



The Commonwealth of Massachusetts
Executive Office of Public Safety



PAROLE BOARD

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DECISION

IN THE MATTER OF

JOSE RODRIGUEZ

W44821

TYPE OF HEARING: Review Hearing

DATE OF HEARING: July 16, 2013

DATE OF DECISION: July 23, 2014

PARTICIPATING BOARD MEMBERS: Cesar Archilla, Dr. Charlene Bonner, Tonomey Coleman, Ina Howard-Hogan, Lucy Soto-Abbe, 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 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 not a suitable candidate for parole at this time. Parole is denied with a review in five years from the date of the hearing.

I. STATEMENT OF THE CASE

On September 27, 1976, Jose Rodriguez, then 16 years old, raped and assaulted a Boston University student while she was walking home from a train station in Brookline.¹ As the victim walked from the train station, she soon realized that she was being followed. A few minutes later, Rodriguez called out to her and, when she turned around, he pretended to ask for directions and walked toward her. When he arrived within a few feet of her, he thrust a broken bottle under her throat, spun her around, and pushed her up a driveway and into a backyard. He threw her to the ground, covered her head with his jacket, and raped her. When he left, the victim ran home, called the police, and provided them with a description of her assailant.

Rodriguez was first convicted of rape and assault and battery by means of a dangerous weapon in July 1977. The Supreme Judicial Court reversed the conviction and ordered a new

¹ The identity of the victim is withheld. G.L. c. 265, § 24C.

trial in 1979. *Commonwealth v. Rodriguez*, 378 Mass. 296 (1979). Rodriguez was released on bail following the issuance of the opinion, but did not appear on the date of his scheduled re-trial. He remained a fugitive at large for seven years, when he was arrested in California and extradited to Massachusetts. He was convicted of the same charges again in 1987, and sentenced to serve life in prison for the rape and a concurrent term of eight to ten years in prison for assault and battery by means of a dangerous weapon. His subsequent appeals and motions for post-conviction relief have been unsuccessful. *Commonwealth v. Rodriguez*, 50 Mass. App. Ct. 405 (2000), *rev. denied*, 433 Mass. 1102 (2001). He was similarly denied federal *habeas corpus* relief. *Rodriguez v. Spencer*, 412 F.3d 29 (1st 2005), *cert. denied* 546 U.S. 1142 (2006).

II. PAROLE HEARING ON JULY 16, 2013

Jose Rodriguez appeared for his third parole hearing on the life sentence he is serving for an aggravated rape he committed in 1976. Rodriguez has a long and complicated history of sexual assault charges. While on bail on the aggravated rape charge, he fled from Massachusetts to California where he committed two more sexual assaults. He has other sexual assault charges in Massachusetts that did not result in convictions, but the incidents add to the picture of a person with serious problems of violence, sexual aggression, and misogyny.

Rodriguez described a history of his own victimization at age 12. He said it was "a one-time incident." He developed substance abuse issues which involved alcohol, marijuana, LSD, speed, and Quaaludes. He said that at age 13 he "groped three girls." The Board asked Rodriguez about three sexual assault cases (in 1975, 1977, and 1978) that did not result in convictions. The Board asked him about the cases based on police reports documenting the accounts of women who were attacked by a stranger. He denied committing the sexual assaults. When a Board Member asked Rodriguez, "Why do you think you were charged with so many sexual offenses," Rodriguez was silent.

After being charged with this aggravated rape, Rodriguez was released on bail. He reported that "I was released in July and I left in November. I went to my uncle's in California. He knew my situation. He set me up in Los Angeles. I chose a common Hispanic name, Jose Maritnez, and lived under that name. I started doing drugs and alcohol. I sexually assaulted a woman I knew for a few months. I wanted her to be my girlfriend. I was released on bail. I was rejected again which led to another sexual assault. I chose the victim at random. I was on bail. I have a difficult time coping with abandonment and rejection; that's when I feel powerlessness and suspend empathy. I pleaded no contest on the case in California and I served four years and nine months; then I was paroled. I did not have sex offender treatment on parole. I drank but did not use drugs; alcohol was permitted. The parole officer put my prints in the database and they figured out who I was and that I was wanted in Massachusetts. I was returned to Massachusetts in October 1986."

A Board Member asked Rodriguez when he accepted responsibility for the rape on which he is serving the life sentence. Rodriguez responded, "It took quite a bit of time. I had a lack of empathy. It was sometime when I was in sex offender treatment, in 1998 or 1999. I learned about my lack of empathy. I also learned I had to stop my deviant fantasies. My pattern is that if I am feeling lonely and abandoned I [commit an offense]. Three times I was thrown out of the house and it was a trigger at age 13 and 16, and in California." Rodriguez also commented that, "I feel degraded by sex offender registration," and "I agree with the

treatment team recommendations where they are concerned with my rigidity because I get locked into a certain view and I need to be flexible and hear other people.”

Board Members asked Rodriguez about his other criminal conduct. He claimed, unconvincingly, no knowledge of an old firearms case. When asked about his several breaking and entering crimes, he said, “I was breaking into anything I could get into – cars, houses; it was for money for drugs and alcohol; I was living a very irresponsible lifestyle of sex, drugs and rock and roll.” A Board Member asked Rodriguez about his juvenile case in 1975 in which he was charged with attempted rape and assault and battery and was found delinquent. He said, “I was 15; I was near Forest Hills; I walked up to a girl and hit her over the head with a bottle and I left; I have no idea why I was charged with attempted rape; I was committed; it’s not the first time I hit someone with a bottle; at age 11 was the first time I hit someone with a bottle; I was bullied by racist older boys and I said, ‘I’m going to show these boys I’m crazy.’” Records also document that Rodriguez as a boy was “attacking classmates, torturing animals, and starting fires.”

Near the end of questioning, Rodriguez gave a defiant speech about why he should not have to answer any questions about the sexual assault charges that did not result in convictions.

Rodriguez has completed sex offender treatment after a long and difficult history with the program. He refused treatment for many years because he falsely claimed innocence. Beginning in 1998, he finally participated in treatment and completed the first two phases. He refused, however, to participate in core treatment in 2003. He later accepted a transfer to the Treatment Center for core treatment but was terminated in 2005 for making an inappropriate overture to a female therapist. He returned to treatment but was terminated again in 2008 for manipulating group members and treatment providers. He was described as displaying a pattern of “lying, manipulation, acting out in entitlement, presenting with a level of superficiality, and lack of empathy.” After he failed to address these issues with a therapist, he was terminated from core treatment in 2009. He was allowed to re-enter treatment in 2010 and completed in 2013. He now participates in maintenance groups. He is not employed.

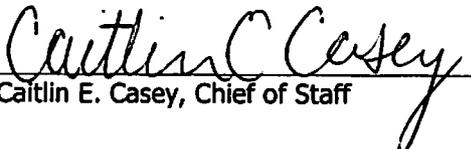
Norfolk Assistant District Attorney Marguerite Grant spoke in opposition to parole. Rodriguez’s mother, brother, and sister-in-law spoke in support of parole.

III. DECISION

Jose Rodriguez has a history of sexual assault cases that is nearly too extensive to describe. Most notably, he committed this brutal rape of a stranger and then committed two serious sexual assaults while on bail. He has completed sex offender treatment, but only after several failures over the decades. In fact, for 20 years he actively resisted rehabilitation by falsely claiming he did not commit the crime. Rodriguez’s history of sexual assaults and failed treatment establishes him as a very dangerous sex offender. He has made progress in very recent years, but a person with this level of sexual violence and failed treatment needs a long period of sustained and successful rehabilitation before he would be considered for release 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 here, it is the unanimous opinion of the Board that Mr. Rodriguez does not merit parole. The period of review will be five years, during which time he should continue with maintenance treatment and other rehabilitative activities.

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.


Caitlin E. Casey, Chief of Staff

7/23/14
Date