

NON-VIOLENT SECOND STRIKER DECISION FORM

NON-VIOLENT SECOND STRIKER INFORMATION

Review Type: Decision Review Admin Review

Date Initiated: July 7, 2016

Inmate Name: BLOXHAM, CHRISTOPHER,RYAN

CDCR Number: AL3772

Institution: Sierra Conservation Center

BPH DECISION REVIEW

- Decision Upheld
- Decision Vacated

COMMENTS

The BPH conducted an NVSS review on 8/25/16 and approved release based upon the mitigating factors in the case- the second strike crime and the institutional behavior. The Yolo County District Attorneys Office filed a request for reconsideration on September 8, 2016. In their request the District Attorney cites to errors in the commitment offense portion of the decision, specifically they argue the second strike crime in the decision is the wrong offense. The decision cites to burglary 2nd, a Stanislaus County case. The correct second strike crime is HS 13351, possession for sales of a controlled substance, from Yolo County. The inmate is also serving a sentence for burglary 2nd out of Stanislaus County- but it is not the second strike crime and was later reduced to a misdemeanor under Proposition 47.

The decision incorrectly cites to the burglary 2nd conviction as the second strike offense and omits entirely any reference to the correct second strike offense of possession for sales of controlled substance. The District Attorney further argues the inmate's institutional behavior should be an aggravating factor as the drug use and sales in the commitment offense has a nexus to the inmate's 115 for possession of marijuana.

After a careful review of the inmate's case factors under CCR section 2042, this error is found to be a substantial error and if corrected could lead to a substantially different decision upon a re-review. This review and approval decision was premised on the wrong offense and effected the entire decision. Therefore, the approval decision will be vacated and a new review of the case will be conducted with the correct commitment offense and a new review of the entire case factors using the correct commitment offense. Vacate the approval decision and order a new NVSS review on the merits.

*Rhonda S Dotta*

September 28, 2016

SIGNATURE

REVIEW DATE

SKIPPER-DOTTA, RHONDA

NAME



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BPH DECISION

JURISDICTIONAL REVIEW

- BPH does not have jurisdiction, no further review.
[X] BPH has jurisdiction.

REVIEW ON THE MERITS

- Recommendation to release approved.
[X] Recommendation to release denied.

Decision based on the reasons stated below:

Decision prepared by DC Mahoney. Issue: Does the inmate pose an unreasonable risk of violence if released?
Statement of Reasons: Current Commitment Offense: The inmate's current commitment offense is a mitigating factor in this case. The 2nd strike offense is HS11351-possession of a controlled substance for sales, a term of 6 years. On 5/15/2011, the police found the inmate slumped over in the driver's seat of a car with his wife and young child also in the vehicle. In the car police found a smoking pipe, 61.96 grams of marijuana, 5.39 grams of heroin, a digital scale, ziplock baggies and a realistic BB gun that looked like a firearm under the seat. It should be noted that while out on bail for this offense, the inmate committed a 2nd degree burglary (PC459) which was later reduced to a misdemeanor pursuant to Proposition 47. There are no aggravating circumstances related to the current commitment offense. The mitigating circumstances related to the current commitment offense are: no weapon was used; there was no violence or threat of violence; there was no physical injury to any victims. When balancing the lack of aggravating circumstances and the mitigating circumstances, the current offense is a mitigating factor. Prior Criminal Record: The inmate's prior criminal record is an aggravating factor in this case. The inmate's prior criminal history began in 2000 and continued until the 2nd strike crime in 2011. The relevant felony convictions are: PC212.5c-robbery 2nd degree with a firearm (2000); PC182(A)(1)/626.9(B)-conspiracy to possess a firearm near a school (2000) (inmate supplied a gun and planned, with codefendants to rob a store in order to get money to buy marijuana. After the robbery they were stopped by police near an elementary school and the co-defendant fired the gun supplied by the inmate at a police officer.); and the PC 459 (2011) and the current commitment offense. The aggravating circumstances related to the prior criminal record are: The inmate's first strike for PC212.5c-robbery 2nd degree is a violent felony offense pursuant to PC667.5(c); 2) the inmate was not free from incarceration for 5 years prior to the second strike offense (the inmate was last released from incarceration 6/21/07 and the second strike crime occurred on 5/15/2011) and the inmate has been convicted of more than 3 prior felony convictions (although one was reduced to misd). The mitigating circumstances related to the prior criminal record are: 2) the inmate does not have multiple serious felony convictions pursuant to PC1192.7 or violent felony convictions pursuant to PC667.5(c). When balancing the aggravating circumstances and the mitigating circumstances, the inmate's prior criminal record is an aggravating factor in the case. Behavior/Rehabilitative Programming: The inmate's behavior/rehabilitative programming is an aggravating factor in this case. The inmate has been incarcerated on the second strike offense since 5/03/2012. During this incarceration the inmate has suffered the



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REVIEW ON THE MERITS

following negative circumstances: 4 rules violations: (1/11/2016 for possession of tobacco; 11/13/2014 for possession of marijuana; 12/16/2013 for possession of tobacco; 2/21/2013 for extortion). During this incarceration the inmate has participated in or completed the following positive programming: a substance abuse program, anger management, a parenting class, college classes, and work as a camp firefighter. After balancing the positive factors against the negative factors, the inmate's institutional record does not show overall compliance with institutional rules and programs and therefore is an aggravating factor in the case. He has received numerous rules violations including for one for possession of marijuana which was the motive for the first strike crime and drugs were also an integral part of his second strike crime and shows a pattern of criminal behavior. Response to Legal Notices There were responses from the inmate's mother and grandmother in support of release and from the Yolo County District Attorney's Office in opposition to the release and they all were considered in the decision. Decision: When balancing the aggravating factor in this case, the prior criminal record and the inmate's behavior/rehabilitative programming, with the mitigating factor, the second strike crime, the aggravating factors outweighs the mitigating factor. The inmate's first strike for 2nd degree robbery was violent and the motive was to obtain money to buy marijuana. The second strike crime was for possession of drugs for sale. The inmate has failed to remain disciplinary free in prison and has received a rules violation for possession of marijuana. The inmate is still willing to violate the rules in order to obtain marijuana which is similar to the events of the first strike crime and the second strike crime. Therefore, the inmate does pose an unreasonable risk of violence to the community and release is denied.

September 28, 2016

SIGNATURE

REVIEW DATE

SKIPPER-DOTTA, RHONDA

NAME