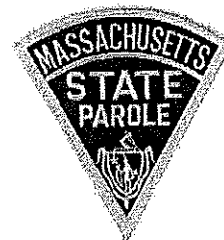


The Commonwealth of Massachusetts  
Executive Office of Public Safety and Security



PAROLE BOARD

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**DECISION**

**IN THE MATTER OF**

**DAVID RIVERA**

**W88627**

**TYPE OF HEARING:** Initial Hearing

**DATE OF HEARING:** January 7, 2020

**DATE OF DECISION:** August 10, 2020

**PARTICIPATING BOARD MEMBERS:** Gloriann Moroney, Dr. Charlene Bonner, Tonomey Coleman, Sheila Dupre, Tina Hurley, Karen McCarthy, 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, 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.<sup>1</sup>

**I. STATEMENT OF THE CASE**

On November 2, 2006, in Hampden Superior Court, David Rivera pleaded guilty to the second-degree murder of Robert F. Smith, Jr., and was sentenced to life in prison with the possibility of parole. On that same date, Mr. Rivera pleaded guilty to carrying a dangerous weapon and possession of a firearm and received sentences of 4 to 5 years and 2 years to run concurrent. Prior to Mr. Rivera's conviction of second-degree murder in Massachusetts, he pleaded guilty to one count of second-degree attempted murder in New York. He was given a 9 year sentence and 5 year post-release parole supervision in New York. Also, at the time Mr. Rivera committed this offense, he was on the run from a parole violation in New York for approximately one year.

<sup>1</sup> One Board Member voted to deny parole with a review in four years.

On January 12, 2005, David Rivera and Robert Smith were witnessed entering a local bar together. When Mr. Rivera asked him to find drugs for him to purchase, Mr. Smith agreed and met up with a dealer nearby. Mr. Smith returned with crack-cocaine, and Mr. Rivera gave him the money. Shortly after the exchange, Mr. Rivera went to the bathroom to use the drugs, but learned that the drugs were fake. Mr. Rivera exited the bar abruptly, confronted Mr. Smith, and an altercation ensued. Mr. Rivera was armed with a .22 caliber handgun, which he used to shoot Mr. Smith, when he attempted to defend himself. Mr. Rivera fled the scene after shots were fired. The weapon was recovered approximately a block away from the murder scene. Witness testimony confirmed that the handgun belonged to Mr. Rivera.

Mr. Smith was transported to a medical center and, shortly thereafter, succumbed to his gunshot wound. Mr. Rivera was arrested by New Jersey police on unrelated charges on January 29, 2005, and was subsequently extradited to Springfield, Massachusetts, where he provided a statement to police confessing to the murder of Robert Smith.

## **II. PAROLE HEARING ON JANUARY 7, 2020**

David Rivera, now 42-years old, appeared before the Parole Board for an initial hearing on January 7, 2020. He was not represented by counsel. Mr. Rivera provided an opening statement in which he apologized to Mr. Smith's family, as well as his own. He also expressed his remorse for the murder and took responsibility for his actions. Additionally, Mr. Rivera acknowledged the residual effect his murder had on the community, stating that there is no need to fear he will reoffend. In describing the governing offense, Mr. Rivera explained that the murder of Mr. Smith was "just a drug deal gone wrong," and that he did not have any intent to kill or harm him.

When Board Members questioned him about his childhood and home life prior to the governing offense, Mr. Rivera explained that he was an only child to a single mother, who struggled with mental health problems. He grew up in an impoverished neighborhood in New York, but later moved to Springfield, Massachusetts in his teens. Mr. Rivera and his mother often had to rely on soup kitchens and charitable institutions in order to survive. At the age of five, Mr. Rivera was sexually abused by an older cousin, causing him and his mother to be estranged from certain family members. At age 8, Mr. Rivera was briefly placed in foster care after his mother was admitted to a psychiatric hospital. While in foster care, Mr. Rivera indicated that he was a victim of sexual abuse and assault. In school, Mr. Rivera was diagnosed with ADHD and dyslexia and was often bullied by his classmates. As such, Mr. Rivera dropped out of school in the 9<sup>th</sup> grade. Upon questioning, Mr. Rivera described himself as "self-centered" and "a loner" at that time of his life.

The Board raised concerns regarding Mr. Rivera's drug usage. Mr. Rivera stated that drugs became a problem as he got older and, by the time he reached his early twenties, he used cocaine and heroin on a regular basis. Mr. Rivera admitted that his drug addiction led to homelessness, and that he committed crimes, such as prostitution, theft, and narcotics sales, to support his habit. In addition, Mr. Rivera's substance abuse problem remained prevalent while incarcerated, as he admitted to using Suboxone and synthetic marijuana ("K2") "almost a year ago." Prior to that, Mr. Rivera indicated that he was clean for about 10 years. Mr. Rivera stated that a "drug filled system" of incarceration is the reason for his relapse. Mr. Rivera told the Board that addiction is something that he still struggles with.

When Board Members questioned him as to the underlying events of the murder, Mr. Rivera stated that the altercation had gone "from bad to ugly." He told the Board that he presented his gun to Mr. Smith, and that the two engaged in a struggle when Mr. Smith tried to take the gun from him. Mr. Rivera stated that he and Mr. Smith were holding on to one another and, as he (Mr. Rivera) attempted to take it, "the gun went off," shooting Mr. Smith in the chest. The Board, however, noted that these statements were inconsistent with witness testimony. A percipient witness had indicated that there was no such struggle between Mr. Rivera and Mr. Smith, and that Mr. Rivera shot the victim when he was approximately a foot away. When asked about this discrepancy, Mr. Rivera reaffirmed his previous statement regarding a struggle.

The Board discussed Mr. Rivera's problematic institutional adjustment, noting that, throughout 15 years of incarceration, he has incurred 46 disciplinary reports. The most recent report was written on November 14, 2019, for possession of contraband. Mr. Rivera stated that most of his disciplinary reports have been due to substance abuse, an extensive enemy list, harassment by other inmates, and staff indifferences. He told the Board that it was only recently, in "the last couple of years," that he has tried to change his behavior. Additionally, Mr. Rivera has gang affiliations that he has yet to fully renounce and has completed only minimal rehabilitative programming. He has not received his GED, nor has he completed employment training. Ultimately, Mr. Rivera acknowledged that his attitude and behavior need to change, so that he can embark on a positive path to rehabilitation. Mr. Rivera also reported that he does not have much outside support from family or friends.

The Board considered the oral testimony and letter of Hampden County Assistant District Attorney Howard Safford in opposition to parole.

### **III. DECISION**

The Board is of the opinion that Mr. Rivera has not yet demonstrated a level of rehabilitative progress that would make his release compatible with the welfare of society. Mr. Rivera shot and killed Robert Smith in January 2005. At the time of the offense, he had been on the run from New York authorities for almost a year and was on parole. Mr. Rivera's adjustment has been problematic. He has engaged in minimal programming to address his causative factors. Mr. Rivera is encouraged to renounce his STG [security threat group] affiliation and participate in recommended programming. In addition, he should refrain from incurring any additional disciplinary infractions. It should be noted that he was transferred to New York Department of Correction to face [an] outstanding attempted murder charge from that state. He pleaded guilty and received a split sentence of 9 years to serve and 5 years of probation. The sentence was ordered to run concurrent [with the] Massachusetts sentence.

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

Mr. Rivera'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. Rivera to continue working 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.*

  
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Pamela Murphy, General Counsel

8/10/2020  
Date