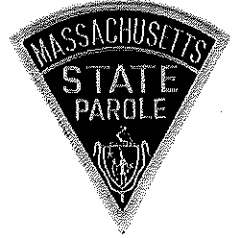




*The Commonwealth of Massachusetts
Executive Office of Public Safety and Security*



PAROLE BOARD

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Gloriann Moroney
Chair

DECISION

IN THE MATTER OF

BENJAMIN SERRANO

W88646

TYPE OF HEARING: Initial Hearing

DATE OF HEARING: February 12, 2019

DATE OF DECISION: November 14, 2019

PARTICIPATING BOARD MEMBERS: Dr. Charlene Bonner, Tonomey Coleman, Sheila Dupre, Tina Hurley, Gloriann Moroney, Colette Santa, Paul Treseler¹

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 not a suitable candidate for parole. Parole is denied with a review scheduled in five years from the date of the hearing.

I. STATEMENT OF THE CASE

On November 8, 2006, after a jury trial in Essex Superior Court, Benjamin Serrano was found guilty of the second degree murder of Aneury "Willie" Guzman. He was sentenced to life in prison with the possibility of parole. On that same date, he was convicted of unlawful possession of a firearm and sentenced to 4 - 5 years to run concurrently with his life sentence. Mr. Serrano appealed his conviction. The Appeals Court affirmed his conviction, and the Supreme Judicial Court denied further appellate review.² Mr. Serrano filed two motions for new trial, both of which were denied at the trial court level. As to the first motion for new trial, the Appeals Court affirmed the trial judge's denial, and the Supreme Judicial Court denied further

¹ Board Member Treseler was no longer a Board Member at time of vote.
² *Commonwealth v. Serrano*, (74 Mass.App.Ct. 1 (2009); 454 Mass. 1106 (2009))

appellate review.³ The Appeals Court dismissed Mr. Serrano's appeal of the denial of second motion for new trial.⁴

In October 2003, while Mr. Serrano was incarcerated from a prior offense, his girlfriend broke up with him and later began dating Mr. Guzman. Upon his release from custody in February 2004, Mr. Serrano began to harass his ex-girlfriend and Mr. Guzman, both by telephone and in person. During these encounters, he threatened to kill Mr. Guzman, his ex-girlfriend, and members of his ex-girlfriend's family. On the night of April 1, 2004, Mr. Serrano went to his ex-girlfriend's apartment with his co-defendant, Luis Penn. Informed that his ex-girlfriend was not at home, Mr. Serrano returned outside, where he observed Mr. Guzman's car. He engaged in a verbal altercation with two unarmed men seated in the car (neither of whom were Mr. Guzman), before showing them a gun and telling them to leave. Shortly thereafter, Mr. Guzman emerged from the apartment and stepped between Mr. Serrano and the two unarmed men.

Mr. Serrano summoned Mr. Penn and gave him the gun, and then proceeded to punch Mr. Guzman in the face. Mr. Penn then pointed the gun at the two unarmed men, one of whom managed to leave the scene. Mr. Guzman broke away from the physical altercation with Mr. Serrano, only to engage in an argument with Mr. Penn for less than a minute. Mr. Penn then shot Mr. Guzman in the head, killing him.

II. PAROLE HEARING ON FEBRUARY 12, 2019

Benjamin Serrano, now 41-years-old, appeared before the Parole Board on February 12, 2019, for his initial hearing. He was represented by Harvard Law Students Jason Bell and Sophie Bird. In his opening statement to the Board, Mr. Serrano expressed his remorse for creating the atmosphere that resulted in the murder of Mr. Guzman. He also provided the Board with an overview as to his rehabilitative progress over the past 15 years.

In discussing the governing offense, Mr. Serrano provided a version that is in conflict with the known facts of the case. He explained that he had been out on bail and selling drugs to support himself. On April 4, 2004, he went to his ex-girlfriend's house to collect money owed to him; he denied, however, being in the company of Mr. Penn (nicknamed "50") or that he even knew him. As he left the apartment complex, Mr. Serrano encountered Mr. Guzman and two of his associates. A conversation ensued, during which time Mr. Serrano focused his attention on Mr. Guzman. Mr. Serrano claimed that Mr. Guzman had a reputation for carrying a firearm, as well as a propensity for violence. When Mr. Guzman, who used expletives, asked why he was there, Mr. Serrano responded by smacking him in the face with his firearm. Then, both parties put their firearms aside and began to fight.

Mr. Serrano claims to have taken the clip out of the gun and placed it on a car in the direction of his ex-girlfriend's brother. During the fight, someone yelled that police were on their way and that "50" was coming. Mr. Serrano, in fear of having his bail revoked and coming in contact with "50," fled the scene. He maintains, to this day, that he does not know who murdered Mr. Guzman or the reason why. Mr. Serrano claims to have had no animosity towards Mr. Guzman for dating his ex-girlfriend. Rather, he claims that his issues stemmed

³ *Commonwealth v. Serrano*, (78 Mass.App.Ct. 1116 (2010); 459 Mass. 1106 (2011))

⁴ *Commonwealth v. Serrano*, (Docket 2016-P-684 (2016))

from two prior incidences, when Mr. Guzman had attempted to shoot him. Mr. Serrano denies ever making threats toward his ex-girlfriend, her family, or Mr. Guzman.

The Board discussed Mr. Serrano's institutional adjustment. Mr. Serrano is currently incarcerated at MCI-Shirley, where he works in the laundry facilities. Mr. Serrano has completed the following programs, including but not limited to, Alternatives to Violence (AVP) (several phases), Criminal Addictive Thinking, and General Population Maintenance. He attends Able Minds and High School Equivalency programming (HiSET) on a regular basis. Board Members expressed concern regarding the disciplinary infraction issued on July 2, 2018, regarding a letter that Mr. Serrano had written to Mr. Penn, his co-defendant. In the letter, Mr. Serrano asked Mr. Penn to sign an affidavit stating that he (Mr. Serrano) was not involved in the murder of Mr. Guzman. In return, Mr. Serrano promised that he would have the witnesses recant their testimony implicating Mr. Penn in the murder.

There were several people in attendance in support of parole. Essex County Assistant District Attorney Elin Graydon spoke in opposition to parole and submitted a written statement.

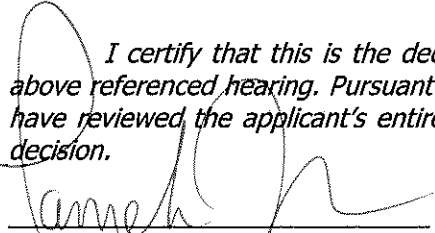
III. DECISION

The Board is of the opinion that Benjamin Serrano has not demonstrated a level of rehabilitative progress that would make his release compatible with the welfare of society. Mr. Serrano appeared to lack candor throughout the hearing and minimized his criminal culpability. Mr. Serrano should fully invest in his rehabilitation and maintain a positive deportment.

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. Serrano'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. Serrano's risk of recidivism. After applying this standard to the circumstances of Mr. Serrano's case, the Board is of the unanimous opinion that Benjamin Serrano is not rehabilitated and, therefore, does not merit parole at this time.

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


Pamela Murphy, General Counsel

11/14/2019
Date