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PAROLE BOARD

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Paul M. Treseler
Chairman

DECISION

IN THE MATTER OF

CHRISTOPHER PUCILLO

W58874

TYPE OF HEARING: Review Hearing

DATE OF HEARING: November 7, 2017

DATE OF DECISION: October 1, 2018

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 by unanimous vote that the inmate is a suitable candidate for parole. Parole is granted to a long term residential program upon completion of 18 months in lower security, subject to special conditions and District Attorney clearance.

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.¹

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 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 07, 2017

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 at his initial hearing and again after his 2016 review hearing.

Mr. Pucillo, now 41-years-old, appeared before the Parole Board for a review hearing on November 07, 2017. He was represented by Attorney Gail Strassfeld. In his opening statement to the Board, Mr. Pucillo apologized to the Tracey family for "his cowardly actions which destroyed their lives and cost Jimmy his." The Board noted that Mr. Pucillo, Mr. Fisher, and Mr. Gauthier gave very different accounts of the murder and asked Mr. Pucillo whether he had anything to add regarding his involvement. Mr. Pucillo said he recognized that his co-defendants gave differing accounts of the night of the murder, but stated that his version of events has not changed from the statement he gave to police on the night he was arrested. Mr. Pucillo also said that his statements were inculpatory and that, if he was going to lie, he would not have put himself at the scene of the crime.

The Board questioned Mr. Pucillo as to whether the murder had anything to do with Mr. Tracey pursuing Mr. Fisher's girlfriend. Mr. Pucillo said that a few weeks prior to the murder, he punched Mr. Tracey because Mr. Tracey wouldn't leave Mr. Fisher's girlfriend alone. Mr. Pucillo told the Board that "When he [Mr. Fisher] asked me to help beat him up, I said yes. When it went further than that, I didn't say no." Mr. Pucillo stated that Mr. Fisher never told him it was going to be a murder. When Board Members asked whether Mr. Pucillo knew about Mr. Fisher putting sleeping pills in Mr. Tracey's drink, he stated that he only found out about the pills after the murder. Mr. Pucillo said that he knows it is difficult for the Board to understand his previous actions, and that they must wonder whether he could do it again. Mr. Pucillo is adamant that he could not. Later in the hearing, Mr. Pucillo said that one of the reasons he went along with the murder was that he was afraid of both Mr. Fisher and Mr. Gauthier.

Board Members asked Mr. Pucillo to discuss his incarceration history prior to the *Diatchenko* and *Miller*² decisions. Mr. Pucillo said that older 'lifers' advised him that although he was never getting out, he could choose to live life as close as he could to life on the outside, or

² *Miller v. Alabama*, 567 U.S. 460 (2012) (Holding mandatory sentences of life without the possibility of parole are unconstitutional for juvenile offenders.)

he could spend his life getting in trouble and sent to "the hole." Mr. Pucillo said he decided to turn his life around as much as he could; he got a job, stayed out of trouble, read, and kept himself busy. Despite the fact that he had no possibility of parole, Mr. Pucillo said that he earned his G.E.D., and later his degree from Boston University, because he wanted to prove to himself that he had worth and that he could do the work. After the *Diatchenko* decision, Mr. Pucillo said that while he continued working and studying, he was able to obtain greater access to programs.

Board Members questioned Mr. Pucillo as to what programs he has participated in, since his last hearing, to address substance abuse issues. Mr. Pucillo said that he is still attending Correctional Recovery Academy (C.R.A.), Narcotics Anonymous, and Alcoholics Anonymous. Mr. Pucillo added that he completed the 32 week Restorative Justice program and shared his story in the circle. Mr. Pucillo was moved by a victim who shared her story of being kidnapped and blindfolded and explained how it made him think of the mental anguish he had put Mr. Tracey through. Mr. Pucillo added that what he dreads most about parole hearings is re-traumatizing the family and friends of Mr. Tracey. Mr. Pucillo asked the Board that he be reserved to a lower security facility for 6 months, then to a pre-release facility for 6 months, followed by 6 months in a long term residential program. Mr. Pucillo would then like to live with his mother in Mansfield and try to find work in a kitchen or obtain plumbing or electrical work.

Five members of Mr. Pucillo's family attended the meeting, as well as testified and submitted letters in support of parole. Mr. Pucillo re-submitted a written evaluation and report prepared by forensic psychologist Dr. Hilary Ziven's which was submitted in Mr. Pucillo's November 15, 2016 hearing. Members of Mr. Tracey's family testified in opposition to parole. Norfolk Assistant District Attorney Marguerite Grant testified in opposition to parole, as well.

III. DECISION

The Board is of the opinion that Christopher Pucillo has demonstrated a level of rehabilitative progress that would make his release compatible with the welfare of society. Mr. Pucillo is considered a low risk according to all risk/needs assessments. He has had a positive adjustment and is program compliant. Mr. Pucillo, based upon recent Classification Board, is being considered for placement in lower security. The Board took into consideration his age and cognitive development. Must complete C.R.A. [prior to release].

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 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 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 also recognizes the petitioner's right to be represented by counsel during his appearance before the Board. *Id.* at 20-40. 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 is of the opinion that Christopher Pucillo merits parole at this time. Parole is reserved to a long term residential program upon completion of 18 months in lower security, subject to special conditions and District Attorney clearance.

SPECIAL CONDITIONS: Waive work for long term residential program; Must be home between 10PM and 6AM; GPS; Supervise for drugs, testing in accordance with agency policy; Supervise for alcohol abstinence, testing in accordance with agency policy; Report to assigned MA Parole Office on day of release; Must have mental health counselor for adjustment/ transition; Long term residential treatment; Alcoholics Anonymous at least three times/week.

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, Executive Director/General Counsel

10/11/18
Date