

BOARD OF PAROLE HEARINGS

En Banc Decisions

Tuesday, September 21 2010

**Compassionate Release -- Penal Code section 1170(e)**

Pursuant to Government Code section 11126(c)(4)

**MARTINEZ, Steven Charles**                      **P23908**                      **Compassionate Release**  
Motion:                      MOTION #1 NOT CARRIED: REFER TO COURT FOR CONSIDERATION OF SENTENCE RECALL BECAUSE: THE PRISONER IS MEDICALLY INCAPACITATED AS DEFINED IN PENAL CODE SECTION 1170(E)(2)(C). THE CONDITIONS UNDER WHICH THE PRISONER WOULD BE RELEASED OR RECEIVE TREATMENT DO NOT POSE A THREAT TO PUBLIC SAFETY AS REFERENCED IN PENAL CODE SECTION 1170(E)(2)(B).  
  
MOTION #2 CARRIED: DECLINE TO REFER TO THE COURT FOR CONSIDERATION OF SENTENCE RECALL.  
  
Motion by:                      Arbaugh  
Second by:                      Pepler  
Aye:                      Anderson, Jr., Arbaugh, Chrones, Doyle, Garner, Gillingham, Labahn, Melanson, Pepler, Prizmich, Tardiff  
Nay:  
Abstain: .  
Not Present:                      Peck  
Decision:                      **Decline to Refer**

**SALSBURY, John Latham**                      **T64823**                      **Compassionate Release**  
Motion:                      REFER TO COURT FOR CONSIDERATION OF SENTENCE RECALL BECAUSE THE PRISONER IS TERMINALLY ILL AS DEFINED IN PENAL CODE SECTION 1170(E)(2)(A). THE CONDITIONS UNDER WHICH THE PRISONER WOULD BE RELEASED OR RECEIVE TREATMENT DO NOT POSE A THREAT TO PUBLIC SAFETY AS REFERENCED IN PENAL CODE SECTION 1170(E)(2)(B).  
  
Motion by:                      Chrones  
Second by:                      Melanson  
Aye:                      Arbaugh, Chrones, Doyle, Gillingham, Melanson, Peck, Pepler  
Nay:                      Anderson, Jr., Garner, Prizmich  
Abstain:  
Not Present:                      Labahn, Tardiff  
Decision:                      **Refer to Court**

**En Banc Review**

Pursuant to Government Code section 11126(c)(4)

**BARAJAS, Melchor**                      **E69705**                      **Governor Referred**  
Motion:                      AFFIRM THE APRIL 8, 2010 SUITABILITY DECISION.  
Motion by:                      Peck  
Second by:                      Gillingham  
Aye:                      Anderson, Jr., Arbaugh, Chrones, Doyle, Garner, Gillingham, Melanson, Peck, Pepler, Prizmich  
Nay:  
Abstain:  
Not Present:                      Labahn, Tardiff  
Decision:                      **Affirm**

**CANO, Victor Manuel**

**J69918**

**Governor Referred**

Motion:

AFFIRM THE APRIL 23, 2010 SUITABILITY DECISION WITH THE ADDITIONAL SPECIAL CONDITION OF PAROLE AS FOLLOWS: DO NOT ACTIVELY PROMOTE OR PARTICIPATE, FURTHER OR ASSIST IN ANY PRISON GANG, DISRUPTIVE GROUP OR CRIMINAL STREET GANG ACTIVITY AS ENUMERATED IN PENAL CODE SECTION 186.22, SUBDIVISION(E) (1)-(33), NOR VIOLATE ANY GANG ABATEMENT, INJUNCTION, ORDINANCE OR COURT ORDER. DO NO ASSOCIATE WITH ANY PRISON GANG, DISRUPTIVE GROUP, OR STREET GANG MEMBER KNOWN TO BE SUCH BY YOU, NOR WEAR OR CARRY ON YOUR PERSON GANG COLORS OR ANY SIGN OR SYMBOL OR PARAPHERNALIA KNOWN TO YOU TO BE ASSOCIATED WITH GANG ACTIVITY.

Motion by:

Garner

Second by:

Anderson, Jr.

Aye:

Anderson, Jr., Arbaugh, Chrones, Doyle, Garner, Gillingham, Melanson, Peppler, Prizmich

Nay:

Abstain:

Not Present:

Labahn, Peck, Tardiff

Decision:

**Affirm**

**CASAS, Jose Manuel**

**J67479**

**Referred by Decision Review**

Motion:

DISAPPROVE THE JUNE 2, 2010 DECISION BECAUSE OF A TERM CALCULATION ERROR AND SCHEDULE A NEW HEARING TO SET THE PRISON TERM.

Motion by:

Peppler

Second by:

Anderson, Jr.

Aye:

Anderson, Jr., Arbaugh, Chrones, Doyle, Garner, Gillingham, Melanson, Peppler, Prizmich

Nay:

Abstain:

Not Present:

Labahn, Peck, Tardiff

Decision:

**Rehearing**

**CASTRO, Johnny**

**P66867**

**Referred by Decision Review**

Motion:

Motion by:

Second by:

Aye:

Nay:

Abstain:

Not Present:

Decision:

**Cancellation**

<b>DAGONS, Preston Aldon</b>	<b>H84592</b>	<b>Governor Referred</b>
Motion:	AFFIRM THE APRIL 2, 2010 SUITABILITY DECISION WITH THE ADDITION OF THE FOLLOWING SPECIAL CONDITIONS: MUST SUBMIT TO ALCOHOL TESTING; MUST SUBMIT TO ANTI-NARCOTIC TESTING; MUST SUBMIT TO THC TESTING; PARTICIPATE IN SUBSTANCE ABUSE RELAPSE PREVENTION PROGRAMS AND REPORT TO PAROLE OUTPATIENT CLINIC FOR EVALUATION AND TREATMENT IF DEEMED NECESSARY.	
Motion by:	Chrones	
Second by:	Melanson	
Aye:	Anderson, Jr., Arbaugh, Chrones, Doyle, Garner, Gillingham, Melanson, Pepler, Prizmich	
Nay:		
Abstain:		
Not Present:	Labahn, Peck, Tardiff	
<b>Decision:</b>	<b>Affirm</b>	
<b>GOMEZ, Elkin</b>	<b>E44776</b>	<b>Governor Referred</b>
Motion:	AFFIRM THE APRIL 27, 2010 SUITABILITY DECISION.	
Motion by:	Garner	
Second by:	Prizmich	
Aye:	Anderson, Jr., Arbaugh, Chrones, Doyle, Garner, Gillingham, Melanson, Pepler, Prizmich	
Nay:		
Abstain:		
Not Present:	Labahn, Peck, Tardiff	
<b>Decision:</b>	<b>Affirm</b>	
<b>GRAFTON, Virginia</b>	<b>W14735</b>	<b>Governor Referred</b>
Motion:	AFFIRM THE APRIL 6, 2010 SUITABILITY DECISION.	
Motion by:	Gillingham	
Second by:	Melanson	
Aye:	Anderson, Jr., Arbaugh, Chrones, Doyle, Garner, Gillingham, Melanson, Prizmich	
Nay:	Pepler	
Abstain:		
Not Present:	Labahn, Peck, Tardiff	
<b>Decision:</b>	<b>Affirm</b>	
<b>LEDBETTER, Randy Michael</b>	<b>E37240</b>	<b>Governor Referred</b>
Motion:	AFFIRM THE APRIL 5, 2010 SUITABILITY DECISION.	
Motion by:	Melanson	
Second by:	Chrones	
Aye:	Anderson, Jr., Arbaugh, Chrones, Doyle, Garner, Gillingham, Melanson, Pepler, Prizmich	
Nay:		
Abstain:		
Not Present:	Labahn, Peck, Tardiff	
<b>Decision:</b>	<b>Affirm</b>	

**MEEKER, John Barton**

**P33796**

**Governor Referred**

Motion: AFFIRM THE 9/24/08 SUITABILITY DECISION WITH THE ADDITIONAL SPECIAL CONDITION OF PAROLE THAT MR. MEEKER NOT OPERATE A MOTOR VEHICLE THAT IS NOT EQUIPPED WITH AN ALCOHOL DETECTION IGNITION SWITCH.

Motion by: Peck

Second by: Garner

Aye: Anderson, Jr., Arbaugh, Chrones, Doyle, Garner, Gillingham, Melanson, Peck, Pepler, Prizmich

Nay:

Abstain:

Not Present: Labahn, Tardiff

**Decision: Affirm**

**SOLA, Arnel**

**E08721**

**Referred by Decision Review**

Motion: DISAPPROVE THE MAY 26, 2010 DECISION BECAUSE OF A TERM CALCULATION ERROR AND SCHEDULE A NEW HEARING TO SET THE PRISON TERM.

Motion by: Garner

Second by: Prizmich

Aye: Anderson, Jr., Arbaugh, Chrones, Doyle, Garner, Gillingham, Melanson, Pepler, Prizmich

Nay:

Abstain:

Not Present: Labahn, Peck, Tardiff

**Decision: Rehearing**

**WHITSON, Scott Alden**

**J44581**

**Referred by Decision Review**

Motion: AFFIRM THE JULY 13, 2010 SUITABILITY DECISION.

Motion by: Chrones

Second by: Gillingham

Aye: Anderson, Jr., Arbaugh, Chrones, Doyle, Garner, Gillingham, Melanson, Pepler, Prizmich

Nay:

Abstain:

Not Present: Labahn, Peck, Tardiff

**Decision: Affirm**

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**En Banc Decisions**  
**Tuesday, September 21, 2010**

**Compassionate Release – Penal Code section 1170(e)**

Pursuant to Government Code section 11126(c)(4)

<b>MARTINEZ, Steven</b> Motion #1	<b>P-23908</b>	<b>Compassionate Release</b>
	<b>Refer to court for consideration of sentence recall because: the prisoner is medically incapacitated as defined in Penal Code section 1170(e)(2)© and the conditions under which the prisoner would be released or receive treatment do not pose a threat to public safety as referenced in Penal Code section 1170(e)(2)(B).</b>	
Motion by:	Anderson	
Second by:	Gillingham	
Aye:	Anderson, Doyle, Gillingham	
No:	Arbaugh, Chrones, Garner, Melanson, Pepler, Prizmich	
Abstain:		
Not Present:	Peck	
<b>Decision:</b>	<b>Motion did not carry.</b>	

<b>MARTINEZ, Steven</b> Motion #2	<b>P-23908</b>	<b>Compassionate Release</b>
	<b>Decline to refer to sentencing court, notwithstanding his medical incapacitation, because the inmate continues to be a public safety risk. Penal Code section 1170(e)(2)(B).</b>	

**The Board concludes that his release would present a threat to public safety based on these findings:**

**The vile nature of his commitment offenses against a young woman: kidnapping, two counts of forcible rape, two counts of forcible oral copulation, rape with a foreign object, and hit and run with injury.**

**His extensive criminal history dating back to 1987 including arrests for receiving stolen property, carrying a loaded weapon, obstructing/resisting a public officer, assault with a deadly weapon, battery and damage of power lines, and convictions for the commitment offenses.**

**After becoming a quadriplegic in prison, Martinez has continued his antisocial behavior by threatening and verbally abusing prison nurses.**

**His disciplinary history includes CDC 115 Rule Violation Reports for disrespect to staff in 2010, 2009, 2008, and 2007. Martinez also received a CDC 115 in 2009 for overfamiliarity and a CDC 115 in 2005 for behavior that can lead to violence.**

Twice he has threatened nurses with physical harm. He said to one nurse, "You're lucky I can't walk... I'd kick your ass. I don't have to worry though, someone will get you." On a separate occasion, he warned another nurse, "You better watch it."

On another occasion, Martinez threatened to have a nurse fired. In 2009, he said to her, "Are you ready to be trained? He then stated, "Oh! You are ignoring me now after telling me you live in an apartment. By the way did you tell your husband that you invited me to your apartment? Later in the nurse's shift, Martinez commented, "The clock is ticking, I'm working on it. Next month is your last month and you will be, Bye Bye."

**Martinez's mental state remains unchanged. He remains a violent person capable of using others to carry out his threats.**

Motion by:	Arbaugh
Second by:	Peppler
Aye:	Anderson, Arbaugh, Chrones, Doyle, Garner, Gillingham, Melanson, Peppler, Prizmich
No:	
Abstain:	
Not Present:	Peck
<b>Decision: _</b>	<b>Decline to refer to sentencing court.</b>