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DECISION

IN THE MATTER OF

CHRISTOPHER PUCILLO

W58874

TYPE OF HEARING: Review Hearing

DATE OF HEARING: November 15, 2016

DATE OF DECISION: May 17, 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.¹ Parole is denied with a review scheduled in one year from the date of the hearing.

I. STATEMENT OF THE CASE

In June 1995, after a jury trial in Norfolk Superior Court, Christopher Pucillo was convicted of the first degree murder of 17 year old Ralph James Tracey as a joint venture, under the theories of deliberate premeditation and extreme atrocity and cruelty. He was sentenced to serve the mandatory term of life in prison without the possibility of parole. Mr. Pucillo was 17-years-old at the time of the murder.²

On the evening of June 3, 1993, Christopher Pucillo, Shawn Fisher, Joe Gauthier, and Jimmy Tracey purchased alcohol and proceeded to drink in a secluded area of woods in Sharon, known as Gavin's Pond. At approximately 9:00 pm (while still in the woods), Mr. Pucillo and his

¹ Mr. Pucillo received three votes to grant parole and three votes to deny parole, failing to meet the two-thirds majority required by statute to grant parole.

² There are two co-defendants in this case, Shawn Fisher and Joseph Gauthier.

co-defendants made plans to attack Mr. Tracey. After attacking him, they knocked him to the ground and beat him with their fists and feet. As the victim lay motionless on the ground, the men removed his clothes. One of Mr. Pucillo's co-defendants used a stick to penetrate the victim's rectum and strike his testicles. Mr. Fisher and Mr. Gauthier then dragged the victim to the edge of the pond and held his head under water. Mr. Pucillo checked the victim's pulse and found none. Finally, one of Mr. Pucillo's co-defendants stabbed the victim in the neck. They covered the victim's half-submerged body with a blanket and sticks and then left the scene. The following day, a local fisherman discovered the victim's body and alerted police. Mr. Pucillo and his co-defendants were subsequently arrested.

II. PAROLE HEARING ON NOVEMBER 15, 2016

On December 24, 2013, the Supreme Judicial Court issued a decision in *Diatchenko v. District Attorney for Suffolk District & Others*, 466 Mass. 655 (2013), in which the Court determined 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 such juvenile offenders must be given a parole hearing. Accordingly, Mr. Pucillo was granted a hearing before the Parole Board in November 2014. He was denied parole with a review in two years.

Mr. Pucillo, now 40-years-old, appeared before the Parole Board for a review hearing on November 15, 2016. He was represented by Attorney Gail Strassfeld. In his opening statement, Mr. Pucillo apologized to the Tracey family and took full responsibility for the brutal death of Mr. Tracey. He stated that testimony from the victim's family (at his initial hearing two years ago) resonated with him, pushing him to work harder towards understanding his actions on the night of the murder. Mr. Pucillo explained that Mr. Fisher and Mr. Gauthier (although older) had befriended him earlier that year. At the time, he was struggling with the death of his uncle, who had been his strongest family support. He told the Board that he did not have any premeditated intention of killing Mr. Tracey that night. However, he also said that he was drinking, and using drugs, during that time and was intoxicated during the murder.

Board Members questioned Mr. Pucillo about his specific involvement in the murder, as all three co-defendants have told differing versions of events over the years. Mr. Pucillo said that all four men were drinking, and he later learned that Mr. Fisher had put sleeping pills in the victim's beer. Mr. Pucillo said he walked the victim down the path toward the pond, while Mr. Fisher and Mr. Gauthier snuck up behind them. Mr. Pucillo then "kicked-out" Mr. Tracey's legs, Mr. Fisher wrapped a shirt around the victim's head, and then all three men hit and kicked the victim continuously (as he was down on the ground). At that point, Mr. Pucillo said that Mr. Fisher told them they were going to kill the victim. Mr. Fisher asked Mr. Pucillo for the knife he always carried on him, and he gave it to him. He said Mr. Fisher then ripped off the victim's clothes, dragged the victim down to the pond, and sodomized him with a stick. Mr. Pucillo said the other two men dragged the victim into the pond and pushed his head under the water. Mr. Fisher asked him to check the victim's pulse. Mr. Pucillo said that he went into the water, but found no pulse. Mr. Fisher then stabbed the victim and attempted to cover the body. Then, they left the woods.

The Board questioned Mr. Pucillo's motive for committing such a brutal and senseless murder on a boy that he barely knew. Mr. Pucillo stated that his motive was his loyalty to Mr. Fisher and said, "At that point in my life, I didn't care what happened to me – I wasn't thinking

about consequences." He said that he had been very depressed over the death of his uncle. When he read the victim's autopsy report several months after he had been charged with the murder, Mr. Pucillo said he "felt sick." He could not believe that he had caused so much pain and injury, doing nothing to stop the brutal attack. He told the Board, "I couldn't understand what I had done. All I knew was that I couldn't be a part of anything like that, ever again." The Board expressed their difficulty in evaluating Mr. Pucillo's motive, and his version of events, given that all three individuals involved in the murder have made different statements about their involvement and culpability. Mr. Pucillo reiterated that the version of events (he told the Board today) was what actually happened. He acknowledged that he murdered Mr. Tracey, stating that the beating alone would have killed him, regardless of the heinous acts he witnessed after the beating.

Mr. Pucillo has had a positive adjustment during his 23 years of incarceration, incurring only a few disciplinary reports. Mr. Pucillo has been program involved and steadily employed since his incarceration began. The Board commended him on his good behavior and his efforts in rehabilitation, which started years before he knew he could become parole eligible. Since his initial hearing two years ago, Mr. Pucillo received his Bachelor's degree from Boston University, completed the Restorative Justice Group, and began attending AA/NA meetings. He is employed as a tutor in the Culinary Arts Program. The Board, however, expressed concern about Mr. Pucillo's lack of substance abuse programming, given his admittance of a substance abuse problem before the crime and his intoxication during the murder.

Mr. Pucillo had multiple supporters at his hearing. The Board considered oral testimony from his mother, his aunt, and from Dr. Hilary Ziven (a forensic psychologist who completed an evaluation of Mr. Pucillo prior to the hearing). Dr. Ziven also submitted her written report and evaluation to the Board for consideration. The Board considered testimony in opposition to parole from the victim's sister, uncle, and from Norfolk Assistant District Attorney Marguerite Grant. The Board also received a letter in opposition to parole from the Sharon Chief of Police.

III. DECISION

The Board is of the opinion that that Mr. Pucillo has not yet demonstrated a level of rehabilitative progress that would make his release compatible with the welfare of society. Three Members of the Board voted for parole to a long term residential treatment program, after successful completion of 18 months in lower security. These Board Members found that Mr. Pucillo had a positive adjustment and is very program involved. They also found that he has strong vocational skills, as well as strong family support. They noted that he was barely 17-years-old when he committed the underlying offense and, while serving 23 years, has worked to rehabilitate himself and remain free of any substance abuse. Three Board Members voted to deny parole with a review in two years. These members encouraged Mr. Pucillo to continue programming, where he can gain further insight into empathy, and to strongly consider the CRA program, given his admission that substance abuse played a significant role in the governing offense.

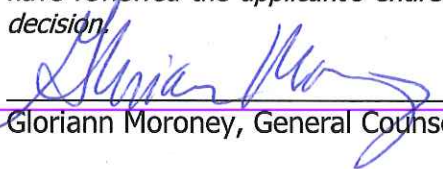
The applicable standard used by the Board to assess a candidate for parole is: "Parole Board Members shall only grant a parole permit if they are of the opinion that there is a reasonable probability that, if such offender is released, the offender will live and remain at liberty without violating the 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 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 in Mr. Pucillo's case 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 has also considered Dr. Ziven's evaluation, a risk and needs assessment, and whether risk reduction programs could effectively minimize Mr. Pucillo's risk of recidivism. After applying this standard to the circumstances of Mr. Pucillo's case, the Board did not reach a majority opinion that Mr. Pucillo merits parole at this time.

Mr. Pucillo's next appearance before the Board will take place in one year from the date of this hearing. During the interim, Mr. Pucillo should continue to work toward 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



Date