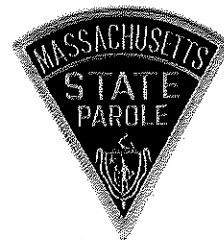


*The Commonwealth of Massachusetts
Executive Office of Public Safety and Security*



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DECISION

IN THE MATTER OF

ANDREW MALAVE

W83263

TYPE OF HEARING: Initial Hearing

DATE OF HEARING: December 12, 2017

DATE OF DECISION: November 27, 2018

PARTICIPATING BOARD MEMBERS: Paul M. Treseler, Dr. Charlene Bonner, Tonomey Coleman, Sheila Dupre, Tina Hurley, Colette Santa, 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 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 that the inmate is not a suitable candidate for parole.¹ Parole is denied with a review scheduled in five years from the date of the hearing.

I. STATEMENT OF THE CASE

On March 2, 2004, in Suffolk Superior Court, Andrew Malave pleaded guilty to the second degree murder of Justin Gibson and was sentenced to life in prison with the possibility of parole. On that same date, he also pleaded guilty to armed robbery. The armed robbery charge was placed on file.

On December 7, 2001, 21-year-old Andrew Malave and an accomplice met Justin Gibson in the Theater District of Boston. When Mr. Gibson asked whether the two men had any heroin, Mr. Malave and his accomplice stated that they did. After they lead Mr. Gibson to a parking lot, Mr. Malave's accomplice attempted to rob him. A fight ensued between Mr. Gibson and Mr. Malave's accomplice. Mr. Malave then joined the fight, stabbing Mr. Gibson to death. Mr. Malave

¹ One Board Member voted to deny parole with a review in four years.

and his accomplice then fled the area. Bystanders alerted police, who arrested Mr. Malave about two blocks from the parking lot. His accomplice was never caught.

II. PAROLE HEARING ON December 12, 2017

Andrew Malave, now 37-years-old, appeared before the Parole Board for an initial hearing on December 12, 2017. He was represented by Attorney Lorenzo Perez. In his opening statement to the Board, Mr. Malave apologized to the Gibson family for killing Justin Gibson. Mr. Malave explained that he was struggling with untreated mental health issues at the time of the murder. Mr. Malave stated that he takes residential treatment classes to address his mental health issues.

When the Board questioned Mr. Malave about the events leading up to the murder, Mr. Malave said that he had been struggling with heroin addiction, as well as living in a homeless shelter in Worcester for two years. When he went to Boston to find work, he stayed in the Long Island shelter, where he met his accomplice. Mr. Malave said that Mr. Gibson approached them in Boston looking to buy heroin. Mr. Malave said that his accomplice lured Mr. Gibson to the back of a parking lot, where he tried to rob Mr. Gibson at knifepoint. Mr. Malave claimed that he had no intention of killing anyone, and that it was his accomplice who had the knife. Mr. Malave told the Board, however, that when he saw his accomplice and Mr. Gibson struggling, he grabbed the knife from his accomplice and stabbed Mr. Gibson. Mr. Malave said that his accomplice took money from the victim, and they both ran off.

The Board noted that Mr. Malave accrued 15 disciplinary reports over approximately 16 years. Further, many were for fighting, including an assault on a corrections officer. Mr. Malave said that "while he tries to be good, he likes to fight." He said that his last fight was in 2015, when he was housed at Old Colony Corrections Center. Mr. Malave said that he is happier being housed at MCI-Gardner's facility, where it is more peaceful and positive. When the Board asked if Mr. Malave was involved in a security threat group, Mr. Malave stated that he had formally renounced in 2009 or 2010. Mr. Malave told the Board that he completed violence reduction programs, which have helped him avoid violent confrontations. The Board noted that Mr. Malave has been committed to MCI-Bridgewater State Hospital for mental health problems on four different occasions and asked whether he had ever been committed before his incarceration. Mr. Malave told the Board that he is being treated for bi-polar personality disorder and takes medication. He sees a counselor once a month and a doctor every three months. He had been placed under observation in a hospital in Worcester when he was a teenager.

The Board noted that Mr. Malave was addicted to heroin when he committed the murder and questioned him as to his programming efforts. Mr. Malave said that he was enrolled in the Correctional Academy Program, but had to drop-out when he was transferred from Old Colony Correctional Center to MCI-Gardner. Mr. Malave said he did not want to go to Alcoholics Anonymous/Narcotics Anonymous meetings because many of the people at the meetings were in security threat groups and would pick on him. Regarding educational programming, Mr. Malave said that he could read and write in Spanish and English, but suffers from a learning disability that prevents him from getting his G.E.D. Mr. Malave stated that he works seven days a week cleaning showers and attends religious services.

For his parole plan, Mr. Malave asked the Board to release him to a "wrap-around" health care program in New York that would provide housing and help him get a job. When the Board noted that he had not been accepted to any programs in New York, Mr. Malave said he would be willing to be released to a similar program in Massachusetts. The Board noted that such a plan would be contingent on Department of Mental Health approval, which Mr. Malave did not have.

Mr. Gibson's mother testified via a recorded video in opposition to parole. Mr. Gibson's mother, sister, and grandmother sent letters of opposition. The Suffolk County District Attorney's Office and Boston Police Commissioner William Evans sent letters of opposition. Suffolk County Assistant District Attorney Charles Bartoloni testified in opposition to parole.

III. DECISION

The Board is of the opinion that Andrew Malave has not demonstrated a level of rehabilitative progress that would make his release compatible with the welfare of society. Mr. Malave's behavior in prison, as well as his mental health, show he would be a threat to the community if released on parole.

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 consideration Mr. Malave's institutional behavior, as well as his 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 could effectively minimize Mr. Malave's risk of recidivism. After applying this standard to the circumstances of Mr. Malave's case, the Board is of the opinion that Andrew Malave does not merit parole at this time.

Mr. Malave's next appearance before the Parole Board will take place in five years from the date of this hearing. During the interim, the Board encourages Mr. Malave 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/Executive Director

11/27/18
Date