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DECISION

IN THE MATTER OF

DONALD PERRY

W39865

TYPE OF HEARING: **Revocation Review Hearing**

DATE OF HEARING: **March 12, 2013**

DATE OF DECISION: **September 26, 2013**

PARTICIPATING BOARD MEMBERS: Cesar Archilla, Dr. Charlene Bonner, Shelia Dupre, Ina Howard-Hogan, Lucy Soto-Abbe, Josh Wall

DECISION OF THE BOARD: After careful consideration of all relevant facts, including the nature of the underlying 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 writing, we conclude by unanimous vote that the inmate is a suitable candidate for re-parole after serving one additional year (from the date of the hearing) in the custody of the Department of Correction. The remaining period of incarceration will allow a transition through lower security and must be completed without disciplinary incident and in compliance with the Department of Correction's expectations for programs, activities, and employment.

I. STATEMENT OF THE CASE

In February and June of 1983, Donald Perry committed a series of armed robberies in the Springfield area. After pleading guilty to these crimes, Perry was sentenced to serve life in prison. Following his most recent parole in 2004, Perry was returned to custody as a parole violator in 2012 following a new arrest and charges of breaking and entering and receipt of stolen property, as well as his failure to pay supervision fees.¹ He appeared before the Massachusetts Parole Board on March 12, 2013, for a revocation review hearing.

¹ Perry was originally indicted as a habitual criminal for unarmed burglary, larceny over \$250, and two counts of receipt of stolen property. As described more fully below, he was only tried for receipt of stolen property, and was acquitted of both counts.

On February 7, 1983, Perry, armed with a knife, robbed two separate Dairy Mart convenience stores in Springfield. With a scarf partially covering his face, Perry brandished the knife at the clerks in both stores and stole money. The next day, he robbed a small market in Chicopee, again brandishing a large knife in order to obtain money. He was arrested on February 8, 1983, and remained in custody awaiting trial.

On June 1, 1983, Perry complained of medical problems and was transported to the Baystate Medical Center. When guards removed his handcuffs so that he could receive medical treatment, Perry ran from them and escaped from custody.

The next day, June 2, he robbed a Springfield convenience store armed with a meat cleaver. During the robbery, he used the cleaver to cut one of the store clerks who had tried to thwart him. Two days later, on June 4, he followed a gas station employee into the attendant's booth, brandished a butcher knife, stole money, and fled. Two days after that, on June 6, he again used a knife to rob a Dairy Mart in West Springfield. On June 7, he robbed a clothing store, threatening a store employee with a knife. That same day, he used a knife to rob a Cumberland Farms in Springfield, stealing cash from the register. Finally, on June 10, he robbed the owner of a small Springfield market, stealing a bag of money after the two had engaged in a physical struggle.

Shortly thereafter, Perry was arrested and indicted on 21 offenses, including armed robbery, armed robbery while masked, assault, assault by means of a dangerous weapon, assault and battery by means of a dangerous weapon, unarmed robbery, receipt of stolen property, burglary, attempted burglary, and escape. On July 29, 1983, in Hampden Superior Court, he pleaded guilty to these crimes and was sentenced to serve a total of 25-40 years in prison.

On November 7, 1983, Perry pleaded guilty to the remaining armed robbery indictment stemming from the Chicopee robbery, and was sentenced to serve life in prison. Originally, the sentence was ordered to run consecutive to the 25-40 year term he was already serving. However, the Appellate Division of the Hampden Superior Court amended the sentences to run concurrently with each other.

Prior to the 1983 crimes for which Perry is currently serving a life sentence, his criminal record includes convictions and incarcerations for larceny over \$250 and breaking and entering in the nighttime with the intent to commit a felony. In addition, Perry was adjudicated delinquent as a juvenile for breaking and entering and use of a motor vehicle without authority.

II. PAROLE HISTORY

Donald Perry first appeared before the Parole Board in 1998 for his initial eligibility hearing. The Board denied parole, noting Perry's lengthy criminal history and numerous disciplinary reports. Two years later, the Board voted to parole Perry to a long-term residential program. He was released from custody on January 8, 2001. He remained in the community until July 7, 2003, when he was returned to custody for making threats against his live-in girlfriend, which resulted in a restraining order being issued against him, gambling, and maintaining contact with individuals known to have a criminal record. His parole was revoked. He was re-paroled on January 16, 2004, and was, overall, maintaining a successful parole.

On August 3, 2011, however, Perry was arrested for breaking and entering in the nighttime with the intent to commit a felony. That day, in the early morning hours, two private residences were broken into and an iPad was stolen in each incident, along with a purse and a wallet. One of the iPads contained tracking software, and the state police were able to track it

to a car that Perry was driving. After following Perry's car, a state trooper pulled the car over. Perry was alone in the car with the stolen iPads, the purse, and the wallet. Accordingly, the state troopers placed Perry under arrest.

A grand jury indicted Perry as a habitual criminal for unarmed burglary, larceny over \$250, and two counts of receipt of stolen property. During the course of the ongoing investigation, however, forensic evidence came to light causing the District Attorney to pursue only the indictment for receiving stolen property. The District Attorney entered *nolle prosequi* on the indictments charging unarmed burglary and larceny over \$250 on July 17, 2012.

The matter went to trial on July 19, 2012, and Perry testified in his defense. He claimed that he was driving out of his driveway on August 3, 2011, when he came across a hitchhiker. He described the individual as a man in his 30s or 40s wearing a blue T-shirt and black pants. The man was carrying a backpack and a garbage bag. Perry stated that he had seen this man before in Northampton and at the Amherst soup kitchen, but did not know his name. While they were driving, Perry noticed a police presence on the road and stated that the man became agitated and eventually jumped out of Perry's car, leaving behind the garbage bag. Shortly thereafter, he was pulled over and arrested. He was held on bail awaiting trial.

After being found not guilty in July 2012, Perry's parole was revoked and he resumed serving his life sentence.

III. PAROLE HEARING ON MARCH 12, 2013

Donald Perry had a successful parole for 7 ½ years before his arrest in August 2011. At the hearing, Board Members were primarily concerned with three issues: Perry's activities as a parolee; his connection to the 2011 housebreaks; and how he would conduct himself if re-paroled.

Perry described his life on parole in western Massachusetts. He lived with his girlfriend, a social worker, in a single family home in Montague. She worked full-time for a non-profit social services agency based in Springfield, but Perry worked in Amherst and Northampton. He promoted community food programs that served needy residents. He ran a soup kitchen in Amherst and an outreach project located in a Northampton church. He passed all drug tests, and was consistently cooperative with his parole officer and compliant with parole conditions. He did frequently have trouble paying his supervision fee.

In describing the parole violation, Perry told the same story that he gave to the jury that acquitted him. He maintains that he picked up a hitchhiker that morning; the unknown person was carrying a bag that must have contained the iPad; Perry got off the highway and stopped at an intersection; the unknown person jumped out of the car and fled on foot, leaving behind the iPad and other stolen items, immediately after which the trooper stopped his car. After considering all of the evidence, especially the GPS information and the trooper's observations which do not include seeing another person in the car or leaving the car, Board Members concluded that Perry is withholding some information and making misrepresentations about the events. No Board Member believed the story, including the claim about a hitchhiker. Other factors, including allegations of mishandled evidence, must have contributed to the acquittal.

Perry has an extraordinary level of community support. Approximately 142,000 people signed a petition of support and 30 people attended the hearing in support. Four people spoke in support of parole, including Perry's girlfriend, a minister, a church member who described Perry's work in running the soup kitchen at the church, and a social services program supervisor who worked with Perry. They all described Perry as a responsible member of the community

who made daily contributions through his work with food pantries and soup kitchens. Hampden Assistant District Attorney Dianne Dillon spoke in opposition to parole.

IV. DECISION

This case presents an unusual and conflicting set of circumstances: Donald Perry was a successful parolee until he was connected to criminal activity by clear and convincing evidence that resulted in criminal charges. He was found not guilty by a jury, and Perry continues to deny that he committed a crime. Based on the facts and circumstances of the case, including the GPS evidence, Perry's possession of the stolen items, and the observations of the state trooper made over a significant period of time, Board Members unanimously concluded that Perry was knowingly involved in criminal activity and that he has consistently hidden the truth from the police, the jury, and the Parole Board. Given the seriousness of the transgression and the misrepresentations, denial of parole would typically result from these events. What separates this case from other similar violations is the community response. Presumably because of his good conduct and good works, Perry has broad and fervent support in the community, and his supporters have expressed their desire to have him return to the community.

Community support, when it exists, is always an important factor supporting a release on parole. Of course, the Parole Board cannot base a release decision solely on community support and must look to other relevant factors. In this case, the Board looked closely at Donald Perry's performance on parole. Perry was a successful parolee for 7 ½ years. Most notably, he has worked for years in social services providing food and other assistance to needy people, primarily in Northampton and Amherst. Recently, he maintained a stable residence and relationship with his girlfriend. Since his release in 2004, Perry has passed all drug and alcohol tests, communicated regularly with his parole officer, and cooperated with all parole requests. This is a very strong performance on parole indicating substantial rehabilitation.

After considering Perry's long record of success and law-abiding behavior in combination with his extraordinary community support, the Board concluded that Perry's period of re-incarceration is sufficient accountability for his parole violation and subsequent misrepresentations about his conduct. The Board also concluded that it could set conditions of parole that would greatly reduce any risk that Perry would repeat the improper conduct that resulted in his parole violation. Most significantly, Perry will be placed on GPS monitoring for at least three years.

The standard we apply in assessing candidates for parole is set out in 120 C.M.R. 300.04, which provides that, "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." Applying that appropriately high standard here, the Board is of the opinion that Donald Perry is suitable for re-parole after a period of transition at the Department of Correction.

SPECIAL CONDITIONS: Re-parole to home after one additional year at the Department of Correction; he must wear a Global Positioning Device upon release for three years, and thereafter at the discretion of his parole officer; no drug use; no alcohol use; substance abuse evaluation with requirement to follow recommended treatment (which may include AA or NA); no gambling and cannot be present at any place where gambling occurs; counseling for adjustment issues; no contact with the victims of his crimes, including the victims of the August 2011 housebreaks.

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.


Janis DiLoreto Noble, General Counsel

9/26/13
Date