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IN THE COURT OF APPEAL  
OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT, DIVISION 2

In re ROY BUTLER  
  
On *Habeas Corpus*.

Case Nos. A139411 & A137273  
Alameda County Case No. 91694B

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STIPULATION AND [~~PROPOSED~~] ORDER REGARDING  
SETTLEMENT

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Court of Appeal First Appellate District  
**FILED**  
DEC 16 2013  
Diana Herbert, Clerk  
by \_\_\_\_\_ Deputy Clerk

Attorneys for Petitioner  
ROY BUTLER  
By Appointment of the Court of Appeal  
of the First Appellate District

WHEREAS petitioner Roy Butler filed a supplemental petition for writ of habeas corpus on May 28, 2013, that raised two issues: (1) that the Board of Parole Hearings' ("Board") denial of parole was unsupported by some evidence of current dangerousness, and (2) that the Board's practice of deferring calculation of the base term for life inmates until after a finding of suitability of parole was unconstitutional;

WHEREAS petitioner filed a motion for discovery on May 28, 2013, in support of the latter claim;

WHEREAS the Court, on its own motion, bifurcated the petition into two separate cases, where petitioner's challenge to the denial of his parole became the subject of Case No. A137273 and petitioner's systemic, constitutional challenge to the Board's base term setting practices became the subject of Case No. A139411;

WHEREAS the Court held a discovery conference on petitioner's motion for discovery on October 23, 2013;

WHEREAS, per the Court's suggestion, the parties participated in a settlement conference before Justice Jim Humes on November 20, 2013, December 6, 2013, and December 13, 2013;

WHEREAS, the Board, through its executive officer and chief counsel, participated in the discovery conference before the Court and each of the settlement conferences before Justice Humes;

WHEREAS, in order to expedite the resolution of these matters, the

parties agreed to waive oral argument in Case No. A137273, and agreed that the decision in that case shall be final upon issuance of the Court's opinion;

WHEREAS the parties agreed that upon issuance of a decision in Case No. A137273, the terms described in the Court's [proposed] order will become effective in Case No. A139411;

WHEREAS the parties agree and stipulate as follows:

- A. With respect to Case No. A137273, challenging the Board's decision to deny petitioner parole, the parties stipulate that:
1. in a comprehensive risk assessment of petitioner, dated September 26, 2011, Dr. S. Thacker concluded that "Mr. Butler presented with good insight into his past criminal/violent behavior;"
  2. petitioner presented the Board with a 2005 letter from his grandmother, Eloise Clayton, that contained an offer of housing, as well as an October 20, 2011 letter of support from the Maranatha Christian Center;
  3. if paroled, petitioner plans to reside with his mother, Camille Gilmore, at 2125 Main Street #2, Santa Clara, California, 95050; or with his grandmother, Eloise Clayton, at 463 Wooster Street, #12-J, San Jose, California, 95116.

- B. With respect to Case No. A139411, challenging the Board's base term setting practices, the parties stipulate to entry of an order directing that:
1. as soon as is practicable, the Board shall begin implementation of new policies and procedures that will result in the setting of base terms and adjusted base terms for life term inmates at their initial parole consideration hearing, or at the next scheduled parole consideration hearing that results in a grant of parole, a denial of parole, a tie vote, or a stipulated denial of parole;
  2. the Board will commence rulemaking proceedings designed to memorialize and embody said new policies and procedures.

THEREFORE, subject to the Court's approval, petitioner Roy Butler and respondent Warden Marion Spearman, by and through their counsel, agree and stipulate that the Court should enter the following proposed order.

IT IS SO STIPULATED.

Dated: December 13, 2013

Respectfully submitted,

KAMALA D. HARRIS  
Attorney General of California  
JENNIFER A. NEILL  
Senior Assistant Attorney General  
CLAUDIA H. AMARAL  
Supervising Deputy Attorney General




AMBER N. WIPFLER  
Deputy Attorney General  
*Attorneys for Respondent*

Dated: December 13, 2013

Respectfully submitted,

BOARD OF PAROLE HEARINGS

By: 

Jennifer Shaffer  
Executive Officer for the Board of  
Parole Hearings

Respectfully submitted,

Dated: December 13, 2013

KEKER & VAN NEST LLP

By: 

JON STREETER  
Attorneys for Petitioner  
ROY BUTLER  
By Appointment of the Court of Appeal  
of the First Appellate District

[PROPOSED] ORDER

Pursuant to the foregoing stipulation, and good cause appearing, IT IS HEREBY ORDERED that:

1. If petitioner prevails on his challenge to the Board's finding that he was not suitable for parole in Case No. A137273, the Board shall:
  - a) Conduct an expedited parole suitability hearing for petitioner, which conforms with due process requirements, within 60 days of the issuance of the Court's opinion;
  - b) Calculate petitioner's base term and adjusted base term at the commencement of his hearing;
  - c) Order an expedited transcription of the hearing;
  - d) Shorten its internal period of decision review from 120 days to 30 calendar days.
  
2. Upon issuance of a decision from this Court in Case No. A137273, whether favorable or unfavorable to petitioner, the terms of settlement for Case No. A139411, as described below, will become effective immediately.
  
3. The Board shall, at the next publicly noticed Board meeting, announce a policy of calculating the base term and the adjusted base term for all life term inmates at the initial parole consideration hearing. The Board will implement this policy on the first day of the calendar month following the aforementioned meeting.

- The base term will be established pursuant to the matrices and directives found in California Code of Regulations, title 15, sections 2282-2284, 2320-2321, 2329, 2403-2405, 2423-2425, and 2433-2435.
- The adjusted base term refers to the base term after it has been adjusted for enhancements pursuant to California Code of Regulations, title 15, sections 2285-2288, 2322-2326, 2406-2409, 2426-2428, and 2436-2438.

4. For any life term inmate who has already had his or her initial parole consideration hearing without a calculation of the base term and adjusted base term, the Board shall calculate the base term and adjusted base term at the inmate's next scheduled parole consideration hearing that results in a grant of parole, a denial of parole, a tie vote, or a stipulated denial of parole.

5. The Board shall, within 90 days of this order going into effect, initiate the process to amend its regulations to reflect the base term setting practices described in this order, in accordance with Government Code, section 11340 et. seq.

6. The Board shall cite this order and submit it as supporting documentation in its initial statement of reasons, as required by Government Code, section 11346.2, subdivision (b).

7. The Board shall in good faith seek to complete the rule-making process as soon as reasonably practicable.

8. This Court shall retain jurisdiction of this case until the amended regulations, conforming to the base term setting practices as described in this order, become effective.

IT IS SO ORDERED.

Dated: DEC 16 2013, 2013

KLINE, P.J.

J. Anthony Kline  
Presiding Justice