

FILED

FEB 15 2006

MARIN COUNTY SUPERIOR COURT
By: *R. M. Deputy*SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MARINIn the Matter of the Application of:
JERRY RUTHERFORD (C-19059),Petitioner,
for a Writ of *Habeas Corpus*.

Case No.: SC135399A

ORDER GRANTING APPLICATION
FOR WRIT OF *HABEAS CORPUS*

This matter came on regularly for hearing on January 11, 2006, on Petitioner's Petition for a Writ of *Habeas Corpus*, filed May 26, 2004.¹ Petitioner was not personally present but was represented by counsel, Keith Wattley, Esq; Respondents were not personally present but were represented by Deputy Attorneys General Anya Binsacca and Patricia Heim.

This court has reviewed all documents filed by the parties in this case, Exhibits 1 through 8 and Exhibit A, received in evidence at the January 11 hearing, and the testimony and oral arguments made at the January 11, 2006 hearing.

¹ The court issued an Order to Show Cause on May 28, 2004. Thereafter, Petitioner sought and obtained extensions of time in which to file his denial. On August 31, 2004, Petitioner filed a motion for class certification, which was granted on November 29, 2004. Subsequently, by stipulation and orders filed December 30, 2004; January 3, 2005; February 4, 2005; February 17, 2005; March 18, 2005; April 7, 2005; June 6, 2005; and August 5, 2005, the parties told the court that they were negotiating and requested a continuance of the evidentiary hearing. When they sought a ninth continuance, the court refused to approve it, and this matter proceeded to an evidentiary hearing.

1 This court has already found that Respondents have failed to furnish Petitioner
2 with a parole eligibility hearing that was timely within the meaning of PC 3041.5(b)(2),²
3 and in this case it has ruled that because Petitioner's application raised an issue of
4 general public concern, that is likely to be repeated, it is not moot by reason of the fact
5 that the ensuing ruling may no longer be binding on Petitioner.³

6 Having carefully reviewed the evidence in this case, the court finds inescapable
7 the conclusion that Respondents are failing to furnish timely parole eligibility hearings
8 to prisoners serving indeterminate sentences, and that the backlog of such overdue
9 hearings is increasing at an alarming rate. According to Michael Keith Brady, the
10 CDCR's "Rutherford" task force project manager, the backlog of such prisoners whose
11 parole eligibility hearings were overdue on May 30, 2001, was 2058, and now it is
12 3200. It is noteworthy that in July, 2001, in Marin County Superior Court case number
13 SC118698A (*In re Sanders*), Respondents' counsel represented to this court that
14 Respondents estimated that the backlog would be eliminated in 21 months. Instead, 55
15 months later, the backlog has not been eliminated, but rather it has *increased* by 55%.

16 Mr. Brady testified to antiquated procedures⁴ and inadequate staffing, among
17 many other deficiencies in the current system.

18 Respondents offered the testimony of Dennis Kenneally, who is charged with
19 management oversight at the Board of Parole Hearings. Mr. Kenneally acknowledged
20 the problem of overdue hearings but testified that commissioner vacancies are the
21 primary reason for it. He estimated that if the Governor's draft budget is adopted
22 *without change on the subject of funding for the Board of Parole Hearings*,⁵ the backlog
23 will be eliminated in 14 months. This prediction echoes the inaccurate prediction of
24 Respondents back in July 2001.

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27 ² In SC118989A.

³ Order filed November 29, 2004, page 2, lines 8-19.

28 ⁴ Such as keeping inmate records on note cards, and the total lack of centralized databases relating to parole eligibility hearings.

⁵ By no means a certainty.

1 Class Counsel is ordered to prepare and give the notice to the class. Since this involves
2 state prisoners, Class Counsel is ordered to discuss with Respondents' counsel the best
3 methods to accomplish this notice. The cost of providing notice of judgment is to be
4 borne by Respondents.

5 The Notice of Judgment shall contain:

- 6 a) Description of the Class;
- 7 b) Brief description of the legal and factual issues raised by
8 parties;
- 9 c) Name of Class Counsel;
- 10 d) Statement that this Court has previously certified this as a
11 mandatory Class, without right to opt-out;⁶
- 12 e) Summary of relevant dates: date petition filed; date Class
13 certified; date evidentiary hearing held;
- 14 f) Summary of Order granting relief requested.

15 4. Remedial Plan.

16 The court's intention is to adopt a plan effectuating this order in a fashion which
17 is as minimally intrusive as possible, in order to accord substantial deference to the
18 CDC's legitimate interest in managing a correctional facility. (See e.g., *Madrid v.*
19 *Gomez* (N.D. Cal. 1995) 889 F. Supp. 1146, 1283 et seq.)

20 Therefore, both counsel are ordered to confer and agree upon a plan to implement
21 the court's order, and report that agreement to the court within 30 days of this order. If
22 by that date, the parties cannot agree on a plan, they are directed to submit any part of
23 the plan agreed to, or a statement that the parties were unable to agree on any aspect of a
24 remedial plan. The court notes that in their stipulation filed April 7, 2005, the parties
25 represented to the court that they had already made specific and significant progress on
26 this project.

27
28 ⁶ Previously, some inmates have sought and received permission to opt-out, but that was before the Notice of Judgment was given to the members of the class.

1 This Court retains jurisdiction over this action until such time as the Court is
2 satisfied that all the statutory violations found herein have been fully and effectively
3 remedied.

4 5. Class Counsel Compensation.

5 Attorney fees may be awarded to prevailing party in habeas corpus proceedings to
6 enforce statutory rights under the Private Attorney General Doctrine, as codified in Code
7 Civ. Proc. § 1021.5. (See *In re Head* (1986) 42 Cal.3d 223, 226, 232 – 233.)

8 Attorney's fees are appropriate in this case in favor of Petitioners and against
9 Respondents, because Petitioners vindicated an important statutory right affecting the
10 public interest. (See e.g. *In re Head, id.* at p. 230.)

11 Respondents are ordered to pay Class Counsel's reasonable attorney fees as the
12 prevailing party, and for post-hearing work, under Code Civ. Proc. §§1021.5 and
13 1032(a)(1)(B), (b)(5). Respondents are ordered to reimburse Marin County for the legal
14 fees the County has heretofore paid to the Prison Law Office in connection with this
15 case.

16 Class Counsel is ordered to file a noticed motion for reasonable fees.

17 6. Status Date.

18 This matter will be heard in Department J of the Marin County Superior Court on
19 Thursday, March 23, 2006, at 9:00 A.M. for a status report on class notice and the
20 remedial plan. The parties are ordered to appear at that time without further notice of
21 hearing. Petitioner's presence is not required.
22

23 Dated: February 15, 2006

24 Verna A. Adams
25 Verna A. Adams
26 Judge of the Superior Court
27
28

STATE OF CALIFORNIA)
COUNTY OF MARIN)

IN RE **JERRY RUTHERFORD**

ACTION NO.: **SC135399A**

(PROOF OF SERVICE BY MAIL – 1013A, 2015.5 C.C.P.)

I AM AN EMPLOYEE OF THE SUPERIOR COURT OF MARIN; I AM OVER THE AGE OF EIGHTEEN YEARS AND NOT A PARTY TO THE WITHIN ABOVE-ENTITLED ACTION; MY BUSINESS ADDRESS IS CIVIC CENTER, HALL OF JUSTICE, SAN RAFAEL, CA 94903. ON February 15, 2006 I SERVED THE WITHIN **ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS** TO ALL INTERESTED PARTIES, BY PLACING A TRUE COPY THEREOF ENCLOSED IN A SEALED ENVELOPE WITH POSTAGE THEREON FULLY PREPAID, IN THE UNITED STATES POST OFFICE MAIL BOX AT SAN RAFAEL, CA ADDRESSED AS FOLLOWS:

<i>JERRY RUTHERFORD CDC NO. C-19059 SAN QUENTIN STATE PRISON SAN QUENTIN, CA 94974</i>	<i>WARDEN SAN QUENTIN STATE PRISON SAN QUENTIN, CA 94974</i>
<i>ATTORNEY GENERAL DEPARTMENT OF JUSTICE ATT: ANYA BINSACCA, PATRICIA HEIM 455 GOLDEN GATE AVENUE, STE 11000 SAN FRANCISCO, CA 94102-7004</i>	<i>PRISON LAW OFFICE GENERAL DELIVERY SAN QUENTIN, CA 94964-0001</i>

I CERTIFY (OR DECLARE), UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING IS TRUE AND CORRECT.

DATE:

2/15/06

R MacL