

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Placer)

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In re MICHAEL JAY LOVELESS  
on Habeas Corpus.

C062354  
(Super. Ct. No.  
WHC0000894)

In the course of a home invasion robbery, Michael Jay Loveless (defendant) shot Robert DeRungs in the head, killing him in front of DeRungs's 14-year-old son. Defendant entered a negotiated plea of guilty to second degree murder in exchange for a sentence of 15 years to life in state prison. On the 22nd anniversary of the murder, the Board of Parole Hearings (the Board) found defendant unsuitable for parole and issued a two-year denial. The superior court granted defendant's petition for a writ of habeas corpus, finding there was no evidence to support the Board's denial of parole, and ordering the Board to conduct a "new hearing within 30 days of the finality of this decision and to find defendant suitable for parole, unless *new evidence* of his conduct and/or change in mental state *subsequent*

to the 2008 parole hearing is introduced and is sufficient to support a finding that he currently poses an unreasonable risk of danger to society if released on parole." (Original italics.) The Warden appeals that decision. We conclude there was some evidence to support the Board's decision. Accordingly, we reverse the trial court's order vacating the Board's decision and direct the trial court to issue a new order denying defendant's petition for writ of habeas corpus.

#### FACTUAL AND PROCEDURAL BACKGROUND

In January 1986, when defendant was 23 years old, he and two friends, Robert Allen and George Layton, heard that Robert DeRungs (victim) had "large sums of money" in his house. Defendant and his friends planned to rob the victim's home, made numerous trips to survey the property and plan the robbery. They took assigned roles, disguised their appearance with theatrical makeup and armed themselves with guns.

At approximately 10:00 p.m., defendant and Allen knocked on the door to the home and the victim answered. They made him lie down on the floor. Allen searched the home, found the victim's 14-year-old son asleep in his bedroom, and brought him to the room with his father. Defendant was standing over the victim, holding a gun on him. The gun defendant was aiming at the victim was loaded, the hammer was cocked and his finger was on the trigger. They made the son lie on the floor next to his father and Allen began to tie up the victim. Then, defendant shot the victim in back of the head. Defendant started apologizing, saying it was an accident and that the gun had

slipped. As the victim lay dying on the floor, they asked the son to direct them to the money. The son answered that if there was any, it would be in his father's wallet. Allen went through the home again while defendant tied up the son. Allen then took the victim's wallet and told defendant he should kill the victim's son as he was a witness. Allen and defendant did not shoot the son and left the home, dividing the \$110 taken from the victim's wallet between them. Defendant claimed that on the night of the murder he was a heavy drinker and had consumed six to twelve cans of beer and a few shots of bourbon. He also claimed that he had been using marijuana and methamphetamine. Defendant pled guilty to second degree murder and was sentenced to 15 years to life in state prison.

On January 31, 2008, defendant came up for a parole hearing. The Board found the offense was committed with an "exceptionally callous disregard for human suffering" and the motive was robbery. The Board found defendant lacked insight into and remorse for his offense, had engaged in insufficient efforts at self-help and had inadequate parole plans. The Board found defendant was not credible, and his demeanor and behavior at the hearing demonstrated his frustration and agitation. Accordingly, the Board concluded defendant was not suitable for parole and would pose an unreasonable risk of danger to society or threat to public safety if released from prison.

During the previous two years, the Board found, the defendant had "done absolutely no self-help" other than what had been specifically ordered by the Board at his prior parole

hearing. Defendant had stopped participating in Alcoholics Anonymous (AA) and Narcotics Anonymous (NA), because he had "reprioritized" his life. The Board found, "[w]hen you kill a man because you're under the influence of alcohol, it [alcohol counseling] had always better be the number one priority. We believe you only stepped back into AA and NA because the Board told you to. You didn't go the extra mile and take stress management, anger management. . . . [¶] . . . You didn't do any self-help by reading books or doing book reports. You didn't put yourself on a wait list for VORG [Victim Offender Reconciliation Group]."

As to the commitment offense, the Board noted it was carried out "in a manner which demonstrated exceptionally callous disregard for human suffering," multiple victims were attacked and a 14-year-old boy had to watch defendant murder his father. The Board was not convinced defendant had "any empathy close to coming to terms with what that meant."

The Board also noted the positives in defendant's record. He did not have a juvenile record and did not have a serious or violent background. He had a good work history and letters of staff support. Defendant had been active in his church, earned his GED and college credits, and his psychiatric evaluation was favorable. His disciplinary record was good and he had received the lowest classification placement score he could. He had one non-violent disciplinary incident in 1999 in which he was found with dangerous contraband, specifically "four inmate manufactured screwdrivers." Defendant explained he used the

tools to repair fans and radios and the items had passed previous searches, then the prison policies changed and they were considered contraband. The Board noted defendant's explanation was "more minimizing or mitigating than anything else. That kind of equipment . . . is never allowed in an institution by an inmate."

The Board found defendant's parole release plan was insufficient. It commended his acceptance into transitional housing, but noted the lack of verification that he would have assistance paying the monthly cost associated with that housing. It also noted he had not taken sufficient steps to become gainfully employed. It disbelieved the assertion he was going to work in a used car dealership washing windows.

The Board also noted defendant's body language demonstrated his frustration and agitation during the proceedings. He repeatedly interrupted the commissioners during the proceedings, and they questioned whether he was listening to their reasoning and recommendations. When they were listening to defendant during the hearing, they felt they were "listening to a con, and not necessarily a rehabilitated one."

Based on these findings and observations, the Board found defendant unsuitable for parole and issued a two-year denial.

Defendant challenged this decision, filing a petition for writ of habeas corpus in the superior court. The superior court issued an order to show cause and the matter was set for hearing on April 22, 2009. The People filed a return and requested the

hearing date be vacated as the matter could be decided on the pleadings.

On June 3, 2009, the superior court found "the evidence presented at the 2008 parole hearing does not support the Board's finding that defendant is unsuitable for parole." The court ordered the Board to hold a new hearing and to find defendant suitable for parole unless new evidence subsequent to the 2008 parole hearing was introduced to support a finding that he currently posed an unreasonable risk of danger if released.

We treated the Warden's petition for writ of supersedes as an application for stay of enforcement of the superior court's order and granted it. This appeal by the Warden followed.

#### DISCUSSION

##### I

The Warden contends the superior court order should be reversed because the Board's decision is supported by some evidence that defendant's release would pose a threat to public safety. The Warden also contends the trial court ordered an improper remedy. Defendant argues the Board's decision is not supported by some evidence, the Board decision was made prior to the decisions in *In re Lawrence* (2008) 44 Cal.4th 1181 (*Lawrence*) and *In re Shaputis* (2008) 44 Cal.4th 1241 (*Shaputis*) and thus did not establish a rational nexus between its findings and a conclusion of defendant's current dangerousness, and that if even one reason of the Board was unsupported by some evidence, we must remand. We agree with the Warden there is some evidence to support the Board's decision that defendant was

unsuitable for parole as he continued to pose a current threat to public safety.<sup>1</sup> Accordingly, we reverse the trial court's order granting defendant's petition for writ of habeas corpus.

The Board must set a parole release date "unless it determines that the gravity of the current convicted offense or offenses . . . is such that consideration of the public safety requires a more lengthy period of incarceration for this individual . . . ." (Pen. Code, § 3041, subd. (b).)<sup>2</sup> "[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 Regs., tit. 15, § 2402, subd. (a) (CCR).) The CCR lists many

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<sup>1</sup> Because we find there is some evidence supporting each of the Board's findings and a rational nexus between those findings and defendant's current dangerousness, we need not address defendant's further claims. We also need not address the warden's claims regarding the propriety of the remedy ordered by the trial court. The Warden also filed a request for judicial notice relating to the proper remedy, and advising of events occurring after briefing in this case was completed. Because our disposition of this case obviates the need to address the remedy contention, the information in the request is not relevant to our analysis. Accordingly, we shall deny the request for judicial notice. We do note, however, after briefing was completed in this case, the California Supreme Court decided *In re Prather* (2010) 50 Cal.4th 238 and held that it "is improper for a reviewing court to direct the Board to reach a particular result or to consider only a limited category of evidence in making a suitability determination." (*In re Prather, supra*, at p. 253.) Accordingly, the remedy ordered in this case was improper.

<sup>2</sup> Further undesignated statutory references are to the Penal Code.

factors relevant to the parole decision,<sup>3</sup> however, despite these factors the Board's core duty is to assess whether the prisoner is currently dangerous. (*Lawrence, supra*, 44 Cal.4th at pp. 1205, 1210, 1212-1213.)

Where, as here, there was no evidentiary hearing in the trial court, we independently review the record of the Board's proceedings. (*In re Lowe* (2005) 130 Cal.App.4th 1405, 1420; *In re Van Houten* (2004) 116 Cal.App.4th 339, 413-414 (*Van Houten*).)

"On appeal, only limited grounds exist for overturning a Board's decision regarding a particular inmate's suitability for parole. Specifically, if there is 'some evidence' supporting the Board's decision, we will not disturb it on appeal.

[Citations.] However, 'because the paramount consideration for . . . the Board . . . is whether the inmate currently poses a threat to public safety, and because the inmate's due process interest in parole mandates a meaningful review of a denial-of-

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<sup>3</sup> Circumstances tending to show parole suitability are: (1) the lack of a juvenile criminal record; (2) a stable social history; (3) signs of remorse; (4) the suffering of significant stress at the time of the offense; (5) the suffering from battered woman syndrome at the time of the offense; (6) the lack of any other criminal history; (7) reduced probability of recidivism due to age; (8) a realistic parole plan or marketable skills; and (9) good behavior in prison. (CCR, § 2402, subd. (d).) Circumstances tending to show parole unsuitability are: (1) a commitment offense committed "in an especially heinous, atrocious or cruel manner"; (2) a previous record of violence; (3) an unstable social history; (4) previous sadistic sexual offenses; (5) "a lengthy history of severe mental problems"; and (6) "serious misconduct in prison or jail." (CCR, § 2402, subd. (c).)



parole decision, the proper articulation of the standard of review is whether there exists "some evidence" that an inmate poses a current threat to public safety, rather than merely some evidence of the existence of a statutory unsuitability factor,' to support the Board's decision. [Citation.] 'It is not the existence or nonexistence of suitability or unsuitability factors that forms the crux of the parole decision; the significant circumstance is how those factors interrelate to support a conclusion of current dangerousness to the public.' [Citations.]" (*In re Shippman* (2010) 185 Cal.App.4th 446, 455 (*Shippman*)).

"In applying this standard, the reviewing court must affirm the Board's reading of the evidence so long as it is reasonable and based upon due consideration of the relevant legal factors. [Citations.]" (*Shippman, supra*, 185 Cal.App.4th at p. 455.) "Our role on appeal is simply to identify this evidence, not to reweigh it. (*In re Criscione* (2009) 180 Cal.App.4th 1446, 1458.)" (*Shippman, supra*, at p. 459.) "Once there is 'some evidence' to support the [CCR] section 2402 factors relied upon by the Board, 'the precise manner in which the specified factors relevant to parole suitability are considered and balanced lies within the discretion of the [Board] . . . .'" (*In re Roderick* (2007) 154 Cal.App.4th 242, 263.) Here, some evidence supports the Board's findings, and there is a rational connection between those findings and the determination that defendant poses a current danger to public safety.

The Board concluded defendant remained a threat to public safety relying on the egregious circumstances of the commitment offense, his lack of insight into and remorse for his offense, insufficient efforts at self-help, and inadequate parole plans. "Thus, applying the legal principles set forth above, we must decide whether 'some evidence' supports the Board's reliance on these factors to deny [defendant] parole. (*Shaputis, supra*, 44 Cal.4th at p. 1255.)" (*Shippman, supra*, 185 Cal.App.4th at p. 456.)

The circumstances of the commitment offense are a relevant consideration as to unsuitability for release when the crime was committed "'in an especially heinous, atrocious or cruel manner' ([CCR,] § 2402, subd. (c)(1); Pen. Code, § 3041, subd. (b) ['gravity of the current convicted offense'].)" (*In re Ross* (2009) 170 Cal.App.4th 1490, 1505-1506.) Among the factors to be considered on this point are "whether the crime 'was carried out in a dispassionate and calculated manner'; whether it 'was carried out in a manner which demonstrates an exceptionally callous disregard for human suffering'; and whether the 'motive for the crime [was] . . . very trivial in relation to the offense' ([CCR,] § 2402, subds. (c)(1)(B), (D), (E))." (*In re Ross, supra*, 170 Cal.App.4th at pp. 1505-1506.) "'[H]einous' means 'shockingly evil: grossly bad'; 'atrocious' means marked by 'extreme wickedness,' 'brutality or cruelty'; 'cruel' means 'disposed to inflict pain,' especially in a way indicating enjoyment in the infliction of 'pain or misfortune' [citation]." (*Id.* at p. 1507.)

Here, the evidence supports the Board's conclusion that the murder that was the commitment offense was especially cruel and heinous. The motive for killing the victim was extremely trivial, the victim was killed for \$110 dollars in his wallet, which was split between defendant and Allen. (CCR, § 2402, subd. (c)(1)(E).) The robbery which led to the murder was planned by defendant and his cohorts over a significant period of time. It involved watching the victim's property, arming themselves, developing "roles" for each of them to carry out in the commission of the offense, and acquiring disguises. This evidence supports the conclusion the commitment offense was carried out "in a dispassionate and calculated manner." (CCR, § 2402, subd. (c)(1)(B).) This was a murder committed on a man who was tied up on the floor of his home. The perpetrators tied the victim up, went out of their way to bring his 14-year-old son into the room, shot the helpless victim in the back of his head, tied the boy up, discussed shooting the equally helpless boy because he was a witness, and rifled through the victim's wallet for \$110 as he lay tied up and dying in front of his son. There is no question these actions demonstrate an "exceptionally callous disregard for human suffering." (CCR, § 2402, subd. (c)(1)(D).) (See *In re Ross*, *supra*, 170 Cal.App.4th at p. 1507.)

In weighing the relevant factors, the Board was entitled to assess defendant's credibility and consider it in determining his current dangerousness. (See *In re Juarez* (2010) 182 Cal.App.4th 1316, 1341.) The Board was also entitled to assess

the relevant factors in light of defendant's demeanor and behavior at the hearing.<sup>4</sup>

Here, the Board found defendant was not credible. He appeared to be a "a con, and not necessarily a rehabilitated one." Defendant regularly interrupted commissioners, was argumentative with them, and clearly frustrated and agitated throughout the proceedings. He explained his disciplinary write up, which involved possessing dangerous contraband, as being due to a change in prison policy. The Board found his explanation was not credible, as such materials were never permitted in a prison. It concluded defendant was attempting to minimize or mitigate the incident. This tendency to minimize or mitigate was also noted in 1995, when the Board found defendant was "trying to mitigate or minimize the consequences of the crime and [his] role in the crime." We defer to the trier of fact on credibility. (*Lenk v. Total-Western, Inc.* (2001) 89 Cal.App.4th 959, 968.) Defendant's lack of credibility and his demeanor and behavior at the hearing were properly considered by the Board in assessing the factors relevant to the parole decision.

A prisoner's insight into his offenses and his understanding of the nature, magnitude and causes of his crime

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<sup>4</sup> The parties read the record as indicating the Board considered defendant's lack of credibility and demeanor as an independent reason supporting the denial of parole. We do not read the record this way. Rather, the Board considered defendant's credibility and demeanor in the context of assessing his suitability for parole, specifically as to his expressions of insight and remorse and the sufficiency of his parole plans.

are important parole suitability factors. (CCR, § 2402, subd. (d) (3); *In re Elkins* (2006) 144 Cal.App.4th 475, 493.) Where a prisoner lacks such insight, the Board is justified under the “‘some evidence’” standard in considering the prisoner's need for further counseling as a factor supporting parole denial. (*Van Houten, supra*, 116 Cal.App.4th at p. 355.)

During his psychiatric evaluation, defendant indicated he did “not view himself as a ‘criminal,’ but rather as an individual who made a series of terrible mistakes” that resulted in the murder of the victim. He recognized “the impact of his substance abuse and his choice of associates, but does not blame either for his actions. Instead, he accepts full responsibility for his actions.” Yet, when discussing the murder, he said he committed the murder and robbery because he “was trying to be somebody [he] wasn’t . . . . The people I was around at the time[,] I cared about what they thought about me and I lost focus of what I had at home. I had a bad drinking problem, I wasn’t making good decisions.” He then went on to indicate that one of the other two perpetrators had come up with the idea for the robbery.

At the hearing, defendant claimed he had been a functioning alcoholic when he committed the robbery and murder. The Board noted that “functioning alcoholics don’t kill people, necessarily, or rob people.” When asked if he had figured out why he did what he did, defendant responded “it was a bad decision to be involved in that and I have no excuse. It was just -- [i]t was an ignorant thing to do on my part, to be

involved in that and go out there and carry that out. I don't -- I don't want to blame it on anybody or anything, you know, I made the decision to go and that's -- I've reconciled that in my mind. I was wrong and I'm very sorry that I went. I hate the fact that I went, I hate the fact about what happened. I have to live with it every day and I have to know that these people suffer, his family."

The Board found defendant did not "have any empathy coming close to terms with what [it] meant" for defendant to have killed a man in front of that man's 14-year-old son, in the course of a robbery for \$110. The Board indicated he had to continue working on that problem. The Board noted defendant had to be able to convince "a Panel that you've done enough soul-searching and you can share that soul-searching to convince a Panel that you're not going to put yourself in a position to ever do that again. That's where self-help comes in." Specifically, the Board wanted defendant to be able to articulate how he got to the point, psychologically and emotionally, where he committed this robbery and murder so it could be certain he would not go "back to where [he] came from."

Defendant's statements about the offense provide some evidence supporting the Board's finding. This murder was not the result of a series of mistakes or bad choices. It was committed by someone who knew right from wrong. In short, it was willful and evil. It was the far-too-easy, far-too-predictable result of a robbery which was planned in careful detail, including surveillance, loaded guns, designated roles,

and disguises. As the Board, and the victim's son stated, despite defendant's claims, "when you put a bullet in a gun[, cock the hammer, put your finger on the trigger and point the gun at someone's head] there's only one thing it's used for." In addition, while on the one hand defendant claims not to blame his "associates" for the murder, he continues to indicate one of the other two perpetrators came up with the robbery plan and he was concerned with what the people around him thought. From this evidence, the Board reasonably could conclude that defendant's statements do not reveal he understands how he got to the point where he committed these offenses, psychologically and emotionally; nor do they demonstrate his remorse. Thus, the Board's findings, that defendant showed both a lack of remorse for and a lack of insight into the murder, were supported by some evidence.

Defendant has a diagnosed alcohol dependence "in sustained full remission in a controlled environment." The murder, he claims, was committed while he was under the influence of alcohol and, he further claims, his alcoholism was a factor in it. In his 2005 psychological evaluation, he "acknowledged his need to stay involved in AA." Nonetheless, at the time he made this acknowledgement, he had stopped attending AA meetings several months before. He stopped participating in NA and AA, because he had "reprioritized" his life and "did not have time with his busy schedule and thought he was working the program through other (faith-based) activities." At his 2006 parole hearing, the Board made clear he had to participate in AA. He

complied. However, between his 2006 hearing and the 2008 hearing, he did not participate in other self-help programs. The psychiatric conclusions that defendant was at low risk were conditioned on his need for further help through programs such as AA. Although defendant had participated in AA for several years, his imprisonment has prevented a test of his resolve to stay away from alcohol. This evidence, combined with the evidence of defendant's lack of remorse and insight into the offense, support the Board's conclusion that defendant required further self-help.

Defendant's parole plans indicated he had been accepted into transitional living. The housing costs were \$600 per month. Defendant stated his family would help him pay for the facility until he got his "first paycheck or two." The Board noted there was general support in the letters from defendant's family. However, the letters contained no specific information regarding how much financial support anyone could or would provide or for how long. This failure of planning by defendant was aggravated by his lack of specificity in his employment prospects. There was a letter from defendant's former father-in-law, which indicated he had "quite a few places" where defendant could be employed if he were released, including a small used car lot. There was no evidence on whether any potential job would be full-time or part-time, what would be the job, or what would be the wages. Defendant stated "I guess I would work at [my former father-in-law's] car lot until I found a permanent position doing what I do." There was also a letter



from a friend of defendant's indicating she could employ him at her rental properties and residence doing "property repair maintenance." Again, there were no specific details of employment given. The Board's conclusion that defendant's parole plans were inadequate was supported by some evidence.

"[T]he underlying circumstances of the commitment offense alone rarely will provide a valid basis for denying parole when there is strong evidence of rehabilitation and no other evidence of current dangerousness." (*Lawrence, supra*, 44 Cal.4th at p. 1211.) Conversely, being largely discipline-free for more than 20 years, having an excellent work record, receiving commendations from prison staff, participating in numerous institutional programs to enhance one's ability to function in the community and achieving the lowest possible classification placement do not mandate a finding granting parole when the circumstances of the commitment offense are egregious and there is a lack of insight as to the commitment offense. (*Shaputis, supra*, 44 Cal.4th at pp. 1245-1246, 1249, 1260; see also *In re Criscione, supra*, 180 Cal.App.4th at pp. 1459-1460.)

The record reflects defendant had several factors in his favor. He had taken steps while imprisoned to address his problems related to his current dangerousness. The Board did not disregard any evidence in defendant's favor. However, "[w]here the record also contains evidence demonstrating that the inmate lacks insight into his or her commitment offense . . . , even after rehabilitative programming tailored to addressing the issues that led to commission of the offense, the

aggravated circumstances of the crime reliably may continue to predict current dangerousness even after many years of incarceration.' (*Lawrence, supra*, 44 Cal.4th at p. 1228, citing *Shaputis, supra*, 44 Cal.4th 1241, *In re Hyde* (2007) 154 Cal.App.4th 1200, 1215 . . . ; *In re Tripp* (2007) 150 Cal.App.4th 306, 314, 320 . . . .)" (*In re Rozzo* (2009) 172 Cal.App.4th 40, 55.)

Here, the egregious circumstances of defendant's murder of Robert DeRungs were not the sole basis for denying parole, although they were relevant and substantial considerations of defendant's current dangerousness. There was also evidence defendant lacked insight into the offense, and required further self-help and a more comprehensive parole and work plan.

As detailed above, the circumstances of defendant's murder of DeRungs were aggravated. It was committed, apparently, when defendant was under the influence of alcohol. He blamed his actions on his being a functioning alcoholic at the time. The psychological reports indicated, as an alcohol dependent, defendant had to continue working with AA to maintain his sobriety. Although defendant had done considerable alcohol and drug counseling, his choice to stop participating in those services when he "reprioritized" his life and got "too busy," and only to rejoin them under the directive of the Board, strongly support the conclusion that his work on that front was not finished and he required additional, sustained, self-help services. Moreover, defendant's lack of credibility, along with his counterproductive behavior and demeanor at the hearing,

cast doubt on his preparation for parole and corroborated the significance of his need for additional self-help services. Defendant was unemployed when he decided to rob the victim, thus, the ultimate motivation for the murder was financial. Defendant's parole plan did not adequately address his employment prospects or financial support upon his release. Since financial insecurity, unemployment, and alcohol contributed to the underlying offense, the lack of adequate anticipation, preparation, and resolution of these problems has significant probative and predictive value on defendant's current dangerousness. In addition, defendant's lack of credibility, and his demeanor and behavior at the hearing, strengthen the nexus between defendant's commitment offense and his current dangerousness.

"Although the Board did not specifically state that there was a 'rational nexus' between [the evidence] and the ultimate conclusion [that defendant was currently dangerous], we are not required to remand due solely to the absence of some pro forma recitation on the record. To the contrary, *Lawrence* called, instead, for reasoning. (*Lawrence, supra*, 44 Cal.4th at p. 1210.) The Board's explanation contains that reasoning . . . ." (*In re Criscione, supra*, 180 Cal.App.4th at p. 1461.)

The Board considered all the relevant evidence and concluded defendant "remains a current danger to the safety of the public, and specifically that the gravity of the offense and [defendant's] lack of insight [insufficient self-help efforts and failure to develop an adequate parole plan] outweigh[ed] the

factors favoring suitability for parole." (*Shaputis, supra*, 44 Cal.4th at p. 1261, fn. omitted; see also *Shippman, supra*, 185 Cal.App.4th at p. 459.) There was some evidence supporting the Board's findings that defendant had insufficient insight into the psychological and emotional factors that led him to commit the murder and robbery, that he needed additional self-help, and his parole plans were insufficiently conceived and developed. These factors combined with the egregiousness of the commitment offense provided a rational nexus between those findings and the Board's finding of current dangerousness.

DISPOSITION

The trial court's order vacating the Board of Parole Hearings' decision and directing the Board to reconsider the matter is reversed, and the trial court is directed to issue a new order denying defendant's petition for writ of habeas corpus.

NICHOLSON, Acting P. J.

We concur:

ROBIE, J.

SCOTLAND, J.\*

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\* Retired Presiding Justice of the Court of Appeal, Third Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

CERTIFIED FOR PUBLICATION

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THIRD APPELLATE DISTRICT

(Placer)

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In re MICHAEL JAY LOVELESS  
on Habeas Corpus.

C062354

(Super. Ct. No.  
WHC0000894)

CERTIFICATION FOR  
PUBLICATION

APPEAL from a judgment of the Superior Court of Placer County. Colleen M. Nichols, Judge. Reversed.

Edmund G. Brown, Jr., Attorney General, Julie L. Garland, Assistant Attorney General, Jennifer A. Neill and Pamela B. Hooley, Deputy Attorneys General, for Appellant Board of Parole Hearings.

Michael Sattris, under appointment by the Court of Appeal, for Respondent Michael Jay Loveless.

THE COURT:

For good cause it now appears that the opinion in the above captioned case filed herein on January 7, 2011, should be published in the Official Reports and it is so ordered.

FOR THE COURT:

\_\_\_\_\_  
NICHOLSON, Acting P. J.

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ROBIE, J.

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SCOTLAND, J.\*

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\* Retired Presiding Justice of the Court of Appeal, Third Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.