



The Commonwealth of Massachusetts
Executive Office of Public Safety



PAROLE BOARD

12 Mercer Road
Natick, Massachusetts 01760

Deval L. Patrick
Governor
Andrea J. Cabral
Secretary

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

Josh Wall
Chairman

DECISION

IN THE MATTER OF

JOHN BURSTON

W48046

TYPE OF HEARING: Revocation Review Hearing

DATE OF HEARING: April 1, 2014

DATE OF DECISION: April 18, 2014

PARTICIPATING BOARD MEMBERS: Dr. Charlene Bonner, Tonomey Coleman, Sheila Dupre, Ina Howard-Hogan, Tina Hurley, Lucy Soto-Abbe, Josh Wall

DECISION OF THE BOARD: After careful consideration of all relevant facts, including the nature of the underlying offense, criminal record, institutional record, the inmate's testimony at the hearing, and the views of the public as expressed at the hearing or in writing, we conclude by unanimous vote that the inmate is a suitable candidate for parole. Mr. Burston will be re-paroled on or after May 2, 2014 to an approved home plan.

I. STATEMENT OF THE CASE

On June 13, 1989, John Burston, age 38, and his co-defendant and friend, Anthony McTier, met the victim, Wayne Bukowski, age 40, at a Springfield bar and were drinking. When the three men left, McTier and Bukowski got into an argument that escalated into a physical confrontation. During the brawl, Burston knocked the victim to the ground, McTier took money from him, and Burston and McTier fled the scene. Springfield police arrested both men a short time later. On March 6, 1990, following a jury trial in Hampden Superior Court, Burston was found guilty of unarmed robbery.

In addition to findings of juvenile delinquency, Burston has a criminal history dating back to 1967 which includes convictions for larceny, armed robbery, burglary, assault to rob, and assault and battery with a dangerous weapon. Burston was incarcerated in state prison for each of these sentences. Therefore, following his 1990 conviction for unarmed robbery, the

Superior Court judge, in a jury-waived proceeding, also found Burston to be a habitual offender under G.L. c. 265, § 25, and as required by that law, sentenced him to life in prison with the possibility of parole at fifteen years, or the maximum penalty allowed for that offense.

On appeal, Burston questioned whether, on the facts, the Court properly employed the habitual offender statute and whether use of that statute offended the prohibition against double jeopardy. The judgment was affirmed and a further appellate review was denied. Additional requests for post-conviction relief were denied in 1996 and 1998.

On January 9, 1990 in Hampden Superior Court, Burston's co-defendant, Anthony McTier, received a 14 to 21 year sentence for unarmed robbery. Records indicate McTier was paroled in March of 1999. He was returned to custody for a parole violation that same year and completed his sentence on October 31, 2000.

II. INSTITUTIONAL & PAROLE HISTORY

John Burston served 15 years in prison before his first parole hearing in 2004. In that time, he maintained a moderate record within the correctional system. Burston accrued twelve disciplinary reports, the last of which occurred in 2004. Disciplinary infractions included three positive tests for opiate use. Burston was returned to higher security in 1991 for attempting to incite others. Burston also completed several programs, including Substance Abuse Recovery; Alternatives to Violence (two phases); Correctional Recovery Academy; and Anger Management (two phases). Burston currently attends Big Book and Alcoholics/Narcotics Anonymous and has attended Health Awareness and Alternatives to Violence. In addition, Burston has been employed in the brush shop, clothing shop, plate shop, laundry, recreation department, optical shop, gym, and the on grounds crew. He has not been employed since his return to custody.

On December 8, 2004, Burston appeared before the Board for an initial parole release hearing. The Board voted to parole Burston to a long term residential treatment program after completing six months in pre-release. In December 2006, after completing six months of pre-release, Burston was released on parole supervision to the New Horizon Sober House in Dorchester. In May 2007, he was discharged from New Horizon because he failed to submit to drug testing and missed a curfew, and received a graduated sanction with additional conditions imposed. Later the same month, Burston entered the Shattuck Stabilization detox due to a heroin relapse, where he remained until he entered Seton Manor in Brighton, an independent living facility, in August 2008.

On July 7, 2009, Burston was arrested by Springfield police charging him with assault. Police observed Burston in an area known for drug activity. When police told him to leave the area, Burston did not comply and approached the police in a threatening manner. Following his arrest for assault, the Department of Correction completed a urine test yielding positive results for cocaine and opiates. On August 17, 2009, the Board conducted a revocation hearing, and then revoked his parole permit. Burston was later convicted on the assault charge and served 40 days.

On February 23, 2010, Burston appeared before the Board for a review hearing following his parole revocation. The Board voted to re-parole Burston to Seton Manor, with conditions including that he follow the treatment plan, and was paroled accordingly effective April 28, 2010. On September 13, 2010, Burston received another graduated sanction with additional conditions and increased supervision after admitting that he had used alcohol in violation of his parole conditions.

On October 4, 2012, Burston's parole officer issued a parole violation report indicating he was not attending AA/NA meetings regularly and failed to provide a urine sample. Rather than revoke parole, the Board placed Burston on a final warning status, and added conditions including a curfew and a GPS requirement.

After being on parole with no issues for seven months, on October 13, 2013, Burston admitted to his parole officer that he had been drinking, had an elevated blood alcohol level and tested positive for cocaine. The Board revoked his parole on February 11, 2014.

III. PAROLE HEARING ON APRIL 1, 2014

On April 1, 2014, John Burston appeared before the Massachusetts Parole Board for a Review Hearing after Revocation on the life sentence he is currently serving at MCI-Shirley. This is Burston's third parole hearing. He has serious medical issues that have led to diminished physical and mental abilities.

Burston was represented by Attorney Rebecca Shapiro, who provided an opening statement detailing Burston's addiction and how it is related to his lengthy criminal history and prior parole failures, his current medical and mental health issues, and his parole plan. Burston is requesting a parole to return to his apartment in an independent living facility in Brighton. He has continued to pay his rent since his return to custody to ensure adequate housing if he is granted parole. In addition, Span, Inc. will continue to provide medical case management, counseling, and substance abuse programming. Burston will report to the Span office three times a week, his case manager will conduct home visits, and will ensure he remains engaged in programming and does not isolate himself. A support letter from Span, Inc. notes that he has been a member of their medical case management program since 2003.

Burston has not committed a violent act for decades, but he continues to struggle with alcoholism, social isolation, serious medical issues, and diminished mental capacity related to his medical issues. The Board focused, therefore, on what support, services, and oversight are necessary for Burston to live in the community. Burston acknowledged he is an alcoholic and his recent return to custody was a wake-up call. He needs to effectively use the resources available to him as he disengaged from Span prior to relapsing last fall. He recognizes his triggers: stress, outside pressures, and idleness.

Although somewhat impaired by declining mental abilities, Burston was able to describe his activities on parole, his relapse, and how he might succeed if paroled again. He said, "I had a lot of respect for my parole officer; he was very fair with me; I got real sick and I gave up; I thought I was going to die and I thought alcohol would help; I isolated myself in my apartment like it was a cell; I need to open up to people, that would help a lot; Span is like another home to me; I would go down there for the day; I need someone to hold my hand and tell me what

to do, like Span.” Burston said he was drinking beer and that he “took a couple of suboxone pills prescribed for me; I took the pills because I was coming back to prison and I needed them for anxiety and to stay calm.” He said he did not use cocaine. Burston spoke about the necessary support and structure that would be in place to promote a successful reentry if his petition for parole is granted.

Hampden County Assistant District Attorney Dianne Dillon spoke in opposition to parole. Lynn Levy, Executive Director of Span, Inc. and Andrea Roisten, Case Manager for Span, spoke on behalf of his petition for parole. They provided detailed information on the services Span would provide, including counseling, help with housing, substance abuse counseling and meetings, food shopping, and medical case management. Span, Inc. has additionally offered to work with Ethos, a non-profit organization that assists the elderly, in order to provide more assistance to Mr. Burston, including oversight of financial matters.

IV. DECISION

John Burston is rehabilitated from his violent lifestyle. Life in the community is difficult for him, however, because of his alcoholism and his medical issues that diminish his physical and mental capabilities. He has several times resorted to alcohol use. The Parole Board has tried to keep him in the community through assistance and treatment, but Mr. Burston must understand that he will not be allowed to live in the community as an active drinker. This period of accountability after revocation is sufficient to deliver that message to Mr. Burston. Mr. Burston needs considerable help to manage his medical, physical, and counseling needs in the community. Fortunately, Span, Inc. is available to provide counseling, case management, services, and coordination with other providers. Because of this assistance, Mr. Burston is capable of living in the community on parole supervision.

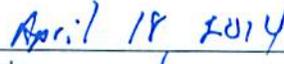
The standard we apply in assessing candidates for parole is set out in 120 C.M.R. 300.04, which provides that, “Parole Board Members shall only grant a parole permit if they are of the opinion that there is a reasonable probability that, if such offender is released, the offender will live and remain at liberty without violating the law and that release is not incompatible with the welfare of society.” Applying that appropriately high standard, the Parole Board concludes by unanimous vote that Mr. Burston is suitable for re-parole under the conditions set for assistance and treatment. Re-parole is granted to an approved home plan on or after May 2, 2014.

SPECIAL CONDITIONS: Parole to an approved home plan; no drug use; no alcohol use; AA/NA three times per week; one-on-one counseling for adjustment and substance abuse issues; participate with Span, Inc. by following Span’s case management plan and attending Span programming three times per week; follow Ethos plan for additional services.

I certify that this is the decision and reasons of the Massachusetts Parole Board regarding the above referenced hearing. Pursuant to G.L. c. 127, § 130, I further certify that all voting Board Members have reviewed the applicant’s entire criminal record. This signature does not indicate authorship of the decision.



Josh Wall, Chairman



Date