

INDETERMINATE SENTENCE PAROLE RELEASE REVIEW

(Penal Code Section 3041.2)

SIRHAN SIRHAN, B-21014

First Degree Murder

AFFIRM:

MODIFY:

REVERSE:

_____ X _____

STATEMENT OF FACTS

On June 5, 1968, Senator Robert F. Kennedy, a candidate for president of the United States, was in Los Angeles for the California Democratic presidential primary election. That evening, Senator Kennedy was declared the winner of the election and celebrated with a large crowd of supporters at the Ambassador Hotel. While Senator Kennedy greeted hotel staff, Sirhan Sirhan shot him at close range. Mr. Sirhan also shot five bystanders, Elizabeth Evans, Ira Goldstein, Paul Schrader, Irwin Stroll, and William Weisel, all of whom survived their injuries. Senator Kennedy did not.

Mr. Sirhan was convicted by a jury of first degree murder and five counts of assault with a deadly weapon with intent to commit murder. On May 22, 1969, he was condemned to death. In 1972, following a change in California law, Mr. Sirhan's sentence was modified to life in prison with the possibility of parole.

In 1975, the Board of Parole Hearings ("Board") found Mr. Sirhan suitable for parole, but the Board rescinded his parole grant. The Board conducted fifteen subsequent hearings, and, at each one, found Mr. Sirhan unsuitable for parole. On August 27, 2021, the Board conducted Mr. Sirhan's sixteenth hearing and found him suitable for parole.

GOVERNING LAW

The California Constitution grants me the authority to review the proposed decisions of the Board. (Cal. Const. art. V, § 8, subd. (b).) I am given broad discretion to determine an inmate's suitability for parole and may affirm, reverse, modify, or refer back to the Board any grant of parole to a person convicted of murder serving an indeterminate life sentence. (*Id.*; Pen. Code, § 3041.2; see *In*

re Rosenkrantz (2002) 29 Cal.4th 616, 625-26; *In re Dannenberg* (2005) 34 Cal.4th 1061, 1080, 1082, 1088.) I am authorized to identify and weigh all “factors relevant to predicting ‘whether the inmate will be able to live in society without committing additional antisocial acts.’” (*In re Lawrence* (2008) 44 Cal.4th 1181, 1205-06, quoting *In re Rosenkrantz, supra*, 29 Cal.4th at p. 655.)

When the Board proposes that an inmate convicted of murder be released on parole, I am authorized to conduct an independent, *de novo* review of the entire record, including “the facts of the offense, the inmate’s progress during incarceration, and the insight he or she has achieved into past behavior,” to determine the inmate’s suitability for parole. (*In re Shaputis II* (2011) 53 Cal.4th 192, 221.)

My review is independent of the Board’s authority, but it is guided by the same “essential” question: whether the inmate currently poses a risk to public safety. (Cal. Const. art. V, § 8, subd. (b); Pen. Code, § 3041.2; *In re Shaputis II, supra*, 53 Cal.4th at pp. 220-21.) In weighing this question, California law grants me the discretion “to be ‘more stringent or cautious’ in determining whether an [inmate] poses an unreasonable risk to public safety.” (*In re Lawrence, supra*, 44 Cal.4th at p. 1204, quoting *In re Rosenkrantz, supra*, 29 Cal.4th at p. 686.)

The circumstances of the crime can provide evidence of current dangerousness when evidence in the inmate’s pre- or post-incarceration history, or the inmate’s current mental state, indicate that the crime remains probative of current dangerousness. (*In re Lawrence, supra*, 44 Cal.4th at p. 1214.) Furthermore, the gravity of the crime has “continuing predictive value as to current dangerousness” where the inmate lacks insight into their conduct and refuses to accept responsibility for their role in a crime. (*In re Smith* (2009) 171 Cal.App.4th 1631, 1639; *cf. In re Twinn* (2010) 190 Cal.4th 447, 465 [because the inmate accepted responsibility for the crime and expressed complete remorse, the inmate’s lack of insight was not probative of present dangerousness].) In rare cases, the aggravated nature of the crime alone can provide a valid basis for denying parole, even when there is strong evidence of rehabilitation and no other evidence of current dangerousness exists. (*In re Lawrence, supra*, 44 Cal.4th at p. 1214.)

I am also required to give “great weight to the diminished culpability of youth as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity of the prisoner” when determining a youthful offender’s suitability for parole. (Pen. Code, § 4801, subd. (c).) I further must afford special consideration to whether age, the amount of time served, and diminished physical condition reduce the inmate’s risk of future violence. (See Feb. 10, 2014

order issued in *Coleman v. Brown*, Case No. 2:90-cv-0520 LKK-DAD (PC) (E.D. Cal.) and *Plata v. Brown*, Case No. C01-01351 TEH (N.D. Cal.).)

DECISION

Mr. Sirhan's assassination of Senator Kennedy is among the most notorious crimes in American history. Senator Kennedy's murder caused his family immeasurable suffering, including his pregnant wife, their ten children, and the extended Kennedy family. Mr. Sirhan shot Senator Kennedy in front of news cameras, which subjected the Kennedy family and American public to a ubiquitous video loop of Senator Kennedy's violent death and his wife's anguish at his side.

Mr. Sirhan's crimes also caused great harm to the American people. Senator Kennedy's assassination upended the 1968 presidential election, leaving millions in the United States and beyond mourning the promise of his candidacy. Compounding the grief of the Kennedy family and the American public, Mr. Sirhan killed Senator Kennedy during a dark season of political assassinations, just nine weeks after Dr. Martin Luther King, Jr.'s murder and four and a half years after the murder of Senator Kennedy's brother, President John F. Kennedy.

The gravity of Mr. Sirhan's crimes alone counsels against his release. But I have concluded that he is unsuitable for parole because he poses a current threat to public safety. After decades in prison, Mr. Sirhan has failed to address the deficiencies that led him to assassinate Senator Kennedy. Mr. Sirhan lacks the insight that would prevent him from making the same types of dangerous decisions he made in the past.

The most glaring evidence of Mr. Sirhan's deficient insight is his shifting narrative about his assassination of Senator Kennedy, and his current refusal to accept responsibility for his crimes.¹ As the following examples show, Mr. Sirhan has inconsistently described his role in the assassination of Senator Kennedy, claimed shifting memory lapses, minimized his participation in the crimes, and outright denied his guilt:

- While in police custody after his arrest in June 1968, Mr. Sirhan admitted that he assassinated Senator Kennedy in a recorded statement.

¹ The evidence that Mr. Sirhan shot and killed Senator Kennedy in an act of premeditated murder is overwhelming and irrefutable, and the claims of innocence by Mr. Sirhan and his advocates have been investigated and conclusively disproved.

- At his trial, which began in February 1969, Mr. Sirhan testified that he shot Senator Kennedy but was drunk and could not remember his actions. Later during his trial, when the jury was not present, Mr. Sirhan exclaimed, "I killed Robert Kennedy willfully, premeditatively, with twenty years of malice aforethought." He later said that he made this statement to get attention.
- Mr. Sirhan told the Board psychologist who evaluated him in 1972 that he "really didn't want to commit homicide" when he shot Senator Kennedy but merely wanted to "attract attention to the plight of his fellow countrymen[.]"
- At his 1979 parole hearing, Mr. Sirhan told the Board that he was drunk at the time of his crimes. He said, "I don't feel myself to be responsible beyond the first shot."
- At his 1985 parole hearing, Mr. Sirhan admitted to writing entries in his journals, found by police in his bedroom after the crimes, that repeated, "RFK must die. RFK must be killed. Robert F. Kennedy must be assassinated" and "Robert F. Kennedy must be assassinated before 5 June 68."² He wrote, "[m]y determination to eliminate R.F.K. is becoming more the more of an unshakable obsession." At the same 1985 parole hearing, Mr. Sirhan stated that "liquor [was] the main culprit" for his crimes.
- At his 1987 parole hearing, Mr. Sirhan admitted that he shot Senator Kennedy but denied shooting the other victims. He said that he committed the crimes in retaliation for Senator Kennedy's statements of support for the United States' military aid to Israel. At the same time, Mr. Sirhan claimed that his memories were vague. He told the Board that he suspected he had blocked the shooting from his memory for his self-preservation.
- In 1989, Mr. Sirhan told a reporter during a televised interview that he committed the assassination because Mr. Sirhan objected to Senator Kennedy's support for Israel. Mr. Sirhan said when he assassinated Senator Kennedy, he "extinguished a great star . . . a champion of all mankind. And it's hard for me to live with this experience myself But I'm a

² June 5, 1968 was the one-year anniversary of the beginning of the Arab-Israeli Six-Day War as well as the date of the California primary for the 1968 United States presidential election.

human being, and I have to adjust and carry on with my life. I never dreamed of ever offending the American system of government or frustrating the votes and the hopes of millions of Americans. And having done so, sir, I can't say anything but that I apologize for having done that."

- Later in 1989, at his parole hearing, Mr. Sirhan told the Board that he could not remember the details of the crimes.
- At his 1990 parole hearing, Mr. Sirhan claimed that he derived his knowledge about the facts of the assassination from accounts of the crimes that he had read, and that, while he remembered being at the Ambassador Hotel, he had no memories of killing Senator Kennedy.
- In 1997, Mr. Sirhan began reporting his belief that he did not commit the crimes and was innocent.
- In 2001, during a forensic evaluation, Mr. Sirhan said he felt distant from responsibility and guilt and that he doubted that he committed the crimes.
- At his 2011 parole hearing, Mr. Sirhan stated that he could recall being at the Ambassador Hotel but not using his gun.
- At his 2016 parole hearing, Mr. Sirhan said he did not remember the details of the crimes but believed he was innocent based on what he had read about the case in his attorney's briefs. He told the Board, "[l]egally speaking, I'm not guilty of anything."
- In 2021, Mr. Sirhan told a Board psychologist that he was innocent of the crimes and "was in the wrong spot at the wrong time," portraying himself as the victim.

The deficiencies in Mr. Sirhan's insight and his failure to accept responsibility for his crimes are well-documented beyond his own statements. In 2021, the Board psychologist who evaluated Mr. Sirhan reported that Mr. Sirhan "denied planning the crime and denied remembering committing any illegal act on the night in question." The psychologist noted, "[d]espite multiple attempts, Mr. Sirhan would not report his understanding of the facts of the crime, as he instead referenced others' reports." The psychologist observed that "Mr. Sirhan reported significant memory impairments" that were only present "when [Mr. Sirhan was]

discussing his history of engaging in antisocial and violent actions." While the psychologist found that Mr. Sirhan's "current cognitive abilities appear grossly intact," Mr. Sirhan's answers were "evasive," he appeared to be "engaging in significant impression management," and "overall, he was not believed to be a reliable source of information."

Mr. Sirhan's implausible and unsupported denials of responsibility and lack of credibility elevate his current risk level. They indicate that Mr. Sirhan, despite decades of incarceration and purported efforts in rehabilitation, has failed to address the deficiencies that led him to assassinate Senator Kennedy.

The record further demonstrates that Mr. Sirhan has not meaningfully disclaimed political violence—committed by him or in his name—nor shown that he appreciates the unique risks created by his commission of a political assassination. These gaps in Mr. Sirhan's insight have a close nexus to his current risk of inciting further political violence.

Mr. Sirhan's prior discussion of his crimes and connections to political violence illustrate the extent of his current threat to public safety. In 1973, for example, in an effort to secure Mr. Sirhan's release from prison, terrorists took ten hostages, three of whom were killed when the terrorists' demands were not met.³ Following his parole denial in 1987, Mr. Sirhan twice invoked this incident, stating that the terrorists took hostages on his behalf and were helping him to escape from prison. In 2021, when the evaluating psychologist asked Mr. Sirhan about the assistance he received from terrorists, Mr. Sirhan laughingly dismissed the incident. He neither disclaimed the violence committed in his name nor renounced his prior acceptance of assistance from terrorist groups. Although these events occurred decades ago, Mr. Sirhan's inability to appreciate their current relevance reveals glaring gaps in insight.

Mr. Sirhan further demonstrated his deficient insight at his 2021 parole hearing. When a commissioner suggested that Mr. Sirhan would be "naïve" not to expect public attention upon his release and calls for him to express his views on the Israeli-Palestinian conflict, Mr. Sirhan remarkably replied that he found that "hard

³ The terrorist group seized the Saudi embassy in Khartoum, Sudan, capturing ten hostages including the U.S. Ambassador to Sudan Cleo A. Noel, the Saudi Arabian Ambassador to Sudan Sheikh Abdullah al Malhouk and his wife and children, the American chargé d'affaires George Curtis Moore, the Jordanian chargé d'affaires Adli al Nasser, and the Belgian chargé d'affaires Guy Eid. The terrorists demanded the release of Mr. Sirhan and other prisoners. When negotiations failed, the hostage-takers assassinated Ambassador Noel, Mr. Moore, and Mr. Eid.

to foresee." The commissioner questioned Mr. Sirhan about the possibility of being used as a lightning rod to foment violence. Mr. Sirhan rejected this possibility out of hand, and implausibly suggested that it was equally likely that he could be used as "a peacemaker and a contributor to . . . a friendly nonviolent way of resolving the issues." The Board found his professed intention not to be "a rebel or a troublemaker" sufficient to mitigate this risk factor.

I disagree. Not only has Mr. Sirhan failed to meaningfully disclaim political violence, he lacks the skills required to control his response to external triggers, which are critical for mitigating the public safety risk he poses. At his 2021 parole hearing, for example, the Board asked Mr. Sirhan to describe his internal mental processes for dealing with stressors. Mr. Sirhan's answers demonstrated that he does not understand these processes or their steps, from self-awareness to effective self-control. Despite his incomplete answers to their questions, the Board found that Mr. Sirhan's anger management skills are sufficient to manage the public safety challenges he would face on parole.

Here, too, I disagree. I am not persuaded that Mr. Sirhan understands the steps required to manage even quotidian interpersonal conflict, let alone the complex geopolitical hazards he must navigate in California and beyond if he is allowed to parole. Mr. Sirhan cannot be safely released because he has refused to acknowledge these risks and to develop the skills to mitigate them.

Finally, I am required by law to consider the additional factors that are legally relevant to Mr. Sirhan's suitability for parole. As explained below, I have weighed these factors and conclude they do not outweigh the substantial evidence of Mr. Sirhan's current dangerousness.

First, in the cases of inmates who commit their crimes when they are under 26 years old, as in Mr. Sirhan's case, I am required to review the record for evidence of factors relevant to their diminished culpability as youthful offenders and any subsequent growth and increased maturity. Mr. Sirhan was 24 years old when he assassinated Senator Kennedy. I have carefully examined the record for evidence of youthful offender factors. I acknowledge that, at the time of his crimes, Mr. Sirhan exhibited some of the hallmark features of youth, as set forth in the relevant statutes. I have also examined the record for evidence of Mr. Sirhan's subsequent growth in prison and increased maturity and rehabilitation. I acknowledge that Mr. Sirhan has made some efforts to improve himself in prison through self-help programming and other prosocial efforts.

While Mr. Sirhan has undoubtedly matured in some ways over the last 53 years, the record evidence shows that he has not internalized his rehabilitation programming sufficiently to reduce his risk for future dangerousness. The

psychologists who evaluated Mr. Sirhan in 2010, 2015, and 2020 rated him a low risk for future violence despite his deficits in insight. The psychologist who evaluated him in 2020, however, noted a concern about Mr. Sirhan's "treatment responsiveness" in the community because Mr. Sirhan continues to have problems with certain risk factors despite engaging in relevant programming. Consequently, even after according these youthful offender factors great weight, I conclude they are eclipsed by the strong evidence of Mr. Sirhan's current dangerousness.

Second, I have given special consideration to the Elderly Parole factors for inmates who are older than 60 and who have served more than 25 years in prison. Mr. Sirhan is 77 years old and has served 53 years. While the psychologist who evaluated Mr. Sirhan in 2021 found that Mr. Sirhan "has not had any significant problems with his advancing age," the commissioners at Mr. Sirhan's 2021 parole hearing determined that he is "significantly incapacitated . . . as far as committing additional crimes."

But Mr. Sirhan's risk of committing acts of interpersonal violence is not the most relevant indication of his current risk level. As explained above, Mr. Sirhan poses a risk to public safety because he lacks insight, as demonstrated by his refusal to accept responsibility for the assassination of Senator Kennedy, his failure to renounce political violence, and his lack of the requisite skills to manage complex external triggers. Thus, evidence of Mr. Sirhan's diminished physical strength does not mitigate the serious threat to public safety that he currently poses, including the risk that he may incite political violence should he be released on parole. Accordingly, his release is not consistent with public safety.

CONCLUSION

When considered as a whole, I find the evidence in the record demonstrates that Mr. Sirhan currently poses an unreasonable danger to society if released from prison. Despite his 53 years of incarceration, Mr. Sirhan has failed to develop the insight necessary to mitigate his current dangerousness and is unsuitable for parole. Consequently, I reverse the Board's decision to parole Mr. Sirhan.

Decision Date:
January 13, 2022



GAVIN NEWSOM
Governor, State of California