Ruling Limits Challenges of Parole Denials

In a 4-3 decision, the state Supreme Court says the Board of Prison Terms may reject inmates' release based on nature of the crimes.

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SAN FRANCISCO — The California Supreme Court decided Monday to limit sharply the ability of inmates to challenge parole denials, ruling that the parole board has the right to keep a convict in prison simply because of the nature of the crime that sent him there.

The state Board of Prison Terms, which has a history of seldom granting parole, has wide flexibility to deny release to convicted criminals even if they have been model inmates deemed not dangerous by mental health officials, the 4-3 decision said. The ruling is expected to keep behind bars thousands of inmates who are eligible for parole.

Monday's ruling came in the case of John A. Dannenberg, 64, who was convicted of the second-degree murder of his wife in 1985 and sentenced to a term of 15 years to life. Dannenberg has a spotless prison record and favorable psychological evaluations, and his two adult children support his release.

In 1999, the parole board rejected his third request for parole, saying he had committed the murder "in an especially cruel or callous manner" and had "a very trivial" motive to kill. Dannenberg then appealed, saying his record since he was put in prison should have made him eligible for release.

A trial court and Court of Appeal both sided with him. But the Supreme Court disagreed. Even though Dannenberg's record has been clean, the board had the right to deny parole based solely on the nature of his crime, the majority said.

The board "may protect public safety in each discrete case by considering the dangerous implications of a life-maximum prisoner's crime individually," Justice Marvin R. Baxter wrote for the majority.

In dissent, Justice Carlos R. Moreno said the ruling required "judicial rubber stamping" of parole-board decisions. "Failure to grant parole where parole is due wastes human lives, not to mention considerable tax dollars," Moreno wrote.

If an inmate is denied parole because of the nature of the crime, the board should be required at least to compare the gravity of the offense and the time served to other cases with the same conviction, he wrote.
The majority rejected that idea, saying it would be too burdensome.

To require the board to compare the inmate's crime and time served to that of other inmates with the same convictions would "contribute significantly to backlogs," Baxter wrote.

Dannenberg killed his wife, Linda, during a fight in their home in Los Gatos. The wealthy engineer had a stormy relationship with his wife, and she had received counseling for trying to harm herself and her children.

During an argument over a blocked bathtub drain, Dannenberg beat her with a pipe wrench. He claimed she first attacked him with a screwdriver while he was attempting to fix the drain.

Dannenberg told police that he passed out momentarily and woke up to find his wife slumped over the edge of the bathtub with her head in the water, where she had drowned. He called 911 and was quickly arrested.

Dannenberg has been behind bars in San Quentin for 18 years. While in prison, he fixed the facility's electrical wiring and volunteered with an inmate education advisory committee and a Jewish religious group for prisoners, the court said.

In upholding the parole board's decision, Baxter, joined by Chief Justice Ronald M. George and Justices Ming W. Chin and Janice Rogers Brown, said Dannenberg had "reacted with extreme and sustained violence to a domestic argument…"

"Though he vehemently denied it, the evidence permitted an inference that, while the victim was helpless from her injuries, Dannenberg placed her head in the water, or at least left it there without assisting her until she was dead."

Moreno countered that a second-degree murder conviction always means that a defendant acted violently, cruelly and out of proportion to the provocation.

Moreover, he said, the board had "an incentive to give only pro-forma consideration" to parole because of the risk that the person could re-offend and the parole board be blamed.

"Dannenberg's present record is not only unblemished in terms of disciplinary infractions, but showed many positive signs of contribution to the prison community in which he lived," wrote Moreno, whose opinion was signed by Justices Joyce L. Kennard and Kathryn Mickle Werdegar.

Over the last 13 years, the parole board has denied release to more than 95% of the eligible inmates who applied.

Even the few approved by the board have not all been released. California is one of three states that allows the governor to override parole recommendations.

So far, Gov. Arnold Schwarzenegger has accepted about 36% of the board's parole recommendations.
Former Gov. Gray Davis approved just 1.7%. His predecessor, Gov. Pete Wilson, approved 67% of the applications that came before him.

Deputy Atty. Gen. Susan Lee Duncan, who represented the state in the case, said the state Supreme Court had made it clear that the parole board has been acting properly.

"They don't have to consider whether this is more serious or less serious than any other offender's crime," Duncan said. "It is strictly a case-by-case consideration, comparing this man and this crime to public safety."

Kathleen Kahn, a lawyer who represented Dannenberg, said the ruling "ratifies" the board's behavior and "allows the board to be as frankly political as it wants to be."

"A few judges in a few counties have really stuck their necks out and said what the board has been doing is really a violation of the law," Kahn said. "I think this opinion is written as a reprimand to those judges."

Tip Kindell, a spokesman for the Board of Prison Terms, said it was pleased that "our position was validated by the Supreme Court."

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