

PAROLE MATTERS.

SPRING 2014. PAROLE MATTERS

IT'S NOT YOUR IMAGINATION. MORE AND MORE LIFERS ARE GOING HOME THAN EVER BEFORE.

PAROLE MATTERS IS PUBLISHED BY **CHARLES CARBONE, ESQ.**



HOW TO PREPARE FOR THE PSYCHOLOGICAL EVALUATION.

Most lifers step into the the psychological evaluation without a second thought. This is a big mistake. The psych report is the first impression that Board will have of the lifer other than the central prison file. It's the pre-exam of the parole hearing and having success in the psych evaluation is critical to a parole date.

Here are some golden rules to follow in preparing for the psyshe evaluation:

1. Don't try to run the show. It's a psyshe interview
2. Don't be passive either: It's a difficult balancing act, but without running the show, be engaged. Talk. It's an interview where the psychologist wants to hear your opinions.
3. Don't re-litigate your conviction: the interview

conducted by the psychologist, not conducted by you. Let the psychologist run the show. Trying to dominate the interview just pisses off the interviewer.

is not your opportunity to show the psychologist that you were wrongfully convicted and or that you didn't have a fair trial. If you proclaim innocence and or didn't get a fair trial, just state the facts without trying to prove them. Keep it concise -- down to three or four major points.

4. If you are guilty of your crime, be ready to admit it. Show emotion without being fake. Talk about your remorse, your acceptance of

what occurred in addition to the crime's impact. Have an outline IN ADVANCE about what you want to say on EACH of these topics. Be specific in your list of what you accept responsibility for including both your actions and inactions which led to the crime.

5. Make a parole support folder that contains your most critical letters of support from friends, family and or transitional housing. Make sure you can show that you have job offers, a stable or suitable place to live, and friends and family who will be involved in your re-entry. The psychologist may not want to look at the letters but they will surely be impressed that you have them and have readied yourself for the transition home.
 6. Bring and know your relapse prevention plan. If you had past drug or alcohol issues, be ready to discuss this topic in the context of your specific and written plan on how you will stay sober. And please, if drugs or alcohol were an issue in the past, know your steps of the 12 step program. Not knowing your 12 steps shows that you are not working a daily program of recovery.
 7. Be prepared to discuss what you actually got out of your self-help programs. Being ready to talk about the substance of what you have learned -- whether that's in anger management, gang diversion, or substance abuse -- be ready to talk about what you have learned and how you live differently now.
 8. Be authentic. Lying or trying to be someone you are not will hurt you. Make sure your answers are consistent with that you have said in the past. Read your past psychological evaluations because you want to be consistent with what you told other BPH psychologists except in those circumstances where you want to improve upon what you said in the past such as having better insight and/or taking greater responsibility for your crime and/or prior criminality.
 9. Familiarize yourself with the basic facts, events and dates in your life. We all forget the date of key events in our lives and perhaps some of the critical events associated with those events. This is why reminding yourself of the dates and facts of the major events in your life will keep you consistent and appearing genuinely self-reflective
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10. Ask yourself the basic questions that parole commissioners ask: how do you feel about your crime?; what do you accept responsibility for?; why did the crime happen?; what could you have done differently?; do you think you are a substance abuser or addict?; why did you get into trouble in prison on a particular rules violation?; what is the biggest change in you since coming to prison?; how have you changed and or matured since committing your crime?; do you believe your sentence was fair?; what is the present health of your relations with friends and family?; what are your goals and priorities if paroled?; how will you maintain your sobriety?; developing good faculty over the typical questions asked at any parole hearing will help show that you have thought about these issues already and are a polished person without being too sterile.
 11. Appearance matters. Unless it's unavoidable and you are coming straight from work, look your best. Make sure to come looking presentable, making good eye contact, and with a polite/ positive attitude. Initial impressions can go a long way.
 12. And lastly, don't ask how you did. Unless the examiner decides to answer that question and divulge that information without prompting, it's best not to fish for how you did. Leave that to when you receive the report.

Proving Your Sobriety:

Being sober is always a topic of great discussion at any parole board given the prevalence of past substance abuse among lifers. That is not to suggest that all lifers have substance abuse problems, but far too many do. And many lifers have taken advantage of the SAP, AA, NA & CADAC programs to learn important self help tools on substance abuse and life skills generally.

This article focuses on how to maintain sobriety -- in fact, the key sobriety tools -- helpful in preventing relapse both in prison and on parole. Hence, this list of sobriety tools can be helpful to lifers in a variety of ways including: (1) how to stay sober in prison so as to avoid a rules violation; (2) how to discuss these critical topics at a parole hearing when asked about sobriety; and (3) to compliment the previous relapse prevention plan published in Parole Matters. Here is Parole Matters "ultimate list" of sobriety tools:

Meetings

Attending self-help, twelve step or sobriety related meetings serves so many helpful functions including: providing for healthy, sober associations and fellowship with others living a sober life, immediate relief from obsessive and compulsive thoughts, keen insight from those with more/less sobriety, and a supportive forum to engage with your sobriety.

Literature

Many twelve step groups have their own "big book" which contains the experience, strength, and hope in the stories of other addicts along with detailed descriptions of the 12 steps. Instead of reading these books in the classic sense of reading the book cover to cover, and being done with it, it's best to see this literature as a daily book used over and over as powerful reminders of the techniques for sober living.

In addition, there are now many self-help books -- religious and not -- which can be read to gain insight into human behavior, spiritual life and the human psyche.

Honesty About Slippery Behavior

All addicts get tempted. Those who are honest about it are those who survive and thrive beyond the potential slip. It's best and indeed necessary to be honest about engaging which may lead to a full blown relapse. If you are honest about getting close to using again, you may just avoid it.

Telephone

The phone can be a lifeline to sobriety. Calling a sober family member or fellow recovering addict can ground you and offer a powerful reminder of the importance of your sobriety and the insanity of an addict's mind at times.

Service: Helping others gives us greater purpose, compassion and meaning. Plus it's proven to keep you sober.

Inspiring Activities: Being sober simply to do the mundane doesn't make a lot of sense. A sober life means you have more energy, time, money, and ability to do those things which really keep us in the game of life. Do something that inspires you and that keeps you motivated for life.

One Day At a Time

All too often, addicts think they are destined to fail and they should give because they feel ultimately doomed to use again. This fatalistic thinking never works. Just take it one day at a time. Focus on the powerful success of just being sober for the next day, sometimes even the next hour. Instead of trying to figure out a lifetime of sobriety, just focus on staying sober for one day.

Friendship

Sober friends are a powerful way to connect to other healthy and supportive people. Often times addicts were self-medicating over their isolation and loneliness. Friendships can bring you out from the secretive shadows that addicts

CONTINUED: Proving Your Sobriety.

Changing Old Routines: If you do the same thing expecting different results that's insanity. Addicts in recover have to break old unhealthy routines. It could be as simple as the route to work, or the hang out places. Changing your routine gets us out of habitual behavior that no longer serves us.

Living Through Discomfort: Addicts are often self-medicating, but the "pain medication" is often excessive because the underlying pain is really just discomfort. Learning how to deal with difficult emotions or painful feelings gives us greater depth and capacity to deal with larger and larger challenges.

Prayer: Get down on your knees and talk to your higher power. Prayer is really just a conversation with our highest thoughts and higher reasoning. You can involve the God of your understanding. Prayer can settle the mind and draw upon the spiritual core of your being.

Meditation: If prayer is talking to God, meditation is listening. Meditation means just stilling the mind and checking in to how you are feeling in the moment. The easiest meditation is listening to and following your breathing.

Journaling: Writing down thoughts, feelings and experiences gives us objectivity and that "third person" view of ourselves. It can also be a powerful tool to see how we are progressing or regressing by reviews in past entries.

Gratitude List: Making a list of those things for which we are grateful reminds us the richness of our lives without the use of intoxicants plus how much we have to lose.

Book Ending: If you thing you are going to be amidst a difficult or triggering event, it's best to "bookend" that even by contacting a sober point person directly before and after the even so as to be accountable.

HALT: The most common triggers for relapse go by the acronym HALT: Hungry, Angry, Lonely, or Tired. Knowing these common triggers is critical.

3 Second Rule: Taking three long seconds to think about your behavior before acting helps you reflect before taking the leap into a mistake.

Thinking the Slip All The Way Through: Ok, so you want to use drugs or alcohol. Before you do, speak out loud what that actually looks like. This can keep us sober by reminding us where such behavior will actually take you. Pondering ramifications is a powerful disincentive.

Rigorous Honesty: Being brutally honest has a coercive quality. It makes us accountable and unable to pretend that the addicts life is manageable. It reveals the wreckage that addicts create by being honest about the nature of addiction. Nothing works without honesty.

Identify - Don't Compare: It's easy to get caught up in comparing yourself to others. Don't. Find ways to identify with others, not to place yourself above or below their league.

Progress, Not Perfection: If you stumble, don't give up. Remembering that no one is perfect is a powerful way to free yourself from having to get it right all the time. Mistakes and set backs will occur. The real test is responding to adversity.

Feedback: No man is an island, and pretending to live on one doesn't work. Asking for feedback from those your respect will give you the chance to really hear how you are living.

Being Positive: How we view the world is really an indicator of how we view ourselves. Those that see only trash and not treasure usually do not value themselves.

Exercise: Scientists are learning that exercise can set off the same neurological receptors that are triggered by drugs or alcohol except without the side effects. Working out really does give you a "runner's high" and any exercise, not just running, works.

PRE-SENTENCE CREDITS: Getting your county time included...for your life sentence.

Inmates often serve time in custody awaiting trial and sentencing. The time spent in custody counts as time served and gets applied to the inmate's sentence. The amount of time applied is called "pre-sentence credit," and these credits affect your base term as lifers.

A quick word on terminology. We are only discussing pre-sentence credits here, so anything that happens after your sentencing (while you are in prison) does not apply to this discussion. All statutory references are to the Penal Code unless otherwise indicated. Also know that pre-sentence credits are a phenomenally complicated subject impossible to fully explain here. This article is a good overview but cannot address every aspect of the law.

Who is eligible to earn pre-sentence credits? Generally, you earn credit for time spent in pre-sentence confinement. To get credit, the defendant must be "in custody." § 2900.5(a). This includes time in jail, camp, a work-furlough facility, a halfway house, a rehab facility, hospital, prison, juvenile detention facility, or a similar residential institution. Id. Depending on the circumstances, you could even get credit for being under house arrest. *People v. Lapaille*, 15 Cal. App. 4th 1159 (1993); *People v. Pottorff*, 47 Cal. App. 4th 1709 (1996).

How are credits calculated? These credits involve two components. The first is actual custody credit. This is simply the total of all the days that the inmate spent in pre-sentence custody. A part of a day counts as a full day (so the day you entered custody counts as a full day even if you entered custody in the afternoon). *People v. Smith*, 211 Cal. App. 3d 523, 526 (1989).

The second component is conduct credit. The amount of conduct credit earned depends on both the location of the pre-sentence confinement and the inmate's conduct during that confinement. Inmates earn conduct credits while confined in a county or city jail, a road camp, or an industrial farm. § 4019. Inmates can also earn conduct credits when sent to California Youth Authority or to a diagnostic facility for diagnostic evaluation. § 1203.03(g). Some locations do not allow for conduct credits: a hospital confinement as a Mentally Disordered Offender, a hospital following being found incompetent to stand trial, a hospital after being found not guilty by reason of insanity, time spent under house arrest when imposed as part of own-recognition release, and others.

Assuming that an inmate is eligible to earn conduct credits, calculating the credits is complicated. The calculation depends on where the inmate served pre-sentence custody, the dates of that custody, the date of the offense, what offense was committed, and the inmate's prior record. It also depends on the inmate's behavior while in custody, because if the inmate refused to comply with rules and regulations, the inmate probably cannot earn conduct credits. § 4019.

5 The law also includes "credit disabilities" that

hinder your ability to earn conduct credits. An inmate convicted of a violent felony after September 21, 1994, cannot earn credits beyond 15% of the confinement. § 2933.1. An inmate cannot earn conduct credits if they are convicted of certain felonies listed in § 2933.5, have previously been convicted more than once, and served more than one separate prison term for any of the listed felonies. Most important for lifers, an inmate convicted of a murder committed after June 2, 1998, cannot earn any pre-sentence conduct credits. § 2933.2(c).

The formula for calculating conduct credits is complex and depends on the date of the custody, but for time served before January 25, 2010, the basic rule is that four days of actual confinement earns two days of credit.

How are pre-sentence credits applied to indeterminate life terms? For lifers, pre-sentence credits serve just one role: reducing the base term for the life offense. This issue came up in *In re Bush*, 161 Cal. App. 4th 133 (2008) (the case also dealt with in-prison credits). The lifer in *Bush* argued that credits should apply to two roles: (1) reducing the base term for the offense, and, if the lifer has already served longer than the base term, then (2) reduce the parole period after the lifer's release. The court rejected this argument, and held that pre-sentence credits do not reduce the parole period after release. Id. at 140. Specifically, *In re Bush* noted that Title 15, § 2289, says that pre-sentence credits should be applied to reducing the base term, and that nowhere in Title 15 (or anywhere else) does it say that pre-sentence credits apply to the parole period after release. Id.

The California Supreme Court in *In re Lira*, 58 Cal. 4th 573 (2014) just reiterated the same rule from *In re Bush*, holding that, "For life prisoners, [*In re Bush*] noted, pre-prison credits are taken into account when the Board sets the base term, being applied to the base term itself to reduce its length." Id. at 581 (citing 15 CCR § 2289). The base term is measured from the time inmates enter CDCR custody. 15 CCR § 2289.

This all means that pre-sentence credits might help a lifer or might simply go to waste. Imagine that the Board sets a base term of 25 years for a lifer with 730 days (exactly two years) of pre-sentence credit. If this inmate is found suitable for parole before serving 25 years, then his release date will come sooner, because those 730 days will get applied to reduce the base term to 23 years. But imagine now that this inmate is found suitable for parole after serving 25 years, for instance, after 26 years. Now those 730 days credit get wasted. It does not matter to this inmate if the base term is 25 years or 23 (or 20 or 15 or 10 years for that matter), because this inmate has already exceeded the base term. Reducing the term has no effect.

Now that the Board will set the base term at all initial parole hearings under the *In re Butler* settlement, lifers will learn very quickly the effects of their pre-sentence credits.

**CHARLES CARBONE, ESQ.
CONGRATULATES THESE CLIENTS FOR
WINNING THEIR PAROLE DATE AND OR
RELEASE IN THE LAST FEW MONTHS:**

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GET LIFERS
OUT IN GREAT
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BECAUSE THE
PREPARATION
PROCESS IS
HANDLED WITH
GREAT CARE,
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