

CASE SUMMARIES
California Supreme Court
October 8, 2002

9:30 a.m. – *In re Rosenkrantz on Habeas Corpus (S104701)*

Robert Rosenkrantz was convicted of second degree murder in 1986, in a case arising out of his shooting an individual who revealed Rosenkrantz's homosexuality to Rosenkrantz's father; since the conviction, Rosenkrantz has been confined in state prison. Rosenkrantz filed the present case to challenge a decision of the Governor denying his request for parole. The principal legal issues presented by the case concern whether a court has the authority to review a decision by the Governor denying parole, and if so, what standard of review a court should use in reviewing the Governor's decision.

Prior to November 1988, the final decision whether to grant or deny parole was made by the California Board of Prison Terms (the official name of the parole board in California). In November 1988, the voters approved a constitutional amendment adding article V, section 8(b) to the California Constitution. That section states: "No decision of the parole authority of this State with respect to the granting, denial, revocation, or suspension of parole of a person sentenced to an indeterminate term upon conviction of murder shall become effective for a period of 30 days, during which the Governor may review the decision subject to procedures provided by statute. The Governor may only affirm, modify, or reverse the decision of the parole authority on the basis of the same factors which the parole authority is required to consider. The Governor shall report to the Legislature each parole decision affirmed, modified, or reversed, stating the pertinent facts and reasons for the action."

In this case, one issue the Supreme Court must decide is whether a decision of the governor to deny parole is subject to judicial review, that is, to review by a court. The Governor contends that under the separation-of-powers doctrine, a court lacks authority to review a gubernatorial decision denying parole to determine whether the decision is supported by evidence in the record. The Governor argues that his decision to deny parole is similar to a gubernatorial decision to refuse to grant a pardon or to refuse to commute a sentence, decisions that historically have not been subject to judicial review. In response, Rosenkrantz contends that the Governor's authority to deny or grant parole is different from the Governor's authority to grant pardons or commutations, because the Constitution places limits on the Governor's authority over parole and because decisions granting or denying parole traditionally have been subject to judicial review.

If the Supreme Court concludes that a Governor's parole decision is subject to judicial review, the court must also determine the appropriate "standard of review" that a court should apply in reviewing such a decision. In this case, the trial court concluded that a court, in reviewing a Governor's decision, should not consider whether it agrees with the Governor's decision or even whether the Governor's decision is supported by

substantial evidence (the ordinary standard of review applied to most factual findings), but instead should apply a more deferential standard and should uphold the Governor's decision whenever there is "some evidence" to support it. Even under that deferential "some evidence" standard, however, the trial court found that in this case no evidence supported the Governor's decision, and on that basis the trial court concluded that the Governor's decision denying parole was improper. Accordingly, the trial court determined that Rosenkrantz should be released on parole.

The Supreme Court must determine whether the "some evidence" standard is the appropriate standard and, if it is, the court must further determine whether in this case there is "some evidence" in the record to support the Governor's decision. The Governor argues that the 12-page decision explaining his basis for denying parole demonstrates that there clearly is "some evidence" to support his decision.

A number of other legal issues are also presented by the case. The Court of Appeal concluded that, in light of an earlier appellate court decision finding that there was insufficient evidence to support *the parole board's* denial of Rosenkrantz's request for parole, the Governor in this case is barred, under the law-of-the-case doctrine, from claiming that his decision to deny parole is supported by sufficient evidence. The Governor challenges the Court of Appeal's conclusion on this issue, asserting that because the Governor and parole board are separate entities and because the Governor may rely upon different evidence than the parole board, the law-of-the-case doctrine is not applicable.

Finally, the Supreme Court may consider one additional legal issue: whether because Rosenkrantz committed his crime in 1986, before article V, section 8(b) was adopted, the ex post facto clause of the federal and state constitutions preclude the state from applying that provision to Rosenkrantz. Rosenkrantz has conceded in his legal brief that he waived or forfeited the ex post facto claim by failing timely to raise it in the Supreme Court, but he has asked the Supreme Court to address it nonetheless. If the Supreme Court agrees to consider this issue, it will have to decide whether, as Rosenkrantz contends, application of article V, section 8(b), violates the ex post facto clause on the ground that the provision authorizing the Governor to deny parole significantly increases the probability of prolonging a prisoner's incarceration, or whether, as the Governor contends, the adoption of a procedural provision like article V, section 8(b), is not the type of change to which the ex post facto clause applies.

Although the trial court and the Court of Appeal ruled in Rosenkrantz's favor, Rosenkrantz's release from prison has been stayed until the Supreme Court decides the case. Thus, the Supreme Court's decision will determine whether Rosenkrantz is released at this time or whether instead the Governor's decision to deny parole will be upheld.

10:30 a.m. *People v. Stanistreet S102722*

Defendants Shaun Stanistreet and Barbara Atkinson were convicted of violating California Penal Code section 148.6, which makes it a misdemeanor to file with a police department an allegation of misconduct against a police officer if the complaining party knows the allegation is a lie. In this case, Stanistreet and Atkinson were convicted of falsely accusing an Oxnard police officer of committing lewd conduct at a Police Activities League gathering. They are now appealing their conviction.

The Supreme Court must decide whether Penal Code section 148.6 violates the defendants' right to free speech under the First Amendment of the United States Constitution. The defendants, represented by the American Civil Liberties Union, argue that the law (1) discourages people from making valid allegations for fear of being prosecuted, and (2) improperly discriminates between accusations against police officers, which the law covers, and accusations against other officials, which the law does not cover. The prosecutor argues the law is valid because (1) it just involves intentional lies, which the First Amendment does not protect, and (2) there are valid reasons to limit the statute to allegations of misconduct against police officers.

The case largely revolves around the interpretation of a 1992 United States Supreme Court case called *R.A.V. v. St. Paul*, which involved a cross burning in an African-American family's yard. (The initials R.A.V. are used rather than the full name because the person is a juvenile and courts generally try to protect the privacy of juveniles charged with crimes.)

11:30 a.m. - *In re Roberts on Habeas Corpus, S071835*

Petitioner Larry Roberts was sentenced to death for murdering fellow prison inmate Charles Gardner. Gardner was stabbed repeatedly as he walked down a prison corridor. Inmate Leslie Rooks testified that he saw petitioner with a knife shortly before the crime. Inmates Raybon Long, Robert Hayes, and Ryland Cade testified at trial that they saw petitioner stab Gardner and then run upstairs. Petitioner was seen in his cell on the third floor shortly after the crime. The prosecution introduced evidence that a person could run up the stairs from the first floor to petitioner's cell in less than a minute, but would have to go through a gate that sometimes was locked. Long testified that petitioner later admitted to him that he killed Gardner, and inmate Richard Yacotis testified that he overheard petitioner discussing the crime with another inmate. The California Supreme Court upheld the judgment on appeal.

Long later recanted his testimony and claimed petitioner did not stab Gardner, stating: "I lied on the witness stand at the trial about nearly everything I testified to regarding Larry Roberts." Long said that the prosecutor had encouraged him to lie, giving him money and other benefits. But a few years later, Long went back to his original position, stating: "What I said during the course of my testimony during the trial was the truth. Larry Roberts stabbed Charles Gardner."

Yacotis also recanted part of his testimony at trial, saying he did not hear petitioner discuss the crime with another inmate but had lied at trial because the prosecutor promised him money and other benefits. Rooks recanted part of his trial testimony, stating that he did not see petitioner with a knife before the murder.

Petitioner filed a petition for writ of habeas corpus claiming he should have a new trial because 1) the prosecutor knew that some of his witnesses were lying and had encouraged them to lie, and 2) defense counsel should have found evidence that the gate through which petitioner allegedly passed to reach his cell after stabbing Gardner was locked.

Habeas corpus is called “the Great Writ” and may be used to obtain the release of a person who is being held in custody illegally. It is not a substitute for an appeal. Often habeas corpus is used when the petitioner’s claim is based on facts that were not known by the court that upheld the conviction on appeal. To obtain relief, it is not enough for the petitioner to show that some minor errors occurred during the trial. The petitioner must show serious errors occurred that violated his or her fundamental rights (like the right to an effective attorney) or that made the trial unfair.

The Supreme Court appointed a Superior Court Judge to act as a referee and hold a hearing to help the Supreme Court determine whether petitioner’s claims were true. Long claimed his privilege against self-incrimination and did not testify at the hearing. Yacotis again said he had lied at trial when he testified that he heard petitioner discuss the crime with another inmate. But Cade repeated his trial testimony that he saw petitioner stab Gardner. Hayes, who also had testified he saw petitioner stab Gardner, did not testify at the hearing; he had since died. There was conflicting testimony about whether the gate through which petitioner allegedly passed on the way to his cell after the murder was locked and, if so, when it was locked.

The referee found that the prosecutor had not encouraged the witnesses to lie and found that the gate was unlocked when Gardner was murdered. But the referee further found that Long’s testimony at trial was not believable, accepted as true Yacotis’s statement that he had lied at trial and found that “Cade’s trial testimony was not truthful.” But the referee found there was no reason to doubt the trial testimony of Hayes and Rooks. Petitioner now claims that he should have a new trial whether or not the prosecutor knew the witnesses were lying because his conviction is based upon false testimony.

The Supreme Court generally gives great weight to a referee’s findings, because the referee actually saw and heard the witnesses testify at the hearing. But the Supreme Court is not required to accept the referee’s findings.

The Supreme Court must decide whether to accept the findings of the referee and whether to order a new trial.