



The Commonwealth of Massachusetts
Executive Office of Public Safety



PAROLE BOARD

12 Mercer Road
Natick, Massachusetts 01760

Telephone # (508) 650-4500
Facsimile # (508) 650-4599

Deval L. Patrick
Governor

Timothy P. Murray
Lieutenant Governor

Mary Elizabeth Heffernan
Secretary

Josh Wall
Chairman

DECISION

IN THE MATTER OF

TIMOTHY FLUKER

W36275

TYPE OF HEARING: Review Hearing after Revocation

DATE OF HEARING: July 31, 2012

DATE OF DECISION: December 7, 2012

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

DECISION OF THE BOARD: After careful consideration of all relevant facts, including the nature of the underlying offense, institutional record, parole history, the views of the public as expressed at the hearing or in written submissions to the Board, we conclude by a unanimous vote that the inmate is not a suitable candidate for parole at this time. Parole is denied with a review in four years.

I. STATEMENT OF THE CASE

On June 22, 1977, Timothy Fluker was found guilty by jury of second-degree murder and sentenced to life in prison with the possibility of parole. Mr. Fluker was also found guilty of larceny and assault with intent to murder for which he received a concurrent 18-20 year sentence. The victim of the murder was Michael Sanders (age 20) and the victim of the assault with intent to murder was Clarence Brown (age 18).

On February 4, 1977, Timothy Fluker, during the commission of a robbery, shot Michael Sanders to death in the offices of a movie theater. Mr. Sanders was the manager of the theatre. Mr. Fluker's accomplice, Danny Rogers, shot Clarence Brown, who was seriously injured. Mr. Brown was an employee of the theater. Following the shootings, both Mr. Fluker and Mr. Rogers stole equipment from the theater and fled. Mr. Fluker was arrested in Brigham Hospital emergency room where he was being treated for a gunshot wound to the left hand. Mr. Fluker was shot during a struggle with Mr. Sanders.

Mr. Fluker created a significant problem for himself by repeatedly lying to the Parole Board at prior hearings. He denied any responsibility for the murder at parole hearings in 1992, 1995, 1998, and 2002. Finally, in 2005, the inmate admitted he had been lying and for the first time admitted that he shot the victim and took stereo equipment, as an afterthought, as he left the apartment. His new story included allegations that the victim provoked him by making a sexual advance, and when Mr. Fluker resisted the victim started fighting which gave the inmate the right to defend himself. Given Mr. Fluker's history of false testimony, his claims of provocation and self-defense carry little weight. Parole was denied in 2005 and 2007, but the inmate did receive parole after his 2009 hearing.

Parole was revoked in 2012 (as discussed below) which led to this parole hearing on July 31, 2012. In his testimony at this hearing, Mr. Fluker again made amendments to his previous versions. The Board vigorously questioned Mr. Fluker on both his accusations that Mr. Sanders made sexual advances toward him and his assertion of self-defense. During the course of this hearing, Mr. Fluker made admissions that now seem to discredit his prior statements that Mr. Sanders propositioned him in any way, and facts continued to evolve throughout the hearing. Mr. Fluker does admit to being the sole aggressor in the shooting death of Mr. Sanders, and in no way was he defending himself. His claims of provocation are not supported by other evidence and are almost certainly false. In addition, Mr. Fluker now admits to allowing and participating in the assault on Mr. Brown, providing his co-defendant with the gun, and then stealing whatever he and his co-defendant could.

II. INSTITUTIONAL HISTORY

During Mr. Fluker's incarceration he has been returned to higher custody one time and committed one escape (in 1986 while at the Wrentham State School Program via Bay State Correctional; he was returned to custody 8 months later). Mr. Fluker was sentenced to 1 to 3 years from and after for his escape.

Mr. Fluker has incurred a total of 20 disciplinary reports, his most recent occurred in 2009. Mr. Fluker's disciplinary reports have ranged in severity, his more serious offenses occurring in the 1980's and 1990, which included positive alcohol and marijuana tests. Mr. Fluker has not incurred any major reports since that period of time. His one return to higher custody was connected to being in possession of two large packets of marijuana in 1990.

Mr. Fluker states he gained his GED during his incarceration, which is not documented in DOC records. He completed only a few programs during his incarceration, and he was removed from the NEADS (dog training) program in 2007 for unsatisfactory reviews. Mr. Fluker was not attending any programming at the time of the hearing.

Mr. Fluker has participated in counseling at his own request, most recently in 2008. He has no documented mental health diagnosis, but was reportedly invested in counseling for unspecified issues he was struggling with. Mr. Fluker's counselor provided a letter supporting his release in 2007 and describing the positive changes he demonstrated during his years of counseling.

III. PAROLE HISTORY

Mr. Fluker received a positive parole vote in May 2009, after his sixth hearing, to reside in a sober house with participation in an outpatient program, and additional conditions to promote continued sobriety and successful re-entry into the community. The Board noted that

Mr. Fluker had improved his institutional behavior, worked towards rehabilitation, and had developed a supportive re-entry plan.

In December 2009, Mr. Fluker completed the treatment requirements as recommended by his outpatient providers. He moved into an apartment, however, with a known felon which was in direct violation of parole conditions. Mr. Fluker was instructed to find an alternative living situation. In March 2010, he moved in with his girlfriend, but had difficulty securing consistent employment and he applied for SSDI. With the exception of a minor motor vehicle violation and difficulty securing employment, Mr. Fluker was in compliance. As a result of his self-disclosed mental health and adjustment issues, parole instructed Mr. Fluker to work with Pyramid Builder's Associates Inc., which assists former inmates with re-entry into the community.

Obtaining employment was an ongoing issue. Mr. Fluker's parole officer gave him repeated suggestions, recommendations, and directives to assist him in securing steady employment. Mr. Fluker's failure to follow through and pursue opportunities gave a strong indication that employment was not a goal or priority for him. It became a continuous supervisory concern for the parole officer, especially when Mr. Fluker's other behaviors lapsed in December 2011 and January 2012.

On December 23, 2011, Mr. Fluker's drug test detected the presence of cocaine in a small amount. Mr. Fluker denied using cocaine and insisted that he was riding the bus near individuals who were smoking crack cocaine. Mr. Fluker was issued a graduated sanction by parole, and his supervision was increased. He was required to report every Friday for a drug test.

He failed to report for his first Friday drug test on January 13. On January 14, 2012 at 2:00 a.m., Mr. Fluker was stopped by State Police in a motor vehicle. Mr. Fluker left a voice mail for his parole officer on January 17, 2012 regarding the stop. On January 20, 2012, Mr. Fluker again failed to report for his Friday drug test. His parole officer made a series of calls and requests for Mr. Fluker to report to parole. Mr. Fluker left a voicemail message for his parole officer insisting he could not report because he had to attend a funeral of a close friend. After being instructed to immediately report on January 26, 2012, Mr. Fluker left another voice mail message the following day stating he could not report because he was in Springfield planning his daughter's baby shower.

Mr. Fluker failed to report on January 26 and did not appear on January 27 for his Friday drug test. The parole officer left several messages for Mr. Fluker and went to his residence three times in search of him. Parole officers went to Mr. Fluker's residence on January 31; he was not home, but parole left a letter insisting that he report. Mr. Fluker was again stopped by State Troopers on January 30, 2012 at 2:00 a.m. He was issued a citation for speeding. He was with a female passenger and stated he was coming home from a restaurant. On February 3, 2012, he finally reported to parole and was taken into custody. He was deemed in violation of parole. He was provided with documentation of such violations including his irresponsible conduct regarding motor vehicle citations, failure to notify parole of his contact with the police, failure to report, and failure to maintain legitimate employment. In summation, Mr. Fluker's parole officer noted his serious concerns about not knowing where Mr. Fluker was throughout most of January 2012, his failure to comply with directives to report, and the likelihood that he was purposely avoiding drug tests and supervision under suspicious circumstances.

An additional violation was submitted to Mr. Fluker following an investigation by the Norwell Police Department. Mr. Fluker was charged with conspiracy in Hingham District Court on April 25, 2012 after evidence showed that he was viewed on a surveillance camera where a

stolen credit card had been used to purchase items. Mr. Fluker was identified with another female in several different stores. The female in question purchased items with the stolen credit card. The vehicle that Mr. Fluker was driving was also identified at the corresponding stores. The charges against Mr. Fluker were dismissed.

The Board inquired about Mr. Fluker's involvement with these crimes. Mr. Fluker admits to being present at such stores and was driving the vehicle, but insists that the woman he was noted to be with was not known to him. He stated he was only in line with her and engaged in conversation, but was in no way involved with her credit card theft. The Board was concerned about his lack of explanation for being in that area and the alleged coincidental contact with the offender.

Mr. Fluker was also questioned regarding each violation cited by his parole officer, and his failure to report. Mr. Fluker explained each violation as being secondary to family priorities and other responsibilities that in no way consisted of illegal behaviors or behaviors that were in direct conflict with his parole expectations. Mr. Fluker reported that he understood he should have made reporting to his parole officer his first priority and regrets now having not done so. Mr. Fluker also insists that his struggle to find consistent employment was not a reflection of his lack of desire to hold employment. Mr. Fluker acknowledged that he applied for SSDI while on parole due to depression, but stated he never seriously pursued benefits as he wanted to work. Records indicate that Mr. Fluker did pursue SSDI and appealed the decision by the state to deny benefits.

IV. DECISION

Mr. Fluker's criminal history commenced at the age of 12 with juvenile offenses that included assault and battery, breaking and entering and other related charges which were all dismissed. He was convicted of larceny of a motor vehicle and driving without a license. His adult record consists of one charge of larceny, which was dismissed, and the offenses for which he is now incarcerated. He has served his sentence for escape.

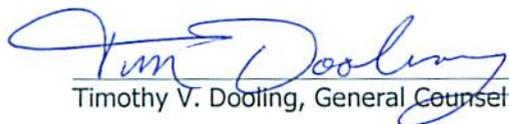
Mr. Fluker left school in grade ten and entered the Job Corps program. He admits that at that time he was not invested in gaining skills or committing himself to the workforce. He admits to supporting himself through petty criminal behavior and stealing. Mr. Fluker has two children and has been married twice. He had no relationship with his first child's mother. He has infrequent contact with his son. He also has a daughter. She lives out of state and he has limited or no contact with her. Mr. Fluker has established a support system while on parole, including his girlfriend, aunt, a friend who employed him on occasion as a painter, and community support. Numerous supporters attended his hearing. There was no one present in opposition to parole.

Despite Mr. Fluker's support system, he was not committed to maintaining consistent employment, and more importantly, he was difficult to supervise. Mr. Fluker did not adhere to the contract he made with parole, and committed serious violations while on parole. Board Members concluded that Mr. Fluker intentionally evaded his parole officer for three weeks, most likely to cover up improper or illegal behavior. The December incident involving cocaine indicates what Mr. Fluker may have been involved with in January, when he failed to report for several weeks. Mr. Fluker admitted to the Board that parole was not his priority and that since his return continued rehabilitation has not been his priority. Mr. Fluker's explanations for his parole failure lack credibility and do not reflect an individual who recognizes the seriousness of his poor conduct. Mr. Fluker's parole officer made every attempt to supervise and support Mr. Fluker in an effort to have him successfully remain in the community as a contributing, law

abiding member of society. Mr. Fluker did not deal conscientiously or honestly with parole. He did not fulfill his parole or his community commitments. Mr. Fluker demonstrated that at this time he is likely to re-offend if released, and his release on parole is not compatible with the welfare of society. Accordingly, Mr. Fluker's parole is denied. Mr. Fluker has not recommitted to rehabilitation since his return to custody in February 2012. He has given every indication that he needs several years to find motivation, implement a plan, and execute that plan. His review, therefore, will be in four years.

The Board highly recommends that Mr. Fluker engage in all available self-help groups, occupational and other programming that would enhance his rehabilitation and prepare him for a potential future release into the community.

I certify that this is the decision and reasons of the Massachusetts Parole Board regarding the above referenced hearing. This signature does not indicate authorship of the decision.


Timothy V. Dooling, General Counsel

December 7, 2012
Date