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SJC-13032

DOE, SEX OFFENDER REGISTRY BOARD NO. 7546 vs. SEX OFFENDER
REGISTRY BOARD.

Plymouth. March 3, 2021. - June 3, 2021.

Present: Budd, C.J., Gaziano, Lowy, Cypher, Kafker, Wendlandt,
& Georges, JJ.

Sex Offender. Sex Offender Registration and Community
Notification Act. Constitutional Law, Sex discrimination.
Due Process of Law, Sex offender. Practice, Civil, Sex
offender. Administrative Law, Exhaustion of remedies, Time
of decision.

Civil action commenced in the Superior Court Department on
May 6, 2019.

The case was heard by Joseph F. Leighton, Jr., J., on
motions for judgment on the pleadings.

The Supreme Judicial Court granted an application for
direct appellate review.

Matthew J. Koes for the plaintiff.

Nicole Nixon for the defendant.

Nancy Dolberg, Committee for Public Counsel Services, for
Committee for Public Counsel Services, amicus curiae, submitted
a brief.

KAFKER, J. In 2012, years before her potential release date from prison, Doe was classified as a level three sex offender.¹ At the time, she did not challenge the classification. In Doe, Sex Offender Registry Bd. No. 7083 v. Sex Offender Registry Bd., 472 Mass. 475, 484 (2015) (Doe No. 7083), we held that "a final classification must be based on an evaluation of the offender's risk of reoffense at a time reasonably close to the actual date of discharge" in order to satisfy due process. In 2019, based on Doe No. 7083, Doe sought to vacate the final classification on the grounds that it was premature, despite her decision not to challenge the classification at the time it was finalized. The Sex Offender Registry Board (board) denied the motion. Applying the familiar Mathews v. Eldridge, 424 U.S. 319, 335 (1976), balancing test, we conclude that the premature classification here violates due process, as it serves little to no purpose, poses an unnecessary risk of harm and error, and is not justified by the board's limited interest in finality or administrative efficiency.²

Background. Doe was convicted of sex offenses in 1970 and 1977, and she was sentenced to life in prison in 1977. In

¹ Doe has transitioned from male to female. Therefore, we refer to her with she/her/hers pronouns.

² We acknowledge the amicus brief submitted by the Committee for Public Counsel Services.

December 2012, the board notified Doe of her responsibility to register as a sex offender and of her recommended classification as a level three, high-risk sex offender. Doe accepted the recommended classification and declined a hearing, and her classification was finalized.

On April 4, 2019, Doe filed a "motion to vacate final classification and for further evidentiary hearing" with the board. She argued, based on Doe No. 7083, 472 Mass. at 479, that her classification was finalized too far in advance of her release and should therefore be vacated. She also claimed the classification had become stale and materially inaccurate, contending that the passage of time, her completion of sex offender treatment, and her advanced age reduced her risk of recidivism. On April 8, 2019, a board hearing examiner denied the motion, concluding that the Supreme Judicial Court's holding in Doe No. 7083 did not apply because, unlike the offender in Doe No. 7083, Doe accepted her classification, thereby waiving her right to a hearing. In the denial, the hearing examiner noted that Doe would be eligible to request reclassification three years after her release from incarceration.³

³ Doe was denied parole on May 20, 2015. On March 3, 2020, another parole hearing was held. Parole was subsequently denied on September 2, 2020. Doe will not be eligible for review of parole again until 2025.

Doe sought judicial review in Superior Court. The parties cross-moved for judgment on the pleadings. A Superior Court judge entered judgment in favor of the board on the grounds of waiver and finality.⁴ We allowed Doe's application for direct appellate review.

Discussion. 1. Standard of review. We review the board's denial of a motion to vacate a classification and hold a further evidentiary hearing for abuse of discretion. Doe, Sex Offender Registry Bd. No. 209081 v. Sex Offender Registry Bd., 478 Mass. 454, 457 (2017) (Doe No. 209081). In reviewing a board decision for abuse of discretion, "we look to see whether the decision was reasonable" based on "the specific context of the circumstances presented and the statutory scheme involved." Id. at 457-458. See L.L. v. Commonwealth, 470 Mass. 169, 185 n.27 (2014) (abuse of discretion involves clear error of judgment "such that the decision falls outside the range of reasonable alternatives"). A "judge may not exercise her discretion in such a way that . . . deprives the defendant of the right to . . . due process of law." Commonwealth v. Cruz, 456 Mass. 741,

⁴ The board also moved to dismiss the complaint for lack of subject matter jurisdiction. The judge partially allowed this motion as to counts I and II, seeking review under G. L. c. 30A, § 14 (the administrative procedures act), and declaratory judgment pursuant to G. L. c. 231A, § 2. The judge denied the motion as to count III, seeking certiorari pursuant to G. L. c. 249, § 4, and addressed the merits of Doe's claims.

747 (2010). See Matthews v. Appeals Court, 444 Mass. 1007, 1008 (2005) (clear error of law is one form of abuse of discretion).

2. Exhaustion of administrative remedies. The board argues that we should not address the merits of Doe's claim because she did not properly exhaust all her administrative remedies. The board contends that Doe should have first requested a reclassification pursuant to 803 Code Mass. Regs. § 1.31(2) (2016), even though the board can summarily deny her application without a hearing if she seeks reclassification while incarcerated, and no appeal is allowed from the decision. 803 Code Mass. Regs. § 1.31(2)(e). Once Doe is released, the soonest she can request reclassification is three years after her release. 803 Code Mass. Regs. § 1.31(2).

As we discuss at greater length in our due process analysis, infra, this procedure is not a reasonably adequate remedy when challenging an obviously premature classification. See Noe, Sex Offender Registry Bd. No. 5340 v. Sex Offender Registry Bd., 480 Mass. 195, 202-206 (2018) (Noe) (addressing due process protections against inaccurate classifications); Doe No. 7083, 472 Mass. at 484-485 (interests implicated by premature classification). The solution to a premature final classification is not a premature reclassification. The correct remedy is vacating the premature final classification until such time as it is appropriate to classify the petitioner. Further,

as explained infra, the board routinely denies all such reclassification requests by incarcerated offenders. Thus, Doe need not proceed with a reclassification request, but may proceed to seek to vacate the premature classification, as she did here.

3. Time of classification. The primary issue in this case is whether our holding in Doe No. 7083, 472 Mass. at 484, that "a final classification must be based on an evaluation of the offender's risk of reoffense at a time reasonably close to the actual date of discharge" applies to incarcerated offenders who, like Doe, accepted their classification.

a. Registration statute. "The purpose of the sex offender registration statute is to protect the vulnerable members of our communities from sexual offenders and from the danger of recidivism posed by sex offenders" (quotations and citations omitted). Doe No. 7083, 472 Mass. at 481. To this end, the board is responsible for developing guidelines to determine "each sex offender's level of risk of reoffense and degree of dangerousness posed to the public." 803 Code Mass. Regs. § 1.04(1) (2016). See G. L. c. 6, § 178K (1). "[A]n offender's recent behavior and current treatment [must] be considered as factors relevant to this determination." Doe No. 7083, supra at 481, citing G. L. c. 6, § 178K (1). Based on these guidelines, the board makes initial recommendations regarding classification

level, which the sex offender may either accept or reject.⁵ 803 Code Mass. Regs. § 1.04(2). All sex offenders must register with the board, and the board may release their information to certain governmental agencies. See G. L. c. 6, § 178K (2); 803 Code Mass. Regs. § 1.05(1) (2016). Identifying information of sex offenders who receive a level two or level three classification (the highest classifications) is available to the public on the board's comprehensive registry, easily accessible through the Internet. G. L. c. 6, §§ 178D, 178K (2).

When an offender is incarcerated, the registration statute establishes deadlines for completion of steps in the classification process, but not a timeline for when the classification process may begin. See G. L. c. 6, § 178E ("shall classify such a sex offender at least [ten] days before the offender's earliest possible release date"), § 178L (1) (a) (board must notify offender of right to submit evidence "not less than [sixty] days prior to" release or parole). The board is required to prioritize classification of certain offenders sentenced to less than ninety days incarceration, followed by offenders recently released from incarceration, then offenders currently on probation or parole or scheduled to be released

⁵ Because Doe did not challenge the initial recommendation, we do not address the procedures that follow an offender's challenge.

from incarceration within six months. G. L. c. 6, § 178K (3). Indefinitely incarcerated offenders are not included in the prioritization. See id.

b. Due process implications. "A sex offender has sufficient liberty and privacy interests constitutionally protected by art. 12 [of the Massachusetts Declaration of Rights] that [s]he is entitled to procedural due process before [s]he may be required to register and before information may properly be publicly disclosed about h[er]" (quotation and citation omitted). Doe No. 7083, 472 Mass. at 482. To assess procedural due process, we apply the test from Mathews, 424 U.S. at 335, which balances the private interests affected by an agency decision; the risk of an erroneous deprivation of those interests and the probable value, if any, of additional or substitute procedural safeguards; and the governmental interests involved. Doe No. 7083, supra at 482. "In the context of sex offender classification, we examine the fit between a classification and the policy that the classification serves" (quotation and citation omitted). Id. at 483.

In Doe No. 7083, 472 Mass. at 476, we considered a substantially similar due process question in the context of an incarcerated and civilly committed offender whose classification hearing was scheduled ten months before his earliest parole

eligibility date and eighteen months before the trial on his petition for discharge. There, we stated,

"our decisions recognize that the registration statute requires [the board] to base its classification determinations on a sex offender's 'current' risk to the community, in order to protect the offender's right to due process. . . . Reaching a final classification determination close to the actual date of discharge promotes accuracy of classification determinations, which advances both the interests of the community and of the sex offender."

Id. at 483-484. When the offender appealed the board's denial of his request to continue the hearing, we held that the board's early classification "risk[ed] classifying Doe based on factors that would be stale at the time of his discharge, in violation of due process protections . . . [that are not] adequately addressed by Doe's ability to request reclassification." Id. at 478. We come to the same conclusion again today.⁶

i. Private interests. "The private interests at stake in sex offender registration and classification are significant." Noe, 480 Mass. at 202. Offenders must submit to "stringent affirmative reporting requirements" and public dissemination of their crimes, their identifying information, and their photograph (citation omitted). Id. "Internet dissemination,"

⁶ Reclassification procedures, particularly the burden of proof, have changed since our decision in Doe No. 7083. See Noe, 480 Mass. at 205. Thus, our analysis of the procedure is different from that in Doe No. 7083, but our conclusion is the same: the existing procedures do not adequately address due process concerns.

required of offenders classified as level two and level three, "exposes [offenders], through aggressive public notification of their crimes, to profound humiliation and community-wide ostracism." Doe, Sex Offender Registry Bd. No. 380316 v. Sex Offender Registry Bd., 473 Mass. 297, 307-308 (2015) (Doe No. 380316), quoting Doe No. 7083, 472 Mass. at 485. For prisoners, or at least prisoners held outside the sex offender treatment center, there is also a threat of physical danger from other inmates.⁷ In Doe's case, her primary interest is preventing the perpetuation of the harm caused by the ongoing, unnecessary Internet dissemination of her level three classification.⁸ See Doe No. 380316, supra at 307 ("Internet allows for around-the-clock, instantaneous, and worldwide access" to information on

⁷ See Noe, 480 Mass. at 202 (liberty interests include "possible threats of physical harm"); Doe No. 380316, 473 Mass. at 307-308 (consequences of public dissemination may include "harassment[] and assault"); Cubellis, Evans, & Fera, *Sex Offender Stigma: An Exploration of Vigilantism against Sex Offenders*, 40 *Deviant Behavior* 225, 232 (2018) (study reporting attacks on sex offenders within correctional facilities as result of stigma); Ricciardelli & Moir, *Stigmatized among the Stigmatized: Sex Offenders in Canadian Penitentiaries*, 55 *Canadian J. Criminology & Crim. Justice* 353, 358-359 (2013) (incarcerated sex offenders stigmatized among other prisoners at risk of victimization); Schwaebe, *Learning to Pass: Sex Offenders' Strategies for Establishing a Viable Identity in the Prison General Population*, 49 *Int'l J. Offender Therapy & Comparative Criminology* 614, 616-618 (2005) (incarcerated sex offenders subject to denigration, harassment, and violence from other inmates).

⁸ Doe is held at a sex offender treatment facility.

registry, with "[n]o limits" on secondary dissemination of information); Doe No. 7083, supra at 478 ("dissemination, which can result in a wide variety of harms, cannot be revoked" [citation omitted]).

ii. Government interests. First, the government has an interest "in protecting vulnerable members of the community through reliable notification of an offender's risk of reoffense and degree of dangerousness." Doe No. 7083, 472 Mass. at 488. In general, "[t]hat interest is best served . . . by ensuring that the classification of each individual offender is accurate," as overclassification "distracts the public's attention from those offenders who pose a real risk of reoffense" (citation omitted). Noe, 480 Mass. at 206. Importantly for this case, however, the public is already protected from an offender who, like Doe, will remain incarcerated, so long as that offender is separated from the public by the prison walls. Classification and dissemination of accurate information serve to protect the public from offenders who are within the community, but are unnecessary to protect the public from offenders who are incarcerated and not in contact with the general community. See Doe v. Attorney Gen., 426 Mass. 136, 142 (1997) (Attorney General), quoting State v. Ward, 123 Wash. 2d 488, 503 (1994) ("Absent evidence that the offender

poses a threat to the community, disclosure would serve no legitimate purpose" [alteration omitted]).

Second, the government has an interest in the finality of its classification decisions. See Doe No. 209081, 478 Mass. at 459 (statutes reflect "legislative acknowledgement that there is value in finality of sex offender classification proceedings"). This court has described the interest in finality of judgments as "weighty, [but] not always paramount." Commonwealth v. Randolph, 438 Mass. 290, 294 (2002). However, the government's finality interest in a premature sex offender classification is quite different from finality in a final criminal judgment or even other types of civil judgments, which require "a sufficient reason to reopen what society has a right to consider closed." Commonwealth v. Amirault, 424 Mass. 618, 637 (1997). See Commonwealth v. Watkins, 486 Mass. 801, 805 (2021), quoting Amirault, supra (final criminal judgments are typically left undisturbed barring "the possibility of error and of grave and lingering injustice"). By statute and regulation, sex offender classifications are subject to regular reclassification, without any requirement that the original classification be erroneous.⁹

⁹ The sex offender classification process provides for reclassification at appropriate times, so that a classification reflects current and changing conditions. See 803 Code Mass. Regs. §§ 1.31, 1.32 (2016). Indeed, the board itself regularly monitors final classifications to determine if a classification

Additionally, here the original classification was premature. A premature classification of an incarcerated person, as explained above, serves little to no purpose, and causes unnecessary harm. The board's finality interest in such a classification is necessarily limited.

Finally, the government has an interest in limiting its administrative burden. See Mathews, 424 U.S. at 335 (government interest includes "fiscal and administrative burdens that the additional or substitute procedural requirement would entail"). In evaluating the administrative burden, we must consider the relief requested here. Importantly, the substitute procedural safeguard -- vacating Doe's classification -- would impose virtually no additional burden on the board. It would simply require that the board vacate the prior classification.

The effect of a vacated decision on subsequent proceedings would also be minimal. If the classification is vacated and Doe is scheduled for release, the board will reinitiate classification proceedings at an appropriate time prior to her release. If the classification is not vacated, Doe has made clear that she intends to challenge it when the reclassification timeline allows her to do so. Consequently, whether or not the current classification is vacated, the board will eventually be

level should be changed. See G. L. c. 6, § 178L (3); 803 Code Mass. Regs. § 1.32.

required to prove the correctness of her classification by the same burden of proof: clear and convincing evidence. Noe, 480 Mass. at 203-205 (board has clear and convincing evidence burden of proof at both classification and reclassification proceedings). Thus, if we institute Doe's requested safeguard of vacating her classification, the additional administrative burden on the board would be minimal.¹⁰

iii. Risk of erroneous deprivation. "A premature, and potentially unreliable or inaccurate [final] classification" has "severe consequences" that affect the offender's private interests. Doe No. 7083, 472 Mass. at 485. It also undermines the public's interest, which depends on currentness and accuracy of final classifications. See id.; see also Noe, 480 Mass. at 206 ("all of the interests at stake in the classification and reclassifications of sex offenders depend on accuracy in the classification process. We have repeatedly recognized the importance of ensuring such accurate classifications"). As we have stated:

"Ensuring that a sex offender's final classification reflects a level of risk and dangerousness that is current at a time when the offender's release is imminent furthers both [the board]'s interest, and that of the public, in protecting vulnerable members of the community through reliable notification of an offender's risk of reoffense and degree of dangerousness, and better protects Doe's

¹⁰ In the event that Doe is never released from the treatment center, the board will bear no additional burden, as there will be no need to reinitiate classification proceedings.

liberty interest in receiving a classification that reflects consideration of current, rather than stale, risk factors."

Doe No. 7083, supra at 488.

Premature classifications, which are based on the circumstances at the time of classification rather than the time of release, may become inaccurate with the passage of time before release of an incarcerated offender. See Doe No. 7083, 472 Mass. at 483 ("registration statute requires [the board] to base its classification determination on a sex offender's 'current' risk to the community"). This is particularly true for a petitioner such as Doe with a long prison sentence. The risk factors assessed to determine classifications include many factors that are subject to change over time. See 803 Code Mass. Regs. § 1.33 (2016) (risk factors include offender's behavioral history while incarcerated, age, physical condition, participation in sex offender treatment, substance use, and mental health). "Moreover, advances in scientific research on sex offender recidivism over the course of an offender's commitment could indicate that additional factors should be considered, or that factors thought to be relevant to a determination of risk are not as predictive as initially believed." Doe No. 7083, supra at 485. Thus, a premature classification may become an inaccurate overclassification,

leading to an erroneous deprivation of an offender's liberty interests.

The board claims that the existing procedure of reclassification is a sufficient safeguard against erroneous risk of deprivation. We disagree. As the hearing examiner noted in her denial of Doe's motion, the regulations provide that Doe may seek reclassification three years after she is released. 803 Code Mass. Regs. § 1.31. Allowing a potentially inaccurate classification to continue for years while a petitioner is incarcerated and at least three years after release presents significant due process concerns. If erroneous, this classification continues a "wide variety of harms" caused by dissemination without advancing any public interest, potentially indefinitely. Doe No. 7083, 472 Mass. at 478 (harm caused by dissemination of inaccurate classification cannot be undone by subsequent reclassification). See Attorney General, 426 Mass. at 142, quoting Ward, 123 Wash. 2d at 503 ("Absent evidence that the offender poses a threat to the community, disclosure would serve no legitimate purpose" [alteration omitted]); 803 Code Mass. Regs. § 1.31(2)(e).

The board also relies on the procedure purportedly available for seeking reclassification while incarcerated as a protection against erroneous classification. A premature reclassification is not, however, a proper solution to a

premature classification. Rather, the solution to a premature classification is vacating the premature final classification and then classifying the petitioner at a time appropriately close to her release based on current conditions. See Doe No. 7083, 472 Mass. at 489.

Further, the reclassification process for incarcerated offenders raises serious due process concerns. The regulations permit Doe to seek reclassification while incarcerated, but the board can summarily deny her application without a hearing, and the board's decision is not subject to judicial review. 803 Code Mass. Regs. § 1.31(2)(e). When pressed, the board confirmed that since January 2014, twenty-one petitions for reclassification have been filed by incarcerated offenders. All have been summarily denied. A summary, predetermined process, subject to no appeal, is not a legitimate protection against erroneous classification. Indeed, the creation of and reliance on this type of illusory process for incarcerated prisoners is a flashing warning sign of a constitutional due process violation. See, e.g., Doe, Sex Offender Registry Bd. No. 326573 v. Sex Offender Registry Bd., 477 Mass. 361, 369 (2017) (rejecting board's argument described as "heads, we win, tails, you [the offender] lose"); Bridgeman v. District Attorney for the Suffolk Dist., 471 Mass. 465, 479 (2015), S.C., 476 Mass. 298 (2017), quoting Mathews, 424 U.S. at 333 ("The fundamental requirement

of due process is the opportunity to be heard '. . . in a meaningful manner'); Devine v. Nantucket, 449 Mass. 499, 511 (2007), quoting Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 315, (1950) ("process which is a mere gesture is not due process"). Finally, the board hearing examiner did not even reference this process in her decision, stating only that Doe would be eligible to seek reclassification three years following her release.

iv. Balancing. When balancing the Mathews factors "[i]n the context of sex offender classification, we examine the fit between a classification and the policy that the classification serves" (quotation and citation omitted). Doe No. 7083, 472 Mass. at 483. Thus, we assess the private interests, government interests, and risk of erroneous deprivation and probable value of substitute safeguards through the lens of the statutory purpose of "protect[ing] the vulnerable members of our communities from sexual offenders, and from the danger of recidivism posed by sex offenders" (quotations and citations omitted). Id. at 481.

As we explained in Doe No. 7083, 472 Mass. at 484-488, an incarcerated petitioner has a liberty interest in protection against premature classification, particularly when it results in dissemination of the classification over the Internet. Internet dissemination leads to "a wide variety of harms,"

including stigma and reputational harm, that "cannot be revoked." Id. at 478. That interest is weighed against the government's interest in protecting the public from sex offenders, but such protection is provided by the incarceration itself. See Attorney General, 426 Mass. at 142, citing Ward, 123 Wash. 2d at 503. Thus, the practice of classifying an offender far in advance of release does nothing to serve the government's interest in (and the statutory purpose of) protecting the public, while unnecessarily subjecting the offender to further stigma and harm. Id. See Doe No. 7083, supra at 483 (examining fit between classification and policy served by classification).

There is also a risk that the premature classification was, or will become, erroneous, thereby increasing the harm to the petitioner. Even if accurate at the time of acceptance, the premature classification does not account for any changes in the offender's behavior, attributes, and experience following the classification. It therefore poses a significant risk of inaccurate classification at the time of release. As both the petitioner and the government share an interest in accurate classification, neither side is served by premature classification. See Doe No. 7083, 472 Mass. at 484 ("Reaching a final classification determination close to the actual date of discharge promotes accuracy of classification determinations,

which advances both the interests of the community and of the sex offender"). See also Noe, 480 Mass. at 206.

The government's interest is therefore confined to finality and the administrative burden of additional process. As discussed above, the government's interest in finality of a premature sex offender classification is quite limited. Even sex offender classifications that were properly determined are regularly subject to review by the board, and offenders may seek reclassification on their own initiative without proof of error in an original classification. When the classification is premature, the interest in preserving it for finality purposes is greatly reduced, if not eliminated, as it serves no ongoing purpose and causes ongoing harm. Therefore, the government's interest is primarily in the administrative burden of vacating the existing classification, which is, as we explained, minimal.¹¹

¹¹ The board contends that to avoid rendering "the finality in accepted classifications a nullity," the government interest in finality is weightier where, as here, an offender has accepted a recommended classification. It is true that Doe knowingly and voluntarily accepted her classification in 2012, but accepted classifications are still subject to the same monitoring and reclassification procedures as contested classifications. Doe's acceptance does not change the risk of erroneous deprivation of her interests implicated by a premature classification with potential to become inaccurate, nor does it enhance the protection of the public. Therefore, it does not change our due process analysis.

Finally, the alternative reclassification process that the board suggests here does not adequately protect the petitioner's interests. Even more troubling, the reclassification process for incarcerated prisoners appears illusory. Thus, the only actual safeguard against deprivation of Doe's interest is the possibility of reclassification three years after her release. 803 Code Mass. Regs. § 1.31(2)(e). This belated opportunity to seek reclassification does nothing to alleviate the ongoing risk of harm caused by her premature classification.

In sum, we conclude that the petitioner was entitled to have her existing classification vacated. The Mathews balancing test compels this result. See Mathews, 424 U.S. at 335 (factors to be balanced in due process analysis). Preserving the premature classification was therefore an abuse of discretion. See Doe No. 209081, 478 Mass. at 457 (abuse of discretion of board's decision is reasonableness determination); L.L., 470 Mass. at 185 n.27 (abuse of discretion involves clear error of judgment "such that the decision falls outside the range of reasonable alternatives"); Cruz, 456 Mass. at 747 ("a judge may not exercise her discretion in such a way that . . . deprives the defendant of the right . . . to due process of law").¹²

¹² Because we conclude that the classification was premature and therefore must be vacated, we need not address Doe's argument that it was materially inaccurate.

Conclusion. We conclude that our holding in Doe No. 7083, 472 Mass. at 484, that "a final classification must be based on an evaluation of the offender's risk of reoffense at a time reasonably close to the actual date of discharge" is rooted in principles of procedural due process that apply to incarcerated offenders who, like Doe, waived their classification hearing. Therefore, denial of Doe's motion to vacate her final classification was an abuse of discretion. Her classification and the Superior Court judgment affirming the board's decision are vacated. At a reasonable time prior to Doe's actual release date, the board may reinitiate classification proceedings, at which time Doe is entitled to submit documentary evidence and request an evidentiary hearing. The matter is remanded to the Superior Court for entry of a judgment consistent with this opinion.

So ordered.