

**CALIFORNIA COURT OF APPEAL, FOURTH APPELLATE DISTRICT,
DIVISION ONE**

In re Kavanaugh; In re Alberto J. Moreno; In re Larry Smith

In re Kavanaugh · No. D076500, D076821, D077003 · Decided February 25, 2021

SUMMARY

The California Court of Appeal reviewed consolidated habeas corpus proceedings involving parole denials under California’s Proposition 57 early-parole regulations for persons convicted of nonviolent felonies. It held that the regulations were consistent with the California Constitution and did not violate prisoners’ procedural due process rights, reversing the superior courts’ orders granting habeas relief. The opinion concerns Alexei Kavanaugh, Alberto J. Moreno, and Larry Smith.

CASE DETAILS

COURT	California Court of Appeal, Fourth Appellate District, Division One
WRITING FOR THE COURT	McConnell, P. J.; Benke, J.; O'Rourke, J.
JURISDICTION	California
DECIDED	February 25, 2021
DOCKET	D076500, D076821, D077003
DISPOSITION	reversed
PROCEDURAL POSTURE	The California Department of Corrections and Rehabilitation appealed consolidated superior court orders granting three habeas corpus petitions, invalidating parole regulations governing early parole consideration for determinately sentenced nonviolent felons, and ordering new parole proceedings.
STANDARD OF REVIEW	Independent judgment in construing constitutional provisions and reviewing the validity of administrative regulations, with agency interpretations receiving great weight when reasonable; case-by-case balancing under the Ramirez due process test; limited judicial review of parole denials for some evidence.
PRECEDENTIAL VALUE	published and precedential
PARTIES	California Department of Corrections and Rehabilitation v. Alexei Kavanaugh, Alberto J. Moreno, Larry Smith

TOPICS

state post-conviction relief

procedural due process

administrative law

statutory interpretation

void for vagueness

PRACTICE AREAS

California habeas corpus

state post-conviction relief

parole

administrative law

constitutional law

QUESTIONS PRESENTED

1. Whether the trial courts exceeded the permissible scope of the habeas corpus proceedings by granting relief based on challenges to the parole regulations.
2. Whether CDCR regulations governing early parole consideration for determinately sentenced nonviolent felons conflict with article I, section 32 of the California Constitution because they do not require appointed counsel, in-person hearings, or multi-member parole panels.
3. Whether the parole regulations violate procedural due process by failing to provide counsel, in-person hearings, or multi-member parole panels.
4. Whether the parole criteria regulation is unconstitutionally vague because it does not specify the amount or type of rehabilitative programming required for parole suitability.

HOLDINGS

1. The trial courts did not impermissibly expand the habeas corpus proceedings because the pro se petitions sufficiently alleged due process violations, arbitrary or capricious parole decisions, and conflicts between the parole procedures and Proposition 57.
2. Article I, section 32, subdivision (a)(1) of the California Constitution guarantees eligible nonviolent felons parole consideration, but does not mandate appointed counsel, in-person hearings, or multi-member parole panels.
3. Prisoners do not have a procedural due process right to appointed legal counsel during parole proceedings.
4. The parole regulations provide constitutionally sufficient procedural due process even though they do not require annual in-person hearings or multi-member parole panels.
5. Title 15, section 2449.5 of the California Code of Regulations is sufficiently definite and is not unconstitutionally vague.

KEY QUOTATIONS

“In contrast to the trial courts, we conclude the parole regulations do not conflict with the constitutional guarantee of parole consideration or violate due process.” (2)

“Section 32 guarantees parole consideration for eligible persons who have been sentenced to prison for a nonviolent felony offense. But it does not mandate any specific parole consideration procedures.” (25)

“Considering all these factors, we conclude the parole regulations afford prisoners reasonable notice and a reasonable opportunity to be heard. That is all due process requires.” (38)

“Therefore, the parole criteria regulation is not unconstitutionally vague.” (42)

FACTUAL BACKGROUND

Kavanaugh, Moreno, and Smith were serving determinate prison sentences for nonviolent felony offenses and became eligible for early parole consideration under Proposition 57 and CDCR regulations. Hearing officers reviewed their records, found that each posed an unreasonable risk to the community, and denied parole; Moreno and Smith also obtained review by a second hearing officer, who affirmed the denials. Their habeas petitions challenged the parole denials and the procedures used under the regulations.

PROCEDURAL HISTORY

Kavanaugh, Moreno, and Smith separately petitioned the San Diego County Superior Court for habeas corpus relief after hearing officers denied them early parole release under regulations adopted pursuant to Proposition 57. The superior courts granted relief, concluding that the regulations violated article I, section 32 of the California Constitution and procedural due process because they did not provide counsel, in-person hearings, or multi-member parole panels. The Court of Appeal consolidated the appeals and reversed.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The orders granting the habeas corpus petitions are reversed. No additional remand instructions are stated.

CASES CITED

- In re Gadlin, 10 Cal.5th 915 (2020)
- In re McGhee, 34 Cal.App.5th 902 (2019)
- People v. Duvall, 9 Cal.4th 464 (1995)
- People v. Romero, 8 Cal.4th 728 (1994)
- Board of Prison Terms v. Superior Court, 130 Cal.App.4th 1212 (2005)
- Delta Stewardship Council Cases, 48 Cal.App.5th 1014 (2020)
- Ontario Community Foundations, Inc. v. State Board of Equalization, 35 Cal.3d 811 (1984)
- Association of California Insurance Cos. v. Poizner, 180 Cal.App.4th 1029 (2009)
- People v. Roach, 247 Cal.App.4th 178 (2016)
- Hodges v. Superior Court, 21 Cal.4th 109 (1999)
- People v. Morales, 63 Cal.4th 399 (2016)
- In re Schoengarth, 66 Cal.2d 295 (1967)
- In re Minnis, 7 Cal.3d 639 (1972)
- Auto Equity Sales, Inc. v. Superior Court, 57 Cal.2d 450 (1962)
- In re Rosenkrantz, 29 Cal.4th 616 (2002)

- In re Shaputis, 44 Cal.4th 1241 (2008)
- In re Powell, 45 Cal.3d 894 (1988)
- Samson v. California, 547 U.S. 843 (2006)
- Morrissey v. Brewer, 408 U.S. 471 (1972)
- In re Taylor, 60 Cal.4th 1019 (2015)
- People v. Ramirez, 25 Cal.3d 260 (1979)
- In re Jackson, 43 Cal.3d 501 (1987)
- Greenholtz v. Inmates of Nebraska Penal & Correctional Complex, 442 U.S. 1 (1979)
- In re J.G., 159 Cal.App.4th 1056 (2008)
- In re Busch, 246 Cal.App.4th 953 (2016)
- California Consumer Health Care Council, Inc. v. Department of Managed Health Care, 161 Cal.App.4th 684 (2008)
- Mackey v. Montrym, 443 U.S. 1 (1979)
- San Jose Police Officers Association v. City of San Jose, 199 Cal.App.3d 1471 (1988)
- Stevens v. Workers' Comp. Appeals Bd., 241 Cal.App.4th 1074 (2015)
- Rodriguez v. Department of Real Estate, 51 Cal.App.4th 1289 (1996)
- Jonathan Neil & Associates v. Jones, 33 Cal.4th 917 (2004)
- Menefield v. Board of Parole Hearings, 13 Cal.App.5th 387 (2017)
- Hess v. Board of Parole & Post-Prison Supervision, 514 F.3d 909 (9th Cir. 2008)
- Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489 (1982)
- Qualified Patients Association v. City of Anaheim, 187 Cal.App.4th 734 (2010)

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