

BOARD OF PAROLE HEARINGS

P.O. BOX 4036
SACRAMENTO, CA 95812-4036
(916) 445-4072



August 27, 2018

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

Subject: **NONVIOLENT PAROLE REVIEW DECISION**

Inmate's Name : GARZA, CANDELARIO
CDCR# : F67607
Location : California Medical Facility
Court Case# : 061680

The above inmate was referred to the Board of Parole Hearings under the Nonviolent Offender Parole Review Process. The board has approved the inmate for release. Enclosed is a copy of the board's decision.

If you believe the board's decision contains an error of law or error of fact, or you have new information you believe would have materially impacted the board's decision had it been known at the time of the decision, please submit a written statement to:

Board of Parole Hearings
Attn: Nonviolent Parole Review
P.O. Box 4036
Sacramento, CA 95812-4036

Please direct any inquiries concerning the inmate's release to the institution where the inmate is housed.

Respectfully,

BOARD OF PAROLE HEARINGS
NV Processing Unit

NONVIOLENT DECISION FORM

NONVIOLENT INFORMATION

Inmate Name: GARZA, CANDELARIO
CDCR Number: F67607
Institution: California Medical Facility

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 for Garza, Candelario, F67607: When considering together the findings on each of the inmate's four case factors, the inmate does not pose an unreasonable risk of violence to the community. Release is approved.

Statement of Reasons:

Case Factor #1 - Current Commitment Offense

The circumstances of the inmate's current commitment offense(s) aggravate the inmate's current risk of violence. The inmate was sentenced to a total term of 18 years and 4 months on the current commitment offense(s). The commitment offense(s) is/are

(1) P273.5(3)(1) Corporal Injury to Spouse Cohabitant w/in 7 Years of Prior: sentenced to 10 years (doubled term per P667c/667e);

(2) P136.1(b) Prevent/Dissuade Witness: sentenced to 4 years (doubled term per P667c/667e);

(3) P422 Terrorist Threat: sentenced to 1 year and 4 months (doubled term per P667c/667e); and

(4) three 1-year enhancements per P667.5(b) for prior prison terms.

Regarding the circumstances of the crimes, according to the Probation Officer's Report, on 10/09/05 the inmate and his wife (the victim) got into an argument over her failing to complete several chores he had requested she do that day. The victim went outside to cool off and began speaking to herself out loud about the pettiness of the argument. Upon overhearing this, the inmate grabbed the victim by the hair and dragged her back into the residence while punching her several times in the face. Once inside, the inmate pushed the victim in the chest, causing her fall to the floor. Additionally, per the Felony Complaint (and required elements of the crimes) (1) the victim suffered a traumatic condition as a result of the P273.5 offense; (2) the inmate attempted to prevent or dissuade the victim from reporting the crime (resulting in the P136.1 conviction); and (3) the inmate threatened the victim with death or GBI during the crime (resulting in the P422 conviction).

After careful review and consideration of the aggravating and mitigating circumstances in all of the current crimes, there are aggravating circumstance(s) in the case and the following aggravating circumstances make this an aggravating factor in the case:

1. The victim was punched in the face multiple times during the crime resulting in corporal injury and was threatened with death or GBI. Therefore, the victim suffered physical injury and the threat of physical injury.

Therefore, the current crimes are found to be an aggravating risk factor in the case.

Case Factor #2 - Prior Criminal Record

The inmate's prior criminal history began in 1991 and continued until the commitment offense(s) in 2005. The inmate's prior criminal record is a factor aggravating the inmate's current risk of violence. The inmate has the

following adult criminal convictions: 1991 Robbery 2nd (P211); 1994 Accessory to Felony (P32); 2002 Inflict Corporal Injury on Spouse/Cohabitant (P273.5); and 2002 False Imprisonment w/ Violence (P237). Two misdemeanor convictions for violence are also noted: 1997 Assault/Family Violence (Texas case); and 2000 Battery (P242) (CA). Also note the inmate was released to parole from his previous prison term on 10/13/03.

The circumstances of the inmate's prior criminal record that mitigate the inmate's current risk of violence are:

1. None of the inmate's convictions are for felonies that were violent felonies as defined under P667.5(c) at the time they were committed. Therefore, the inmate has not been convicted of a violent felony as defined in P667.5(c) in the past 15 years.

The circumstances of the inmate's prior criminal record that aggravate the inmate's current risk of violence are:

1. The inmate's prior felony convictions include robbery, corporal injury to a spouse or cohabitant and false imprisonment with violence. His current commitment offense involves an assault on his wife and his threatening her. Additionally, the inmate has two prior misdemeanor convictions for violence. Accordingly, the inmate's prior criminal convictions, coupled with his current convictions, show a pattern of assaultive behavior.

2. The inmate was released to the community from his previous prison term on 10/13/03. He committed the current crimes on 10/09/05—approximately two years later. Therefore, the inmate was incarcerated for a felony conviction within five years prior to his her current convictions.

Analysis: When balancing the aggravating circumstances against the mitigating circumstances, they tend to show that the circumstances of the inmate's prior criminal record aggravate the inmate's current risk of violence because the pattern of repetitive violence reflected in the inmate's prior criminal record indicates a high risk for future and his having committed his current crimes only two years after his prior release from prison proves that previous attempts to correct his criminality—including incarceration—were unsuccessful and had little, if any, impact on reducing his criminally violent behavior. As such, these circumstances are weighted more heavily than the fact that none of the inmate's prior felony convictions are for a crime listed in P667.5(c). Consequently, the inmate's prior criminal record is a factor which aggravates his current risk for violence.

Case Factor #3 - Institutional Adjustment

The inmate was received into the California Department of Corrections and Rehabilitation on the current commitment offense(s) since April 5, 2007, a period of approximately 11 years, 5 months.

The inmate has been involved in the following activities:

BEHAVIOR: During his current term, the inmate has been found guilty of several Rules Violations Reports, including:

09/08/15 Fighting resulting in use of force
07/13/15 Destruction of State property
10/29/14 Delaying a PO/Refuse to accept assigned housing
04/17/11 Disrespect towards staff
10/12/10 Disrespect towards staff
07/27/10 Cheeking medication

It should be noted that reliable confidential information indicating the inmate has engaged in criminal activity during his current term was also located in his Central File (see Conf. Memos of 03/25/14 and 08/17/09). However, based on statements in the 03/25/14 memo itself, and based on statements noted in a CDC128-B of 03/25/14 (see ERMS/GEN-CHRONOS), the information in the 03/25/14 memo is not being used to aggravate the inmate's institutional adjustment.

EDUCATION: Per the inmate's Assignment History (SOMS), during his current term, between 2011 and 2015, the inmate was assigned to adult basic education classes (ABE) at various times totaling approximately 11 months.

VOCATION: Per the inmate's Assignment History (SOMS), during his current term, the inmate was assigned to the Vocational Computer Literacy from 11/18/14 to 06/22/16 (approx. 1 year, 7 months) and completed the program.

WORK ASSIGNMENTS: Per the inmate's Assignment History (SOMS), during his current term, the inmate has been assigned to the following institutional work assignments: Laundry for approximately 2.5 months in 2014; Porter for 3+ months in 2013; Dining room worker for a little under 4 months in 2012; Kitchen worker for approximately 1.5 months in 2012; Clerk for about 1 month in 2012; Dining room worker for approximately 8 months during 2010 and 2011; and Cook for approximately 2 weeks in 2010. Note that the inmate's actual hours worked in these assignments is not provided in his Assignment History..

SELF-HELP/REHABILITATIVE PROGRAMS: Currently, the inmate is assigned to the following self-help programs: Family Relations (08/11/18 to present), Criminal Thinking (08/11/18 to present) and the Veteran's Support Group (since 08/01/18). Additionally, he completed the following programs in 2018: Anger Management (about a 4-month program); Substance Abuse Treatment (approx. 6+ months); and Transitions (re-entry program; approx. 3 months). A 10/01/12 laudatory chrono also indicates the inmate was an active participant in the Veterans Helping Veterans Group in 2012.

The following circumstances of the inmate's institutional behavior, work history, and rehabilitative programming mitigate the inmate's current risk of violence:

1. The inmate has completed the Vocational Computer Literacy program during his current term and has been assigned to various educational classes for close to a year's time as well as to various prison jobs for a total time exceeding one year. Therefore, the inmate is deemed to have successfully participated in a educational, vocational and institutional work assignments for a sustained period of time.

2. The inmate has completed courses in substance abuse treatment, anger management and re-entry skills. Additionally, he has been involved in a Veterans Support Group and is currently attending additional self-help programs—including a course on family relationships. As such, the inmate is deemed to have participated in available rehabilitative or self-help programming to address the circumstances that contributed to his criminal behavior.

The following circumstances of the inmate's institutional behavior, work history, and rehabilitative programming aggravate the inmate's current risk of violence:

1. The inmate's most recent Rules Violation Report (09/08/15) was for fighting which necessitated the use of force. Therefore, the inmate has been found guilty of an institutional Rules Violation Report resulting in physical injury or threat of physical injury since his last admission to prison.

2. As noted above, there is reliable information in the confidential section of the inmate's central file indicating he has engaged in criminal activity since his last admission to prison.

Analysis: When balancing the aggravating circumstances against the mitigating circumstances, they tend to show that the inmate's institutional behavior, work history, and rehabilitative programming mitigate the inmate's current risk of violence because the inmate's one rules violation involving violence is limited to a prison fight which took place close to three years ago and he has since participated in multiple self-help courses (including anger management) and completed a vocation. The inmate's behavior over the past three years has been good. He has completed three self-help programs (all of several months duration) and is currently attending courses in criminal thinking and family relationships. Furthermore, he has been assigned to multiple institutional work assignments for extended periods of time during this term as well as adult education classes. As noted above, the most recent confidential information in the inmate's record (03/25/15) is not being afforded weight and his prior confidential memo refers to events that occurred close to 10 years ago and, therefore, also do not warrant substantial weight. For these reasons, the inmate's improved prison performance in the areas of education, vocation, prison work assignments and rehabilitative programming are now deemed to outweigh his one act of misconduct involving violence and the older negative confidential information. Accordingly, the inmate's overall institutional adjustment is now considered a factor which mitigates his current risk for violence.

Case Factor #4 - Response to Legal Notice

There were response(s) to the Legal Notices in support of release from the inmate (dated 07/05/18) which were reviewed and considered in this decision.

SUMMARY: When reviewing all of the case factors as documented above, taking into account the totality of the circumstances, including the passage of time, the inmate's age (64) and any physical and/or cognitive limitations, the factors mitigating the inmate's current risk of violence outweigh the factors aggravating the inmate's current risk of violence.

While the inmate's current commitment offense involved violence and injury—thereby making it an aggravating factor—the record does not indicate the victim's injuries were of a serious nature. In addition, it is also important to keep in mind that the offense occurred in 2005; thirteen years ago. Similarly, although the inmate's prior criminal record demonstrates a pattern of assaultive behavior—and therefore also an aggravating factor—these crimes took place over 15 years ago. The inmate is now 64 years old, has served over 11 years, and even though his prison record is marred by a prison fight and earlier misconduct, his performance over the past three years evidences significantly improved behavior and a sustained effort to participate in rehabilitative programs. In view of the inmate's current age and progress during the past three years of incarceration, the mitigating factor of his institutional adjustment is now deemed to outweigh the aggravating factors of his current commitment offenses and prior criminal record. Therefore, the inmate is not considered an unreasonable risk of violence at this time. The inmate is approved for release.



August 24, 2018

SIGNATURE

REVIEW DATE

STANTON, KEITH - Deputy Commissioner

If you believe this decision is not correct, you may send a written request to :

Board of Parole Hearings
Attn: Nonviolent Parole Review
P.O. Box 4036
Sacramento, CA 95812-4036

Your request must be post marked within 30 calendar days from the date you were served this decision and your request must include a brief written statement explaining why you believe the decision is not correct. You may include additional information to support your request.