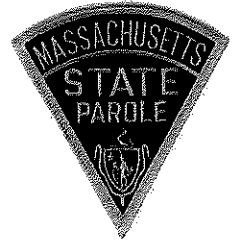




The Commonwealth of Massachusetts
Executive Office of Public Safety and Security

PAROLE BOARD

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DECISION

IN THE MATTER OF

DAVID MAGRAW

W57698

TYPE OF HEARING: **Review Hearing**

DATE OF HEARING: **March 5, 2019**

DATE OF DECISION: **December 12, 2019**

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

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, the criminal record, the 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 December 31, 1994, in Norfolk Superior Court, David Magraw was convicted by a jury of the first degree murder of his wife Nancy Magraw (age 55). He was sentenced to life in prison without the possibility of parole. On review, the Supreme Judicial Court determined that certain evidence was improperly admitted at trial, entitling Mr. Magraw to a new trial. The Supreme Judicial Court reversed the judgment, set aside the verdict, and remanded the case to Superior Court for a new trial.¹ On remand, Mr. Magraw was convicted of murder in the second degree and received a life sentence with the possibility of parole. The Massachusetts Appeals Court subsequently affirmed the judgment, and the Supreme Judicial Court denied further appellate

¹ See *Commonwealth v. Magraw*, 426 Mass. 589 (1998).

review.² Mr. Magraw filed subsequent motions related to his conviction, all of which have been denied and, subsequently, affirmed on appeal.³

At the time of the murder, Nancy and David Magraw were living apart and negotiating a divorce settlement, after approximately 15 years of marriage. Accumulated assets valued at approximately one million dollars were at issue in the settlement. Mrs. Magraw had insisted on 50 percent of those assets, a demand which had greatly angered Mr. Magraw. On July 23, 1990, Mr. and Mrs. Magraw had scheduled a meeting with their attorneys at the office of Mr. Magraw's lawyer. That same morning, Mr. Magraw visited Mrs. Magraw at her home. When Mrs. Magraw failed to attend the scheduled meeting that afternoon, her attorney called her house. He spoke to Mrs. Magraw's son who, thereafter, found her lifeless body on the floor of the living room. Mr. Magraw and the attorneys then drove to Mrs. Magraw's house, where Mr. Magraw subsequently stated, "We were so happy."

At trial, the Commonwealth presented evidence that Mrs. Magraw died of manual asphyxiation or strangulation. Death would have been caused by sustained pressure on her neck for 3 to 5 minutes. In addition, Walpole police noted no sign of a struggle or a forced entry. Numerous injuries were recorded in her autopsy, including abrasions to her nose, cuts to her lower lip, a scratch to her chin and neck, bruises on each arm, contusion on the right bicep, lacerations to knuckles on her right hand, contusions on each side of her pelvis, and ruptured blood vessels above her right knee. Considerable evidence was introduced at trial, and found on appeal to have been properly admitted, that in the months leading up to her death, Mrs. Magraw made various statements regarding her fear of Mr. Magraw.

II. PAROLE HEARING ON MARCH 5, 2019

David Magraw, now 79-years old, appeared before the Parole Board for a review hearing on March 5, 2019. He was not represented by counsel. Mr. Magraw had been denied parole at his initial hearing in 2009, and he postponed his 2014 review hearing. In his opening statement to the Board, Mr. Magraw claimed that he was "not responsible for the death of Nancy Magraw." As to his relationship with her before she died, Mr. Magraw admitted that he "could have been better" as a husband, due in part to his significant history of infidelity. He denied, however, the existence of domestic violence. Mr. Magraw told the Board that he "interprets domestic violence as violence," denying that he physically abused Mrs. Magraw during their relationship. When asked by the Board if he had psychologically abused her, Mr. Magraw stated that he "probably" had, claiming to have been "critical" of her drinking, although he could not recall any other issues. When Board Members reminded him that he had once left a rifle on their bed for his wife to find, Mr. Magraw explained that he had done so in a manipulative effort to garner her sympathy, whereby implying that he might take his own life. Although Mr. Magraw said that "everybody" said Mrs. Magraw was afraid of him, he "did not know why" she would be.

When questioned as to the governing offense, Mr. Magraw explained that he had visited Mrs. Magraw's home that morning, so that they could write a letter to their son. He claimed to have left the home without incident about an hour later to visit his rental properties. Mr. Magraw told the Board that he rejects the medical examiner's determination that Mrs. Magraw's cause of death was strangulation and suffocation, maintaining that she died of myocarditis. Mr. Magraw

² *Commonwealth v. Magraw*, 58 Mass. App. Ct. 1112 (2003); *Commonwealth v. Magraw*, 440 Mass. 1107 (2003).

³ *Commonwealth v. Magraw*, 73 Mass. App. Ct. 1102 (2008); *Commonwealth v. Magraw*, 452 Mass. 1110 (2008).

further suggested that the scratches and bruises on his wife's body could have been sustained from a fall, as opposed to a physical assault. When Board Members expressed their belief that Mrs. Magraw was murdered, rather than died from natural causes, Mr. Magraw responded that "If Nancy was killed, I would be the only one who would have done it or could have done it." Nonetheless, Mr. Magraw maintained that he had no part in her death.

When discussing his institutional adjustment, Board Members noted that Mr. Magraw has received only one disciplinary report (in 2010). He was employed in the library and participated in several groups and programs, including Alternatives to Violence, the Lifers Group, AmVets in Prison, and Restorative Justice. Mr. Magraw stated, however, that he did not feel Restorative Justice was meant for him since he did not commit murder. In addition, he told the Board that he does not "believe [he] need[s] to work on [himself]." As to his parole plan, Mr. Magraw prefers to live with his oldest son, but would rely upon all of his sons for support. When Board Members asked if he foresaw any issues related to reentry, Mr. Magraw stated that he had no concerns about adjusting to life outside of prison.

Mrs. Magraw's brother, sister-in-law, and niece testified in opposition to parole. Former Norfolk County First Assistant District Attorney John Kivlan also testified in opposition to parole. Norfolk County Assistant District Attorney Marguerite Grant testified in opposition to parole and submitted a letter, as well. The Board considered additional letters in support of, and in opposition to, parole.

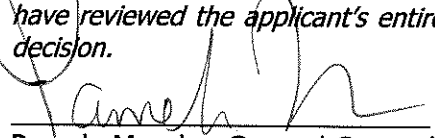
III. DECISION

David Magraw has not demonstrated a level of rehabilitative progress that would make his release compatible with the welfare of society. Mr. Magraw has yet to fully accept responsibility for Nancy Magraw's murder. He shows no remorse, is not truthful as to the circumstances of the crime, and shows no insight into his violent behavior and causative factors.

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

Mr. Magraw'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. Magraw 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

12/12/2019
Date