



The Commonwealth of Massachusetts
Executive Office of Public Safety and Security



PAROLE BOARD

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RECORD OF DECISION

IN THE MATTER OF

ANTONIO FERNANDEZ

W82745

TYPE OF HEARING: Initial Hearing

DATE OF HEARING: April 27, 2021

DATE OF DECISION: October 26, 2021

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

STATEMENT OF THE CASE: On November 20, 2003, following a trial by jury in Norfolk County Superior Court, Antonio Fernandez was convicted of first-degree murder of 19-year-old Perry Hughes, and was sentenced to life imprisonment without the possibility of parole. On the same date, Mr. Fernandez was also convicted of possession of a firearm without a license and was sentenced to a concurrent prison term of four to five years. Mr. Fernandez was 16-years-old at the time of the offense. On the evening of June 20, 2002, Mr. Fernandez shot and killed Mr. Hughes following a verbal confrontation between Mr. Fernandez’s group of friends and the victim and his group of friends.

On December 24, 2013, the Supreme Judicial Court issued a decision, *Diatchenko v. District Attorney for Suffolk District & Others*, 466 Mass. 655 (2013), that the statutory provisions mandating life without the possibility of parole are invalid as applied to juveniles convicted of first-degree murder. Further, the Court decided that Diatchenko (and others similarly situated) must be given a parole hearing. Accordingly, Antonio Fernandez is now before the Parole Board.

Mr. Fernandez appeared before the Parole Board for an initial hearing on April 27, 2021, and was represented by Attorney John Cunha. The entire video recording of Mr. Fernandez’s April 27, 2021, hearing is fully incorporated by reference to the Board’s decision.

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 by unanimous vote that the inmate is a suitable candidate for parole¹. Reserve to Community Resources for Justice – Transitional Housing for six months. Mr. Fernandez committed the offense when he was 16-years old and has been incarcerated for approximately 20 years. He has engaged in rehabilitative programs to address his needs, received his GED in 2007, and has been in minimum security since 2019 due to his positive adjustment. Mr. Fernandez began engaging in rehabilitative programs prior to the decision in *Diatchenko* which made him parole eligible. The Board considered the expert opinion of Dr. Robert Kinscherff, who indicated in his report that the subject does not have a mental health diagnosis or substance abuse disorder and that he is a low risk of recidivism. Mr. Fernandez has a strong support network in the community. Transitional housing will aid in a successful transition into the community.

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-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 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.*

In forming this opinion, the Board has also taken into consideration Mr. Fernandez's institutional behavior, as well as his participation in available work, educational, and treatment programs during the period of his incarceration. The Board has also considered a risk and needs assessment and whether risk reduction programs could effectively minimize Mr. Fernandez's risk of recidivism. After applying this appropriately high standard to the circumstances of Mr. Fernandez's case, the Board is of the opinion that Mr. Fernandez is rehabilitated and merits parole at this time.

Special Conditions: Reserve to Community Resources for Justice – Transitional Housing (CRJ-TH) for six months; Waive work for 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 the victim's family; Must have substance abuse evaluation – adhere to plan; Must have mental health counseling for adjustment/transition; May have contact with [named individual].

¹ Four Board Members voted to grant parole to CRJ-TH and two Board Members voted to grant parole to an approved home plan.

I certify that this is the decision and reasons of the Massachusetts Parole Board regarding the above referenced hearing.

Pamela Murphy
Pamela Murphy, General Counsel

10/26/2021
Date