



The Commonwealth of Massachusetts
Executive Office of Public Safety and Security



PAROLE BOARD

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DECISION

IN THE MATTER OF

**PHILIP GAGLIARDI
W44843**

TYPE OF HEARING: Resolve Action Pending

DATE OF HEARING: February 3, 2015

DATE OF DECISION: July 28, 2016

PARTICIPATING BOARD MEMBERS: Dr. 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, 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 written submissions to the Board, we conclude by unanimous vote that the inmate is not a suitable candidate for parole. Parole is denied with a review on or after September [1], 2016.

I.STATEMENT OF THE CASE

On May 6, 1988, in the Middlesex Superior Court, Phillip Gagliardi was sentenced to life in prison with the possibility of parole for the second degree murder of Donald Kingsley Costello.

In the early morning hours of December 12, 1983, Philip Gagliardi shot Donald Kingsley Costello, as he sat in the back seat of Mr. Gagliardi's car. The car was parked at Mr. Gagliardi's residence in Medford. The evening prior, Mr. Gagliardi had gone to the American Legion Hall in Medford. He spent the evening drinking and using cocaine with his friend Paul Mullis, who worked there as a bartender. At the end of the evening, Mr. Mullis drove Mr. Gagliardi home in Mr. Gagliardi's car because he appeared intoxicated. However, when Mr. Mullis was at a traffic light, he saw Mr. Costello and another individual named Glen Enos. They stopped their respective vehicles to engage in a conversation. The four men then returned to the American

Legion Hall, where they continued drinking and using cocaine. Mr. Gagliardi got into an argument with Mr. Enos and, during the heated exchange, Mr. Gagliardi pulled a gun on Mr. Enos. Mr. Enos then left the area. Mr. Costello left the American Legion Hall with Mr. Gagliardi and Mr. Mullis, and headed back to Mr. Gagliardi's home. Mr. Costello sat in the rear of the vehicle, while Mr. Gagliardi sat in the passenger seat and Mr. Mullis drove the car. When they arrived at their destination, Mr. Gagliardi turned and fired three shots at Mr. Costello, striking him in the head, nose, and hand. Mr. Mullis ran from the scene. Mr. Gagliardi then set fire to his house and abandoned his car in the Somerville area, with the victim's body inside. When the vehicle was located, the victim's body was in the rear seat, along with burned papers, household trash, and lighter fluid. Mr. Gagliardi fled the area, but was apprehended several days later.

II. PAROLE HEARING ON FEBRUARY 3, 2015

Philip Gagliardi, now 78-years-old, appeared before the Massachusetts Parole Board for a review hearing and was represented by Attorney George Sacco. He had been paroled on August 27, 2002, and had remained in the community without incident until August 27, 2014. At that time, he was taken into custody and returned to MCI-Walpole for a parole violation. Mr. Gagliardi's parole violation included operating a motor vehicle just prior to registering a 0.081 on a breath test. Since his return to custody due to his parole revocation, Mr. Gagliardi has been housed in the Health Services Unit due to his medical needs and health issues. At present, Mr. Gagliardi is not involved in programming and is not employed.

Parole Board Members attempted to question Mr. Gagliardi about his insight into the behavior that resulted in his parole violation. During the questioning, it became apparent that Mr. Gagliardi was having difficulty comprehending the questions, as evidenced by his responses. When asked about his health concerns, Mr. Gagliardi stated, "I really don't have any," despite his diagnosis of kidney disease, gout, anemia and dementia. Mr. Gagliardi indicated that his memory was fine, but that he had difficulty answering questions concerning his health history or day to day tasks. Mr. Gagliardi denied having anger issues or issues with alcohol while on parole, and denied a history of mental health issues.

When asked questions concerning his wife and sister-in-law, Mr. Gagliardi gave conflicting answers to the Board. Mr. Gagliardi told the Board that he and wife have been married for 50 or 60 years and that their marriage is fine, but for the fact that he is away from her. Mr. Gagliardi told the Board that (as he could recall) his wife was not at the hearing because he had not spoken to her since his return to custody. Mr. Gagliardi stated that he had no idea why his sister-in-law would obtain a restraining order against him, and that he loved her like he loved his wife. Later, Mr. Gagliardi mentioned that his sister-in-law was trying to keep his wife away from him. The Board expressed concerns as to whether Mr. Gagliardi was having memory issues or whether he was afraid to tell the Board something, as it was difficult to elicit clear answers from him. The Board suggested he participate in neurological testing prior to any determination for parole suitability.

The Board considered testimony from Middlesex County First Assistant District Attorney Michael Pelgro, who spoke in opposition to Mr. Gagliardi's parole. No one testified in support of Mr. Gagliardi's parole.

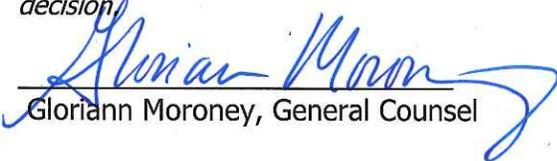
III. DECISION

The Board is of the opinion that Mr. Gagliardi has not demonstrated a level of rehabilitative progress that would make his release compatible with the welfare of society. The Board believes that a longer period of positive institutional adjustment and programming would be beneficial to Mr. Gagliardi's rehabilitation.

The applicable standard used by the Board to assess a candidate for parole is: "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." 120 C.M.R. 300.04. In forming this opinion, the Board has taken into consideration Mr. Gagliardi's institutional behavior, as well as participation in available work, educational, and treatment programs during the period of his incarceration. The Board also considered a risk and needs assessment, and whether risk reduction programs could effectively minimize Mr. Gagliardi's risk of recidivism. After applying this standard to the circumstances of Mr. Gagliardi's case, the Board is of the unanimous opinion that Mr. Gagliardi is not yet rehabilitated and.

Mr. Gagliardi's next appearance before the Board will take place on or after September [1], 2016. Mr. Gagliardi may submit information regarding mental health status, or any other relevant documentation, to assist the Board's determination of parole suitability and reentry needs. During the interim, the Board encourages Mr. Gagliardi to continue working towards his full rehabilitation.

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.


Gloriann Moroney, General Counsel

7/28/16
Date