

1 ELBERT LEE VAUGHT

2 RJD, FAC E. 24. C103

3 480 ALTA ROAD

4 SAN DIEGO, CA. 92179

5 # H. 56089

8 SUPREME COURT OF CALIFORNIA

10 WILLIAM M. PALMER II

11 Petitioner,

CASE NO. 5256149

12 v.

13 APPLICATION TO FILE
14 AMICUS CURIAE BRIEF

14 CALIF. DIST. ATTORNEY ASSOC.

15 Respondent.

17 MOVANT, ELBERT LEE VAUGHT IV, RECEIVED
18 AN EN BANC RULING DENYING HIS PETITION FOR REVIEW W/O
19 PREJUDICE, CASE # 5263352, STATING ONLY RELIEF THAT
20 I AM ENTITLED TO WILL BE DECIDED AFTER THIS COURT DECIDES
21 PALMER ON HABEAS CORPUS, #5256149.

22 GIVEN SUCH RULING, PETITIONER IS NOW WITH STAND-
23 ING TO WEIGH IN ON THE MERITS AT HAND IN ALL DUE FAIRNESS,
24 SINCE THIS COURT HAS NOW LINKED THESE TWO CASES, WHILE
25 PETITIONER BEING PRO SE IS AFFORDED GREAT LEEWAY UPON
26 SUCH MATTERS.

27 PETITIONER FEELS THAT IN THE INTERESTS OF JUSTICE
28 WITHIN HIS OWN CASE, HE SHOULD BE AFFORDED AMICUS

1 curiae status, and be able to submit attached
2 declaration; Vaught AS AMICUS CURIAE, for parties con-
3 sideration.

4 On 9.9.2020, Petitioner received notice that his
5 petition for review and Palmer II mirror each other enough
6 to not entertain other two issues in Vaught's Petition but
7 to shelf Vaught until Palmer II is decided in order to
8 give Vaught a ruling on the main issue of disproportionate
9 sentence to the point of becoming a state and Federal
10 Constitutional violation.

11 For those reasons Vaught, I now believe I have
12 proper standing and a vested interest to be allowed to
13 weigh in my humble opinion for everyone to mull over. I
14 unlike Palmer am still living this daily nightmare of my on-
15 going constitutional protections being violated to the ex-
16 treme. I've been often told "you have 24 years in, what's
17 another few months," my response is simple, "have you done
18 24 years in a cement box away from your family for
19 a property crime?"

20 I am content with my participation of oral
21 argument by my declaration given to all parties and filed
22 with the court for consideration and thoughtful contemplation
23 with human beings in mind, drug addicts be it, they are still
24 part of our society with a brain disease, we need a hand up not
25 a kick to the head while we are down.

26 I declare under penalty of perjury that the
27 foregoing is true and correct to the best of my abilities.

28 Dated: 10.3.2020

Signed: Elbert Lee Vaught IV
ELBERT LEE VAUGHT IV

1 ELBERT LEE VAUGHT IV

2 RJD FAC E 24 C103

FILED OCT 20, 2020

3 480 ALTA ROAD

WITH PERMISSION

4 SAN DIEGO, CA, 92149

5 # H 56089

6
7
8 SUPREME COURT OF CALIFORNIA

9
10 WILLIAM M. PALMER II

11 Petitioner,

CASE NO. 5256149

12 v.

13
14 CALIF. DIST. ATTORNEY ASSOC.

15 Respondants

DECLARATION OF ELBERT

LEE VAUGHT IV, AS

AMICUS CURIAE.

16
17 DECLARATION

18 I, ELBERT LEE VAUGHT IV, LIKE PALMER II, DUE
19 TO PERSONAL CULPABILITY, HAVE HAD MY CONSTITUTIONAL
20 RIGHTS UNDER THE CALIFORNIA AS WELL AS UNITED STATES
21 CONSTITUTION VIOLATED IN THE MOST HARSHEST DEGREE.

22 PALMER'S CRIME WHILE ARMED WITH A WEAPON, IT
23 WAS UNLOADED, WHILE BEING 17 AT THE TIME WAS OBVIOUS-
24 LY WORRIED ABOUT SOMEONE BEING SERIOUSLY INJURED AND
25 TOOK THE NECESSARY STEPS TO PREVENT THAT AS MUCH AS
26 POSSIBLE OR SO HE THOUGHT, NOT INCLUDING HIMSELF.

27 PETITIONER'S CRIME WAS A RESIDENTIAL BURGLARY
28 OF AN UNOCCUPIED DWELING, PETITIONER ACTUALLY NEVER

1 EXITED HIS VEHICLE DURING COMMISSION OF CRIME,
2 HIS CO-DEF. DANIEL LANNING WAS THE SOLE PERPETRATOR
3 TO ENTER RESIDENCE.

4 ANY CRIME WITHOUT VIOLENCE (PHYSICAL), TO
5 WHERE AN INDIVIDUAL IS DOING OVER TWENTY YEARS CLEARLY
6 FALLS WITHIN THE LYNCH STANDARD AND TECHNIQUE. IT
7 WOULD BE UPSURD TO EXPECT SOCIETY TO THINK OTHERWISE.
8 PETITIONERS MOTIVE WAS DRUG MOTIVATED, I AM UNAWARE
9 OF MOTIVE FOR PALMER BUT ON AN EDUCATED GUESS I WOULD
10 SAY IT WAS ALSO MOTIVATED BEHIND DRUG ADDICTION, FOR
11 THAT IS THE ONLY REASON, PETITIONER HAS EVER COMMITTED
12 ANY CRIME.

13 AS WITH PALMER PETITIONER WAS ONLY 24 AT TIME
14 OF CRIME, AND LEARNED HIS FIRST TERM, TO ONLY "VICTIMIZE
15 PEOPLE IN THE GAME", THE REASON I WOULD NOT ENTER
16 THE RESIDENCE, FAULTY THINKING, OF COURSE!!!! MY
17 POINT, JUVENILE THINKING COUPLED WITH DRUG ADDICTION,
18 NO GOOD DECISIONS ARE GOING TO COME FORTH.

19 HOWEVER, UNDER OUR GREAT CALIFORNIA CONSTITU-
20 TION, A SENTENCE MUST BE INVALIDATED AS UNCONSTITUTION-
21 AL IF IT GROSSLY IS DISPROPORTIONATE TO THE INDIVIDUAL
22 CULPABILITY OR SHOCKS THE CONSCIENCE AND OFFENDS FUNDA-
23 MENTAL NOTIONS OF HUMAN DIGNITY.

24 THAT DESCRIPTION IS THE PERFECT RESPONSE
25 I GET FROM ANYONE, EXCEPT BPH, WHEN I TELL THEM
26 I AM NOW WORKING ON MY 25th YEAR FOR A BURGLARY
27 TO WIT I SAT IN CAR AND THE VICTIMS GOT ALL THEIR
28 ⁵1000 DOLLARS WORTH OF PROPERTY BACK 30 MINUTES LATER

1 PALMER SERVED 30 YEARS ON A LIFE WITH
2 PAROLE, SERIAL DENIALS OF PAROLE RESULTED IN THE
3 PUNISHMENT SO DISPROPORTIONATE TO LIFE'S INDIVIDUAL
4 CULPABILITY FOR THE OFFENSE HE COMMITTED, THAT IT
5 MUST BE DEEMED CONSTITUTIONALLY EXCESSIVE.

6 PETITIONER VAUGHT, PER PASSAGE OF PROP. 57,
7 AMENDING OUR GREAT CALIFORNIA CONSTITUTION, HAS BEEN
8 ELIGIBLE FOR EARLY RELEASE CONSIDERATION SINCE 2002,
9 AFTER SERVING THE FULL LENGTH OF HIS PRIMARY. FOR BPH
10 TO DENY VAUGHT FOR 3 YEARS IN DECEMBER 26th, 2019,
11 3 YEARS AFTER PASSAGE OF CONSTITUTIONAL AMENDMENT,
12 MIRRORS PALMER'S SERIAL DENIALS, (SLIGHT DIFFERENCE IN
13 DETAILS SAME RESULT), A PUNISHMENT NOW BECOMING SO
14 DISPROPORTIONATE TO LIFE'S INDIVIDUAL CULPABILITY FOR
15 THE OFFENSE HE COMMITTED, THAT IT MUST ALSO BE DEEM-
16 ED CONSTITUTIONALLY EXCESSIVE.

17 PETITIONER VAUGHT HAS SUCH AN INTEREST
18 IN THIS CASE DUE TO ABOVE ACTIONS BY BPH, FLAUNTING
19 VOTER INTENT BY DENYING ME PAROLE ON DEC. 26th 2019,
20 WHILE BRINGING THEM 23 YEARS 9 MONTHS ON A NOW
21 6 YEAR PRIMARY, THIS IS THE DEFINITION OF CUEL AND
22 UNUSUAL PUNISHMENT.

23 PROP. 54'S AMENOMENT OF THE CALIFORNIA CONST-
24 ITUTION GIVES VAUGHT STANDING TO HAVE HIS CAUSE, IN
25 WHATEVER WAY QUICKEST, ADJUDICATED AND JUSTICE AFFORDED
26 TO HIM, PETITIONER BELIEVES ALONG WITH PALMER THAT
27 HIS RETENTION HAS BECOME UNAUTHORIZED FOR IT IS
28 BEYOND THE CONSTITUTIONAL MAXIMUM PERIOD OF CONFIN-

1 MENT, AND AS INMATES MAY BRING THEIR CLAIMS
2 DIRECTLY TO COURT THROUGH PETITIONS FOR HABEAS
3 CORPUS IF THEY BELIEVE, BECAUSE OF PARTICULAR CIR-
4 CUMSTANCES OF THEIR CRIMES, THAT THEIR CONFINEMENTS
5 HAVE BECOME CONSTITUTIONALLY EXCESSIVE AS A RESULT,
6 PETITIONER BELIEVES HE SHOULD BE AFFORDED HIS
7 OPINION TO SUCH MATTER AND HIS CASE RESOLVED
8 ALONG SIDE PALMER'S TO PREVENT ANY FURTHER DELAY
9 IN OBTAINING THE ALREADY LONG OVERDUE JUSTICE THAT
10 HAS ELUDED HIM.

11 UNLIKE PALMER, PETITIONER IS STILL INCARCERA-
12 TED, AND THE INFLECTION OF CRUEL AND UNUSUAL PUNISH-
13 MENT CONTINUES DAY AFTER DAY IN VIOLATION OF THE
14 FEDERAL AND STATE CONSTITUTIONS, THEREFORE PET-
15 ITIONER EXPECTS NO MORE BUT WILL BE SATISFIED WITH
16 THIS AMICUS CURIAE DECLARATION IN SUPPORT OF PALMER
17 ALONG WITH HIMSELF BE PROVIDED BY THE COURT TO ALL
18 INVOLVED PARTIES FOR HIS PART OF ORAL ARGUMENT.

19 PETITIONER, BEING THAT HIS ENTIRE RECORD
20 IS BEFORE THE COURT, FEELS THAT EQUITABLE RELIEF
21 BE AFFORDED HIM ALONG THE SAME TIME LINE AS
22 PALMER, DUE TO SIMILAR AND LESS THAN YOU
23 COULD SAY DUE TO PROP. 57, WHICH COULD ALSO
24 AFFORD ALL THE NON-VIOLENT THIRD STRIKERS A
25 REMEDY THAT IS NOT IN VIOLATION OF THE CALIF-
26 ORNIA OR UNITED STATES CONSTITUTION IF THEY SO
27 CHOSE TO FIND IT AS PETITIONER DID, UNFORTUNATE-
28 LY IT WOULD BE FEW, HOWEVER, THEY WOULD BE THE

1 DESERVING AND ON THE CORRECT PATH AS THIS
2 HONORABLE COURT IS AWARE.

3 PETITIONER IS FULLY AWARE OF THE LIMITED
4 REVIEW TO THE FOLLOWING ISSUES: (1) Did this life
5 prisoner's continued confinement become constitution-
6 ally disproportionate under article I, section 17 of the
7 California Constitution and/or Eighth Amendment of the
8 United States Constitution? (2) If this life prisoner's continued
9 confinement became constitutionally disproportionate, what
10 is the proper remedy?

11 Petitioner's Petition for review was denied
12 without prejudice due to any relief which might be
13 afforded him after the Court decides Palmer II, well
14 petitioner also expects to be ruled upon expeditiously
15 like, due to this Honorable Court putting him on
16 the shelf on this ground, and not even mentioning
17 other grounds.

18 Therefore in all fairness and justness,
19 petitioner believes he should be resolved by the
20 courts own doing upon grant of Palmer II, however,
21 petitioner is not sure how to go about this.

22 However, petitioner, does know without
23 a doubt that Palmer's rights were definitely vio-
24 lated under both the California and United States
25 Constitutions. He was 17 at the time, most
26 likely drug induced, but still had the mind frame
27 to use an unloaded gun, yeah he scared, well
28 would of scared your normal victim, more than

1 an officer of the law would be, to be realistic
2 yeah the victim didn't know the gun was unloaded but
3 still walked Palmer into a setup telling him he had
4 a bank card, knowing when they get to the bank, they
5 would get out, the vehicle between them for cover,
6 and he opened up on Palmer, he was lucky to not be
7 killed actually.

8 So yeah, 17 year old kid, probably just
9 trying to obtain money to buy more drugs, had the
10 compassion to use an unloaded gun. Did he scare
11 the victim through fear, yes I'm sure, it was an
12 off duty cop, did he deserve the sentence he got,
13 maybe, did he deserve to do 30 years on it, no
14 he most certainly did not.

15 Again, Palmer II needs to be given justice,
16 not only for him but for the others as well that are
17 being unjustly denied parole by this arbitrary
18 murder Board. Petitioner is a non-violent 3rd
19 striker who's primary is 6 years, I have served
20 4 times that and was denied 3 years, 3 years
21 after the voters made their intent known that is my
22 entire 6 year primary again.

23 Like Palmer, there are many, I am
24 just one, but I also am being denied justice while
25 violating my constitutional rights under the Calif-
26 ornia and United States constitution proscription
27 against cruel and unusual punishment for I have
28 served 24 years 7 months, now on a 6 year primary.

1 a non-violent crime, I am the guy that
2 the voters intended for Prop. 57 to let go, not get
3 a 3 year denial by BPH (board) a murder board
4 at that.

5 It doesn't matter that I am a Blackstone
6 Paralegal graduate with 93% test average, or
7 that I have 10 years of rehabilitative efforts,
8 along with no violence on my jacket, in or out.

9 No, like Palmer II, all that matters
10 now is the gross amount of time we were/are
11 made to live on crimes where no one was even
12 physically hurt and are personal culpability
13 was such that it makes uglier and uglier under
14 our great California constitution with the more light
15 you shine upon it.

16 Enough is enough, these are people we
17 are talking about, my mother has been without
18 her son for 25 years due to a property crime,
19 when is enough enough, her son didn't take
20 a life, why should she lose her son for the
21 remainder of her life.

22 Therefore, along with Petitioner's thoughts
23 is a plea for justice and release as soon as the
24 Docket sees fit, I declare under penalty of
25 perjury the foregoing to true and correct to my
26 personal knowledge and sincere belief, I will attest
27 to any of the foregoing if asked to do so. Sincerely,
28 Dated: 10.3.2020 Signed: Elbert Lee Valient IV
ELBERT LEE VALIENT IV

S263352

CONFORMED COPY
HC-001

Name: ELBERT LEE VAUGHT IV
Address: RSD, FAC E, 24, C103
480 Alta Road
San Diego, Ca
92179

Please return stamped
file cover page

SUPREME COURT
FILED

CDC or ID Number: H.56089

JUL 16 2020

Supreme Court of
California

Jorge Navarrete Clerk

(Court)

Deputy

Please Expedite

PETITION FOR WRIT OF HABEAS CORPUS

FILED AS PETITION FOR REVIEW

No. _____

(To be supplied by the Clerk of the Court)

<u>Elbert Lee Vaught IV</u>
Petitioner
vs.
<u>Board of Parole Hearings</u>
Respondent

INSTRUCTIONS—READ CAREFULLY

- If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.
- If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.

- Read the entire form *before* answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the superior court, you only need to file the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal, file the original of the petition and one set of any supporting documents.
- If you are filing this petition in the California Supreme Court, file the original and 10 copies of the petition and, if separately bound, an original and 2 copies of any supporting documents.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.

Approved by the Judicial Council of California for use under rule 8.380 of the California Rules of Court (as amended effective January 1, 2016). Subsequent amendments to rule 8.380 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.

RECEIVED

Page 1 of 6

PETITION FOR WRIT OF HABEAS CORPUS

JUL 16 2020

Penal Code, § 1473 at seq.;
Cal. Rules of Court, rule 8.380
www.courts.ca.gov

PETITION FOR REVIEW

The July 10th 2020, POST CARD DENIAL IS UNCONSTITUTIONAL AND IN VIOLATION OF MY DUE PROCESS PROTECTIONS.

THIS IS THE CORRECT PROCESS TO BRING THIS WRIT PER PENAL CODE §1506; California Rules of Court, rule 8.500(a)(1); In re Michael E., (1975) 15 Cal. 3d 183, 193 n. 15 [123 Cal. Rptr. 103]. Ground 1

Petitioner Elbert Lee Vaught II, brings suit challenging the [BPH] decision on grounds of being cruel and unusual, being disproportionate time served due to my crime and my personal culpability of sitting in vehicle during commission of an unoccupied residence during a residential burglary by co-def. Daniel Lanning.

I was sentenced to 30 years to life and have been incarcerated for 24 years on a non-violent property crime. Due to the enactment of proposition 59, petitioner became eligible for early parole consideration in 2002.

However, in December 26th 2019, three years after the California Constitution was in fact amended to provide me such relief, I was given a 3 year denial from BPH, in violation of such amendment. This is the definition of cruel and unusual punishment in every sense.

(1a.)

GROUND 2

The BPH violated petitioners protected liberty interest in parole and due process by finding him unsuitable for parole without reliable evidence of current dangerousness.

GROUND 3

The BPH relied to heavily on the Comprehensive Risk Assessment (CRA), which concluded petitioner to be a High risk for re-commitment of a violent crime. Petitioner has never been convicted of a violent crime to date, go figure.

The California Constitution along with the U.S. Constitution forbids Cruel and Unusual Punishment along with violations of Due Process.

Petitioners issues are simple and in need of justice to be served to him in whatever form this Honorable court deem.

Twenty-four years served is quite long enough on a 6 year primary, if the role was reversed and I had just finished my 6 years due to being arrested say in 2014 do you think BPH would deny me for 18 years, not if I was committing violence once a year. This is a ridiculous waste of my life and the courts time and resources. Please enforce the justice.

REQUEST FOR RELIEF

Petitioner, is without remedy save this writ of Habeas Corpus, petitioner request this court:

- 1) Issue a writ of habeas corpus;
- 2) Issue an Order to show cause;
- 3) Expedite briefing due to ongoing constitutional violation of state and Federal constitutional protections.
- 4) Grant any and all appropriate relief;
- 5) Correct the injustice of BPH and CIOCR actions flaunting voter intent of California, and violation of constitution as such.

Conclusion of Writ

FOR THE ABOVE STATED REASONS OF ONGOING VIOLATIONS OF THE CALIFORNIA AND FEDERAL CONSTITUTIONS AS WELL AS DUE PROCESS, PETITIONER SHOULD BE IMMEDIATELY RELEASED AS SOON AS THE DOCKET SEES AN OPENING ON CALENDAR, 24 YEARS ON A NON-VIOLENT CRIME AFTER PASSAGE OF PROP. 57, IS BLATANTLY SMUGGLING VOTER INTENT AS WELL AS THE SPIRIT OF THE LAW. OUR GREAT CALIFORNIA CONSTITUTION STATES THAT IT IS AS I PROCLAIM. TO KEEP ME IN PRISON IS A VIOLATION OF CRUEL AND UNUSUAL PUNISHMENT IN ANY FACET OF LAW, according to my personal circumstances, period.

Dated: July 14, 2020 Signed: Robert Lee Vaughn IV
ERBERT LEE VAUGHN IV

SUPREME COURT
FILED

Court of Appeal, Fourth Appellate District, Division Three - No. G059184 SEP 9 2020

S263352

Jorge Navarrete Clerk

IN THE SUPREME COURT OF CALIFORNIA

Deputy

En Banc

In re ELBERT LEE VAUGHT on Habeas Corpus.

The petition for review is denied without prejudice to any relief to which petitioner might be entitled after this court decides *Palmer on Habeas Corpus*, S256149.

CANTIL-SAKAUYE

Chief Justice

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re ELBERT LEE VAUGHT
on Habeas Corpus.

G059184

(Super. Ct. No. 96HF0215)

ORDER

THE COURT:*

The petition for a writ of habeas corpus is DENIED.

O'LEARY, P. J.

* Before O'Leary, P. J., Moore, J., and Aronson, J.

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

MAY 04 2020

DAVID H. YAMASAKI, Clerk of the Court

BY: D. IBARRA, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

In re ELBERT LEE VAUGHT, IV,)	Case # M-18495
)	(#96HF0215)
Petitioner,)	DENIAL OF PETITION
)	FOR WRIT OF
<u>ON HABEAS CORPUS</u>)	HABEAS CORPUS

TO THE PEOPLE OF THE STATE OF CALIFORNIA AND TO PETITIONER IN PRO PER:

On 4/27/2020, the petitioner filed a pro per habeas corpus application.
The petition for writ of habeas corpus is denied for the reasons hereinafter stated.

PROCEDURAL HISTORY

According to the Court of Appeal opinion pertaining to an earlier petition for writ of habeas corpus, a jury convicted petitioner of one count of residential burglary (Penal Code § 459-460 (a), 461.1) and one count of receiving stolen property (Penal Code § 496 (a).) Petitioner admitted having suffered six prior strike convictions (Penal Code § 667 (d) & (e) (2)) and one prior serious felony conviction (Penal Code § 667 (a) (1)). Under the Three Strikes law, petitioner was sentenced to 25 years to life for the burglary, plus a five-year enhancement for the serious felony prior. The conviction was affirmed on appeal in an unpublished opinion in 1998 (G020743). Petitioner is currently serving his sentence as "an indeterminately sentenced nonviolent offender."

On 12/26/2019, the California Board of Parole Hearings (BPH) found petitioner unsuitable for parole following a parole consideration hearing pursuant to Proposition 57. A petition for writ of habeas corpus challenging that ruling was denied on 3/20/2020 on grounds of failure to supply a sufficient record to permit review (M-18391).

Petition for Writ of Habeas Corpus

This time with an adequate record, petitioner again challenges the BPH's decision finding him unsuitable for parole and seeks his outright release on parole claiming:

1. The BPH violated petitioner's protected liberty interest in parole and constitutional right to due process by finding him unsuitable for parole without reliable evidence of current dangerousness.
2. Petitioner's continued imprisonment amounts to an excessive sentence in violation of federal and state constitutional proscriptions against cruel and unusual punishment.
3. The BPH relied too heavily on the Comprehensive Risk Assessment, which concluded petitioner presents a markedly elevated risk for violence relative to long-term inmates and average risk relative to other parolees. Petitioner contends this type of assessment is better suited to murderers and other violent offenders, rather than nonviolent offenders such as himself.

As his remedy, petitioner seeks "immediate release per se – and without parole due to the servitude of a prison term grossly disproportionate to his offense."

Petitioner provided a self-executed (and thus technically defective) proof of service showing service on the Orange County District Attorney by mail on 3/12/2020.

DISCUSSION

Habeas corpus is a proper remedy to test the propriety of proceedings before the Board of Parole Hearings. (*In re Powell* (1988) 45 Cal.3d 894, 903.)

Standard of Review

"The panel or the board, sitting en banc, shall grant parole to an inmate unless it determines that the gravity of the current convicted offense or offenses, or the timing and gravity of current or past convicted offense or offenses, is such that consideration of the public safety requires a more lengthy period of incarceration for this individual." (PC § 3041(b)(1).)

RELEVANT AND RELIABLE
INFORMATION AVAILABLE TO THE PANEL
SHALL BE CONSIDERED IN DETERMINING SUIT-
ABILITY FOR PAROLE

"Regardless of the length of time served, a life prisoner shall be found unsuitable for and denied parole if in the judgment of the panel the prisoner will pose an unreasonable risk of danger to society if released from prison." (Cal. Code of Regs., tit. 15, § 2402(a).) "All relevant, reliable information available to the panel shall be considered in determining suitability for parole. Such information shall include the circumstances of the prisoner's social history; past and present mental state; past criminal history, including involvement in other criminal misconduct which is reliably documented; the base and other commitment offenses, including behavior before, during and after the crime; past and present attitude toward the crime; any conditions of treatment or control, including the use of special conditions under which the prisoner may safely be released to the community; and any other information which bears on the prisoner's suitability for release. Circumstances which taken alone may not firmly establish unsuitability for parole may contribute to a pattern which results in a finding of unsuitability." (Cal. Code of Regs., tit. 15, § 2402(b).)

In reviewing a parole suitability determination made by the BPH, a court views the record in the light most favorable to that determination. (*In re Shaputis* (2011) 53 Cal.4th 192, 214.) "The Board's decision regarding parole suitability is subject to limited judicial review under the 'some evidence' standard. The 'some evidence' standard of review is extremely deferential ... Review under the 'some evidence' standard simply ensures that parole decisions are supported by a modicum of evidence and are not arbitrary or capricious." (*In re Bettencourt* (2007) 156 Cal.App.4th 780, 797-798 citing *In re Rosenkrantz* (2002) 29 Cal.4th 616, 626, 652, 665.)

"When a court reviews a decision of the Board or the Governor, the relevant inquiry is whether some evidence supports the *decision* of the Board or the Governor that the inmate constitutes a current threat to public safety, and not merely whether some evidence confirms the existence of certain factual findings." (*In re Lawrence* (2008) 44 Cal.4th 1181, 1212.)

"Although the Board and the Governor may rely upon the aggravated circumstances of the commitment offense as a basis for a decision denying parole, the aggravated nature of the crime does not in and of itself provide some evidence of *current* dangerousness to the public unless the record also establishes that something in the prisoner's pre- or post-incarceration history, or his or her current demeanor and mental state, indicates that the implications regarding the prisoner's dangerousness that derive from his or her commission of the

commitment offense remain probative to the statutory determination of a continuing threat to public safety." (*Id.* at 1214.)

The precise manner in which the specified factors relevant to parole suitability are considered and balanced lies within the discretion of the BPH, but the decision must reflect an individualized consideration of the specified criteria and cannot be arbitrary or capricious. It is irrelevant that a court might determine that evidence in the record tending to establish suitability for parole far outweighs evidence demonstrating unsuitability for parole. As long as the decision reflects due consideration of the specified factors as applied to the individual prisoner in accordance with applicable legal standards, the court's review is limited to ascertaining whether there is some evidence in the record that supports the decision. (*In re Rosenkrantz* (2002) 29 Cal.4th 616, 677.)

A reviewing court does "not consider the ultimate issue of whether an inmate is currently dangerous. If the Board's interpretation of the evidence is not arbitrary and reflects due consideration of the relevant factors, we must uphold it. 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 Montgomery* (2012) 208 Cal.App.4th 149, 161.)

Application to Petitioner

Petitioner's claim is without clear merit and may be denied. The record before the court demonstrates the BPH afforded petitioner individualized consideration with respect to his suitability for release on parole taking into account all relevant information before it including petitioner's social and past criminal history as well as petitioner's involvement in the commitment offenses. (See, Penal Code § 3041(b), Cal. Code of Regs., tit. 15, § 2281.) Contrary to petitioner's suggestion, the BPH did not rely too heavily on the Comprehensive Risk Assessment, which concluded petitioner poses a high risk of violence if released. The Board did not ignore or overlook petitioner's various accomplishments in prison, noting with particular approval that petitioner has completed a Paralegal certificate for which he received high marks. Under these circumstances, petitioner does not establish a violation of his constitutional right to due process.

How is a non-violent inmate under the guise of the three strikes law, and now 4 as of Nov 2016, Prop 57, even receive a CRA concluding petitioner poses a high risk of violence if released. Where is the evidence of such, it cannot be substantiated due to BPH just relying totally on CRA, it is only evident by the outcome a 3 year denial, after 3 years to get me to BPH, on 6 primary. Definitely of equal and universal.

In this case, at least "some evidence" supports the Board's conclusion petitioner represents a current threat if released. The Board noted that prior to his life crime, petitioner had compiled a "very dense" history of offenses "one after another." According to the Comprehensive Risk Assessment, beginning in 1990 and continuing until the life crime in 1996, petitioner amassed convictions for trespassing, burglary (multiple occasions), vehicle theft, receiving stolen property, robbery, possession of burglary tools and possession of a controlled substance. While this alone does not demonstrate petitioner would remain dangerous today, it appears he has never lived a crime-free life outside of prison. The Board relied additionally on petitioner's history of disciplinary offenses while in prison. Despite his counsel's reference to petitioner having an "excellent" disciplinary history, the Board noted petitioner had suffered five serious rule violations ("RVR's") in ten years, most recently in 2016 for possession of a cell phone. Although petitioner contended a 2013 incident was not his fault, he did admit being involved in illegal narcotic activity while in prison, though stating he has been clean since January, 2014.

The Board seems to have given particular focus to petitioner's failure to participate in/complete specific programs a Commissioner had instructed him to complete. Petitioner acknowledged having had a significant drug problem but failed to attend Narcotics Anonymous meetings in prison, stating he did not like to be around some of the people in that program. Similarly, petitioner has a history of participation in the Nazi Low Riders gang, and evidently has numerous tattoos pertaining to that affiliation. To petitioner's credit, one of his primary and initial goals is to have those tattoos removed. Petitioner stated he was "stabbed out" of the Nazi Low Riders and is no longer involved in gangs. However, despite being told to do so by the parole commissioner petitioner failed to participate in Criminal Gangs Anonymous, also because he did not like to be around some participants in that program. The Board expressed concern that petitioner demonstrated a "pattern of avoidance" and that he would need to "learn to deal" with such persons if released. Although petitioner expressed a plan to attend NA with his former wife if released, a commissioner pointed out to petitioner he is likely to encounter the same sort of people in the community and that he needs to learn to "go through" the programming. In denying parole, the Board expressed concern petitioner's failure to complete his programming indicates he still lacks the tools needed to reintegrate into society, leaving him susceptible to recidivism.

Additionally, the record supports the Board's conclusion that petitioner has not yet established a sufficient plan for reintegrating into the community. Although petitioner had listed multiple potential occupations, he had no concrete plans. In particular, while he expressed a strong interest in "flipping" houses, he seemed to have no real knowledge of what such a line of work would entail. Similarly, though he has made inquiries to some post-release programs, petitioner seemed reluctant to enter transitional housing, which the Board indicated would be beneficial in light of his long incarceration. Additionally, the Board expressed concern that petitioner was unable to articulate many of the things learned in his programming, such as the cycle of domestic violence. He acknowledged previously having an anger problem and had completed Anger Management. But, the Board expressed concern regarding petitioner's claim he does not get angry anymore, suggesting he has not truly learned the lessons of the program. While acknowledging petitioner has made significant progress, it noted that progress has not been over a lengthy period, particularly in light of the length of petitioner's criminal history. (1990 - 1996)? [6 years] [PROGRAMMING SINCE 2011 BIK. STU. PARA- / LEGAL COUNSEL]

Based on the entire record, the Board's conclusion petitioner continues to present a risk of danger to the community if released on parole is supported by "some evidence."

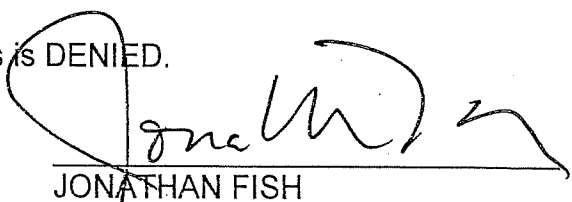
DISPOSITION

(2011 - 2019) [8 years] SIGNIFICANT PROGRESS

The petition for writ of habeas corpus is DENIED.

DATED:

5/4/20



JONATHAN FISH
JUDGE OF THE SUPERIOR COURT

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3 VERIFICATION

4 I am self represented, I make this
5 verification for myself.

6 I have re-read all the contained
7 application to file amicus curiae brief and accompanying
8 declaration of Elbert Lee Vaughn IV and is in
9 accordance to such self wish.

10 I solely believe the matters at hand and
11 contained herein to be true and to the best
12 of my ability and knowledge.

13 I certify under penalty of perjury that
14 the foregoing is true and correct.

15 This declaration of verification was
16 executed on 10-3-2020 at DOROVAN
17 state prison.

18 I sent the aforementioned document(s)
19 to the Cal. Supreme Court.

20 Elbert Lee Vaughn IV
21 ELBERT LEE VAUGHN IV
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PROOF OF SERVICE

I, Elbert Lee Vaught IV, am a resident of R.J. Donovan, in the county of San Diego, state of California, I am over the age of 18. I am a party to the above entitled action, my address is 480 Alta Road, San Diego, Ca. 92179.

ON 10.3.2020, I served the foregoing:

- 1) Application to file an amicus curiae
- 2) Declaration of Elbert Lee Vaught IV, as Amicus curiae.

ON the parties listed hereafter by placing a true copy thereof, enclosed in a sealed envelope, with postage thereon fully paid, in U.S. mail, here a RFD.

1) ATTORNEY GENERAL - San Francisco 455 Golden Gate Ave Ste. 11000
San Francisco, CA. 94111

2) Board of parole Hearings: Non Title Respondent
Amanda Jane Murray, OFFICE OF ATTORNEY GENERAL, SUITE 11000 94102-7069
San Francisco

3) SENTENCING PROJECT 1515 Agate Street Eugene, OR. 97403

4) HUMAN RIGHTS WATCH - 350 South Grand Avenue, 50th Floor
Los Angeles, CA. 90071

5) LEGAL SERVICES ORGANIZATION, P.O. BOX 209090 NEW HAVEN CT

6) KEKER, VAN NEST & PETERS LLP 633 BATTERY ST. SAN FRANCISCO, CA. 94111-1809
86520

I, Elbert Lee Vaught, declare under penalty of perjury that the foregoing is true and correct.

Dated: 10.3.2020

Signed: Elbert Lee Vaught IV
ELBERT LEE VAUGHT IV

EVERETT LEE VAUGHN 1456083

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Master

10/05/2020

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Individual business

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