



The Commonwealth of Massachusetts
Executive Office of Public Safety



PAROLE BOARD

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DECISION

IN THE MATTER OF

ANTHONY ROLON

W62684

TYPE OF HEARING: Initial Hearing

DATE OF HEARING: July 22, 2014

DATE OF DECISION: August 6, 2014

PARTICIPATING BOARD MEMBERS: Dr. Charlene Bonner, Tonomey Coleman, Sheila Dupre, 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, 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 to an approved home plan after one year in lower security at the Department of Correction (DOC), during which time Anthony Rolon must maintain good conduct and comply with all DOC expectations for programs, activities, and employment.

I. STATEMENT OF THE CASE

On January 20, 1996, Anthony Rolon, then 17 years old, was the principal instigator of an attack by a group of armed men that resulted in the stabbing death of Robert Botelho. Rolon and several co-defendants stormed an apartment in a New Bedford housing project in retaliation for an earlier confrontation involving Botelho. The confrontation also resulted in the stabbings of two other men, Matthew Grant and Anthony Mullen, who survived the attack.

On May 19, 1997, after a jury trial in Bristol County Superior Court, Rolon was found guilty of first degree murder and was sentenced to life without the possibility of parole. In addition, Rolon was convicted of several other offenses stemming from this incident, each of

which resulted in sentences running concurrent with the life sentence.¹ Rolon filed an appeal which resulted in his first degree murder conviction being affirmed. *Commonwealth v. Anthony Rolon*, 438 Mass. 808 (2003).²

On August 12, 2013, Judge Hely of the Bristol County Superior Court, relying on the United States Supreme Court's decision *Miller v. Alabama*, 132 S. Ct. 2455 (2012)³, ordered that the Department of Correction and the Massachusetts Parole Board shall not apply to Rolon the provisions of G.L. c. 265 § 2, and G.L. c. 127 § 133A, that prohibit parole eligibility for those convicted of first degree murder. While leaving in place the conviction for first degree murder, it was ordered that the amended mittimus not contain any "without the possibility of parole" language.

On December 24, 2013, the Massachusetts 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 Rolon, who were juveniles when they committed first degree murder. The SJC ordered that affected inmates receive a parole hearing after serving 15 years. Accordingly, Rolon became eligible for parole, and is now before the Board for an initial hearing.

The facts of Rolon's murder conviction are culled from the SJC's 2003 opinion, *Commonwealth v. Anthony Rolon*, 438 Mass. 808 (2003).

On the evening of January 20, 1996, the victims Botelho, Mullen and Grant, were visiting the apartment of Botelho's girlfriend, Natasha Azevedo. Azevedo lived in the apartment with her two-year old son, her sister Tiffany, and her cousin, Desiree Gibbs. After some period of drinking, the three men and three women decided to go to a party held at a nearby apartment in the housing project. There was some concern about potential friction between Botelho and other guests who might be at the party, and the three men therefore armed themselves: Mullen with a "steak fork," Grant with a hammer, and Botelho with a pistol. Botelho's pistol, although it appeared real, had a plug in the barrel and was incapable of firing. After leaving Azevedo's baby with a next door neighbor, the group proceeded to the party at around 11 P.M.

At the party, a fight erupted between Mullen and one of the other guests. During that altercation, Botelho pulled out his gun, waved it around, and told everyone to "get off [his] boy." Anthony Rolon arrived shortly before the end of the fight and began arguing with Botelho. Rolon complained that Botelho would "bring the cops around" where he, Rolon, was

¹ Those offenses included two counts of assault and battery with a dangerous weapon for which he was given a nine to ten year sentence, and a four to five year sentence, respectively; armed assault in a dwelling resulting in a ten to fifteen year sentence; burglary and resulting in a ten to fifteen year sentence; and a home invasion charge which was placed on file after a guilty plea.

² The Court reversed Rolon's related convictions for assault and battery by means of a dangerous weapon and armed assault. The court also vacated the armed burglary charge as being duplicative.

³ The Court held that mandatory life imprisonment without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on cruel and unusual punishments. The Court further held that while states may impose life imprisonment without the possibility of parole on a juvenile convicted of homicide, the sentencing authority must take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.

"trying to make money."⁴ During that argument, Botelho pulled his gun out, waved it around, and repeatedly pointed it at Rolon. In response, Rolon stretched out his arms and told Botelho to "come on, go ahead." Various friends intervened, convinced Botelho to put the gun away and leave, and escorted Botelho and his companions back to Azevedo's apartment to make certain that they left.

Despite the efforts to separate Botelho from Rolon, Rolon and a few of his friends followed close behind. Rolon continued shouting at Botelho ("Come on, you're a big man, go ahead"). When they reached Azevedo's apartment, words continued to be exchanged, with Rolon yelling for Botelho to come out and fight. Botelho ultimately told them to leave, and went inside Azevedo's apartment. One of Rolon's friends yelled out, "We'll be back." Rolon's group then left, and all was quiet for some ten to twenty minutes thereafter.

During that interval of time, Rolon's group expanded to include some other young men. Most of them were armed, carrying knives, bats, shovels, hammers, sticks, and frying pans. As they assembled slightly down the hill from Azevedo's apartment, someone asked what they were doing. An unidentified member of the group replied, "We're [going to] take care of something." Others were heard asking who had pulled a gun on Rolon. Rolon said that he "was going to get the kid" with the gun. Various people who had been at the earlier party saw the armed group and attempted to dissuade Rolon, telling him and his companions that they should "just drop it . . . just leave it alone," that "the person's gone, he's left," and "[t]here's no more reason to fight." However, Rolon did not respond, and "nobody seemed to listen." Anticipating trouble, one partygoer went to telephone the police.

Rolon, at the head of one group, proceeded in the direction of Azevedo's apartment, while a smaller group broke off and approached the apartment by a different route. As they reached the apartment, one group went around to the back while the other remained in front. The attack began by smashing the apartment windows with a rock, a board, and a shovel. Botelho, Mullen, and Grant rushed out the back door. Botelho, carrying his inoperable gun, ran at one of his attackers and struck him with the gun. However, the gun fell to the ground, and someone called out that the gun was a "fake." Grant grabbed Botelho and rushed back toward the apartment. Rolon and one of his companions, Hidekel "Kelly" Hernandez, chased after Botelho and caught up with him just outside the back door. Hernandez began hitting Botelho; Rolon stabbed him several times. Botelho went back inside the apartment, and ultimately collapsed in the living room.

Meanwhile, other members of Rolon's group were fighting with Mullen outside. Mullen was hit with a shovel and cut with a knife. When he made his way back inside the apartment, he was assaulted by yet another intruder with a knife. Others pushed their way through the back door and caught up with Grant, who had managed to get inside as far as the living room. Surrounded by attackers who had him pinned down on the couch, Grant was struck in the head with the handle of a hammer and stabbed in the buttocks and thigh, severing an artery. Versions differed as to the identity of the individuals who stabbed Mullen and Grant, and versions differed as to whether Rolon himself had ever been inside the apartment at any point. By all accounts, the scene was chaotic, and most of the perpetrators were never identified.

⁴ Rolon was concerned about selling drugs without the police being around. He approached the unit to see what all the noise was about. When he arrived, Rolon could see a large crowd and two men who were arguing. Rolon approached the crowd, and told the two men to stop making noise before the police were called. Rolon believed that with the police coming to the apartment complex, it would prevent him from making his drug money.

The attack ended when one of the intruders yelled out "five-o" (a reference to the imminent arrival of the police) and the group fled. Rolon and several others regrouped at a friend's apartment shortly thereafter. Hernandez, whose hands were bloody, reported that he had gotten "the kid inside the house good," and Rolon bragged that "he got that kid good with the gun."

Botelho was still alive when police arrived at the scene, but he succumbed shortly thereafter. He had three deep stab wounds in the chest, the fatal wound being to the heart. He had also sustained blunt force injuries and lacerations to the head, neck, shoulders, back, arm, thigh, and hands.

Rolon had several co-defendants. Edwin Corcino was found guilty of manslaughter and sentenced to 5 years to 5 years and 1 day, and released in May 2001. Hidekel "Kelly" Hernandez was found guilty of manslaughter and sentenced to 10 years to 10 years and 1 day, and released in January 2006. Edan Mejias was found guilty of manslaughter and sentenced to 4 years to 4 years and 1 day, and released in April 2001. Alexis Vasquez was found guilty of manslaughter and sentenced to 3 to 4 years, and released in May 2001. Eddie Torres pleaded guilty to second degree murder as a juvenile, received a ten to fifteen year sentence, and testified against his co-defendants. Omar Saez was found not guilty after trial. He was tried with Mr. Rolon. Likewise, Henry Zayala was found not guilty after trial. Carmen Mendes was charged with accessory after the fact which the Commonwealth declined to prosecute. She testified for the Commonwealth at all the trials.

II. CRIMINAL HISTORY

While Rolon's only adult charges are related to the murder, he has a history as a juvenile offender. Rolon was first arrested at the age of fifteen. An April 1994 arraignment for assault and battery with a dangerous weapon, possession with intent to distribute heroin, and possession of a controlled substance at school resulted in Rolon receiving a suspended sentence to DYS. In June 1994, Rolon, who recently turned 16, was arraigned on charges of vandalism and assault with a dangerous weapon and received a suspended sentence to DYS. In October 1994, Rolon received a suspended sentence to DYS for receiving stolen property, failing to obey police, operating to endanger, and possession of burglarious tools. In December 1994, Rolon received a suspended sentence to DYS for distribution of heroin and conspiracy to violate controlled substance laws.

III. INSTITUTIONAL HISTORY

Rolon has incurred 18 disciplinary reports during his incarceration, his last being in September 2013 for mailing a personal letter directly to a staff member. The letter thanked the staff member for leading a rehabilitative program in which Rolon had participated. The disciplinary report, therefore, presents no obstacle to parole. Serious infractions include a 1999 disciplinary report for the possession of a seven inch Plexiglas weapon sharpened to a point and a 1997 disciplinary report for fighting with another inmate. Rolon's other infractions involved the unauthorized possession of property, contraband, disruptive conduct, and gambling.

Despite the disciplinary reports, Rolon has had an overall positive adjustment to incarceration. Records indicate that he was not a management issue while awaiting trial at the Plymouth House of Correction. He currently receives good housing and work evaluations.

Rolon has participated in many educational, skills-based, and rehabilitative programs including Second Thoughts Program from 2006 to 2011; ABLE Minds in 2006; Alternatives to

Violence Project – Basic Course in 2006; Emotional Awareness/Emotional Healing in 2010; Problem Solving and Thinking Skills in 2011; Emotional Awareness and Emotional Healing in 2012; ServSafe Program and Certification in 2012; Fatherhood in Action in 2014; and he began the Companion Program on June 5, 2014. In addition, Rolon obtained his GED in 2001 which he followed up with college level courses in Anthropology, Sociology, and English. Rolon completed a welding program in 2004, obtained an apprentice barber license in 2009, and completed a computer skills program in 2014.

Rolon has maintained employment when possible. He worked at the Plate shop at MCI-Cedar Junction, and was a gym worker for almost three years while at Souza-Baranowski. While at MCI-Norfolk, Rolon worked in culinary, industries (mattress shop) and barber shop (five years). He is currently a janitor in the Inmate Worker Unit (Cadre Unit) at Bridgewater State Hospital.

IV. PAROLE HEARING ON JULY 22, 2014

Anthony Rolon, age 36, appeared for his initial parole hearing represented by Attorney Emanuel Howard of Brookline. Rolon is serving a life sentence for first degree murder. He is eligible for parole due to 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). Rolon has served 18 years of the life sentence. Rolon made opening remarks in which he said he was remorseful for the killing and also regretted the fact that he did not, after his conviction, tell the victim's mother that he had committed the murder. In his opening statement, he made statements directed to Robert Botelho's mother: "It was me who killed your son; it was me who created the confrontation that caused the fight; if I had just walked away after the first confrontation he would be alive today." Rolon also apologized to the two surviving victims and acknowledged that, "I may not be the one who directly assaulted you, but I created the situation."

Rolon is classified to the Inmate Worker Unit (Cadre Unit) at Bridgewater State Hospital. Cadre employment is a competitive selection process that allows 53 well-behaved and responsible inmates to reside at Bridgewater State Hospital for the purpose of working in the hospital. Rolon said, "I asked to be classified to Cadre because I heard it was a humbling experience. I started on May 16, 2013. I work in the infirmary and have moved up to a janitor's job. I work three hours a day. I get paid for six days a week but I do the job seven days a week because I take pride in it. I have been accepted into another Bridgewater program, the Companion Program. That program pairs you with a patient who needs help with daily living needs. I will help the patient with getting dressed, showering, anything he needs. I just finished the training, and I am waiting to be paired with a patient. I've been trying to get into anything I can to help people. The Warden told me the Companion Program would allow me to help an individual."

In describing his rehabilitation, Rolon acknowledged that his early years in prison included poor conduct but explained his transformation. "Early in my incarceration I received a lot of disciplinary tickets. In May 2003, I got sent to solitary confinement for the last time. I realized I was fed up with being a disrespectful person and spiritually lost. While I was in the hole, I got on my knees and genuinely prayed to God for the first time. My grandmother, aunt, and mother were religious, but I never took it seriously. I asked for forgiveness and guidance. After that experience in 2003, a process began. I started to hang with a different group of people, a positive group. I started going to programs. I made a conscious decision to hang out with different people."

Before classification to the Cadre Unit, Rolon resided at MCI Norfolk for ten years. Rolon has an impressive history of program participation and offers an excellent example of what an inmate can accomplish and what programs he can participate in even though he was not eligible for parole due to his life sentence for first degree murder. Rolon identified Violence Reduction and the Fatherhood Program as the most recent programs he completed. He reported that the Fatherhood Program was very helpful "because it teaches how to be a better father and a better man." He is not a parent, but took the program because "my fiancée has five kids and a lot of the lessons were about being a better man." Rolon said that Violence Reduction helped him because "there were a lot of scenarios with intense role plays." Rolon informed the Board that he has "known my fiancée since we were 12 years old. We reconnected four years ago. She visits me twice a week. She works as a nurse's aide."

Rolon cited Emotional Awareness as an important program for his development. He completed the program twice, in 2010 and 2012. He said, "Emotional Awareness was the most impactful. It allowed me to deal with my own emotions." He completed the welding program at MCI Norfolk and obtained a welder's license. He worked steadily at Norfolk in industries, culinary arts, and as a barber. He said that, if paroled, "I want to work as a barber. I have a job offer. My passion is to cut hair, I really enjoy it."

A Board Member asked Rolon about his religious activities. Rolon said, "I was baptized in 2006 and I continue to live a Christ-like life to the best of my ability. Every day I read the Bible and pray. I look at life differently because of my religion. I go to church every Sunday. The Fatherhood program was run by the prison Pastor."

A Board Member asked Rolon to describe some of his negative conduct in prison. Rolon said, "I went to solitary in 2003 for arguing with a correctional officer and being disrespectful. That was not unusual at that time; I had a lack of respect for authority. My most serious disciplinary report was for having a sharpened Plexiglas weapon. I got the weapon because I saw someone get thrown off the third tier. I heard stories about rape and murder. I was scared. I was 19 years old." Rolon has no disciplinary reports for alcohol or drug use. He said, "I haven't used alcohol or drugs in prison. I never liked alcohol. I have had access to alcohol and drugs, but it was my decision not to use them. Thank God I didn't."

Rolon provided information on his childhood. He was born in Philadelphia and came to New Bedford to live with his father in 1992 at age 14. He said, "At that time my mother in Philadelphia was addicted to crack cocaine. I lived with my aunt who was good to me. My father lived in Massachusetts. He said he was no longer doing drugs or selling them and that he wanted me to live with him in New Bedford. When I went to live with him, I found out that was not true about the drugs. We lived in the Presidential Heights housing development. I dropped out of school after one year at New Bedford High School and things spiraled downward. I had two juvenile court cases, one for a stolen motor vehicle and one for an assault and battery. I started selling drugs daily in the housing project at age 15. The assault and battery happened in an argument with my girlfriend; I shook her. I did not have other violence. I was not involved in gangs. I sold drugs with friends and with my father. My father and I were partners in a drug business. We shared profits until I was incarcerated. There was a time that I got stabbed and had a collapsed lung; after that I started carrying knives and sometimes a gun. At the time of the murder, I was selling drugs every day."

Rolon gave the following details on the murder on January 20, 1996. "I was selling drugs in Presidential Heights. I heard a loud crowd and I could see three or four people arguing. I was afraid that would cause the police to come. I went over and told them to stop making noise. Mr. Botelho approached me and told me to mind my own business. He pulled a

gun out and pointed it at me. I put my hands up and said, 'go ahead, shoot me.' His friends got between us. I followed him because I felt he disrespected me. I followed him to an apartment where we argued for a second time. We were separated but I was still angry. Everyone said, 'we have to go fight him.' They were egging me on. We went to the apartment. I was armed with a knife. My co-defendant threw a rock at the window. After the rock, people came out and a fight began. I saw Mr. Botelho and I went after him. We fought again. He was getting the best of me but he did not have a weapon. I stabbed him, pushed him away, and ran. I stabbed him two or three times. I didn't choose the location of where to stab him, I was just trying to get the upper hand. I did not know other people were stabbed until I heard that on the news. I was scared. I went to New York for three months and stayed with a cousin. Then I went to Philadelphia where I told my family what happened and then turned myself in. I did not know any of the victims before that night.

Robert Botelho's father, mother, and sister spoke in opposition to parole. They described the lasting sorrow that remains with them. Mr. Botelho said, "Not a day goes by that something about my son doesn't go through my mind." Mrs. Botelho recalled the several "back to back trials and I had to be there for my son."

Bristol District Attorney Samuel Sutter attended the hearing in opposition to parole. Bristol Assistant District Attorney Dennis Collins spoke in opposition to parole. He described the facts of the case, including three stab wounds to the chest. ADA Collins said that "this crime merits punishment beyond 18 years."

Five witnesses spoke in support of parole. Rolon's mother said she has been sober for many years and currently works for the City of Philadelphia and a church camp. Yvette Benning, who taught Rolon in middle school in Philadelphia, testified that "Anthony was my student in seventh and eighth grade and now he's become my friend; I sent him many cards and letters in prison and had phone calls; I gave him a newspaper subscription." She described that Rolon was a good person who had some difficult life circumstances that led to a tragic mistake. Allen Correia described himself as "a friend for 24 years." He said, "I knew him from the project. I left the project in 1995 to go to Rhode Island. I stayed in touch with him. He told me many years ago, 'If I'm going to die in here, I'm going to die a different man than I came in.' I've secured two solid job offers for him." Two speakers know Rolon through the Partakers religious and educational program in the prison. They described his spiritual commitment and rehabilitative success.

Attorney Emanuel Howard and Anthony Rolon each gave a closing statement. Attorney Howard emphasized his client's commitment to rehabilitative programs and described the benefits Rolon obtained from the programs.

V. DECISION

At age 17, Anthony Rolon was living a negative and criminal lifestyle as a drug dealer in a New Bedford housing development. His father had brought him into the drug dealing business at age 15 and they worked together in street level drug dealing. On the night of January 20, 1996, a fight erupted between two groups of young men at a local party. The victim was part of the fight and he displayed a handgun (which was inoperable). Rolon became involved in the dispute and Robert Botelho pointed the handgun at Rolon. Rolon instigated a second confrontation a short time later. Despite knowing that Mr. Botelho possessed a handgun, Rolon armed himself with a knife and sought out Mr. Botelho. Rolon stabbed the victim three times in the chest.

Rolon had some early misconduct in prison, but in 2003 he made a conscious decision to improve his conduct and reform his character. Rolon described his decision as "If I'm going to die in here, I'm going to die a different man than I came in." Following up on that new approach, Rolon actively sought out programs that would assist him in rehabilitating. He was still serving a life sentence without possibility of parole during the decade of commitment to programs. The effectiveness of the reform is evidenced by his good conduct in prison for over a decade. Additionally, at this hearing Rolon was thoughtful, sincere, and knowledgeable in describing the programs he has taken, the lessons he has learned, and the changes he has made. He was remarkably insightful, candid, remorseful, humble, and committed to improving his character and conduct. He demonstrated that he is rehabilitated and presents no current risk for violence. The Board concluded that the sentencing goals of rehabilitation and public protection have been met.

Rolon remains convicted of first degree murder and the Board evaluated whether 18 years of incarceration is sufficient to accomplish the sentencing goals of punishment and deterrence. The Board considered the following factors. First, 18 years is a long and meaningful punishment. He has served three years beyond the initial eligibility of 15 years. Second, the 18-year punishment was sufficient to promote successful rehabilitation, which is an objective of punishment. Third, Rolon was just 17 years old when he committed the crime. His conduct was presumably affected by the underdeveloped thought process and decision making abilities of a juvenile. Adding to the impulsive effects of immaturity was the negative role played by Rolon's father as they worked together in a drug business. Rolon was a young person who was not in school and whose parent was promoting criminal behavior. Consequently, Rolon's maturity and development would be even further delayed. Fourth, Rolon committed a first degree murder, but the facts do show that he was assaulted earlier in the evening by a handgun and that urging by peers played a role in propelling his criminal intent and activity. These facts are insufficient to constitute provocation under the law, but they are facts of context properly considered by the Parole Board. In combination, these four factors allowed the Board to conclude that the sentencing goals of punishment and deterrence have been met.

The four goals of sentencing – punishment, deterrence, rehabilitation, and public protection – 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 grants parole to an approved home plan after one year in lower security. This release plan will allow for important supports during a closely supervised transition.

SPECIAL CONDITIONS: Parole to an approved home plan after one year in lower security; no drug use; no alcohol use; counseling for adjustment issues; no contact with victim's family.

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

Josh Wall, Chairman

August 6, 2014

Date