

BOARD OF PAROLE HEARINGS

P.O. Box 4036
Sacramento, CA 95812-4036



July 7, 2016

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF Yolo
301 2ND ST.
WOODLAND, CA 95695

Subject: **NON-VIOLENT SECOND STRIKER RELEASE DECISION**
Inmate's Name: GARCIA, FRANCISCO
CDCR#: AX5097
Institution: Mule Creek State Prison (MCSP)
Court Case #: CRF151101

The Board of Parole Hearings (BPH) has reviewed the Non-Violent Second Striker (NVSS) decision for inmate GARCIA dated May 24, 2016. The decision to approve release was vacated and a new NVSS review ordered.

On July 6, 2016, a recommendation to deny release was approved. Please direct any inquiries concerning the inmate to the institution at which the inmate is housed.

Respectfully,

PRE-HEARING ANALYSIS UNIT
BOARD OF PAROLE HEARINGS

/JRL

RECEIVED
JUL 08 2016
Yolo County District Attorney

NON-VIOLENT SECOND STRIKER DECISION FORM

NON-VIOLENT SECOND STRIKER INFORMATION

Review Type: Decision Review Admin Review

Date Initiated: April 12, 2016

Inmate Name: GARCIA, FRANCISCO, DARIO

CDCR Number: AX5097

Institution: Mule Creek State Prison

BPH DECISION REVIEW

- Decision Upheld
- Decision Vacated

COMMENTS

Mr. Garcia was approved for release pursuant to the NVSS process on May 24, 2016, but received a serious rules violation subsequent to the review. Due to the serious rules violation, a decision review is required to determine if release is still appropriate.

[Handwritten Signature]

SIGNATURE

MOELLER, DANIEL

NAME

July 6, 2016

REVIEW DATE

NON-VIOLENT SECOND STRIKER DECISION FORM

NON-VIOLENT SECOND STRIKER INFORMATION

Inmate Name: GARCIA, FRANCISCO, DARIO
 CDCR Number: AX5097
 Institution: Mule Creek State Prison

BPH DECISION

JURISDICTIONAL REVIEW

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

REVIEW ON THE MERITS

- Recommendation to release approved.
 Recommendation to release denied.

Decision based on the reasons stated below:

ISSUE: When considering together the findings on each of the five of the inmate's case factors listed below, both aggravating and mitigating, do they tend to show Mr. Garcia poses an unreasonable risk of violence to the community?

A. CURRENT COMMITMENT OFFENSE

Mr. Garcia's second strike offense is Penal Code (PC) §594(b)(1)- Vandalism. On February 25, 2015, Woodland Police Department responded to a call of an intoxicated man breaking windows. Victim reported that she asked her ex-boyfriend, Mr. Garcia, to leave her residence because he was intoxicated. After leaving, he immediately kicked the door. He then went to the sliding glass door and yelled for the victim to come out. Victim immediately heard the sliding glass door shatter. When she went to her bedroom to call police, Mr. Garcia yelled again for her to come out. When she refused, he threw a large river rock through her bedroom window. The aggravating circumstances are: 1) a weapon was used; and 2) there was a threat of violence. The mitigating circumstances are: 1) there was no physical injury to the victim; and 2) only property damage occurred. When balancing the aggravating circumstances and the mitigating circumstances, the current offense is determined to be slightly mitigating due to the lack of any physical injury.

B. PRIOR CRIMINAL RECORD

Mr. Garcia's criminal record began in 2003 and continued until the second strike crime in 2015. All of Mr. Garcia's prior felony convictions occurred in 2003 and consist of the following: PC §245(a)(1)- Assault with a Deadly Weapon with an enhancement for PC §12022.7- Infliction of Great Bodily Injury; PC §1320.5- Failure to Appear; and PC §186.22(a)- Criminal Gang Act. Mr. Garcia received a 7 year 4 month prison term for those convictions. The aggravating circumstances are: 1) the first strike was violent under PC §667.5; 2) he was convicted of multiple serious and violent offenses; 3) his criminal record shows a pattern of assaultive behavior; and 4) there was less than 5 years between incarceration (2/28/11) and his second strike offense (2/25/15). No mitigating circumstances were found. When balancing the aggravating circumstances and the lack of mitigating circumstances, Mr. Garcia's criminal record is determined to be an aggravating factor.

NON-VIOLENT SECOND STRIKER DECISION FORM

REVIEW ON THE MERITS

C. INSTITUTIONAL ADJUSTMENT

Mr. Garcia has been incarcerated on the second strike offense since August 13, 2015. During his current incarceration, Mr. Garcia has received one serious rules violation for Possession of Tattoo Paraphernalia in June 2016. Mr. Garcia is currently unassigned and no work or self-help participation was found. Due to his recent rules violation, Mr. Garcia's institutional record does not show compliance with institutional rules and programs and is determined to be an aggravating factor.

D. MEDICAL CONDITION

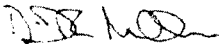
Mr. Garcia does not suffer from a medical condition that decreases his ability to reoffend if released.

E. Response to Legal Notices

No responses from legal notices were received.

SUMMARY

When balancing the aggravating factors in this case: the prior criminal record and the institutional behavior, with the mitigating factor in this case: the current commitment offense, the aggravating factors outweigh the mitigating factor. Mr. Garcia is found to currently pose an unreasonable risk of violence to the community and, as a result, release is denied.



SIGNATURE

MOELLER, DANIEL

NAME

July 6, 2016

REVIEW DATE

NON-VIOLENT SECOND STRIKER DECISION FORM

NON-VIOLENT SECOND STRIKER INFORMATION

Inmate Name: GARCIA, FRANCISCO, DARIO
CDCR Number: AX5097
Institution: Mule Creek State Prison

BPH DECISION

JURISDICTIONAL REVIEW

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

REVIEW ON THE MERITS

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

Decision based on the reasons stated below:

Issue: When considering together the findings on each of the five of the inmate's case factors, both aggravating and mitigating, they tend to show the inmate does not pose an unreasonable risk of violence to the community. Release is approved.

Statement of Reasons:

Current Commitment Offense: The second strike offense is PC 594(b)(1) Vandalism. On 2/25/15, Woodland Police Department responded to a call of an intoxicated man breaking windows. Victim stated her ex-boyfriend was kicked out of her residence and threw a large river rock through the back window. The mitigating circumstances are: 1) no weapon was used during the commitment offense; 2) there was no threat of violence involved; 3) Drug/Alcohol use was involved; 4) property damage occurred. No aggravating factor was found. When balancing the aggravating circumstances and the mitigating circumstances, the current offense is a mitigating factor.

Prior Criminal Record: The inmate's criminal record began in 2003 and continued until the second strike crime in 2015. The relevant felony conviction is: PC 245(a)(1) Assault with a deadly weapon, PC 12022.7 Inflicting great bodily injury, PC 1320.5 Failure to appear and PC 186.22(a) criminal gang act (2003). The aggravating circumstances were: 1) the first strike was serious under PC 1192.7; convicted of 3 or more felonies; multiple serious PC 1192.7 offenses; criminal record shows a pattern of assaultive behavior; and less than 5 years between incarceration (2/28/11) and the second strike (2/25/15). No mitigating circumstance was found. When balancing the aggravating circumstances and the mitigating circumstance, the inmate's criminal record is an aggravating factor due to the serious nature of his first strike.

Institutional Adjustment: Inmate has been incarcerated on the second strike offense since 8/13/15. During his current incarceration, inmate has not suffered any CDC-128 or CDC-115 violations. The inmate is currently unassigned and no work or self-help was found. Confidential was reviewed, but not used for NVSS purposes. Therefore his current institutional time would be considered a mitigating factor.

Medical Condition: Inmate does not suffer from a medical condition.

Response to Legal Notices: No legal notices were received.

Decision: When balancing the aggravating factors in this case, the prior criminal record, with the mitigating factor in this case, the second strike crime and institutional behavior the mitigating factors outweigh the aggravating factors. The

NON-VIOLENT SECOND STRIKER DECISION FORM

REVIEW ON THE MERITS

inmate does not pose an unreasonable risk of violence to the community and release is granted.

Michael Grottkau

May 24, 2016

SIGNATURE

REVIEW DATE

GROTTKAU, MICHAEL

NAME