his substance abuse, was a determining factor in the commission of his crime.

F. Opposition to Parole by District Attorney

The Board further contends that the granting panel did not sufficiently address the District Attorney's opposition to parole.

The rescission panel stated: "[T]he District Attorney in his letter raised significant issues and significant questions regarding your suitability for parole. And at that time we feel that the Panel did not adequately - at least adequately put the District Attorney's position on record. At least we feel that the very least they could have done was to have read part of it into the record expressing his concerns, specifically what the specifics were."

However, as previously discussed, the granting panel summarized the letter and discussed it with Corron. The prosecutor's letter stated that he was opposed to a grant of parole, referred to Corron's statement that he stopped choking the victim because he thought she was dead, that Corron selected the victim based on her isolation from others, that Corron had a fantasy about becoming a serial killer, that he had photographs of assaults on women, that he "sexually mutilated pictures of naked women," and that he possessed a list of things to do when murdering a woman. Deputy Commissioner Stevenson summarized the prosecutor's view of Corron as a "serial killer who's out on his first mission," and asked Corron to reconcile the prosecutor's view with his own characterization of events. Corron then explained his actions. Thus, rescission was not justified on this ground.

III. Disposition

The order of the superior court is reversed with directions to deny the writ of habeas corpus.

WE CONCUR: Bamattre-Manoukian, Acting P.J., McAdams, J.

1. This court's caption reflects an incorrect spelling of petitioner's name as "Carron," which is consistent with the superior court's caption.

2. Thomas Goughnour, acting warden at San Quentin State Prison, is also a party to this appeal.

3. Penal Code section 3041.1 provides that "[u]p to 90 days prior to a scheduled parole release date, the Governor shall have the power to request review of any decision concerning the grant or denial of parole to any prisoner in a state prison. The Governor shall state the reason or reasons for the request, and whether the request is based on a public safety concern, a concern that the gravity of current or past convicted offenses may have been given inadequate consideration, or on other factors. When a request has been made, the full board, sitting en banc, shall review the parole decision. In case of a review, a vote in favor of parole by a majority of the current board members shall be required to grant parole to any prisoner. In carrying out any review, the board shall comply with the provisions of this chapter."

4. On December 18, 2003, while the petition was still pending, the Board found Corron suitable for parole and set a release date.

5. The Board filed a petition for writ of supersedeas in which it sought a stay of the superior court's order. On April 22, 2004, this court issued the writ of supersedeas.

6. We will refer to the California Code of Regulations as Regs. in the remainder of this opinion.

7. The central file includes a cumulative case summary, all Board reports, all psychiatric reports, prior parole hearing decisions, notices and responses, and the probation officer's report, which contained a detailed, eight-page discussion of the circumstances of the offense, and the abstract of judgment. Not all of these documents have been included in the record on appeal.