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DECISION

IN THE MATTER OF

DAVID FRANCO
W80900

TYPE OF HEARING: Initial Hearing

DATE OF HEARING: July 26, 2016

DATE OF DECISION: November 28, 2016

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, subject to special conditions and after successful adjustment to 18 months in lower security.

I. STATEMENT OF THE CASE

On October 22, 2002, in Hampden Superior Court, David Franco pled guilty to the second degree murder of Ivan Morales and was sentenced to life in prison with the possibility of parole. On that same date, Mr. Franco received a concurrent sentence of 3 to 5 years for carrying a firearm without a license.

On Sunday, June 3, 2001, 17-year-old David Franco and his brother, Christian Torres, were involved in an altercation with Ivan Morales in Holyoke. The events transpired in front of Mr. Franco and Mr. Torres' home on Chestnut Street at around 11:25 p.m. The argument between Mr. Morales and Mr. Torres escalated into a physical altercation, with the two men exchanging punches. At that point, Mr. Franco ran into his apartment, grabbed a gun, and returned to the fight. When Mr. Morales saw Mr. Franco holding a gun, he turned and began to run away. Mr. Franco fired approximately seven shots at Mr. Morales. One of the shots hit Mr.

Morales in the back of the head and another in his chest. He was taken to the hospital and died around 11:45 p.m. that evening.

Mr. Franco and Mr. Torres fled to Lancaster, Pennsylvania, where some of their family members lived. Both men were arrested by Lancaster police on the night of June 4, 2001, and were subsequently returned to Massachusetts and indicted for Mr. Morales' murder.

II. PAROLE HEARING ON JULY 26, 2016

Mr. Franco, now 32-years-old, appeared before the Parole Board on July 26, 2016, for an initial hearing and was represented by Attorney Rebecca Rose. In Mr. Franco's opening statement to the Board, he expressed remorse for the pain that he caused Mr. Morales' family by taking his life. Mr. Franco discussed his childhood and lifestyle prior to his incarceration. Although he grew up in a loving home, his family had very little money and often moved around. Mr. Franco had wanted to be "just like any other kid in the streets" and wished to own the clothes and sneakers worn by his peers. He began selling heroin when he was 14 or 15-years-old, after learning that some of the children he knew were getting new clothing this way. Mr. Franco expressed regret for his previous involvement in dealing drugs and the impact that it may have had on his community. When asked about his education, Mr. Franco said that he had dropped out of high school when he was 16-years-old. The Board asked if lead poisoning (which he had been diagnosed with at age 7) had impacted his performance in school. Mr. Franco said that he had trouble learning and was placed in special classes, but he is unsure if it was a result of lead poisoning.

Mr. Franco addressed the events that precipitated Mr. Morales' murder. He said that he and four of his friends were driving around when they passed by three women standing in front of a convenience store. One of the women was the victim's girlfriend; another was the victim's sister. One of the men in his vehicle made an inappropriate comment as they passed the women. Mr. Franco and his friends then returned to Mr. Franco's home. By that time, there were about 25-30 people in front of his house. As he exited the car, Mr. Franco saw Mr. Morales, Mr. Morales' sister, and Mr. Morales' girlfriend approaching. Mr. Morales accused Mr. Franco of making the disrespectful comment to Mr. Morales' girlfriend. According to Mr. Franco, he tried to explain that he was not the one who made the comment, but Mr. Morales' sister kept insisting that he had. A verbal altercation ensued between Mr. Franco and Mr. Morales.

During the argument between Mr. Franco and Mr. Morales, Mr. Torres (Mr. Franco's brother) came out of the home to defend Mr. Franco. Mr. Franco saw Mr. Morales hit Mr. Torres repeatedly. When asked what he knew about Mr. Morales' reputation at the time of the altercation, Mr. Franco said he heard that Mr. Morales was a gang member who had recently been released from prison, and that he did not take "disrespect" from anyone. Mr. Franco said that he feared for his life and the life of his brother, so he ran into his house and grabbed a gun that he had been holding for a friend. When he got downstairs, Mr. Franco saw Mr. Morales standing over his brother. Mr. Franco then shot Mr. Morales, and admitted that he continued shooting as Mr. Morales attempted to flee. The Board questioned Mr. Franco as to why he would continue shooting, if the victim was trying to run away. Mr. Franco responded by stating that he was not "thinking about anything" and that he "just kept shooting recklessly."

Religion and family have played significant roles in Mr. Franco's rehabilitation, in addition to the completion of over 20 programs while incarcerated. He states that he is committed to his faith and has surrounded himself with people that he knows are "going in the right direction." Mr. Franco stated that he had lost a brother to gun violence, which made him realize the pain he had caused to Mr. Morales' family. Mr. Franco's younger sister was subsequently killed due to gun violence, as well. Mr. Franco said that he has learned that the street "only destroys life, it doesn't give life." In addressing the programs that have been most significant in aiding his transformation, Mr. Franco stated that the Alternatives to Violence Program (AVP) showed him that "violence should never be an option" and that "it's always good to walk away." He believes the program has given him many different tools to use in various situations that could arise. Mr. Franco provided an example where he applied this skill set to break up a fight between two fellow inmates. Mr. Franco said that the AVP has a substance abuse component, where he works as a program facilitator. While in prison, Mr. Franco obtained his GED and earned 32 college credits. He is presently pursuing an associate degree. Mr. Franco has been employed for most of his incarceration, working in culinary, industries, and as a unit runner. He is presently employed as a photographer in the visiting room.

Numerous supporters attended the hearing on Mr. Franco's behalf. The Board considered oral testimony from Mr. Franco's sister, who testified on behalf of his family in support of parole. Dr. Frank DiCataldo, a forensic psychologist, presented his findings after assessing Mr. Franco. Hampden County Assistant District Attorney Howard Safford also testified at Mr. Franco's hearing. Although ADA Safford raised the issue of divergent accounts of a recent disciplinary report, he commended Mr. Franco's overall efforts at rehabilitation and his commitment to programming.

III. DECISION

Mr. Franco has been very involved in programming throughout his 15 year incarceration. He now appears empathetic and is insightful of his actions that resulted in the death of Mr. Morales. In addition to his positive adjustment, Mr. Franco has good family support. The Board is of the opinion that Mr. Franco has demonstrated rehabilitative progress and, consequently, has acquired the tools and skills that will assist him in his successful transition from incarceration. In forming this opinion, the Board has taken into consideration that Mr. Franco was 17 years old when he committed the governing offense. In addition, the Board has taken into consideration Mr. Franco's institutional behavior, as well as participation in available work, educational, and treatment programs during the period of his incarceration. The Board also considered a risk and needs assessment, and whether risk reduction programs could effectively minimize Mr. Franco's risk of recidivism.

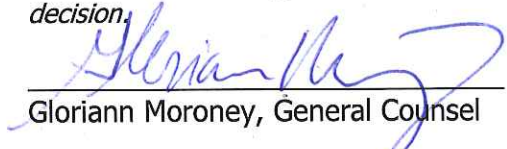
The applicable standard used by the Board to assess a candidate for parole is: "Parole Board Members shall only grant a parole permit if they are of the opinion that there is a reasonable probability that, if such offender is released, the offender will live and remain at liberty without violating the 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 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.*

After applying this appropriately high standard to the circumstances of Mr. Franco's case, the Board is of the unanimous opinion that Mr. Franco merits parole at this time, subject to special conditions and after 18 months in lower security.

SPECIAL CONDITIONS: Waive work for long term residential program; Must be at home between 10pm and 6am, or at parole officer's discretion; Electronic monitoring - GPS for 6 months; 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; Must have mental health counseling for adjustment/transition; Attend Long Term Residential Treatment.

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

11/28/16
Date