



Charles D. Baker
Governor

Karyn Polito
Lieutenant Governor

Daniel Bennett
Secretary

The Commonwealth of Massachusetts
Executive Office of Public Safety and Security

PAROLE BOARD

12 Mercer Road
Natick, Massachusetts 01760

Telephone # (508) 650-4500

Facsimile # (508) 650-4599



Paul M. Treseler
Chairman

Michael J. Callahan
Executive Director

DECISION

IN THE MATTER OF

ANTONIO FERRER

W58563

TYPE OF HEARING: Review Hearing

DATE OF HEARING: September 27, 2016

DATE OF DECISION: March 9, 2017

PARTICIPATING BOARD MEMBERS: Paul M. Treseler, Dr. Charlene Bonner, Tonomey Coleman, Sheila Dupre, 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 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. Parole is denied with a review scheduled in three years from the date of the hearing.

I. STATEMENT OF THE CASE

On May 10, 1995, in Bristol Superior Court, Antonio Ferrer was convicted by a jury of the second degree murder of Joseph Freitas. He was sentenced to life in prison with the possibility of parole.¹

On January 2, 1992, 14-year-old Antonio Ferrer shot and killed 36-year-old Joseph Freitas in front of a Dunkin Donuts in New Bedford. On the day of the murder, Mr. Ferrer and his co-defendant, 24-year-old Andre Cortes, had been at Dunkin Donuts, where they made vulgar and threatening comments to a female server. After they left, the server told two regular customers what had happened. One of these customers was Joseph Freitas. A few minutes after Mr. Ferrer and his co-defendant exited Dunkin Donuts, Mr. Ferrer returned and ordered more food. Mr. Freitas and Mr. Ferrer exchanged stares, and then words, which led to

¹ The Bristol County District Attorney petitioned the Court to try Mr. Ferrer as an adult. The Court granted the petition and, at age 15, Mr. Ferrer was tried as an adult.

a fight outside the store. After being shoved to the ground, Mr. Ferrer got up and ran, getting into the front passenger seat of the car that Mr. Cortes was driving. As the car drove by the entrance to the store, it slowed down. Through his open window, Mr. Ferrer fired a gun at Mr. Freitas from a distance of about five feet, fatally wounding him.

II. PAROLE HEARING ON SEPTEMBER 27, 2016

Mr. Ferrer was initially paroled in March 2008 to a residential program. His parole was provisionally revoked on March 10, 2009 for a drug arrest, association with a person known to have a criminal history, and failure to pursue employment. The drug charge was dismissed, and his parole revocation was not affirmed. He was re-paroled in May 2009. Revocation proceedings were again initiated in August 2010 for violations that included drug transactions with a police confidential informant and association with a person known to have a criminal history. Mr. Ferrer's parole revocation was affirmed on November 23, 2010, and he was returned to custody. He was denied parole after a review hearing in September 2011, with a review scheduled in five years from the date of the hearing.

Mr. Ferrer, now 39-years-old, appeared before the Parole Board for a review hearing on September 27, 2016. He was represented by Attorney Steven Weymouth. In his opening statement to the Board, Mr. Ferrer expressed his sorrow and accepted responsibility for the death of Mr. Freitas. He allowed his anger to control him when he made the worst decision of his life, in shooting Mr. Freitas. He told the Board that since his return to custody in 2010, he has participated in programming and is ready to return to society as a responsible law-abiding citizen. Mr. Ferrer discussed his childhood, as well as the events that took place on the day of the murder. He told the Board that he grew up in a "chaotic" household, with an alcoholic mother and a father who was in and out of prison. He said that he spent a lot of time "on the street" associating with older, criminal-minded individuals. He said that he had never carried, or fired, a gun prior to the day of the murder. Mr. Ferrer told the Board that he wanted to leave after his encounter with Mr. Freitas, but his co-defendant handed him the gun and encouraged him to shoot Mr. Freitas out his window.

Board Members questioned Mr. Ferrer about his first parole violation in 2009. Mr. Ferrer maintained the same version of events that he told the Board at his hearing five years ago. He said that he picked up his nephew to give him a ride to Wal-Mart. As he was turning the car around, an individual approached his nephew's car window and asked for a cigarette. Shortly after driving away, the police pulled the car over and Mr. Ferrer saw his nephew trying to swallow something, which he later learned was Percocet. They were both arrested, with Mr. Ferrer in possession of \$900 (in cash) and his nephew in possession of drugs and a smaller amount of cash. He told the Board that the money was from cashing his income tax return, and that he did not know his nephew was addicted to Percocet and was dealing drugs.

Mr. Ferrer maintained a similar innocence, and ignorance of his surroundings, when discussing his second parole violation that resulted in his return to custody. He told the Board that he was never selling drugs, but takes responsibility since "I put myself in that environment and allowed myself to be there – I should have known better. I knew what was going on in the house and with my brother." The Board noted that much of Mr. Ferrer's last hearing in 2011 focused on the search warrant affidavit, which resulted in his apartment being searched for drugs and other evidence of illegal drug sales. The search warrant affidavit identified Mr. Ferrer

as the individual who conducted several hand to hand drug sales with a confidential informant, sometimes in the car with his girlfriend and her infant and, at other times, from his first floor apartment. The affidavit also contained police observations of Mr. Ferrer and his girlfriend acting in a manner consistent with drug sales in their interactions with cars outside of the house. Mr. Ferrer maintained that the confidential informant was either wrong, or lied to the police, because he never sold drugs while on parole. He suggested the misidentification could have been that he and his brother look alike and both go by the street name "Panther." He believes that they made up information in the affidavit, in order to obtain a search warrant for his house to find his brother's drugs. He acknowledged that his brother was arrested and that he knew about the arrest the day it happened, but said that police did not execute the search warrant for his apartment until four days after his brother's arrest.

Board Members questioned Mr. Ferrer's credibility about his version of events surrounding his two parole violations, which both involved drug dealing. Board Members expressed concern that Mr. Ferrer seemed to minimize his role in both parole violations, as well as his role in the underlying offense, and sensed that Mr. Ferrer had a pattern of describing himself as the victim in these situations. Mr. Ferrer responded by noting a pattern of allowing himself to be in situations where "bad things are going on around [him]," but aside from the murder of Mr. Freitas, he maintains his innocence in all other illegal activities. When asked if he ever talked to his brother about his brother's arrest, or asked his brother if he was the one selling the drugs (as outlined in the search warrant affidavit), Mr. Ferrer replied that he has never had that conversation with his brother. He told the Board that he is close with his brother, but never talked to him about the situation since "I already knew what he was doing...why ask the questions to what you already know?"

The Board questioned Mr. Ferrer about his institutional adjustment, as well as his rise to a leadership position in a prison gang. Mr. Ferrer was honest about his initial struggles during incarceration. As a juvenile, he said that he became gang affiliated (when first incarcerated) because he wanted protection and group acceptance. He now sees how gang activity was counterproductive and states that he has not participated in any gang activity in years. He has tried to renounce on several occasions. The Board acknowledged Mr. Ferrer's positive adjustment since his return to custody in 2010, especially in starting the M.A.C (Making a Change) program, where he acts as a mentor to younger inmates entering the prison system in need of positive guidance, encouragement, and support.

Mr. Ferrer had multiple supporters at his hearing. The Board considered oral testimony from his brother, who expressed support for his parole. The Board considered testimony in opposition to parole from Bristol County Assistant District Attorney Daniel Hourihan.

III. DECISION

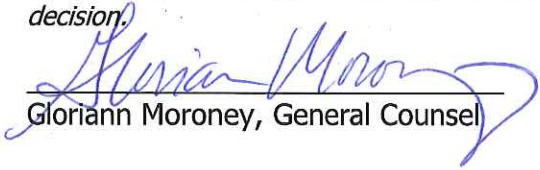
The Board is of the opinion that Mr. Ferrer has not yet demonstrated a level of rehabilitative progress that would make his re-release compatible with the welfare of society. Despite his recent positive program involvement, Mr. Ferrer's version of events that led to his return to custody is not perceived as plausible by a majority of the Board. Mr. Ferrer needs a longer period of positive adjustment and should continue to engage in relevant programming. He should also officially renounce any gang affiliation.

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 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 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 Mr. Ferrer's case, the Board also considered 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." *Diatchenko*, 471 Mass at 30. The Board also recognized the petitioner's right to be represented by counsel during his appearance before the Board. *Id.* at 20-24. The Board has also taken into consideration Mr. Ferrer's institutional behavior, as well as his participation in available work, educational, and treatment programs during the period of his incarceration. The Board considered a risk and needs assessment and whether risk reduction programs could effectively minimize Mr. Ferrer's risk of recidivism. After applying this standard to Mr. Ferrer's case, the Board is of the majority opinion that Mr. Ferrer does not merit parole at this time.

Mr. Ferrer's next appearance before the Board will take place in three years from the date of this hearing. During the interim, Mr. Ferrer should continue to engage in treatment and programming, as well as maintain a positive adjustment.

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

3/9/17
Date