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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re ALBERT SASSER

on Habeas Corpus.

B224785

(Los Angeles County
Super. Ct. No. BH006495)

APPEAL from an order of the Superior Court of Los Angeles County. Peter Paul Espinoza, Judge. Reversed with directions.

Edmund G. Brown, Jr., Attorney General, Julie L. Garland, Senior Assistant Attorney General, Anya M. Binsacca and Amanda Lloyd, Deputy Attorneys General, for Appellant.

James M. Crawford, under appointment by the Court of Appeal, for Respondent.

In 1983, Albert Sasser was convicted of second degree murder and sentenced to an indeterminate term of 15 years to life in prison (Sasser was also convicted of conspiracy to commit extortion, attempted extortion, and assault by force likely to produce great bodily injury). On February 25, 2009, the Board of Parole Hearings (the Board) found Sasser suitable and granted parole. The Governor reversed the Board's decision. In July 2009, the superior court granted Sasser's petition for a writ of habeas corpus, finding the Governor's reversal was not supported by some evidence that Sasser currently posed an unreasonable risk of danger to society if released (see *In re Rosenkrantz* (2002) 29 Cal.4th 616, 652), and ordered Sasser be released in accord with the parole date calculated by the Board. The Attorney General appealed from that order, contending the Governor's decision was supported by some evidence in the record.

Subsequently, this court learned that on February 3, 2010, the Board found Sasser was unsuitable for parole and then asked the parties to address the effect of that decision.¹ Although the Attorney General asserted the 2010 Board decision had no effect on his appeal as it did not affect the merits of Governor's prior decision, Sasser argued this appeal was moot as a court may only decide justifiable controversies. (See *Golden Gate Bridge etc. Dist. v. Felt* (1931) 214 Cal. 308, 316; 3 Witkin, Cal. Procedure (5th ed. 2008) Actions, § 21, pp. 84-86 & § 32, pp. 98-100.) As conceded by Sasser, even if this court were to affirm the superior court's order, Sasser would still be subject to the 2010 Board decision and would not be entitled to release. Accordingly, we agree the appeal is moot.

However, rather than dismiss this appeal as moot, leaving the order releasing Sasser intact, this court will reverse the superior court's order with directions to dismiss

¹ Pursuant to Evidence Code section 452, subdivision (c), this court takes judicial notice of the transcript of the February 3, 2010, hearing at which the Board decided Sasser was "not suitable for parole." (See *Arce v. Kaiser Foundation Health Plan, Inc.* (2010) 181 Cal.App.4th 471, 484.)

the petition. (See *Paul v. Milk Depots, Inc.* (1964) 62 Cal.2d 129, 134; *Giles v. Horn* (2002) 100 Cal.App.4th 206, 229; Eisenberg et al., Cal Practice Guide: Civil Appeals and Writs (the Rutter Group 2009) ¶ 5:34.)

DISPOSITION

The superior court order is reversed with directions to dismiss the petition as moot.

WOODS, J.

We concur:

PERLUSS, P. J.

JACKSON, J.