



The Commonwealth of Massachusetts
Executive Office of Public Safety



PAROLE BOARD

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DECISION

IN THE MATTER OF

HERBERT EARL

W34929

TYPE OF HEARING: Review Hearing

DATE OF HEARING: August 14, 2012

DATE OF DECISION: August 31, 2012

PARTICIPATING BOARD MEMBERS: Cesar Archilla, Dr. Charlene Bonner, Sheila Dupre, Ina Howard-Hogan, Roger Michel, Lucy Soto-Abbe, Josh Wall

DECISION OF THE BOARD: Parole is denied with a review in five years. The decision is unanimous.

I. STATEMENT OF THE CASE

Herbert Earl sexually assaulted his 15-year-old daughter in their North Adams residence on October 7, 1973. He forcibly raped the child after she refused to submit to his demands. She reported the rape to police on October 9, 1973. The victim also told police that on another day her father showed her nude pictures of a child and told her that he had taken the photos and sexually assaulted the girl. The police located that child who reported that Mr. Earl sexually assaulted her on two separate days in September 1973. She said he took Polaroid photos and forced her to sign a note promising never to tell anyone about the crime and falsely stating that she had willingly engaged in the conduct. In searching Mr. Earl's apartment, police recovered the note, the photographs, and the camera.

Mr. Earl was charged for sexually assaulting both his 15-year-old daughter and the 12-year-old girl. He pleaded guilty on April 19, 1974 to three counts of rape of a child and received three concurrent life sentences. He seeks parole from these three life sentences.

The inmate has committed several other serious crimes. He sexually assaulted his sister when he was 14 years old. In 1966 Mr. Earl was convicted in North Carolina of assault and battery with a deadly weapon (he shot a carnival co-worker six times) but he escaped on November 2, 1966. Upon escaping he quickly returned to Massachusetts. On November 4, he stabbed his wife and another man in Pittsfield. He stabbed his wife five times, including two wounds in the chest and one in the abdomen. He was sentenced to serve 7 to 10 years for assault with intent to murder with a concurrent term of 5 to 10 years for assault and battery with a dangerous weapon.

He has also been incarcerated for larcenies, breaking and entering offenses, and assault and batteries. He has been on Massachusetts parole at least two previous times and each time went whereabouts unknown in another state (Texas and North Carolina) to avoid supervision.

II. PAROLE HEARING ON AUGUST 14, 2012

This hearing was Mr. Earl's seventh parole hearing. Previous decisions document his long history of minimizing his conduct and refusing to participate in sex offender treatment. After his last hearing, in 2007, the decision noted that Mr. Earl was "argumentative," "refused to admit to his sexual deviancy," and "lacks remorse." The decision also noted that the inmate sent a letter to his daughter (who is the victim) telling her what to say to the Parole Board, including what lies to tell, so that he could get released. The Parole Board concluded that "despite 33 years of incarceration, Mr. Earl's road to rehabilitation has yet to begin."

Other than Mr. Earl's health, which has continued to decline, little else has changed since his last hearing in 2007. He is now 83 years old but he continues with his anti-social behavior. He has received 11 disciplinary reports since his last hearing. He has a pattern of mistreating medical staff who are obligated to treat him. Mr. Earl was asked about the most recent disciplinary report from May 28, 2012 that documented "loud and abrasive yelling" at a nurse and his refusal to follow directions from the medical staff. Mr. Earl took the position that he was not at fault for the incident because "that nurse gave me a bunch of lip."

Mr. Earl continued his pattern of minimizing his conduct, failing to understand the harm caused to his victims, and reacting with anger. He was especially angry in responding to a question about the sexual assault of his sister: "she said I raped her; that's not true, I tried to rape her but didn't get it done, there was no penetration." His anger was untempered by remorse or concern for his sister. Mr. Earl has refused several times to participate in sex offender treatment, but he apparently has discussed some issues during sporadic one-on-one mental health counseling sessions through the years. His statements at this hearing gave little indication that he has rehabilitated his deviancy. He is not currently involved in treatment or mental health counseling.

The inmate seeks a parole to a medical facility near his daughter (who is the victim) so that she can visit him and assist him with his medical needs. One supporter, a man who has visited Mr. Earl in prison for many years, appeared and spoke in support of parole.

III. DECISION

Herbert Earl is a disturbingly violent and sexually deviant person. He has stated many times through the years that "he sees nothing wrong" with his sexual contact with female children. Mental health evaluations have concluded that Mr. Earl is a pedophile with an anti-social personality disorder. Mr. Earl has for many years refused to enter sexual offender treatment. His occasional and sporadic one-on-one mental health counseling sessions cannot substitute for sex offender treatment. Mr. Earl is not rehabilitated. As shown by his recent disciplinary reports and his statements at his parole hearing, Mr. Earl remains dangerous despite his advancing age and declining health. If paroled, he would re-offend in whatever manner he is physically capable of. The criminal thinking remains intact and would direct his behavior if released to a non-secure medical facility. His release is not compatible with the welfare of society and parole is therefore denied. Given that Mr. Earl shows no motivation for reform or rehabilitation, there is no reason to reduce the statutory review period of five years.

I certify that this is the decision and reasons of the Massachusetts Parole Board regarding the above referenced hearing.


Caitlin E. Casey, Chief of Staff


Date