

FILED
Court of Appeals
Division III
State of Washington
5/6/2019 8:00 AM

No. 97973-1

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION III

IN RE PERSONAL RESTRAINT PETITION OF:

ADAM BETANCOURT,

PETITIONER.

**REPLY IN SUPPORT OF
PERSONAL RESTRAINT PETITION**

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A. INTRODUCTION

When the ISRB refused to parole Adam Betancourt, it did not find facts supporting the conclusion that Mr. Betancourt was currently more likely than not to reoffend even if released on restrictive conditions. Instead, the ISRB denied release because of the length of Mr. Betancourt's sentence and his prison behavior during the first years of his incarceration.

In contrast, the ISRB made only passing reference the DOC's psychological evaluation finding that Mr. Betancourt was a low risk to reoffend, in large part due to Betancourt's rehabilitative efforts over the last decade. The ISRB's decision never explains why it reached an opposite conclusion.

In his PRP, Betancourt argued both that the ISRB abused its discretion by denying parole based on improper and non-statutory reasons, fails to consider relevant evidence, and fails to find facts overcoming the presumption of release.

In response, the ISRB essentially asks this Court to put aside the ISRB's consideration of improper factors and defer to its judgment, which the ISRB argues is highly subjective and apparently cannot be reduced to factual findings. While counsel for the ISRB tries to recast the deficient ISRB decision with

arguments not found in the decision, its response only serves to illuminate the ISRB's focus on irrelevant considerations and its corresponding failure to explain why it disregarded the psychological evaluation, which followed the statutory directive of incorporating "methodologies that are recognized by experts in the prediction of dangerousness."

This Court should reverse and remand with directions that the ISRB release Mr. Betancourt on appropriate conditions.

B. ARGUMENT

Introduction

The ISRB did not find relevant facts overcoming the presumption of release. Early release under conditions the ISRB determines appropriate is "presumptive," unless the ISRB determines by a preponderance of the evidence that, "despite such conditions, it is more likely than not that the person will commit new criminal law violations if released." RCW 9.94A.730(3). Instead, the ISRB relied on improper and irrelevant facts and ignored the most relevant facts.

The ISRB Denied Parole Based on Improper Considerations

The Washington Legislature directed that "any person convicted of one or more crimes committed prior to the person's

eighteenth birthday may petition the indeterminate sentence review board for early release after serving no less than twenty years of total confinement.” RCW 9.94A.730 (1).

The ISRB’s decisions fails to respect the legislative judgment. The ISRB was not free to conclude that 20 years in prison was insufficient for Mr. Betancourt’s crime. The ISRB was not free to dispense with the presumptive of release. The length of the original sentence has no bearing on whether the presumption of release has been overcome

Nevertheless, the decision specifically lists the fact that Betancourt “(h)as served less than ½ of the sentence imposed” as a reason denying release. In addition, under the heading “Progress/Behavior” explaining its decision, the ISRB notes: “The Grant County Prosecutor’s office submitted a letter stating their office recommended the original sentence of 600 months be adhered to and stated they oppose any reduction in this.” *Decision*, p. 6. With all due respect to the Grant County Prosecutor and the ISRB, their objections must be addressed to the Legislature and are irrelevant to overcoming the presumption of release.

This Court has previously held that reliance on the crime and the sentence is improper. “The ISRB’s reliance on Brashear’s underlying crimes, their impact, and the portion of her sentence served conflicts with its statutory mandate to consider whether she is more likely than not to reoffend.” *Matter of Brashear*, ___ Wn. App. ___, 430 P.3d 710, 715 (Wash. Ct. App. 2018). The ISRB has broad discretion but that discretion must operate within the statutory framework.

In addition, the *Decision* references Betancourt’s possession of drugs a decade ago as one of the six reasons (along with the length of the sentence) as a reason it denied parole. *Decision*, at p. 2. The *Decision* specifically notes the Betancourt’s actions “could have resulted in criminal charges.” *Id.* The reference to the unrealized possibility of a criminal conviction also appears to be in defiance of the statute, which makes individuals who are subsequently convicted ineligible for parole. RCW 9.94A.730 (1) (“...provided the person has not been convicted for any crime committed subsequent to the person's eighteenth birthday...”). Certainly, the ISRB utterly fails to explain how the possibility of a criminal charge from actions a decade ago is relevant to Betancourt’s current risk of re-offense.

The ISRB Decision Fails to Explain Why It Discarded the DOC Risk Prediction

The ISRB's response argues that parole is a highly subjective decision guided by expertise and intuition not easily reduced to written reasons and that this Court should defer to the outcome.

Once again, the Washington Legislature has provided a specific framework, which the ISRB is not free to disregard. Moreover, the legislative framework does not depend on untethered guesswork, however experienced the members of the Board. Instead, RCW 9.94A.730 (3) requires a risk evaluation "incorporating methodologies that are recognized by experts in the prediction of dangerousness, and including a prediction of the probability that the person will engage in future criminal behavior if released on conditions to be set by the board."

The psychological evaluation that the DOC psychologist conducted included the use of the Hare Psychopathy Check List-Revised (PCL-R), which it called "currently the gold standard of predicting future risk." Mr. Betancourt scored in the very low (non-psychopath) range for psychopathy. The evaluation added: "His risk for reoffending is low based upon the absence of

psychopathy indicators and antisocial personality disorder is unlikely.” *Evaluation*, at p. 10.

The evaluation likewise uses a recognized risk assessment tool to find that “Mr. Betancourt scored in the moderate-high range of protective factors. These were evenly distributed between internal (historical and dynamic factors), motivational (be a positive member of society), and external factors (voluntary and imposed support systems.)” “Taking into consideration Mr. Betancourt's very low score on the PCL-R, his moderate score on the VRAGR and the moderate-high score on protective factors which are dynamically based, the result is on a more probable than not combined score of low level of risk to reoffend violently.” *Decision*, at p. 10-11.

The ISRB decision fails to explain why it disregarded the risk prediction required by the statute and instead substituted its own subjective judgment—a judgment which relies entirely on the historical facts of the crime and Betancourt’s early infraction history.

This Court should not countenance such disregard of the statutory directive. This Court should not permit the ISRB to

replace scientifically accepted methodologies with subjective speculation, regardless of experience. See *Training to See Risk* at https://www.uscourts.gov/sites/default/files/75_2_9_0.pdf (finding that the use of the risk assessment instruments resulted in greater predictive accuracy and that unstructured judgments overpredicted future risk).

D. CONCLUSION

Based on the above, this Court should grant relief and remand to the ISRB with directions to release Mr. Betancourt after setting appropriate conditions of release.

DATED this 5th day of May 2019

Respectfully Submitted:

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May 05, 2019 - 11:19 AM

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Appellate Court Case Number: 36555-7
Appellate Court Case Title: Personal Restraint Petition of Adam Betancourt
Superior Court Case Number: 97-1-00295-1

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