

PAROLE MATTERS.

Summer 2009 Issue



Parole matters and so does INSIGHT. In this issue ,we cover the topic of INSIGHT. What is insight as defined by the Board, and how do you prove you've got it?

Because of a need to base parole denials on present concerns, the Board has taken to invoking "insight" as the latest reason to deny parole. In these pages, you will learn exactly what insight means and how to prove it at your next parole hearing.

Parole Matters is published by Charles Carbone, Esq. Charles is a parole and prisoner rights attorney for California prisoners. This publication may be construed as a legal advertisement.

INSIGHT: HOW TO PROVE IT AND HOW TO SHARE IT WITH THE BOARD.

By now, you've heard how important "insight" is to the Board because if you don't have it you will likely get denied parole. Insight is indeed the latest and most increasingly invoked reason to deny your parole. Hence, it is now more important than ever to establish that you have sufficient insight into the crime. Don't allow yourself to be denied for reasons which you can control -- namely, you can easily prove your insight is sound and in-depth.

Why is INSIGHT the new reason to deny parole?

Insight is the latest reason to deny parole because it can act as the connection between your life crime and a present risk to public safety. As you may recall, the courts now agree that a historical factor like your life crime or your priors can not be used to deny parole unless there is a nexus between these factors and a present risk to public safety. Hence, the easiest connection for the Board to rely on is "insight" because: (a) it is an inherently subjective thing to prove and it leaves the parole board with the opportunity to pick apart your presentation without citing specific facts; (b) many inmates fail to explicitly detail their insight into the crime; (c) the pivotal California Supreme Court case *In re Shaputis* allows the Board to deny parole solely because of lacking insight; and (d) many inmates actually lack insight.

With insight as the lowest hanging fruit, the Board reasons that "insight" is the simplest way to deny parole when no other reason exists.

INSIGHT into What?

The most tested insight by the Board is insight into the crime, but insight can also apply to your priors and your social history. But for most lifers insight should focus on the life crime.

INSIGHT about What?

YOUR CRIME:

Let's start first with your crime. You need insight into generally three areas when it comes to your crime.

(a) Get the Facts Right

The first and most obvious area of insight relates to your understanding of the basic facts of your life crime. The Board wants to see that your un-

derstanding of the facts of the life crime corresponds to the court's version. Here the court's version includes the version of the crime in the Probation Officer's report as well as any Court of Appeals decision, among other sources. The Board wants to confirm that your understanding of the basic facts of the crime do not contradict what the court believed happened. For most lifers, this is not a problem unless you are one of those lifers who is innocent of the life crime. For those innocent of the life crime, this first bit of insight can be difficult to deal with. And in past issues of Parole Matters, we have tied to deal with this issue. But for those who are guilty of their crimes, it boils down to agreeing with the court's version and remembering (to the best of your ability) exactly what happened. For example, the Board can find lacking insight when an inmate cannot remember essential facts of the crime that he or she should know despite being (perhaps) intoxicated during the commission of the crime. Here it is crucial to agree with the court's version and to be able to recall those facts with as much detail as possible.

The Board is basically testing your honesty and acceptance of responsibility. If you are conveniently forgetting key facts, the Board may conclude you are minimizing, or your memory is self-serving with an eye toward remembering the crime in a way that makes you less accountable or less involved. It's best to agree with as much of the court's version as you can, and to recall as much of the crime as you can. That's insight.

(b) INSIGHT over the defining qualities of the crime.

Next comes insight into the defining qualities of the crime. "Defining qualities" means what stands out about the crime as differentiating your crime from others. Think about it this way: the defining qualities of "Star Wars" (the movie) was that it was a fight between good and evil set in the future where those who best used the force would prevail. Notice, I didn't tell you the plot or story of "Star Wars." Instead, I boiled it down to what was being conveyed in the film about its message. This same method can be applied to your crime. Obviously, we are dealing with real life not the movies here but the same approach applies. You need to share what is the defining message or defining facts of your crime. It could be any number of things: the extent of your extreme intoxication during the crime; the manner of death; the severe extent of the injuries to the victim; the triviality of the reason why the crime occurred; your youthful

INSIGHT has 3 major parts: 1. Agreement with the court's version of the crime. 2. Understanding into what makes your crime different from others. And 3, Insight into your remorse, acceptance of responsibility and understanding over WHY the crime occurred.

INSIGHT means that you have to be confident in addressing your understanding of the most difficult and painful aspects of your life before the Board. You can't transmit something you haven't got. Yes, those self-help classess actually matter. They should be taken seriously. If you aren't doing the work, the Board may sniff it out. Commit yourself to the time honored work of self-development and growth.

age at the time of the crime; the number of victims; or how much you sought to flee after the crime. The point is that something stands out about your crime and gives it its distinct qualities. Name them. Tell the Board you understand exactly what stands out in your mind as the defining qualities of your crime. This is especially useful in heinous crimes because when done effectively it take the wind out of the sails of any arguments put forth by the Board or the D.A. about the cruelty inherent in your crime.

(c) Discuss in detail your INSIGHT on remorse, acceptance of responsibility, etc.

And third, here comes the hardest part. You've agreed with the facts of the crime, and you've identified what stands out about your crime. Now, you have to share your opinions on four crucial areas:

i) Remorse:

Insight into remorse means detailing how you are remorseful and regretful over what you did. Most inmates get a D+ when discussing this topic because they simply say "I accept full responsibility for my crime" and leave it at that. Such statements mean nothing to the Board. They want DETAILS. What exactly -- details -- are you accepting responsibility for? It is helpful to review your crime in you mind moment by moment pausing each place in its commission where you were either doing something or not doing something which led to the victim's injuries or death, and take note specifically of what you regret doing. Your remorse should focus on what you regret doing, or how you regret living at the time. You can discuss how you have dealt with the shame of committing your crime and injuring your victims as well as express remorse by seeing the crime through the eyes of the victim or the victim's family. One exercise I often recommend is having the lifer play the part of the victim in telling the story of the crime from their standpoint prior to the hearing. This can often reveal many new perspectives into what the lifer has done and the harm they have caused which can later be shared with the Board.

ii) Why did the crime occur?

The next big topic in INSIGHT is knowing why the crime occurred or what the Board calls "knowing the causative factors which led the commission of the offense." As reported in past issues, this boils down to knowing why the crime occurred. The reasons can be as varied as the life crimes out there. But an example of these reasons can include the following: 1. Bad choices. 2. Normalizing criminal behavior through previous encounters with the law and committing lesser crimes 3. Anger and impulse control issues. 4. Intoxication and drug abuse. 5. Low self-esteem and depression. And 6. Poor associations. These are just a

few of the many reasons a life crime can occur. Your job is to be able to list out and detail whatever reasons apply to why your life crime occurred. And simply naming the reasons is not enough. You have to be able to discuss how each reason independently or cumulatively led to your life crime.

iii) Responsibility

What are you responsible for? Another topic of INSIGHT is insight into what you did wrong and what you accept responsibility for. Again, here, detail is important. You should be able to replay your crime and discuss at what points during its commission do you take personal responsibility for the injuries you caused. This includes being able to accept responsibility for a crime partners actions, maybe even something your victim did, or the condition you found your victim in. Once you set in motion a chain of events, you have to own those events and make certain that you acknowledge that the effects of your crime stem from you.

iv) Magnitude and Impact

Lastly, you have to share INSIGHT into your understanding of the effects and impact of your crime. Life crimes never have one victim. Invariably, there are many victims: the person killed or directly harmed, their family, the community, the witnesses, and your family, among others. Being able to name all these victims and discuss the impact of the crime upon them is crucial. Show the Board you have thought about the immediate and long term effects of your crime upon each of these victims. Most life crimes have literally an unfathomable amount of victims because when a life is taken it affects people the inmate has never met. Detail to the Board that you appreciate the impact your crime had on each of your victims.

INSIGHT is not an exact science. It comes when you are genuine about the details you share with the Board when reviewing your life crime. It comes when you know what you want to share on these topics *before* you walk into the hearing room.

And these topics of insight can apply equally to your priors (discussing your responsibility and impact of your priors) as well as your social background. Knowing the impact on how you were raised and how your acted prior to your life crime can also support INSIGHT because it shows that you have carefully considered the effects of your upbringing and life before the life crime.

Yes, INSIGHT requires that you TALK before the Board, and share DETAILS.

RECENT PAROLE CASES YOU MUST KNOW ABOUT.

As you may know by now, if you are a regular reader of Parole Matters, we keep you informed on the latest, greatest, and worst state and federal parole cases. And rather than giving you more than what you need or can understand, Parole Matters presents the pivotal cases as they are viewed by the courts, lawyers and judges -- according to the "rule of law" established by each case.

On these pages appear the list of the most recent parole case you need along with the actual importance of the case identified.

2009 OAL No. 9.: CTU 2008-1016-05

This is a favorable decision from the Office of Administrative Law ruling that the routine denial of witnesses for lifers at parole hearings is an underground regulation which requires that it be formally written into law if the Board intends to follow this practice.

In re P.F. Lazor

Cal. 4th; 2009 WL 922822
The Court of Appeals upheld the lower court's order of a rehearing of parole because the crime was no longer relevant to a present risk to public safety. The Appeals Court also rejected any comparison to *Shaputis* and refused to believe that the lifer had any problems over insight when the record did not support this.

In re Joseph Rozzo

172 Cal. App. 4th 40 (2009)
This is good decision by the California Supreme Court where the court found that the lower court could not rely on reasons to deny parole that were not cited by the Board or the Governor.

In re David McGraw

171 Cal. App. 4th 251 (2009)
This is another good case where the Board could not rely on a 28 year old murder to deny parole when the prison psychologist found that the lifer posed a low risk and the lifer had an exemplary prison record.

In re Linda Lee Smith

171 Cal. App. 4th 1631 (2009)
This is a bad case where the Court found that the inmate lacked insight into the life crime (and agreed with the Governor) despite the opinions of prison psychologists and seven previous parole grants.

In re Palermo

171 Cal. App.4th 1096 (2009)
This is a great and important case ruling that an inmate's disagreement with some of the facts of the life crime does not automatically mean that the inmate lacks insight or is minimizing his/her responsibility.

In re James Masoner

2009 WL 866262
This is a great case where a new hearing was ordered to find the lifer suitable unless his mental state had changed since his parole grant. The lifer's crime was nearly 30 years old.

In re Daniel Rico

171 Cal. App4th 659 (2009)
This is another powerful case where a murder committed in 1992 when the lifer was 19 years old was ruled to be irrelevant to parole. The lifer had been 115 free for 12 years. Plus, the court ruled that the Board could not rely on concerns over supposedly inconsistent psychological evaluations. And lastly, the Court rejected arguments made by the Attorney General (such as weak parole plans) when the Board did not share those concerns.

In re Donald Ray Lewis

172 Cal. App.4th 13 (2009)
This is a good case where the Court once again spanked the Board for finding that life crimes were "especially heinous, atrocious, and cruel" when this label did not apply.

In re Arthur Criscione

2009 WL 1028180
This is a good case finding that a 30 year old crime was no longer a reason to deny parole. The court also found that the Board relied too much on a recent psychological report which did not conduct a present risk assessment. The Court ordered the Board to establish a connection to a present risk to the public or to find the lifer suitable.

In re Justo Avalos
2009 WL 295028

This is good case overruling the Governor because the lifer did not lack insight and the Governor over-relied on the life crime.

In re Jacobson
2009 WL 692425

This is another good case rejecting a lifer's supposed lack of insight, and requiring an explicit nexus between the life crime and a present risk to the public.

In re Julian Moreno
BH005139 Los Angeles Superior Court (2009)

This a good case where the Court ruled that a 29 year old crime was not a reason to deny parole when the lifer had excellent conduct in prison, and had no 115s in 10 years. Further, the lifer had back-up parole plans in light of his primary plan to live with his brother who was a gang member 28 years ago.

Hoffman V. Marshall
USDC CD Cal. No. 08-1427
2009 WL 585437

This is another positive case where the federal court ruled that a 32 year old life crime was not relevant, and that the opinions of the prison's psychologists on the issue of insight was more important than the Governor's opinions which were not supported by the record.

In re Miguel Molina
2009 WL 1026596

This is a good case which rejected the Attorney General's arguments which the Board did not express. And the Court noted the lack of any present risk to the public and that the prison psychologist determined that the lifer posed no risk.

In re Michael Montgomery
2009 WL 782986 (2009)

The Court of Appeals reversed the Governor because the Governor incorrectly called the crime premeditated.

Styre v. Adams
2009 WL 981155

This is a great federal case finding no evidence of a present risk to public safety posed by the lifer's 29 year old and decades of so-

briety. *Charles Carbone, Esq. represents inmate Styre currently before the Board.*

In re Jose Orozco
2009 WL 242853

This is a good case ruling that the Probation Officer's Report is not evidence because it is largely hearsay. The Court also ruled that the lifer had not been inconsistent or minimizing on the life crime even though the lifer's version differed.

In re Kevin Tarver
2009 WL 446116

This is a fine case ruling that the Governor's concerns over insight were unfounded.

In re Lawrence Canez
2009 WL 804760

This is a positive case ruling that the Board needed to state the required nexus to a threat to present public safety.

In re Ut Chi Vo
2009 WL 583590

This is a strong case where the Board's requirement that the inmate "come to grips" with the life crime were not supported by the record or the psychological reports.

In re Bruce Treadway
2009 WL 840143

Here's another great case where the inmate's nearly 27 year old crime (and 10 appearances before the Board) made the lifer suitable including 11 years of being 115 free.

In re Leonard Rubio
2009 WL 414665

This is a favorable case ruling that a 29 year old crime was not relevant in light of 20 years of perfect conduct in prison.

In re David Quesada
Case No. 76259

Alameda County Superior Court (2009)
This is an important case where a recording malfunction was ruled to be an improper reason to deny a parole grant which had indeed occurred before the Board.

In re Anthony Ruiz
Case No. 77185 (Santa Clara 2009)

This is a strong case won by *Charles Carbone, Esq.* in which the life crime could not be relied to deny parole when the inmate had decades on positive conduct in prison.

APPEALING YOUR PAROLE DENIAL IS NOT AN OPTION.

In life, there are choices and necessities. With Marsy's Law now in full effect, and its new longer parole denial periods up against the courts warming up to the valid claims of lifers, an appeal of your parole denial is a **MUST**. Even a favorable decision which tells the Board they can no longer rely on particular topics to deny parole or a requirement that the Board explicitly state the connection to your present risk to public safety can be a huge help to you at future hearings. Parol appeals in the Superior Court generally take 7 months to be decided from the date of filing and must be filed within a year of the Board denial. And, of course, having a parole attorney at your side for that appeals process can make the difference between going nowhere and going home. In short, appeal any denial.

SUBSCRIPTION?

If you want to regularly receive (4 times a year) the invaluable information in Parole Matters:

For Prisoners: Send \$15 for one year subscription.

For Non-inmates: Send \$25 for one year subscription.

(Make checks payable to Charles Carbone, Esq.)



CHARLES CARBONE, ESQ.

PAROLE MATTERS

PMB 218

3128 16th Street

San Francisco, CA 94103

www.prisonerattorney.com