



The Commonwealth of Massachusetts  
Executive Office of Public Safety and Security



PAROLE BOARD

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DECISION

IN THE MATTER OF

VIENGSAYMAY CHALEUMPHONG  
W65665

TYPE OF HEARING: Initial Hearing  
DATE OF HEARING: August 20, 2015  
DATE OF DECISION: December 10, 2015

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

DECISION OF THE BOARD: After careful consideration of all relevant facts, including the nature of the underlying offense, criminal record, institutional record, the age of the inmate at the time of the offense, the inmate's testimony at the hearing, and the views of the public as expressed at the hearing or in written submissions to the Board, we conclude by a majority vote that the inmate is not a suitable candidate for parole. Parole is denied with a review in two years from the date of the hearing.<sup>1</sup>

I. STATEMENT OF THE CASE

On December 3, 1998, after a jury trial in Middlesex Superior Court, Viengsaymay Chaleumphong was found guilty of first degree murder in the beating death of Joshua Molina. He was sentenced to life without the possibility of parole. On that same day, Chaleumphong was also convicted of assault and battery by means of a dangerous weapon and sentenced to 9 to 10 years concurrent with the life sentence.<sup>2</sup> Chaleumphong was 17-years-old at the time of the murder.

<sup>1</sup> Four Board Members voted to deny parole with a review in two years. Two Board Members voted on a reserve to parole after successful completion of one year in lower security.

<sup>2</sup> Chaleumphong, joined by co-defendant Donnie Bouphavongsa, filed an appeal which resulted in the first degree murder convictions being affirmed. *Commonwealth v. Viengsaymay Chaleumphong*, 434 Mass. 70 (2001).

On December 24, 2013, the Massachusetts Supreme Judicial Court (SJC) 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 Viengsaymay Chaleumphong, who were juveniles when they committed first degree murder. The SJC ordered that affected inmates receive a parole hearing after serving 15 years in prison. Accordingly, Chaleumphong (who has served 17 years) became eligible for parole and is now before the Board for an initial hearing.

Viengsaymay Chaleumphong was a member of a prominent gang and, acting with other gang members, beat Joshua Molina (age 17) to death on November 20, 1997 on Bridge Street in Lowell. Around 9:30 p.m. that night, Chaleumphong and fellow gang members were traveling in two cars looking for rival gang members. Chaleumphong was driving one of the cars and pulled alongside three Hispanic youths walking together on the sidewalk: Joshua Molina, Jhonny Lozada, and Juan Santana. Someone in one car summoned Mr. Molina. Mr. Molina walked over, spoke briefly with one of the passengers, and then walked away. The two cars drove away and pulled over in an alleyway. The gang members then got out of their cars and, despite the lack of provocation, decided to attack the three Hispanic youths (who were not members of a rival gang). Chaleumphong and his fellow gang members hid in the alley and attacked the three unsuspecting youths when they walked by. Johnny Lozada was able to run to safety, but Joshua Molina and Juan Santana were viciously beaten by the gang members with a shovel, a claw hammer, a ball peen hammer, an automobile antitheft device, pipes, and boards. Co-defendant Phaivanh Inthabane used the shovel and struck the first blow to Joshua Molina. Mr. Molina went down after the first blow, but Inthabane continued to strike him in the face, head, and body with the shovel. Mr. Molina was curled in a fetal position and lay motionless on the ground. Chaleumphong and Bouphavongsa then used hammers to beat Mr. Molina, while more gang members pummeled Mr. Molina with fists, boards, and "The Club" (an automobile antitheft device). Mr. Santana was also beaten unconscious by the gang members, but he survived.

Mr. Molina died three days later from his head wounds, any one of which was life threatening by itself. Each wound was consistent with the blow of a hammer wielding significant force. The official cause of death for Joshua Molina was multiple blunt force trauma to the head.

## **II. PAROLE HEARING ON AUGUST 20, 2015**

Viengsaymay Chaleumphong, now 35-years-old, appeared for his initial parole hearing after serving 17 years of his life sentence. He was represented by Attorney La Mer Kyle-Griffiths. Chaleumphong opened the hearing with a tearful apology and statement of remorse. He said that he accepts full responsibility for the senseless murder and spoke about the pain he caused the victim's family, his own family, and the entire community. At 35-years old, Chaleumphong proudly told the Board how he obtained his GED in 2001 at Souza Baranowski Correctional Center and then enrolled in classes through the Boston University program at MCI Norfolk. He said that these were big accomplishments for him since (although he was a good student at a young age) he started getting into trouble as he got older. He was eventually suspended in the eighth grade for selling marijuana. His attraction to gang life deepened as school became less important to him.

Despite serving a life sentence without the possibility of parole, Chaleumphong advocated zealously to be allowed to participate in programs that addressed his issues of substance abuse and violence. He began the Alternatives to Violence Project (AVP) in 2008, completed the three phases, and recently became a facilitator of that program for other inmates. He described the Correctional Recovery Academy (CRA) as one of his most influential programs, as it helped him understand substance abuse and taught him how to "stay out of trouble." He displayed empathy when discussing his experience with Emotional Awareness and Jericho Circle and told the Board that "I liked the restorative justice, but it hurts so much to hear the stories [of victims' families]."

Chaleumphong described his upbringing to the Board and stated that he was born in a Laotian refugee camp in Thailand. His parents met there after being forced from Laos amid a violent civil war. He said, "My father was a soldier in the fight against the communist regime; my mother was a farmer with no education. Her sister died of starvation." Shortly after Chaleumphong was born, the family moved to Lowell. He said, "Things were ok at the beginning. My parents were both working and we had a nice house. But then my dad turned to alcohol and my mom turned to gambling. There was a lot of domestic violence in my family. My father would come home drunk and pick fights with my mother. My brother started getting into trouble, missing school and staying out late. I learned that he was in a gang and I wanted to be in the gang. After my brother got shot, I thought I would not join a gang, but I did. I wanted to be a part of the neighborhood and the neighborhood was selling drugs, stealing, and fighting. I fought a lot for no reason and became a leader in the gang." He participated in a program through Juvenile Court that was designed to extricate youth from gang life. He said, "I did well in the program, but as soon as I got back to the streets, it was the same. The murder happened about a year after the program."

Chaleumphong has faced similar battles in prison by being unable to completely separate himself from his association with gang members. However, unlike many juvenile offenders, Chaleumphong's initial adjustment to incarceration was neither marred by numerous disciplinary reports, nor was he a management concern. He has a total of five disciplinary reports over his 17 years of incarceration. He said that he had been trying to distance himself from the Security Threat Group label that had been with him for so long, but remained a validated member until his formal renunciation in 2014.

Chaleumphong described the senseless killing of Joshua Molina and the beating of Juan Santana by saying, "I had three Heinekens and six or seven shots of Canadian Mist and we went out to fight a rival gang member, but he would not come out of the house, so we destroyed some of his property. Then we found Joshua." Chaleumphong said that there was a brief discussion between the gang members and Mr. Molina, Mr. Santana, and Mr. Lozada before the groups parted ways. As Chaleumphong drove away, he saw Mr. Molina hold up his hands in what he perceived to be an act of defiance. Chaleumphong pulled the car into an alley and the occupants armed themselves with various weapons. They waited for Mr. Molina and his friends. He said, "I got the hammer out of the car. When I got to Josh, he was in the fetal position and I hit him like four or five times [in the head with the hammer]. Then I chased Santana." Chaleumphong insisted the attack was gang related and not racially motivated.

Chaleumphong said he understands that an Immigration and Customs Enforcement Detainer is lodged against him and an Order of Deportation would be acted upon, if he were to get a favorable parole vote. He said that he has family on his mother's side living in Laos and would connect with them if he were deported there. He described opportunities to work in farming and construction. Chaleumphong's father, brother, and three members of his community support team spoke in support of parole. Each described in detail the role they would play in his transition into the community, which includes reintegration services, mental health counseling, and rehabilitative programs.

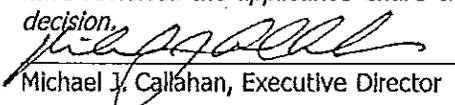
Both the victim's sister and Middlesex Assistant District Attorney Kerry Kilcoyne spoke in strong opposition to Chaleumphong's parole.

### III. DECISION

Viengsaymay Chaleumphong participated in murder at age 17 when he smashed the skull of (defenseless) Joshua Molina with a hammer. Although the Board recognizes Chaleumphong's difficult childhood, as well as the age at which he participated in the assault on Mr. Molina, Chaleumphong became a willful participant in gang life and the perpetual violence that went along with such a lifestyle. The senseless killing of Joshua Molina was the result of Chaleumphong's gang affiliation and their desire to go "hunting" for anyone against their gang. Chaleumphong longed to join a gang, and did so, even after seeing his brother get shot in a gang-related shooting. He completed a program for juveniles to keep him out of a gang, but returned to gang life immediately upon completion of the program. He committed the gang-motivated murder a year later. He has failed in the past to completely extricate himself from gang life in prison and has only recently been deemed free of any STG label.

The Board commends Chaleumphong for his program participation, his desire to better himself, and his positive adjustment while facing a lifetime in prison without the possibility of parole. However, he needs more time away from gang life, as well as continued participation in positive rehabilitative programs, before he would be a viable candidate for release. At this time, the majority of the Board is of the opinion that Viengsaymay Chaleumphong is not a suitable candidate for parole. 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 opinion of the Board that Viengsaymay Chaleumphong does not merit parole at this time because he is not rehabilitated. The review will be in two years from the date of the hearing, during which time Chaleumphong should commit to a more comprehensive rehabilitation that addresses non-violent conflict resolution, criminal thinking, and substance abuse. Chaleumphong is also expected to maintain a positive adjustment and avoid disciplinary reports.

*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.*

  
Michael J. Callahan, Executive Director

December 10, 2015  
Date