



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

GREGORY DIATCHENKO

W38579

TYPE OF HEARING: Initial Hearing

DATE OF HEARING: September 30, 2014

DATE OF DECISION: October 31, 2014

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

DECISION OF THE BOARD: After careful consideration of all relevant facts, including the nature of the underlying offense, age of the inmate at the time of 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. Parole is granted after 12 months in lower security at the Department of Correction (DOC), during which time Gregory Diatchenko must maintain good conduct and comply with all DOC expectations for programs, activities, and employment.

I. STATEMENT OF THE CASE

On May 19, 1981, Gregory Diatchenko, then 17 years old, fatally stabbed 55-year-old Thomas Wharf near Kenmore Square in Boston. Following a jury trial in Suffolk Superior Court in November 1981, he was convicted of first degree murder on the theories of deliberate premeditation, extreme atrocity and cruelty, and felony-murder (armed robbery). He was sentenced to serve the mandatory term of life in prison without the possibility of parole. The Supreme Judicial Court affirmed the conviction on direct appeal. *Commonwealth v. Diatchenko*, 387 Mass. 718 (1982).

Thirty years later, the United States Supreme Court decided *Miller v. Alabama*, 132 S. Ct. 2455 (2012), in which it held that the mandatory imposition of life without the possibility of parole on individuals who were under the age of 18 at the time of the murder violated the

Eighth Amendment prohibition on cruel and unusual punishment. Following that decision, Diatchenko filed a G.L. c. 211, § 3, petition with the Single Justice of the Supreme Judicial Court challenging the constitutionality of Massachusetts law requiring the imposition of life without the possibility of parole on juveniles who were convicted of first degree murder. The matter was referred to the full bench of the Supreme Judicial Court and, on December 24, 2013, the Court issued a decision in *Diatchenko v. District Attorney for the Suffolk District & Others*, 466 Mass. 655 (2013), in which it determined that the statutory provisions mandating life without the possibility of parole were invalid as applied to Diatchenko and others who were juveniles at the time that they committed murder. The Court ordered that affected inmates receive a parole hearing after serving 15 years. Accordingly, Diatchenko became eligible for parole, and is now before the Board for an initial hearing after serving 33 years of the life sentence.

The facts of Diatchenko's murder conviction are culled from the Supreme Judicial Court's 1982 opinion. On the evening of May 9, 1981, at approximately 9:45 PM, a Boston Police officer received a radio call directing him to an alley at the rear of 860 Beacon Street, near Kenmore Square. When he arrived he saw the victim, Thomas Wharf, slumped unconscious and bleeding in the driver's seat of a red Cadillac automobile. Wharf was pronounced dead, and a later autopsy revealed nine stab wounds, including one penetrating the left lung at a depth of four inches and another piercing the heart at a depth of seven inches. The right rear pocket of the victim's pants had been ripped open.

The Commonwealth presented extensive evidence indicating that Diatchenko had committed the murder. Diatchenko's fingerprints were found in and on the victim's car. A witness testified that she was seated at a table in the living room of her apartment at 860 Beacon Street on the night of the stabbing. The table was located next to an open window overlooking the alley where the stabbing occurred. At approximately 9:30 PM, she heard a loud voice from the alley yell out a few times, "Give me your money, you m--- f---." She telephoned the police and reported what she assumed was a robbery. While she was on the telephone, she heard a car horn sound continuously for approximately five seconds. She next saw someone with blonde or light brown hair, wearing a brown leather jacket, run away from the building past parked cars in the alley.

On the same night, at approximately 10:15 PM, another witness was seated at a shelter at the Brookline Village streetcar station. He saw a light-haired young man, carrying a brown leather jacket, walk along the trolley tracks, coming from the direction of the scene of the murder. The young man came into the shelter, sat down beside the man, and asked him for a match. The witness, who noticed that the young man's hand was covered with blood, asked him if he had cut himself. The young man replied that he had been in a fight and had stabbed someone approximately 20 times. The witness and the young man spoke for about 15 minutes and the young man told the witness that his name was Greg. On the following day, Sunday, May 10, the witness read an account of the murder in a newspaper. On Monday, May 11, he telephoned the Boston Police and told them of his meeting with the young man on the night of the stabbing. The witness later identified a photograph of Diatchenko from an array of 11 photographs.

An arrest warrant was issued for Diatchenko. A search of Diatchenko's apartment was conducted during the arrest, and a brown leather jacket and a knife were found.

II. CRIMINAL HISTORY

The murder conviction is Diatchenko's only conviction or delinquency. Diatchenko was 16 years old the first time that he was arrested. In March 1981, he was charged with assault and battery by means of a dangerous weapon and was found not guilty. In April 1981, he was charged with being a minor in possession of alcohol, possession of a Class D substance, breaking and entering in the nighttime, and larceny from a building. The larceny charge was continued without a finding and the other charges were dismissed. He was charged with being a disorderly person in July 1981 and with assault and battery in November of that same year. These cases were dismissed.

In April 1981, Diatchenko was charged with armed robbery in the Quincy District Court and the case was continued without a finding. Since armed robbery cannot be prosecuted in the district court, the Board presumes that the charge was reduced to a lesser included offense prior to resolution. Diatchenko's criminal record does not indicate what that lesser offense was. Diatchenko explained that the case stemmed from an incident at a drive through where he and a friend had offered to sell two boys marijuana and, when they accepted and pulled out their wallets, Diatchenko's friend pulled out a small bat and demanded their wallets and money.

III. INSTITUTIONAL HISTORY

Gregory Diatchenko has been incarcerated for 33 years. During that time, he has incurred 40 disciplinary reports, with most occurring during the early portion of his incarceration. The last disciplinary report was issued in January 1998, for destroying a food tray and fighting with another inmate. Other infractions include possession of a container with alcohol residue (1994), insolence (1984), conduct which disrupts (1993), disobeying orders (1983 and 1985), possession of unauthorized material (1987) and controlled substances (1982 and 1986), threatening a staff member (1983), and possession of a weapon (1982). Since 1998, he has not received any disciplinary reports, has achieved a low classification rating, and has received positive housing and work evaluations.

Diatchenko began program involvement in 2001. Since then, he has completed multiple phases of Alternatives to Violence, including work as an apprentice and as a facilitator. He has also participated in Jericho Circle, Anger Management, Problem Solving and Thinking Skills, and Emotional Awareness and Emotional Healing. He regularly attends AA meetings, and is a practicing Zen Buddhist.

Diatchenko received his GED in 1984, and earned a Bachelor of Liberal Arts degree, cum laude, from Boston University in 2014. He has worked as a plumber in the maintenance department at the prison for the past 26 years.

IV. PAROLE HEARING ON SEPTEMBER 30, 2014

Gregory Diatchenko appeared for his initial parole hearing assisted by Attorney Ben Keehn. Diatchenko was 17 years old when he committed the first degree murder of Thomas Wharf. He has served 33 years of the life sentence. Parole Board Members questioned Diatchenko about the murder, other criminal conduct, family and social history, and his conduct and rehabilitative efforts during his incarceration. He provided the following information.

After an initial period at MCI Cedar Junction (Walpole), Diatchenko has been classified to MCI Norfolk since 1985 (except for six months at Bay State Correctional Center in 1991-2). He has been employed as a plumber for 26 years and has been the primary plumber at the prison for over two decades. Diatchenko reported that he works several hours every morning and every afternoon. He said, "I am on-call 24/7; I do everything in the prison that involves the plumbing, including toilets, showers, heat, and water. I was taught by the instructor and the inmate who did the job before me. It's a skill and it's honest work. I have free access to places other inmates can't go so I can get the work done."

In addition to his daily work as a plumber, Diatchenko attends Alcoholics Anonymous, graduated from the Boston University college program in 2014, and is involved in Buddhist activities. Diatchenko has practiced Zen Buddhist meditation since 2005. He said that Buddhist meditation has "helped bring calm and stability" to his life in prison and "made me a better, more caring person who is more thoughtful about other people." He meditates twice a day and participates in two group meditations every week. Meditation practices have helped him in prison because "by being mindful and aware you can keep yourself in line when things arise unexpectedly."

Substance abuse led Diatchenko to the lifestyle that resulted in the murder of Mr. Wharf. He reported that "I started drinking alcohol in 1977 when my family moved to Brookline. The drinking progressed from weekends to weeknights and by age 15 it was out of control. I started doing drugs and moved from marijuana to mescaline, acid, and mushrooms. I was doing drugs very frequently." Diatchenko described his substance abuse in prison. "I was in Walpole in 1981 and coming off an addiction. It was rough. I did NA for a year. In November 1992, I drank homebrew two or three times but I got very sick and I never did it again. I smoked marijuana at Walpole and Norfolk; everybody did it but my last time was in 1992."

Board Members asked Diatchenko about his poor conduct early in his sentence. He acknowledged that "it is quite extensive, but mostly during my first few years of incarceration. I was very insolent; I wasn't a good guy. I had a hard time listening to people tell me what to do. Most of my insolence was with staff. I was an angry kid; I had a hard time adjusting and a hard time fitting in. I didn't want to be taken advantage of, especially by inmates, so I was mouthy towards corrections officers in front of other inmates. In the early years I did some productive things. I attended AA, got my GED in 1984, and was employed; I was involved in Project Reach Out when we would meet with young people to show them where they would end up if they violated the law."

Diatchenko identified a particular encounter that set him on a rehabilitative path. "In 1984 I was still in Walpole. Thomas Maroni, a corrections officer, asked me 'When are you getting out of Walpole?' He told me I was a better person than what I was portraying. He said, 'Only one person put you in prison and that was you. You are very angry at the world but you are better than that and you have family who care about you. Walpole is not the place you want to be in. You should settle down and go to Gardner or Norfolk.' That changed my outlook to get advice from a corrections officer when I realized he cared about me even though I was a punk. I realized I needed to grow up. I made a vow to do better and get out of there. Six months later I was able to transfer out of Walpole and went to Norfolk." In addition to employment as the plumber at Norfolk, Diatchenko was involved in a theater program and co-founded a program in which inmates made wooden toys for Toy For Tots. Diatchenko said that "for nearly three years I spent countless hours sanding and painting toys." He also took college classes through the Boston University program.

He reported that "in 2001 I was in a very dark place in my life. Watching people jump out of buildings on 9/11 was a turning point for me. That day was also my sister's birthday and I called her. She was at home, dying; she took herself off her meds so she could end her life. I felt helpless and hopeless. I was glued to the TV for days. I lost faith in humanity. My cousin died of a heroin overdose; my sister died on September 22; and then my aunt died of a heart attack. I felt so all alone in the world. There was nobody to comfort me in my cell. I didn't care about going on in the world. My neighbor told me to go to Problem Solving and Thinking Skills program. It was 18 weeks long. I thought it was excellent. I learned about hatred, anger, and how we deal with other people. Sometimes we react to situations in negative ways and say things we regret. I learned communication skills and conflict resolution skills. It helped me become more mindful dealing with people. Now if I have a problem with someone in prison, I try to communicate with the person and I can acknowledge or apologize if I am at fault."

Board Members asked Diatchenko about other programs he had completed. He described his work in Anger Management, Alternatives to Violence, and Jericho Circle. He said that he advocated with the director of programs in order to be admitted to Alternatives to Violence. He said, "I got a lot out of the program because I learned how to deal with conflict which sometimes means putting others before me. Jericho Circle was a great program. It deals with family relationships." Diatchenko also remained involved with Problem Solving and Thinking Skills. "I took the program a second time and was a co-facilitator. This was an eight week course. A lot of guys go into a shell and I tried to help them open up and participate." He completed the Boston University program after seven years. He received a Bachelor of Arts degree with honors in 2014.

Diatchenko provided a family and social history. "I was born in Jamaica Plain in 1964. We lived in Sharon for two years. My father worked at a lab and then became a painter. My mother was a receptionist. My family life was dysfunctional. My mother and father didn't get along and there was arguing, fighting, screaming, and yelling. They separated and then divorced. Witnessing the terrible fights changed my life. At age 13, I got involved in negative behaviors: drinking, getting high, skipping school, and vandalism. My sister got hooked on heroin at age 13. The house became crazy and I couldn't stand dealing with it. One time I was with my sister in Brookline when she grabbed a purse and we got arrested. I was put on probation for two years, but I continued drinking and drugging. I ended up at Hingham High School because I was staying with my father and stepmother but I dropped out and went back to Jamaica Plain to live with my mother. I got arrested for an armed robbery and that's when my father got fed up and told me to go back and live with my mother. The robbery case involved a friend who was going to sell pot to these guys but he stole their money instead. The case was dismissed."

Diatchenko provided a long and detailed description of his conduct on May 19, 1981. The more significant information is reported here. "In the afternoon I got buzzed drinking beer and Southern Comfort. I met up with friends in Brookline where I acted like a jerk in a store and stole a can of red spray paint. I got some more beer and drank by the Muddy River in Brookline. I went to Copley Square to meet up with some friends. Copley Square was where I normally went to meet up with friends to hang out, drink, and smoke marijuana. After a while we decided to go to Mission Hill. They all got on the bus but I missed the bus because I was spray painting my name on a wall. I went back to the library steps to wait for the next bus. A car drove by me and then came back by. The guy looks at me and my belief was that he was going to pick me up. He came back again and I decided I was going to rob him and get a ride to Mission Hill. He stopped and said, 'you're a good looking kid; do you want to fool around?' He said he would pay me \$25 for oral sex. I got in the car and we proceeded to drive. I had a

buck knife. I quietly pulled out the knife, popped out the blade and set up to rob the guy in Kenmore Square. Mr. Wharf turned onto Beacon Street and took a left down an alley, pulled behind an apartment building, and shut the motor off. I had the knife in my hand and I said, 'Give me your f---ing money, you m--- f---.' He grabbed me and slammed on the car horn. My plan to rob him wasn't going right. I tried to grab the door handle to get out but I couldn't find the handle. I started stabbing him and saying, 'Get off me.' He stopped honking the horn. I panicked and stabbed him four or five more times. When I seen he wasn't grabbing me anymore I opened the door and jumped out of the car. I went back in the car and sliced a pocket open, took his wallet, and ran out of the alley."

Police arrested Diatchenko about one week after the murder. He was released on bail after being held for nearly one month. He said, "I promised my mother I wouldn't drink [if she posted bail], but I continued drinking and I was arrested multiple times. I got arrested for a fight in Copley Square. My bail was not revoked but I was ordered to stay away from Copley Square. On July 4, 1981, I was drunk and high with friends and we were chasing each other with Roman candles. I was arrested but my bail was not revoked." Diatchenko was free on bail during the trial. He said, "My defense was that it must have been someone else who did it. At the end of every trial day I would go home and get drunk. I was offered a plea to second degree murder, but I didn't want to plead and go into prison. I didn't realize the magnitude of the harm or the severity of what I was facing. I was at a point in my life that I was blind to everything."

A Board Member asked Diatchenko to reflect on the anger he displayed during the murder. He said, "I'd been carrying a lot of hatred and anger. I didn't set out to kill anyone or rob anyone that night. I knew he was looking to pick me up; this was common then. I was sick and tired of being propositioned all the time. I guess my rage just surfaced that evening. When he grabbed me, I just panicked. Behind the panic was some built up anger. It was anger towards everyone. I hated myself; I was upset with my parents; and I had hatred and anger towards people who were trying to pick up kids."

A Board Member asked Diatchenko about his poor conduct earlier in his sentence. In addition to providing explanations for specific disciplinary reports, he said, "For years I hated myself. I also went through some tough times and had to deal with some issues. My brother passed away in a house fire in 1992. Some of the things I said, that's not who I am today. Buddhism has enlightened me. Buddhism teaches me to put other people first. The Boston University education and the classes I took have also helped me. I have taken Buddhist vows to abstain from alcohol. I have been sober for 32 years. I last smoked marijuana in 1992." About his early prison career Diatchenko said, "People looked out for me at Walpole because I was so young. You think people will victimize a young person. Inmates and corrections officers looked out for me and I'm very grateful. I got to sit with the Cambridge and Somerville guys because one of them knew my sister." In considering his long incarceration, Diatchenko said, "I was on a road to destruction and prison set me on a path of redemption."

If paroled, Diatchenko would live in Boston with his mother and stepfather. He has been offered a job as a plumber. He would attend counseling, Alcoholics Anonymous, and the SPAN transitional program. He would practice Buddhism with the Zen Center in Cambridge.

Diatchenko's mother, stepmother, stepfather, and cousin spoke in support of parole. Suffolk Assistant District Attorney John Zanini spoke in opposition to parole. One of Mr. Wharf's sons spoke with Parole Board staff before the hearing. He described the effects of the crime on family members and expressed the family's view that "we do not want him out but will leave the decision up to the Parole Board."

V. DECISION

Gregory Diatchenko committed the first degree murder of Thomas Wharf in 1981 and has served 33 years of his life sentence. Diatchenko credibly alleges that the sequence of events evolved from an agreement involving sex for a fee between an adult and a juvenile. Diatchenko attempted to rob Mr. Wharf and stabbed him multiple times after Mr. Wharf resisted. Diatchenko was only 17 years old and his violent acts were unplanned and impulsive in a manner that was likely connected to his age and stage of development. The acts were also likely connected to his anger at being involved with an adult paying for sex. Diatchenko had been living a wayward life involving substance abuse, frequent petty crime, and risky behavior. His conduct during the first years of his sentence gave further evidence of antisocial behavior.

Diatchenko faced a long path to rehabilitation that would be undertaken with no prospect of release as he served a sentence of life without parole. He did set forth on that path decades ago and made incremental but steady improvements in his character and conduct. His first meaningful step was to improve his behavior so that he moved away from Walpole to Norfolk where he was able to work as a plumber. His steady employment for 26 years as the prison plumber has given him stability, increasing self-worth, and an incentive to maintain good behavior. Next, he became involved in programs that helped him address issues of anger, violence, substance abuse, conflict resolution, empathy, and low self-esteem. Additionally, he became a practicing Buddhist and a college graduate. Through assistance from these various sources, Diatchenko matured, reformed his character, developed valuable skills and interests, and improved his behavior. He has developed prosocial thinking and conduct. He is rehabilitated and presents no current risk for violence. The Parole Board concludes that the four goals of sentencing – punishment, deterrence, public protection, and rehabilitation – have been met.

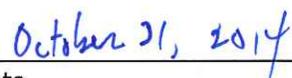
The standard we apply in assessing candidates for parole is set out in 120 C.M.R. 300.04, which provides that, "Parole Board Members shall only grant a parole permit if they are of the opinion that there is a reasonable probability that, if such offender is released, the offender will live and remain 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 is of the unanimous opinion that Gregory Diatchenko is a suitable candidate for parole. Parole is granted after 12 months in lower security, a period which will allow him to transition gradually to the community.

SPECIAL CONDITIONS: Parole to an approved home plan after 12 months in lower security; no drug use; no alcohol use; Alcoholics Anonymous one time per week; counseling for adjustment, anxiety, and substance abuse issues.

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