



The Commonwealth of Massachusetts
Executive Office of Public Safety



PAROLE BOARD

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DECISION

IN THE MATTER OF

JOSEPH DONOVAN

W55313

TYPE OF HEARING: Initial Hearing

DATE OF HEARING: May 29, 2014

DATE OF DECISION: August 7, 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, the age of the inmate at the time of the crime, 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 six months of program participation and an additional one year in lower security at the Department of Correction (DOC) during which time Donovan must maintain good conduct and comply with all DOC expectations for programs, activities, and employment.

I. STATEMENT OF THE CASE

Joseph Donovan, then 17 years old, participated in the 1992 armed robbery and killing of Massachusetts Institute of Technology (MIT) student Yngve Raustein, and the armed robbery of Mr. Raustein's friend and fellow MIT student Arne Fredheim. After a jury trial in Middlesex Superior Court in 1993, he was convicted of first degree murder on the theory of felony murder, with the underlying felony being the armed robbery of Mr. Raustein. He was not convicted of murder on a joint venture theory. He was also convicted of the armed robbery of Mr. Raustein's friend. He was sentenced to serve a mandatory term of life in prison without the possibility of parole for the murder, and two concurrent 20 to 25 year terms for the armed robberies. These two concurrent sentences are expired.

The Supreme Judicial Court upheld the convictions on appeal. *Commonwealth v. Donovan*, 422 Mass. 349 (1996). Between 1994 and 1999, Donovan filed three unsuccessful post-conviction motions for relief in federal and state court. His latest motion for a new trial, which was filed in 2013, is stayed in Middlesex Superior Court pending the outcome of these parole proceedings. Donovan also filed a petition for commutation of his sentences in 2010. That petition was denied.

On December 24, 2013, the Supreme Judicial Court issued a decision in *Diatchenko v. District Attorney for the Suffolk District & Others*, 466 Mass. 655 (2013), in which the Court determined that the statutory provisions mandating life without the possibility of parole were invalid as applied to those, like Donovan, who were juveniles when they committed first degree murder. The SJC ordered that affected inmates receive a parole hearing after serving 15 years. Accordingly, Donovan became eligible for parole, and is now before the Board for an initial hearing after serving 22 years of his life sentence.

The following facts are culled from the Supreme Judicial Court's opinion and the trial transcript. On September 18, 1992, Mr. Raustein, a 21-year-old MIT student from Norway, was stabbed to death during an armed robbery perpetrated by Donovan, Alfredo Velez, and a juvenile.¹ Prior to the murder, Velez and the juvenile had been drinking beer in a park when they decided to rob MIT lockers in search of money. On their way to the campus, they met up with Donovan. The three first attempted to rob a liquor store, but left because it was too crowded. Velez testified at trial that they told Donovan their plans and that the juvenile showed Donovan a switchblade knife before they had attempted to rob the store. Donovan testified at trial and denied any knowledge of a plan to commit robbery and denied knowing that the juvenile had a knife prior to the stabbing.

Mr. Raustein and his friend were walking along Memorial Drive in Cambridge when they encountered Donovan and his two companions. According to the trial testimony of the surviving victim Arne Fredheim, Donovan initiated the robbery by speaking angrily and punching an unsuspecting Yngve Raustein in the face. Mr. Raustein fell to his knees and the juvenile, with Donovan standing next to him, displayed a knife. The juvenile and Donovan moved towards the crumpled Raustein. At about the same time, Velez took the second victim's wallet and instructed him to run away. The second victim did not see the stabbing. While Mr. Raustein was on the ground, the juvenile stabbed him in the heart. The three perpetrators fled across a bridge to Kenmore Square. During their flight, Donovan took out Mr. Raustein's wallet, removed approximately \$30, distributed it amongst the group, and threw the wallet into the Charles River. Once in Kenmore Square, the juvenile told Donovan that he had used the knife and that he had wanted to see "what it was like to kill somebody."²

In his testimony, Donovan gave a different version of events that presented himself as less culpable. According to Donovan, one of the victims bumped into him and he asked for an apology. When the victims responded in Norwegian, Donovan asked what language they were speaking. The victims replied and made another comment, which Donovan did not understand. Donovan became angry and punched Mr. Raustein in the face. Donovan injured his hand and turned away due to the pain. He said he did not participate in the robberies and did not see the stabbing.

¹ Velez testified against Donovan and the juvenile. He pleaded guilty to manslaughter and two counts of armed robbery, and was sentenced to serve concurrent terms of 12 to 20 years in prison for each conviction. He completed his sentence in 2009, having been on parole since 2000. The juvenile's case remained in juvenile court. He was adjudicated delinquent and committed to the custody of the Department of Youth Services for a period of 20 years, but was released after having served 11 years.

² Velez said that he did not see the stabbing.

II. PAROLE HEARING ON MAY 29, 2014

Joseph Donovan, age 38, appeared for his initial parole hearing represented by Attorney Ingrid Martin and Attorney Jason Casey of the Collora Law Firm in Boston. Donovan is serving a life sentence for first degree murder, having been convicted by a jury on a theory of felony murder. He was not eligible for parole until the Supreme Judicial Court's recent ruling in *Diatchenko* which granted parole eligibility at 15 years to an inmate who is serving a life sentence for first degree murder committed when the inmate was a juvenile (age 17 or younger). Donovan has served 22 years of the life sentence. Donovan made opening remarks which included an apology to the Raustein family and Attorney Martin gave an opening statement describing her client's rehabilitative progress. Much of the hearing concerned the Board's efforts to understand Donovan's path from poor prison behavior to much improved conduct. Unlike most inmates who display such improvement, Donovan's program participation has not increased through the years and does not appear to be the reason for his reformed behavior.

Donovan provided information on his background. "I was raised in Cambridge by my mother and my father. They were divorced but they were both active in my life. I had a great family of grandparents, aunts, and uncles, and they all helped to raise me. I played a lot of sports. I went to Cambridge Rindge and Latin; I was in my senior year when this happened. I drank alcohol at parties and I smoked marijuana maybe once a month. I got in trouble at school once when I brought a fake gun to school and a teacher saw it. I had one incident with the police. I was with a group of friends and we were in a building. The water was left on in a sink and the place got flooded. I got a DYS probation for that incident. I had no other trouble, no fights, no drugs."

Donovan is currently held in medium security at MCI Shirley where he has resided for four years. He described a typical day. "I spend a lot of time reading, doing art work, and maintaining relationships with family and friends on the outside. I also try to help people in the law library. I stay to myself a lot." Unlike many inmates seeking parole, Donovan has not been active in prison rehabilitative programs and organized activities. Donovan said, "When I was at Old Colony, there were more programs and I took them. I'm on the waiting list for activities here; I don't think there is one I haven't applied to. The only activity I'm in now is recreational board game group. If I were able to get in, I would do them." The Board did not accept this answer as fully forthcoming. There are just a few programs that are closed to first degree inmates. There are, however, many activities and programs available to inmates serving first degree sentences. Some are easy to access and some are more difficult and require the inmate to advocate for a spot. Donovan has been an assertive advocate for himself at the Department of Correction, but he has not applied those skills to program admittance. While housed at Old Colony Correctional Center, Donovan completed one phase of Alternatives to Violence in 2010 and participated in the Life Skills program. As the hearing progressed, Board Members elicited more information from Donovan on how he spends his time, what areas he needed to rehabilitate, how he used his own activities to reform his conduct and character, and how he improved his behavior in prison.

Donovan has not been steadily employed. He reported that he has worked approximately six of his 22 years. He reported that he lost his most recent job when it was eliminated. He worked in the visiting room at MCI Shirley for seven months but left that job when he foresaw a problem with another inmate worker who resented supervision by Donovan. Donovan's disciplinary issues, with three long sentences in the Disciplinary Detention Unit (DDU), would also prevent him from steady employment. He worked in the kitchen at MCI

Cedar Junction from 1998 to 2000, and advanced from janitor to prep cook. Donovan said, "I really liked that job, but I went to DDU in 2000."

A Board Member asked Donovan to describe an accomplishment in prison in which he is most proud. Donovan quickly responded, "I entered an art contest called Peace Project to help people in Sierra Leone. I won the contest."

Donovan was asked to identify his most negative behavior in prison. He described an incident in 2000 in which he assaulted two corrections officers. "The situation would have been easy to avoid. My actions led to an officer grabbing me. I know it sounds crazy, but I thought I was about to be get injured. The guard tried to grab my arm and twist it. I got away; I pushed the officer. The officer on the other side came at me and I got scared and I hit him. They had come to strip me and shake down the cell. The officers came into the cell and they had a conversation with me in the cell. I requested to see a captain or lieutenant, so we started walking when the officer behind me started grabbing my arm." The video of the incident shows the entrance to the cell and the area outside the cell. The video documents that one officer was in the cell with Donovan while the second officer waited outside the cell. Shortly after Donovan emerges from the cell with the first officer, Donovan punches one officer and fights with the second officer. The video shows Donovan as the aggressor. It seems more likely that he was angry and defiant rather than scared.

When asked to reflect on the violent incident, Donovan said, "It was dumb. The whole thing could have been avoided. First, I could have used the grievance process. Second, I could have acquiesced. I probably should have done what they said."

The incident resulted in a sanction of four years in the DDU. A Board Member asked Donovan how the DDU placement affected Donovan. Donovan responded, "There were some upsides from being away from the distractions. At DDU, I started focusing more on myself and why I was doing this and the problems I had in life. I realized I had a recurring problem with letting things just slide and not really taking responsibility for them. So I decided I had to do something. I also felt I was lacking in education, so I started reading a lot. It was a great time for that; there were no distractions. Reading really helped me; that changed my life." Donovan said that he continues to read frequently and just finished reading a "series about the Napoleonic Wars and an autobiography of Benjamin Franklin."

A Board Member asked Donovan to describe any changes he made when he was released from the DDU and returned to general population in 2004. Donovan said that he realized "I didn't empathize with other people and didn't think about what they were thinking. So I started making an active effort to learn and pay attention to other people."

Donovan has received five disciplinary reports for his involvement in violent incidents. His first incident involved a racial fight between white and black inmates in 1994. In describing that incident, Donovan said, "It was a giant riot that encompassed the whole unit. I was involved in it but I wasn't proactive. Guys came out of cells with weapons and some guys assaulted an officer. An older inmate told me to grab something and I grabbed a broom handle and backed into a corner. I hit whoever came near me. Most people had knives. It was a scary moment. I got myself caught in a crazy situation that I hadn't planned on. That was my first disciplinary report and I got sent to DDU for two years."

In reflecting on his violent incidents in prison, Donovan said, "It all came down to how I reacted. I was very rash. I had impulsivity. When I was younger, I would act without thinking about it. And I used to blame other people. I learned that it didn't matter what the other

person did, it really mattered what I did. Once I started realizing that, I stopped getting into fights. Sometimes my problems were because I followed others; I would let other people dictate my actions." Donovan was asked about the racial aspect of two or three of his violent incidents. He said, "I don't have any personal racial problems with anybody. Prison is sometimes racially segregated, especially back then, but it's not really my choice. I did have another fight with a black inmate, but that was me coming to the aid of another inmate. I ended up fighting with the other guy, but I didn't really have any racial malice towards anyone."

A Board Member asked Donovan to comment on the violence he displayed in his earlier prison years. He said, "I was quick to seek a violent outcome. If violence came my way, I did not turn from it. I thought a lot about that and realized that I didn't think about other people. I didn't see them as living, thinking people until my early 20s. I changed myself as a person. I made a conscious decision to change. Around 2000, I started to see I was doing dumb stuff and causing hurt, and I changed my thought process."

Donovan provided his version of the crime, which was at odds with other evidence and the jury's verdict. "That night I was looking for friends in the parks when I ran into [the juvenile] and Velez. They were drinking; they wanted more and I wanted to drink. We went to the corner store where sometimes they sold us alcohol. We tried to buy alcohol and they wouldn't sell it so we started walking to Kenmore Square to get beer. We were on Memorial Drive and me and [the juvenile] and Velez were screwing around. These weren't really friends of mine so maybe I was acting stupider than usual. We were pushing each other and we bumped into Yngve Raustein. Yngve Raustein bumped into me. I got angry. I spun around and said, 'Don't you say excuse me?' They kept going and I said it again. They stopped and turned around and spoke in another language. I said, 'Do you speak English?' They said, 'We're speaking Norwegian.' I got angry; I thought they were making fun of me. I struck Yngve Raustein; I punched him in the face; I punched him real hard. I believe I broke my hand. I seen Velez grab [the second victim]. I took steps towards him but I heard 'Give me your wallet,' and that stopped me. [The second victim] gave Velez the wallet. I heard yelling and I looked and saw [the juvenile] standing over Yngve Raustein. I could only see his back. Velez went over there and grabbed [the juvenile's] arm and said, 'Let's go.' I got scared and turned and ran. When it happened I was a foot from Velez on one side and five feet from [the juvenile] on the other side. [The juvenile] was beyond my peripheral vision. I heard [the juvenile] say, 'Stay down.' I don't know when [the juvenile] stabbed him. I learned about the stabbing about five minutes later after we ran to Boston. I saw [the juvenile] wiping blood off the knife. I didn't know he had a knife."

The trial prosecutor, former Middlesex First Assistant District Attorney John McEvoy, provided information for the Board. He recounted evidence from the trial and concluded that "the credible evidence goes against Donovan's version." He noted that Donovan delivered an especially violent punch that was part of a planned armed robbery. Middlesex Assistant District Attorney Adrienne Lynch also spoke in order to give information to the Board and stated that the District Attorney has "serious reservations about Donovan's present suitability for parole." Middlesex District Attorney Marian Ryan attended the hearing.

The family of Yngve Raustein, who live in Norway, spoke with parole staff. The victim's mother said that parole would give her "closure" and that she and her son [the victim's brother] "think he's done enough time; he's served six years beyond the 15 years."

Many people attended the hearing and submitted letters in support of parole. Four people testified, including Donovan's father, great uncle, and a family friend. The fourth witness was Dr. Frank DiCataldo, a forensic psychologist who evaluated Joseph Donovan and

submitted a report to the Board. Dr. DiCataldo noted that Donovan was impulsive, immature, and directionless as a young person but that did not result in an "early onset of violence" in childhood or early teenage years. He said, "there is no history of major conduct problems." He concluded that when Donovan was 17 years old, he was "impulsive, had poor regulation of his actions, and developmentally was vulnerable to peer approval and acceptance." In evaluating Donovan's prison conduct, Dr DiCataldo said, "His words are meaningless, it's his actions that matter. His more recent conduct in prison is most important." Attorney Ingrid Martin gave a closing statement to the Board.

III. DECISION

Joseph Donovan seeks parole from a life sentence for a first degree murder committed when he was 17 years old. He was convicted on a theory of felony murder. As established by the jury verdict, he did not commit, encourage, or have advance knowledge of the stabbing committed by his co-defendant. He did not have an intent to kill the victim. He did, however, violently punch the victim as part of a robbery. He has not come to terms with that act, as he still describes a less culpable role than the evidence proved or the jury verdict established. The Board concluded that Donovan believes he is "locked into" the story he has told for years to the jury, family, friends, supporters, and the media, and cannot vary from that story despite its inaccuracy. The victim's family members are able to overlook this lapse and they offer support for parole without demanding a more candid description of events. Donovan has been severely punished by serving 22 years for a stabbing murder that he did not intend or commit. He intended and committed a robbery, for which he has been adequately punished. His involvement in the robbery created a chain of events that resulted in a murder and he has fairly received punishment for that tragic result. His period of incarceration, 22 years, is sufficient to punish him for the robbery and the fact that he participated in a chain of events that led another person to murder the victim. The sentencing goals of punishment and deterrence have been accomplished.

Donovan came to prison as a young person and became involved in some violent activity that was due primarily to associating with older, violent inmates. The Parole Board evaluated the evidence of Donovan's conduct provided by the Department of Correction and Donovan's statements at the hearing and concluded that he was not a leader or instigator in the incidents of group violence. In fact, in one riot he made attempts to correct another inmate's behavior before circumstances escalated. The most concerning incident was Donovan's assault on two corrections officers. The incident is on videotape and the tape documents that Donovan was the aggressor.

The assault on corrections officers resulted in Donovan's commitment to the DDU, where Donovan decided to make some changes in his attitude, his activities, his conduct, and his character. He reported that he made a conscious decision to change himself and improve his behavior. He did not undertake reform through the traditional means of programs, organized activities, employment, formal education, or religious involvement. Instead, during his four years at the DDU (2000 – 2004), he pursued self-education through extensive reading and art (primarily drawing). Once released to general population, he continued with the commitment to reading and art. He added the activity of spending considerable time in the law library researching the law and assisting other inmates with DOC proceedings and court matters. He described that he has developed more empathy for others and that with increased maturity and knowledge he has reduced his impulsivity and improved his decision making.

Assessing Donovan's level of reform presented an unusual situation for the Parole Board because he has not used the normal rehabilitative tools available to an inmate. The path he chose would not work for most inmates convicted of murder. Donovan, however, has a simpler

path to rehabilitation than most inmates convicted of murder. First, he did not commit, intend, encourage, or foresee the stabbing that caused the victim's death. Second, he does not have a history of antisocial behavior or violent criminal behavior in the community. Third, he does not have a substance abuse problem. Fourth, his actions that contributed to the crime were consistent with impulsive juvenile behavior rather than hardened criminal conduct. Fifth, much of his poor prison conduct occurred in the context of a young person managing an existence in state prison. Considering all these factors, the Parole Board concluded that Donovan does not have the complex set of intermingling psychological, behavioral, and character issues that are most commonly seen in inmates convicted of murder. Consequently, the efforts he described can achieve the necessary reform goals. Based on Donovan's much improved behavior since 2008, his answers at the hearing, and the testimony of witnesses, the Board concludes that the sentencing goals of rehabilitation and public protection will be met upon completion of the transition prescribed in this Decision.

Donovan has chosen to spend his time in the law library, doing art work, and reading books as part of a self-education program. He has eschewed organized activities and formal programs. The Parole Board concludes that he would benefit from rehabilitative programs offered by the Department of Correction. This is especially important due to Donovan's young age when he entered prison. Some of his important years of maturation were in prison under the influence of older, poorly behaved inmates. Given the work Donovan has done on his own, six months of rehabilitative programming will be adequate and very beneficial for Donovan. This extra step of preparation and transition, while not typically required by this Parole Board, will be an important component of Joseph Donovan's long term success.

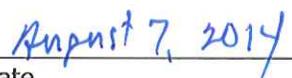
The standard we apply in assessing candidates for parole is set out in 120 C.M.R. 300.04, which provides that, "Parole Board Members shall only grant a parole permit if they are of the opinion that there is a reasonable probability that, if such offender is released, the offender will live and remain 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 grants parole after six months of program participation in medium security followed by one year in lower security. This release plan will allow for important supports and treatment during a closely supervised transition.

SPECIAL CONDITIONS: Parole to long term residential program after six months of program participation, followed by 12 months in lower security; no drug use; no alcohol use; counseling for adjustment 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