In the Supreme Court of the State of California

SUPREME COURT COPY

In re **RICHARD SHAPUTIS,** **On Habeas Corpus.**	Case No. S188655

Fourth Appellate District, Division One, Case No. D056825

OPENING BRIEF

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ISSUE PRESENTED

Where the Board identifies the nexus between an inmate's past violent conduct and his current risk to public safety as a lack of insight into the causes of, and failure to take responsibility for, his past violent behavior, must a court defer to the Board's weighing of the conflicting evidence regarding the inmate's insight?

STATEMENT OF THE CASE

Richard Shaputis was convicted in 1987 for murdering his wife, Erma, with a close-range gunshot to her neck. (*In re Shaputis* (Nov. 17, 2010, D056825) [nonpub. opn.]; Slip opn. at pp. 1, 4-5.) He was sentenced to fifteen years to life in prison with an additional two-year sentence for the use of a firearm. (*Id.* at pp. 1, 4.)

The murder was Shaputis's first felony conviction, but he had a long history of domestic violence. (Slip opn. at pp. 4-5.) Over twenty-three years of marriage, Shaputis repeatedly beat Erma, cracked her ribs, threatened her life, and fired a gun at her during a drunken argument. (*Id.* at p. 4.) Shaputis was also abusive to his previous wife and his children from both marriages. (*Ibid.*) He pled no contest to misdemeanor soliciting or engaging in a lewd act after he was charged with twice raping his daughter. (*Id.* at pp. 5-6.)

In 2004, the Board of Parole Hearings found Shaputis unsuitable for parole given the gravity of the offense and his history of domestic violence. (Slip opn. at p. 8.) He challenged the Board's decision by filing a petition for a writ of habeas corpus in the San Diego County Superior Court. (*Ibid.*) When this superior court petition was denied, he filed another one in the Court of Appeal for the Fourth Appellate District, which was granted in a split decision. (*Id.* at pp. 8-9.) The appellate court found that the Board's decision "was contrary to the only reliable evidence of his current

dangerousness and relied on findings unsupported by any evidence," and it ordered the Board to reconsider Shaputis's suitability for parole. (*Ibid.*) In doing so, however, the appellate court ruled the Board could only consider evidence that was new or different than what was presented at the 2004 hearing. (*Ibid.*)

The Board held the court-ordered hearing in 2006 and found that Shaputis continued to demonstrate a lack of understanding as to why had he murdered his wife and was abusive. (Slip opn. at pp. 9-10.) In making this finding, the Board considered a 2005 psychological evaluation, which noted that Shaputis could have schizoid tendencies because he continued to insist that his daughter's allegations of molestation and abuse were "inexplicable" and had a flat affect when discussing the allegations. (*In re Shaputis* (2008) 44 Cal.4th 1241, 1252.) Nevertheless, the Board reluctantly granted Shaputis parole because it believed it was compelled to do so by the appellate court's directive. (Slip opn. at pp. 10-11.)

Governor Arnold Schwarzenegger reversed the Board's decision based on his conclusion that parole was improper given the circumstances of the crime and because Shaputis failed to accept responsibility for his violent behavior. (*Id.* at p. 11.) For the second time, Shaputis petitioned for a writ of habeas corpus in the court of appeal, and in another split decision, the court of appeal agreed with him. It concluded that the evidence was insufficient to support the Governor's decision. (Slip opn. at pp. 11-12.) This Court granted review and reversed. (*In re Shaputis, supra,* 44 Cal.4th at pp. 1260-1261.) Disagreeing with the appellate court, this Court found that the evidence was sufficient to support Shaputis's parole denial. (*Id.* at p. 1241.)

Since this Court's 2008 decision, the evidence has changed very little. In April 2009, Shaputis was scheduled to be evaluated by a Board psychologist, Dr. Nameeta Sahni, but Shaputis refused to participate. (Slip

opn. at p. 14, n.12.) Dr. Sahni assigned Shaputis a low risk for recidivism, but her assessment was necessarily restricted to a review of the written record only. Because Shaputis had refused to be interviewed, Dr. Sahni was unable to assess his insight or remorse, and was unable to apply any formalized risk assessment measures. (Ex. 4 at p. 7, Return to Order to Show Cause.)

In May 2009, Shaputis hired his own psychologist, Dr. Barbara Stark, to produce a report for his next parole hearing. (Slip opn. at p. 13.) She accepted Shaputis's claim that his wife had been accidentally shot and killed when she dropped the pistol in his lap. And she concluded that Shaputis had "no history of unstable, tumultuous relationships," despite his long history of domestic violence and abuse. In Dr. Stark's view, Shaputis has adequate insight into the murder and his past violence, and posed a very low risk of violence. (*Ibid.*)

Shaputis's next parole hearing was held in August 2009, and it is this hearing that gives rise to the underlying petition. At the hearing, the Board once again found that Shaputis should not be paroled. (Slip opn. at pp. 12, 15-16.) The Board determined that Shaputis continued to minimize his responsibility and lacked insight into the murder of his wife and the years of domestic violence that preceded it. (*Id.* at p. 15.) The Board considered Dr. Stark's favorable assessment, but gave it little weight. (*Id.* at pp. 15-16.)

Shaputis challenged the Board's 2009 decision in the San Diego County Superior Court, but the court denied it. (Slip opn. at p. 15.) For the third time, Shaputis filed a habeas petition in the court of appeal, and, for a third time, in yet another split decision, the court granted it. (*Id.* at p. 16.) The majority concluded that Dr. Stark's report should have been given weight because it was "the only current evidence of Shaputis's insight," and any evidence that previously could have supported a finding of unsuitability

"has evaporated" in light of the report. (Slip opn. at pp. 27, 29.) It considered the Board's reliance on Shaputis's lack of insight to be a pretense. (*Id.* at pp. 24-25.)

The dissenting justice criticized the majority for "simply disagree[ing] with the weight the Board gave to Dr. Stark's report and its assessment of the evidence concerning Shaputis's suitability for parole." (Slip opn. dissent at pp. 2-3.) The dissent believed that the Board acted reasonably in giving Dr. Stark's report little weight and for concluding that Shaputis continued to lack insight into his crimes. (*Ibid.*)

But this disagreement about the weight of evidence was resolved by this Court the last time Shaputis was here. As this Court held, it is irrelevant that a reviewing court might reasonably conclude that the evidence could support a finding of parole suitability because the manner in which the evidence is balanced and weighed lies within the discretion of the Board and the Governor. (*In re Shaputis*, *supra*, 44 Cal.4th at p. 1260, quoting *In re Rosenkrantz* (2002) 29 Cal.4th 616, 677.)

ARGUMENT

I. THE BOARD'S RELIANCE ON CREDIBLE EVIDENCE OF SHAPUTIS'S LACK OF INSIGHT WAS SUFFICIENT TO CONCLUDE THAT HE REMAINS DANGEROUS.

In 2008, this Court rejected the Court of Appeal's independent assessment that Shaputis was no longer dangerous in light of his age, poor health, and years of sobriety, and applied *In re Lawrence* (2008) 44 Cal.4th 1181, to conclude that his parole was properly denied because he lacked insight into his crimes. (*In re Shaputis*, *supra*, 44 Cal.4th at pp. 1245, 1255, 1260.) The Court held that, rather than doing an independent assessment of the evidence, a reviewing court must limit its evaluation to whether the parole authority's decision is supported by evidence. (*Ibid.*) The reviewing court must uphold the parole authority's decision where its

conclusion that the prisoner is unsuitable for parole rests on evidence rationally indicative of the prisoner's current dangerousness. (See *ibid.*) Simply because a reviewing court could draw a different, reasonable conclusion from the record does not render the parole decision arbitrary or capricious. (*Ibid.*)

As was the case a little over two years ago when Shaputis was last before this Court, the question is whether evidence supports the parole authority's finding that he remains dangerous because he lacks insight into his violent and abusive behavior. (Slip opn. at pp. 25-29; see *In re Shaputis*, *supra*, 44 Cal.4th at pp. 1252-1253, 1258-1260.) Then, the Court upheld the denial of parole because Shaputis minimized responsibility for, and lacked insight into, the murder of his wife and his years of domestic abuse. (*Shaputis,* at pp. 1260-1261.)

The only differences this time are that Shaputis refused to participate in the Board's most-recent psychological evaluation and instead retained his own private evaluator, Dr. Stark. Although the Board considered Dr. Stark's report, it gave her report little weight because she concluded—over significant evidence in the record to the contrary—that Shaputis had no history of unstable or tumultuous relationships and she similarly accepted Shaputis's complaints about deficiencies in the legal proceedings and police investigation. (Slip opn. dissent at p. 2.)

The majority below believed that the Board should be bound by Dr. Stark's report and Shaputis's written statement submitted in support of it because they were "the only current evidence of Shaputis's insight" (slip opn. at pp. 27, 29), and that any evidence that could support a finding of unsuitability "has evaporated" in light of Dr. Stark's report. (*Id.* at p. 29.) In reaching this conclusion, the court relied on its own weighing of the evidence—the approach expressly rejected by this Court in 2008.

If the appellate court had faithfully applied *Lawrence*, it would have concluded that the Board was acting well within its discretion in denying parole. Shaputis's 2005 psychological evaluation continues to be the only neutral evidence of his level of insight. By refusing to participate in the most recent evaluation by a Board psychologist, Shaputis blocked the Board from receiving a more recent, neutral assessment of his insight. And the Board's decision to give little weight to the report of his privately retained psychologist is reasonable. In fact, Dr. Stark's report reveals that Shaputis still claims that his wife's death was an unlikely accident, thus confirming that the factual basis for the lack-of-insight finding by the Board and the 2005 evaluator remain valid. (Slip opn. dissent at p. 2.)

II. REQUIRING DENIALS OF PAROLE TO BE BASED ON EVIDENCE OF DANGEROUSNESS PROPERLY BALANCES THE NEED FOR APPROPRIATE COURT REVIEW AND THE DEFERENCE THAT SHOULD BE AFFORDED TO THE PAROLE AUTHORITY'S ASSESSMENT.

Less than three years ago, this Court's *Lawrence* opinion established a review standard for parole decisions that was premised on a careful analysis of California's parole law and an examination of the problems that arose from previous articulations of the standard. (*In re Lawrence, supra,* 44 Cal.4th 1181.) Before *Lawrence*, courts could uphold parole denials if any evidence supported any regulatory basis for parole unsuitability. (See Cal. Code Regs., tit. 15, § 2402.) *Lawrence* changed this by holding that when a court reviews a parole decision, "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." (*Lawrence*, at p. 1212.) And when parole is denied, there must be a "rational nexus" between the criteria on which the Board or the Governor relied and the determination that the inmate remains dangerous. (*Id.* at pp. 1191, 1212-1214, 1221.) The companion case of *Shaputis* provided an example of the rational-nexus

requirement: an inmate's lack of insight into past violence or the failure to accept responsibility for such acts can establish a rational nexus between the inmate's prior violent conduct and the inmate's current risk. (See *Lawrence*, at p. 1228; *In re Shaputis*, *supra*, 44 Cal.4th at pp. 1260-1261.)

Lawrence is premised on two key components of California's parole law. First, the parole law makes clear that public safety is the overriding consideration for both executive decisionmakers and reviewing courts when assessing an inmate's suitability for parole. (*In re Lawrence, supra,* 44 Cal.4th at pp. 1209-1212; Pen. Code, § 3041.) Second, California's parole law contemplates that parole release dates *shall normally be granted* to convicted murderers once they have served their base terms, unless considerations of public safety require a lengthier period of incarceration. Thus the Board and the Governor's authority to "make an exception" to the requirement of setting a parole date "should not operate so as to swallow the rule that parole is 'normally' to be granted." (*Lawrence,* at p. 1211, citing Pen. Code, § 3041.)

Lawrence gives effect to both of these considerations by striking the appropriate balance between the need for appropriate and meaningful judicial review of parole denials and the Board and Governor's discretion in making parole determinations. (*In re Lawrence, supra,* 44 Cal.4th at pp. 1204, 1211–1212.) A life prisoner has an expectation in parole that is protected by the principles of due process as a liberty interest. (See *id.* at p. 1191, 1204-1205, citing *In re Rosenkrantz*, *supra,* 29 Cal.4th at pp. 655, 657, 665, 677.) Judicial review of parole decisions is an important check on the executive branch's parole power under California's indeterminate sentencing scheme. (See Cal. Const., art. V, § 8, subd. (b); Pen. Code, §§ 3041, 3041.1, 3041.2.) To ensure that parole decisions result from individualized consideration of the evidence and the governing criteria, courts must undertake a careful review of the executive branch's parole

decisions. (See *Lawrence,* at pp. 1204-1205.) Legal commentators have recognized that *Lawrence* requires the executive branch to make individualized decisions based on credible evidence:

> Rather than being merely a speed bump on the way to a parole denial, post-*Lawrence* courts can assert themselves in the proper role as a safeguard against arbitrary decisions. In overruling parole denials, these courts have articulated the demands of due process: the Board or the governor can only deny parole if, after an individualized consideration, it finds evidence of statutory factors that rationally indicate current dangerousness. Rather than facing a rubberstamp denial, inmates who have rehabilitated themselves now have a realistic possibility of being granted parole.

(Hipolito, *In Re Lawrence: Preserving the Possibility of Parole For California Prisoners* (2009) 97 Cal. L. Rev. 1887.)

Lawrence also respects the executive branch's authority in assessing an inmate's parole suitability. *Lawrence* explained that while the standard of review "certainly is not toothless," it is also "unquestionably deferential." (*In re Lawrence, supra*, 44 Cal.4th at p. 1211.) Under this deferential standard, reviewing courts must credit the findings of the Board or the Governor if they are supported by evidence establishing a rational nexus between the facts and current dangerousness. (*Id.* at pp. 1226-1227.)

CONCLUSION

Accordingly, respondents request that the Court of Appeal's judgment granting the petition for writ of habeas corpus be reversed.

Dated: April 18, 2011

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached **OPENING BRIEF** uses a 13 point Times New Roman font and contains 2,434 words.

Dated: April 18, 2011

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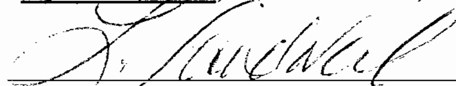
I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **April 18, 2011**, at Sacramento, California.

L. Sandoval	
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