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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re TONY PROTOPAPPAS on Habeas Corpus.	G042075 (Super. Ct. No. C-52021) ORDER MODIFYING OPINION AND DENYING PETITION FOR REHEARING; NO CHANGE IN JUDGMENT

It is ordered that the opinion filed herein on March 9, 2010, be modified as follows:

Delete the following paragraph that begins on page 19 and ends on page 20 in its entirety:

"The parties disagree on the appropriate remedy. Petitioner requests that we remand the matter to the Board with instructions to grant parole. The Attorney General argues the Board should be allowed another opportunity to conduct a de novo parole hearing. Under the circumstances of this case, a middle course is the correct one: "[W]e direct the [Board] to find [petitioner] suitable for parole unless new information, either previously undiscovered or discovered subsequent to the 200[8] hearing, supports a

determination that [petitioner] poses an unreasonable risk of danger if released on parole." (*In re Rico* (2009) 171 Cal.App.4th 659, 688.)"

On page 20, delete the paragraph below the Disposition heading in its entirety, retaining footnote 8, and insert the following paragraph in its place:

"Petitioner's petition for writ of habeas corpus is granted and the Board is ordered to vacate its decision finding him unsuitable for parole. We recognize the Board rendered its decision prior to the Supreme Court's opinion in *Lawrence*, *supra*, 44 Cal.4th 1181. We therefore direct the Board to conduct a new parole suitability hearing within 120 days of the issuance of the remittitur in this matter, and to reconsider its denial of parole to petitioner in light of the current dangerousness standard set forth in *Lawrence*, bearing in mind that this court finds no evidence in the record before it that petitioner poses a current threat to public safety. Pursuant to California Rules of Court, rule 8.387(b)(3)(A), this opinion shall be final as to this court within five days after it is filed."

Footnote 8 at the end of the original Disposition paragraph is retained and inserted at the end of the new Disposition paragraph.

The petition for rehearing is DENIED.

The modification does not change the judgment.

IKOLA, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

ARONSON, J.