



Please Note: The information contained in this Guide is not intended as legal advice in any individual's case. There are many exceptions and variations in the parole consideration process. If you have questions, please consult with an experienced parole attorney.

ANNOTATED CASE LIST

This Guide is intended to help you identify important cases related to parole. This Guide should not replace legal research; it is merely a starting place to help you identify some of the cases that have clarified people's rights in the parole consideration process.

I. Foundational Cases

- *Greenholtz v. Inmates of Nebraska Penal and Correctional Complex* (1979) 442 U.S. 1 (when a state creates a parole process, the Constitution requires that process to include no more than (1) notice, (2) an opportunity to be heard, and (3) a statement of the reasons for denial; however, a state may provide more rights, which California does)
- *In re Rosenkrantz* (2002) 29 Cal.4th 616 (the Governor's reversal of a grant of parole must be supported by "some evidence," which can include the nature of the life crime; the Governor's ability to reverse a grant of parole does not violate the *ex post facto* clauses of the federal and state Constitutions even though it applies to people whose crimes were committed before the Governor had that authority)
- *In re Dannenberg* (2005) 34 Cal.4th 1061 (the Board does not need to compare one crime to another and does not need to consider the terms of confinement set forth in the Board's regulations when it decides whether to release someone on parole; the Board may also deny a parole date solely on the basis of the circumstances of the offense when the offense is particularly egregious)

- *In re Lawrence* (2008) 44 Cal.4th 1181 (the Board’s central inquiry is to determine whether the person eligible for parole represents a current risk to public safety; however, the facts of the crime – standing alone – can rarely be the basis for denying someone parole. Instead, there must be something either before or after the crime that makes it relevant many years later [at the time of parole consideration].)
- *In re Shaputis* (2008) 44 Cal.4th 1241 (“lack of insight” can create the nexus [or connection] between the circumstances of someone’s crime and their current risk to public safety)
- *In re Shaputis* (2011) 53 Cal.4th 192 (holding that “the presence or absence of insight is a significant factor in determining whether there is a ‘rational nexus’ between the inmate’s dangerous past behavior and the threat the inmate currently poses to public safety.” The use of “insight” is appropriate because the applicable regulations “direct the Board to consider the inmate’s ‘past and present attitude toward the crime’ and ‘the presence of remorse,’ expressly including indications that the inmate ‘understands the nature and magnitude of the offense.’”)
- *Swarthout v. Cooke* (2011) 562 U.S. 216 (federal habeas relief is not available for an error of state parole law. Accordingly, the “some evidence” test from *Rosenkrantz, Dannenberg, Lawrence*, and *Shaputis* does not apply in federal court. The *Greenholtz* protections [notice, opportunity to be heard, and statement of reasons] are all the federal Constitution requires.)
- *In re Vicks* (2013) 56 Cal.4th 274 (the application of Proposition 9 [Marsy’s Law, which extended the period between parole hearings up to 15 years] to people whose crimes were committed before its passage does not violate the *ex post facto* clauses of the state and federal Constitutions)
- *In re Shelton* (2020) 53 Cal. App. 5th 650 (holding that to the extent a psychologist was correct in attributing a parole candidate’s confusion and memory loss to progressive

neurological impairments, the parole candidate was unlikely ever to be able to coherently answer questions about his motivations for and understanding of the second-degree murder for which he was sentenced to life. In that sense, the deficient insight upon which the panels based the denials of parole was effectively an immutable factor.)

II. Youth Offender Parole

- *Miller v. Alabama* (2012) 567 U.S. 460 (mandatory life imprisonment without parole for those under the age of 18 at the time of their crimes violates the federal Eighth Amendment’s prohibition on cruel and unusual punishments)
- *People v. Caballero* (2012) 55 Cal.4th 262 (sentencing a person under the age of 18 for a non-homicide offense to a term of years with a parole eligibility date that falls outside their natural life expectancy constitutes cruel and unusual punishment in violation of the state Eighth Amendment)
- *People v. Franklin* (2016) 63 Cal.4th 261 (a person under the age of 18 may not be sentenced to the functional equivalent of life without the possibility of parole for a homicide offense without the protections outlined in *Miller*)
- *In re Perez* (2016) 7 Cal.App.5th 65 (giving “lip service” to the hallmark features of youth does not satisfy the mandate that they be given “great weight”)
- *In re Palmer* (2018) 27 Cal.App.5th 120 (holding that “to give ‘great weight’ to the youth offender factors as required under section 4801, subdivision (c), the Board must accept those factors as indicating suitability for release on parole absent substantial evidence of countervailing considerations indicating unsuitability” and that the Board is “required to satisfactorily explain why a youth offender is not entitled to a finding of suitability for release despite the presence of the statutory youth offender factors to which the Board is required to give ‘great

weight.”) *** *While the legal reasoning in this case is instructive, this case has been depublished and cannot be cited.*

- *In re Jenson* (2018) 24 Cal.App.5th 266 [crime in prison committed over age 26] & *In re Trejo* (2017) 10 Cal.App.5th 972 [under 26] (youthful offenders do not have to serve *Thompson* terms [additional sentences for in-prison criminal convictions] regardless of their age at the time that the *Thompson* term was incurred)

III. Prison Discipline

- *In re Reed* (2009) 171 Cal.App.4th 1071, 1085 (holding that a person’s recent 128A could be the basis for denying parole because it violated a specific directive from the Board given only two months before and “was not an isolated incident; instead, it was part of an extensive history of institutional misconduct, including 11 CDC 115s and 19 CDC 128-As”)
- *In re Palermo* (2009) 171 Cal.App.4th 1096 (holding that “nothing in the record supports a conclusion that [the person eligible for parole] poses a threat to public safety because he once engaged in the unauthorized use of a copy machine, once participated in a work strike, and once was found in possession of a fan stolen by his roommate.”)
- *In re Hunter* (2012) 205 Cal.App.4th 1529 (holding that a person’s failure to report to work on one occasion did not show future dangerousness when their previous disciplinary misconduct was twenty-one years prior)
- *In re Perez* (2016) 7 Cal.App.5th 65 (holding that a person’s rule violation report for excessive physical contact with his fiancée during a visit did not show future dangerousness without an extensive history of rules violations)

IV. Elderly Parole

- *In re Hoze* (2021) 61 Cal. App. 5th 309 (holding that people granted parole at elderly parole hearings do not have to serve *Thompson* terms)

V. Credits

- *In re Lira* (2014) 58 Cal.4th 573; *In re Bush* (2008) 161 Cal.App.4th 133; and *In re Trejo* (2017) 10 Cal.App.5th 972 (people in prison are not entitled to credit against their period of parole supervision for time between parole grant and a subsequent reversal by the Governor even when the Governor's decision is later found invalid)

VI. Recent & Developing

- *In re Poole* (2021) Case No. A161030 (currently being litigated to determine whether the Board's procedures and fee schedule for appointed counsel deprive people of effective assistance of counsel) *** *This case is currently being litigated by UnCommon Law. If you would like more information, please write to us at the address listed above. ****