

BOARD OF PAROLE HEARINGS

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



October 18, 2022

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SISKIYOU
PO BOX 986
YREKA, CA 96097

Subject: NONVIOLENT PAROLE REVIEW DECISION

Inmate's Name : FERGUSON, JUSTIN,CURTIS
CDCR# : BB5000
Location : California Correctional Institution
Court Case# : 2014308, 2014775, 20151513, 2010597

The above inmate was referred to the Board of Parole Hearings under the Nonviolent Offender Parole Review Process. The board has denied 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: FERGUSON, JUSTIN,CURTIS
CDCR Number: BB5000
Institution: California Correctional Institution

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 Ferguson, Justin, BB5000: When considering together the findings on each of the inmate's four case factors, the inmate poses a current, unreasonable risk of violence or a current, unreasonable risk of significant criminal activity to the community. Release is denied.

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 or significant criminal activity. The inmate was sentenced to a total term of 13 years and four (4) months on the current commitment offense(s). The commitment offense(s) is/are

Failure to Appear on Felony Charge (PC 1320.5), two counts of Second Degree Burglary (PC 459), Threatening a Victim or Witness (PC 140(a)), and First Degree Burglary (PC 459) with four (4) enhancements for Offense Committed While Released on Bail (PC 12022.1).

For the Failure to Appear and one of the Second Degree Burglary offenses, along with the enhancements, the inmate was convicted on October 15, 2014. For the Failure to Appear offense, the court imposed a prison term three (3) years. For the Burglary offense, the court imposed a prison term of two (2) years at 1/3, equally eight (8) months. For the enhancements, the court imposed a prison term of two (2) years each, totaling eight (8) years.

For the remaining Second Degree Burglary offense, the inmate was convicted on September 28, 2010. The court imposed a prison term of two (2) years at 1/3, totaling eight (8) months.

For the Threatening a Victim or Witness offense, the inmate was convicted on January 19, 2016. The court imposed a prison term of three (3) years at 1/3, totaling one (1) year.

For the First Degree Burglary offense, the inmate was convicted on October 11, 2016. The court imposed a prison term of six (6) years, to be served concurrent to the above-documented prison terms.

In addition to the above referenced offenses, records indicate that the inmate was also been convicted of the following misdemeanor convictions: Battery on a Spouse or Cohabitant (PC 243(e)(1)), Failure to Appear on Felony Charge (PC 1320.5), and four counts (4) of Possession of Unlawful Paraphernalia (HS 11364.1(a)). There is insufficient information indicating the specific sentences the court imposed for said misdemeanor convictions.

On March 8, 2010, the inmate entered a closed business, without permission, and took valuables and money.

On July 27, 2013, the inmate entered a Walmart, damaged a stereo display, and then took another stereo without paying. Upon arrest, police officers found two syringes in the inmate's possession.

On June 4 and July 30, 2014, the inmate, while on bail, failed to appear for court proceedings related to pending criminal charges.

On September 25, 2015, the inmate physically struck and pushed a female victim. When a witness attempted to intervene, the inmate became aggressive towards him, punched the window of the witnesses' vehicle, and challenged him to fight.

On September 22, 2016, the inmate entered a residence, without permission and while a victim was present, with the intent to commit a felony. Police officers found the inmate hiding inside the residence and, upon arrest, located two hypodermic needles in his pocket.

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) One or more victims suffered physical injury or threat of physical injury. First, the inmate physically struck a female victim. Second, the inmate threatened a witness to the battery. Third, the inmate unlawfully entered a residence while a victim was present, a presumptively threatening offense.

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 2010 and continued until the commitment offense(s) in 2016. The inmate's prior criminal record is a factor mitigating the inmate's current risk of violence or significant criminal activity. The inmate has the following adult criminal convictions:

- No relevant prior adult felony or misdemeanor convictions.

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

(1) The inmate has not been convicted of a violent felony as defined in subdivision (c) of section 667.5 of the Penal Code in the past 15 years. The inmate has never received a conviction for a violent felony.

(2) The inmate was free from incarceration for a relevant misdemeanor involving physical injury or a felony conviction for five (5) years or more prior to his current convictions. Pursuant to the inmate's criminal record, he has not been previously incarcerated for any relevant prior felony or misdemeanor conviction.

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

(1) There are no aggravating circumstances.

Analysis: When balancing the aggravating circumstances against the mitigating circumstances, they tend to show that the circumstances of the inmate's prior criminal record mitigate the inmate's current risk of violence or significant criminal activity because the inmate has no relevant prior criminal convictions. Due to the inmate not having a relevant prior conviction for any felony or misdemeanor offense, he has not been incarcerated for a relevant conviction within the past five (5) years and received no convictions for any statutorily violent felonies. Accordingly, due to the lack of relevant prior criminal convictions or incarcerations, the prior criminal record is found to be mitigating.

Case Factor #3 - Institutional Adjustment

The inmate was received into the California Department of Corrections and Rehabilitation on the current commitment offense(s) since November 5, 2016, a period of approximately five (5) years and 11 months.

The inmate has been involved in the following activities:

(1) Serious Rule Violations Report ("RVR")

- May 5, 2022 – Participation in a Riot;
- April 27, 2022 – Behavior Which Could Lead to Violence;
- September 26, 2021 – Fighting;
- October 14, 2019 – Fighting;
- June 11, 2019 – Fighting;
- October 29, 2018 – Fighting;
- June 8, 2018 – Battery on a Prisoner;
- November 24, 2017 – Possession of Alcohol;
- June 7, 2017 – Battery Causing Serious Injury;
- March 10, 2017 – Delaying a Peace Officer in the Performance of Duties;
- March 10, 2017 – Possession of Alcohol.

(2) Tate Terms

- On November 29, 2017, the inmate was convicted of Battery with Serious Bodily Injury (PC 243(d)). The court imposed a Tate prison term of two (2) years, to be served consecutive to the prison term associated with the commitment offenses.

On June 7, 2017 the inmate and a crime partner, while incarcerated at the Deuel Vocational Institution, struck a victim inmate in the head, face, and torso with their fists. The victim was bleeding heavily. As a result of the battery, the victim suffered a non-displaced nasal bone fracture with overlying soft tissue swelling.

Of note, case records indicate that the inmate is currently serving the prison term associated with the commitment offenses, and not the above-referenced Tate term. Once the inmate has finished serving the initial prison terms, he will begin serving the Tate term prison term.

(3) Confidential Memorandum

- There is reliable confidential memoranda in the inmate's central file, dated October 13, 2021 and June 8, 2018, indicating that the inmate participated in criminal or gang related activity during the current prison term.

(4) Vocational Training

- No indication of any vocational assignments during the current term.

(5) Educational Studies

- 5/1/2021 to 9/29/2021 – Transitions – 106 hours indicated.

(6) Work Assignments

- 10/15/2022 to present – Yard Worker – no hours indicated.
- 5/1/2021 to 9/7/2022 – Porter – 2,074 hours indicated with an above-satisfactory and satisfactory performance review.
- 5/10/2019 to 1/21/2020 – 533.5 hours indicated.

(7) Rehabilitative/Self Help Programming

- 9/24/2022 to present – CBI Outpatient (ISUDT) – 6 hours indicated.

During this current term of incarceration, the inmate was in General Population and did not receive services through the Mental Health Services Delivery System (MHSDS).

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

- (1) The inmate has successfully participated in vocational, educational, or work assignments for a sustained period. Though the inmate has not participated in vocational assignments, he has amassed at least 2,713.5 work and educational hours and received an above-satisfactory and satisfactory performance review. Under the review criteria, this circumstance is mitigating.

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

- (1) The inmate has been found guilty of institutional RVRs resulting in physical injury or the threat of physical injury since his last admission to prison or recent serious RVRs. The inmate received eight (8) RVRs for assaultive or threatening conduct, two (2) of which occurred within the last year.
- (2) There is reliable information in the confidential section of the inmate's central file indicating the inmate has engaged in criminal activity since his last admission to prison.
- (3) The inmate has limited participation in available rehabilitative or self-help programming to address the circumstances that contributed to his particular criminal behavior. Though the inmate has participated in rehabilitative or self-help programming, his participation has been minimal and there is limited indication that such programming focused on relevant areas that have been problematic for him in the past, specifically his engagement in threatening and assaultive conduct. The inmate would benefit from sustained programming in relevant areas to avoid future criminality. With that understanding, the inmate's limited successful engagement in programming to address the salient factors that contributed to his criminality, specifically his engagement in threatening and assaultive behaviors, for a sustained period is probative of his risk to re-offend. Under the review criteria, this is an aggravating circumstance.

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 aggravate the inmate's current risk of violence or significant criminal activity because the inmate has received several RVRs for assaultive conduct and he has not yet successfully participated in self-help or rehabilitative programming to address the circumstances of his criminal behavior for a sustained period. The eight (8) RVRs for assaultive and threatening behavior is heavily indicative of the inmate's current risk of dangerous criminality and is weighted heavily. Additionally, the inmate's limited participation in self-help or rehabilitative programming, particularly related to his proclivity for engaging in threatening or assaultive behavior, is a factor that weighs heavily against any actual or potentially mitigating circumstance. Accordingly, the institutional adjustment factor is overall

aggravating.

Case Factor #4 - Response to Legal Notice

The Board of Parole Hearings received responses to the legal notices regarding the inmate's nonviolent review. The following responses were reviewed and considered in this decision:

- Inmate self-support letter received on September 15, 2022;
- Letter from the San Joaquin County District Attorney's Office dated September 1, 2022;
- Letter from Shawn Perkins dated September 7, 2022.

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

To prepare for this review, the author reviewed the Disability and Effective Communication System as well as the inmate's record to determine all physical and cognitive disabilities documented for this inmate. In reaching the decision articulated below, the author fully considered any mitigating impact of each documented disability on all of the factors considered.

Under the review criteria, the inmate's prior criminal record is a factor that mitigates his current risk of violence. However, the inmate's current commitment offenses and institutional behavior are factors that aggravate his current risk of violence. In reaching this decision, great weight was given to the threatening and assaultive nature of the commitment offenses, as the inmate physically struck a female victim, threatened a witness to the battery, and unlawfully entered a residence while a victim resident was present. Great weight was also given to the inmate's institutional behavior during the current term. The inmate received multiple RVRs for threatening and assaultive conduct, the most recent occurring approximately six (6) months from the date of this review, and he has not successfully participated in self-help or rehabilitative programming concerning the factors that contributed to his criminal behavior, specifically his engagement in threatening and assaultive conduct, for a sustained period. For all these reasons, the inmate poses a current, unreasonable risk of violence to the community. The inmate is denied for release.



October 17, 2022

SIGNATURE

REVIEW DATE

METTE, MICHAEL - 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.