

The Commonwealth of Massachusetts
Executive Office of Public Safety and Security



PAROLE BOARD

12 Mercer Road
Natick, Massachusetts 01760

Charles D. Baker
Governor

Karyn Polito
Lieutenant Governor

Terrence Reidy
Acting Secretary

Telephone # (508) 650-4500
Facsimile # (508) 650-4599

Gloriann Moroney
Chair

Kevin Keefe
Executive Director

AMENDED DECISION¹

IN THE MATTER OF

ANTHONY AYALA

W52769

TYPE OF HEARING: Review Hearing

DATE OF HEARING: February 26, 2019

DATE OF DECISION: September 9, 2021

PARTICIPATING BOARD MEMBERS: Dr. Charlene Bonner, Tonomey Coleman, Sheila Dupre, Tina Hurley, Colette Santa²

DECISION OF BOARD: In light of the holding in *William Dinkins & Another v. Massachusetts Parole Board*, 486 Mass. 605 (2021) and careful reconsideration of all the facts, including the nature of the underlying 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 that the inmate is a suitable candidate for parole at this time.³ Parole is granted to a long term residential treatment program (LTRP), subject to special conditions and after District Attorney clearance.

I. STATEMENT OF THE CASE

On June 18, 1992, in Suffolk Superior Court, Anthony Ayala pleaded guilty to the second-degree murder and aggravated rape of Kimberly Rae Harbour, as well as the armed robbery of Ms. Harbour and a second victim. He was sentenced to two consecutive life sentences for the murder and armed robbery charges and a consecutive 7 to 10 year sentence for the aggravated rape charge.

On October 31, 1990, Anthony Ayala (age 15) and 7 others went to Franklin Field in Dorchester, where they broke up into two groups in order to trap anyone walking in the area. The men observed two young women, Kimberly Rae Harbour (age 26) and another woman,

¹ The original decision was dated December 12, 2019.

² Chair Moroney recused.

³ One Board Member voted to place Mr. Ayala on the list for a new hearing before the full Board (PONAL).

who were conversing on a sidewalk across from Franklin Field. The men chased and caught the two women, who were then on different sides of the street. After assaulting and searching the other woman, who managed to escape and run away, one group joined the other in the chase and capture of Ms. Harbour, who they dragged into Franklin Field. There, Ms. Harbour was hit with a tree branch, punched and kicked numerous times, stabbed with knives and a bottle, and raped by four of the men. She was stabbed 132 times and left for dead in the park. The medical examiner determined that Ms. Harbour bled to death in the park. On November 19, 1990, Mr. Ayala and the other assailants were arrested.

II. PAROLE HEARING ON FEBRUARY 26, 2019

On February 26, 2019, Anthony Ayala, 43-years-old, appeared before the Parole Board for a review hearing. He was represented by Attorney Rebecca Rose. Mr. Ayala was denied parole after his initial hearing in 2005, and after his review hearing in 2010. Mr. Ayala postponed his 2015 review hearing. In his opening statement to the Board, Mr. Ayala apologized to the Harbour family for the senseless and brutal rape and murder of Ms. Harbour. He apologized for the pain he caused his own family, the community, and the first responders who found her body. When Board Members discussed his childhood, Mr. Ayala spoke of how his father abandoned him and his siblings and described how his mother was addicted to crack cocaine. He dropped out of school when he was 15-years-old, after completing seventh grade. Mr. Ayala described his gang involvement as more like a group of friends, but admitted that they fought with rival gangs. He reported being committed to the Department of Youth Services for drug charges and stealing, prior to his current convictions.

When the Board questioned him about the governing offense, Mr. Ayala admitted to raping Ms. Harbour and joining in on her beating. He told the Board that at the time of the attack, he did not see Ms. Harbour as a human being, but rather, as a victim. He denied allegations that the group had planned on robbing prostitutes in the Franklin Field area prior to the attack. When Board Members questioned him as to which programs have been most helpful in his rehabilitation, Mr. Ayala stated that the Sex Offenders Treatment Program improved his ability to put himself in another's shoes, to respect and set boundaries, and to pursue healthy relationships. Mr. Ayala also reported that his involvement with the Nation of Islam has helped him become a better person. Religion has given him structure and has helped him to think more positively about himself. The Board noted that Mr. Ayala has completed his G.E.D, H.V.A.C., and OSHA certifications. Mr. Ayala said that he worked as a janitor in the Special Management Unit and, prior to that, he collected trash. The Board also noted that Mr. Ayala has not had a serious disciplinary report since 2002, and he is not currently considered to be associated with any Security Threat Groups.

Mr. Ayala's brother submitted a letter of support on behalf of the Ayala family. Dr. Heather Jackson Psy.D. submitted a psychological evaluation, which Dr. Kinscherff discussed with the Board. Suffolk County Assistant District Attorney Charles Bartoloni testified and submitted a letter of opposition. Boston Police Commissioner William Gross submitted a letter of opposition, as well.

III. DECISION

On January 19, 2021, the Supreme Judicial Court in *William Dinkins & Another v. Massachusetts Parole Board*, 486 Mass. 605 (2021) invalidated 120 Code Mass. Regs. § 200.08(3)(c) and held


that the Board must aggregate the parole ineligibility period of a life sentence with the parole ineligibility period of consecutive sentences for purposes of determining a single parole ineligibility date. In accordance with the SJC ruling, Mr. Ayala's parole eligibility was recalculated in order to determine a single parole eligibility date and that date has since passed. As a direct result of the decision in *Dinkins*, the Board subsequently re-reviewed Mr. Ayala's case and amended its original decision paroling Mr. Ayala to his consecutive sentence. After careful reconsideration 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, the Board is of the opinion that Anthony Ayala has demonstrated a level of rehabilitative progress that would make his release compatible with the welfare of society. Mr. Ayala was 15-years-old at the time of the offense and has served approximately 29 years. He has completed SOTP (Sex Offenders Treatment Program) and engaged in additional treatment/programming to address his causative factors.

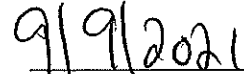
The applicable standard used by the Board to assess a candidate for parole is: "Parole Board Members shall only grant a parole permit if they are of the opinion that there is a reasonable probability that, if such offender is released, the offender will live and remain at liberty without violating the law and that release is not incompatible with the welfare of society." 120 C.M.R. 300.04. In the context of an offender convicted of first or second-degree murder, who was a juvenile at the time the offense was committed, the Board takes into consideration the attributes of youth that distinguish juvenile homicide offenders from similarly situated adult offenders. Consideration of these factors ensures that the parole candidate, who was a juvenile at the time they committed the murder, has "a real chance to demonstrate maturity and rehabilitation." *Diatchenko v. District Attorney for the Suffolk District*, 471 Mass. 12, 30 (2015); See also *Commonwealth v. Okoro*, 471 Mass. 51 (2015).

The factors considered by the Board include the offender's "lack of maturity and an underdeveloped sense of responsibility, leading to recklessness, impulsivity, and heedless risk-taking; vulnerability to negative influences and outside pressures, including from their family and peers; limited control over their own environment; lack of the ability to extricate themselves from horrific, crime-producing settings; and unique capacity to change as they grow older." *Id.* The Board also recognizes the petitioner's right to be represented by counsel during his appearance before the Board. *Id.* at 20-40. The Board also has considered Mr. Ayala's submitted psychological evaluation and whether risk reduction could effectively minimize Mr. Ayala's recidivism. After applying this appropriately high standard to the circumstances of Mr. Ayala's case, the Board is of the opinion that Anthony Ayala's release is compatible with the welfare of society. Parole is granted to a long-term residential treatment program, subject to special conditions and after District Attorney clearance.

SPECIAL CONDITIONS: Reserve to LTRP, but not before District Attorney clearance; Waive work for LTRP or two weeks; Must be at home between 10 p.m. and 6 a.m.; ELMO-electronic monitoring; Supervise for drugs, testing in accordance with agency policy; Supervise for liquor abstinence, testing in accordance with agency policy; Report to assigned MA Parole Office on day of release; No contact with victim's family; Must have substance abuse evaluation and follow all recommendations; Must have mental health counseling for adjustment and transition; Must complete LTRP; Sex-A Conditions.

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.


Pamela Murphy, General Counsel


Date