

BOARD OF PAROLE HEARINGS

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



December 06, 2021

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

Subject: **NONVIOLENT PAROLE REVIEW DECISION**

Inmate's Name : EMERSON, MICHAEL,LORY
CDCR# : AZ9790
Location : Salinas Valley State Prison
Court Case# : 151508

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: EMERSON, MICHAEL,LORY
CDCR Number: AZ9790
Institution: Salinas Valley State Prison

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 Emerson, Michael, AZ9790: 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 11 years on the current commitment offense(s). The commitment offense(s) is/are

PC 422, criminal threat to inflict gbi/death, conviction date 12/15/15. On 11/5/15, the inmate wanted the title to a truck. The title was in the inmate's sister's possession, and she refused to give the inmate the title. The inmate swung a bat around the home, broke a glass table, and threatened to bash her head in. Sentence enhancements per PC 12022(b)(1), 667(a) prior serious felony conviction, and 667.5(b), prior prison sentences were imposed on the sentence.

VC 2800.2, fleeing police on motor vehicle and driving recklessly, conviction date 5/17/16. Law enforcement saw the inmate illegally driving a dirt bike on a road and travelling at 90 miles per hour. A stop was attempted, the inmate fled, drove over 90 miles per hour, into the opposing lanes, and forced drivers off the road. The sentence imposed was doubled because of a prior strike conviction per PC 667(b)-(i)/1170.12.

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 inmate personally used a deadly weapon. The inmate used a baseball bat in one crime, and operated .
2. There were multiple victims who suffered a threat of physical injury. The victim in the bat swinging incident, drivers who were forced off the road during the inmate's flight from police, and others in the path of flight were threatened with injury during the inmate's two crimes.

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 2007 and continued until the commitment offense(s) in 2016. The inmate's prior criminal record is a factor aggravating the inmate's current risk of violence or significant criminal activity. The inmate has the following adult criminal convictions:

2009: PC 594, vandalism.

2009: 7 counts of PC 459, first degree burglary and one count of PC 664/459, attempted first degree burglary.

2012: PC 664/666, attempted petty theft with prior theft related convictions, and two counts of PC 666, petty

theft with prior theft related convictions. In 2015, these convictions were reduced to misdemeanors.

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

1. The inmate was incarcerated for a felony conviction within five years prior to the inmate's current convictions. The inmate was released from prison after serving a prior prison term on 1/21/15. On 12/15/15, about 11 months later, the inmate was convicted of the current commitment offense of PC 422. On 5/17/16, about 16 months later, the inmate was convicted of the second commitment offense, VC 2800.2. There were two separate convictions within five years from release from prison.

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 or significant criminal activity because the inmate's current convictions include one felony conviction that was 11 months after release from a prison term, and a second felony conviction that was 16 months after the prior prison term. The lack of passage of time between felony convictions shows that jail terms are not a deterrent to the inmate's crimes and the inmate's willingness to continue engaging in criminal behavior. Though the inmate has not committed a violent felony, the number of convictions within five years of release from a prior prison term is a greater indication of the inmate's risk of violence or substantial criminal activity to the community. The inmate's prior criminal record is an aggravated risk factor in this review.

Case Factor #3 - Institutional Adjustment

The inmate was received into the California Department of Corrections and Rehabilitation on the current commitment offense(s) since May 24, 2016, a period of approximately 5 years and 7 months.

The inmate has been involved in the following activities:

SERIOUS RULES VIOLATIONS

5/4/21: Fighting.

1/14/21: Fighting.

12/27/18: Fighting.

6/6/18: Battery on a prisoner. The inmate was one of two inmates who attacked and beat on a third inmate.

11/3/17: Battery on a prisoner. The inmate was one of three inmates who attacked and beat on a fourth inmate, causing facial fractures.

WORK/VOCATIONAL/EDUCATIONAL ASSIGNMENTS

4/4/19 to 2/5/21: Porter. Over 2,000 hours.

3/16/18 to 4/3/19: Yard Worker. Over 1,000 hours.

6/30/17: Positive chrono from a work supervisor commending the inmate's work habits.

SELF-HELP/REHABILITATIVE PROGRAMMING

10/1/20 to 2/5/21: CBI Intensive Outpatient. 59.5 hours. Unassigned when inmate elected not to participate.

4/20/19 to 12/17/19: Substance Abuse Program (Reentry). Program completed with 148 hours. Inmate's first participation in this program ended after the inmate completed 190 hours, but the program was not completed. Inmate completed a total of 338 hours.

12/5/19: Certificate for Most Improved in Growth and Understanding. Hours not reported.

3/23/17: Completed KET Life Skills. No hours reported, but positive chrono from instructor commending inmate's dedication to his assignment.

CONFIDENTIAL: Memo dated 1/18/18

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 work assignments for a sustained period of time. The inmate was worked as a yard crew member and as a porter for over 3,000 hours in the current term.

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 Rules Violations Reports resulting in physical injury or threat of physical injury since the inmate's last admission to prison or has one or more recent serious institutional Rules Violation Reports.

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 or her last admission to prison. See memo dated 1/18/18.

3. The inmate has limited participation in available rehabilitative or self-help programming to address the circumstances that contributed to the inmate's criminal behavior. While the inmate has participated in substance abuse programming, there is little or no programming in other areas that have contributed to the inmate's criminal behavior, such as criminal thinking, anger management, victim impact, and other similar programming.

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 though the inmate has work programming accomplishments, the rules violations for assaultive behavior, confidential information regarding the inmate's criminal activities in prison, and lack of self-help programming significantly outweigh the mitigating factor of work programming. The inmate has five rules violations involving assaultive behavior. One of those violations occurred this year in 2021. Two of these violations involve the inmate joining with one inmate in one incident, and two inmates in the other, to attack and beat a single victim inmate. These latter two incidents are particularly aggravating as they classify as criminal assaults. There is confidential information the inmate is involved in criminal activity in the prison. While the inmate has participated in self-help programming for substance abuse, other programming such as criminal thinking, victim impact, anger management, and impulse control is limited. These areas are highly relevant to the inmate's rehabilitation, and without that type of programming, the inmate has not sufficiently addressed the reasons for his criminal behavior. The inmate's institutional adjustment is an aggravated risk factor in this review.

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:

The inmate submitted a parole plan in 2019 that was read and considered. No other responses have been received.

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.

All risk factors in this review are aggravated, indicating the inmate poses a risk of violence or significant criminal behavior to the community. The inmate's commitment offenses are aggravated because the inmate used a deadly weapon in both crimes (a baseball bat and a motorcycle operated in a deadly manner) and placed others at risk of injury. The inmate's prior record is also aggravated because the inmate's release from a prior prison term was followed by the current commitment offenses 11 and 16 months later, an indication jail terms are not a deterrent and of the inmate's ongoing criminality. The inmate's assaultive and criminal behavior has continued with five rules violations for fighting and assaulting prisoners. The inmate has not participated in a sustained period of programming to address the reasons for his criminal behavior. All these factors are indicative of the inmate's likelihood to continue with criminal behavior if released. The inmate poses a current risk of violence or significant criminal activity to the community. The inmate is denied for release.



December 3, 2021

SIGNATURE

REVIEW DATE

WOODWARD, CORY - 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.