

PAROLE MATTERS.

WINTER 2010



This issue of Parole Matters covers substance abuse and how to address your sobriety before the Board & in the Courts.

Because many life crimes represent the culmination of years of drug and alcohol abuse, lifers often have to prove that their sobriety is intact and that they are not prone to relapse. In this Parole Matters, we show you how to prove your sobriety, and how to define this issue before the Courts. In these pages, you will learn exactly how past substance abuse overlaps on your right to parole.

Parole Matters is published by Charles Carbone, Esq. Charles is a parole and prisoner rights attorney for California prisoners. This publication may be construed as a legal advertisement.

HOW to DEAL with DRUG & ALCOHOL ABUSE before the BOARD.

For many lifers, the life crime was the culmination of years of drug and alcohol abuse. Because the U.S. criminalizes the drug trade and deals with substance abuse via the criminal justice system rather than as a public health issue, your drug problem is seen as a crime and a threat to public safety.

There are generally **3 categories** of lifers and their connection to drugs and alcohol.

The **first group** of lifers are the easiest to deal with. This is the lifer who has **no history of substance abuse**. For those lifers who have genuinely never had a drug problem, you do not need to address the issue before the Board other than to acknowledge that you have no history of abuse. It is, however, a good idea -- although not required -- to participate in substance abuse programs (especially 12 step programs) because these programs often discuss and deal with "life skills" such as taking a "fearless and searching moral inventory" (Step 4) as well as "making a list of all people we had harmed and willingness to make direct amends to them all" (Step 8) or "making direct amends" (Step 9) or "continuing to take personal inventory and when wrong promptly admitting it." (Step 10). Hence, because so much of substance abuse programming relates to clearing away the wreckage of your past and uncovering the core beliefs that made your life unmanageable, there is much of great benefit even to the non-addict to participate in. The Board will never fault a lifer who has no history of substance abuse for participating in sobriety programs in order to use the tools of sobriety to address other issues in your life and life crime.

The **second group** of lifers are those who **did not have a significant history of substance abuse but who committed the life crime while under the influence**. This is a tricky group to deal with. Because your life crime involved drugs and alcohol, your even one-time use of drugs during the life crime will mean that you will have to engage in at least some self-help dedicated to substance abuse. And, it is strongly suggested that you have a working knowledge of substance abuse related programs, including but not limited to, 12-step programs. Further, you will need to discuss the influence of drugs and alcohol in your life as it relates to your criminality. In other words, if you committed crimes to fund a drug habit and/or you committed crimes while high on drugs you need to discuss why drugs were a part of your criminality. For these inmates I also suggest producing and submitting to the Board a "Drug & Alcohol Life Inventory" as explained below. You may also need to discuss this same history with any psychologist who is producing a risk assessment for the Board. For example, you may want to discuss the distinction between being an addict versus abusing narcotics or alcohol. And, you may want to discuss how you were in the early stages of becoming an addict and you would have likely become a full blown addict but for your incarceration. Lastly, you will want to emphasize to the Board that even though you may not have become a complete addict you will practice both abstinence (meaning refraining from all drugs or alcohol) and a life of sobriety (meaning ongoing participation in 12-step or substance abuse programs) to ensure healthy associations with others while on parole, along with practicing healthy life skills on parole.

The third group of lifers are **those with serious and long-term substance abuse histories**. For these inmates several things are required: You can not have any 128s or 115s related to alcohol or drugs. If so, your parole chances will diminish significantly. You need a long history of not using drugs or alcohol in prison. It is good to point out to the Board your exact sobriety date if you have one. You need long standing participation in AA and/or NA or participation in some other reputable and acceptable substance abuse program. The Board can not require AA or NA per se because they are faith based programs. But the Board can require participation in substance abuse programs, and those are arguably the best if not the only ones in prison.

Sobriety is different from mere abstinence. Sobriety is more than just no longer using drugs or alcohol. Sobriety is a daily plan of action to keep you clean in body, spirit and mind. It means having an ACTIVE program of recovery because relapse is not an accident.

INSIGHT means that you have to be confident in addressing your understanding of the most difficult and painful aspects of your life before the Board. You can't transmit something you haven't got. Yes, those self-help classes actually matter. They should be taken seriously. If you aren't doing the work, the Board may see it. Commit yourself to the time honored work of self-development and growth.

Do not memorize the steps, work them. Any person can memorize the 12-steps and the Board is not interested in your capacity to regurgitate the 12 steps. The Board wants to see that you actually work the steps on a daily basis. For example, you should have a morning practice of prayer and mediation involving Step 11 and an evening practice of Step 10. You should have also written out a Step 4 and a Step 8 and you should be able to discuss how Steps 4, 8 & 9 relate to your life crime. Steps 8 & 9 are particularly important because they relate to the life crime and to your effort in making amends. In fact, the health of your sobriety relates directly to your ability to make amends to your life crime.

Remember that the steps follow a natural grouping:

Steps 1-3 go together (each of these Steps relate to admitting powerlessness and unmanageability, allowing a higher power to provide direction in your life, and turning your life over to a higher power to restore sanity).

Steps 4-9 relate to clearing up the wreckage of one's past. Within this group, Steps 4-7 relate to cleaning up this wreckage *internally* (meaning identifying, fixing and turning over one's character defects). Within this same group, Steps 8 & 9 concern fixing the *external* wreckage of your past (meaning those you've harmed).

Steps 10-12 relate to maintaining these gains and ensuring your ongoing sobriety. Step 10 is a daily inventory, Step 11 is your conscious contact with God and Step 12 is being of service to others. You will remember the steps best by working them, and you can not work the steps without a sponsor. So get one in prison and identify a sponsor for yourself in the community.

Other options for long-term addicts include: Obtaining a letter from a psychologist or psychiatrist who indicates that they will provide you with substance abuse counseling on the outside. Transitional housing with a 6-month to one year commitment that includes daily individual and group therapy. An outside sponsor who will provide accountability immediately upon release. Letters from other inmates attesting to working steps together with you. A drug and alcohol life inventory which details the exact times and quantities of your drug consumption. This inventory will also identify the progressive nature of addiction as well as identifying how a combination of drugs may have affected you. Write book reports relating specifically to substance abuse. The book reports can be based on AA/NA literature or other recovery related books. The reports should be one page each in length with half of the text dedicated to what you read and the other half dedicated to how it applies to your life. Affirm that any residence offer from family members or loved ones comes from a residence that is drug and alcohol free. You will need a relapse prevention plan which may include the following: A 90 x 90 (90 meetings in 90 days); A list of all meeting times and locations of NA or AA groups in your area of parole; Obtaining a temporary or permanent sponsor with whom you meet weekly and speak to via phone daily; A list of your triggers such as Hungry / Angry / Lonely/ or Tired or specific triggering people, places, or things; Three program telephone calls per day to other people in the NA/AA fellowship; Contacting your parole agent; Reading specific NA or AA literature; Talking to a sober family member; Talking to clergy; Writing a gratitude list; and Prayer and meditation. All or any of these may appear (with details attached) in your relapse prevention plan.

It's also helpful in identifying your character defects to do 2 things: Pay particular mind to those defects that were present in your life crime. Be prepared to discuss in detail what specific programs you've participated in while in prison to address those defects of character (particularly how you have new and improved coping skills to utilize when those defects come up). Remember that merely refraining from using drugs or alcohol by no means is a sign that you've conquered the problem. That just means you're not using drugs in this moment. If you are not working an active program of recovery as an addict, you are preparing for relapse and the Board realizes this. Lastly, do not wait around (especially with all the budget cuts) to only work a program of sobriety and recovery through the self-help programs offered by the prison. You can work the steps and/ or recovery on your own or with fellow inmates on a daily basis.

RECENT PAROLE CASES YOU MUST KNOW ABOUT.

As you may know by now, if you are a regular reader of Parole Matters, we keep you informed on the latest, greatest, and worst state and federal parole cases. And rather than giving you more than what you need or can understand, Parole Matters presents the pivotal cases as they are viewed by the courts, lawyers and judges -- according to the "rule of law" established by each case. On these pages appear the list of the most recent parole case you need along with the actual importance of the case identified.

In re Paul Gaul (II)

2010 WL 105198

(2nd App. District Jan 13, 2010)

This is a good case ruling that an exceptional crime alone is insufficient to permit a Governor reversal of parole unless the crime is evidence of present dangerousness. The Court also overruled the Governor because he relied on outdated (1997) psychological evaluations while the 2008 evaluation noted the lifer was "not making excuses" for the life crime. The Court ruled that the Board could still assess the lifer's level of insight even if he didn't talk about the life crime because the 2008 psychological evaluation said that the lifer had "come to terms with the factors involved in his life crime." Lastly, the lifer expressed some frustration at the parole hearing that the Governor tried to say was proof of an anger problem. The Court rejected this instead relying on the lifer's disciplinary-free behavior to show he had no anger problem.

In re Marcos Marlo

2009 WL 1277744

(2nd App. District May 1, 2009)

This is a fine case ruling that the Governor has to establish a rational nexus between the lifer's supposed failure to accept responsibility and an unreasonable risk of danger to the public if paroled. The Governor couldn't rely on outdated psychological reports especially when present ones had the lifer at a low risk.

In re Tyrone Johnson

2010 WL 165868

(4th App. District Jan. 19, 2010)

This is a favorable case finding that the lifer's version of the crime was not so strained that it couldn't be true. The Court ruled that requiring the inmate to admit the crime exactly how the court understood it would require the inmate to admit the offense as a condition of parole and this wasn't allowed. Plus, the lifer took responsibility for the crime and expressed remorse. The Court overturned the Governor's reversal.

In re Mark Lugo

2010 WL 146313

(4th App. District Jan. 14, 2010)

On a first-degree murder case, the Court found that the Board could not require an inmate to demonstrate remorse for a crime he said he did not commit. The Court said remorse could be required if an inmate admitted limited involvement, but if an inmate denied committing the crime, remorse was not required. The Board could rely, however, on any comments made by the lifer outside of remorse relating to his current mental state because the lifer called the judges and cops "crooked." This was evidence of a poor mental state and a reason to deny parole.

In re Anthony Allen

2009 WL 3419647

(First App. District Oct. 26, 2009)

This is a good case ruling that an inmate's former "gang lifestyle" alone could not be used to deny parole because it was an unchanging factor which was not on its own evidence of current dangerousness. The lifer had a "good disciplinary history in prison, positive psychologi-

cal evaluations, and strong work history.” Plus, he “appeared to have developed some insight and understanding in regard to his life crime.”

In re Michael Harris

2010 WL 179749

(6th App. District Jan. 19, 2010)

A rehearing of parole by the Board was required because the Board did not consider whether the lifer’s past substance abuse was the result of significant stressors in his life at the time of the crime, and now with so much time having passed whether there was any growth in his character since. The prisoner also used Islam instead of the 12 steps of AA for his sobriety. This was deemed acceptable. Lastly, the Court interestingly took note of whether “any *further* rehabilitation might change the ultimate decision that petitioner remains a danger.”

In re Gloria Olson

2010 WL 25048

(4th App. District January 6, 2010)

This is a positive case overruling the Governor’s reversal because the lifer had been disciplinary-free for 30 years in prison despite being found guilty of two counts of first degree murder. The Governor could not rely on old psychological evaluations from 1999-2004 when the 2005-2008 reports were supportive. Plus, the Governor could not rely on outdated statements the lifer made in 2005 about the commitment offense when he had since improved his insight. Her insight was deemed adequate despite having “varying descriptions for her subjective responses and impulses leading to the killings, as well as her perceptions of what conduct by the victims precipitated her irrational decisions.”

In re James Masoner

179 Cal. App. 4th 1531 (2009 2nd App. District)

This is a good case clarifying that the remedy in reversing the Governor is that the lifer must be released rather than another review by the Board or Governor.

In re James Sauers

2010 WL 290584

(6th App. District Jan 6, 2010)

This is a good case finding that the Board did not adequately explain why the lifer needed more self-help or why he lacked insight when he was disciplinary-free, had no criminal history and good parole plans. The lifer had 20 years of favorable psychological evaluations, and his plan to parole to Texas ultimately could not be used to deny parole.

In re Anthony Martinez

2009 WL 3823339

(4th App. District Nov. 17, 2009)

This case overruled the Governor finding that the Governor could not reply on a 1997 counselor’s report to allege that the lifer lacked responsibility. Neither was the crime exceptional; and most importantly, in this case, the prisoner’s early spate of 115s in prison could not be used to deny parole because the analysis is decided by “not whether the inmate has ever violated prison rules, but whether he has conformed his behavior for a sufficiently long period to establish that conformity and good conduct is not the inmate’s ‘norm’ or typical, predictive behavior.” Here, 20 years of disciplinary-free behavior was enough to prove this.

When Should I Hire A Lawyer to Help In The Parole Process?

A lawyer can be retained at various times including: (a) one year prior to your hearing date to prepare for the hearing; (b) immediately after any parole denial so that an appeal of the denial can be filed; (c) anytime prior to your next hearing to educate you on what should be the focus of your parole plans and your time in prison; (d) at any point necessary to inform your family of what to expect for your parole prospects and how the family can help; (e) to assist with the Governor on why his office should affirm your parole grant; and (f) to take your case to an en banc or to a rescission hearing.

At any stage, a skilled parole lawyer can make the difference between going home, and not.

SUBSCRIPTION?

If you want to regularly receive (4 times a year) the invaluable information in Parole Matters:
For Prisoners: Send \$15 for one year subscription.
For Non-inmates: Send \$25 for one year subscription.
(Make checks payable to Charles Carbone, Esq.)



CHARLES CARBONE, ESQ.
PAROLE MATTERS
POB 2809
San Francisco, CA 94126
www.prisonerattorney.com
charles@charlescarbone.com