



The Commonwealth of Massachusetts
Executive Office of Public Safety and Security



PAROLE BOARD

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DECISION

IN THE MATTER OF

DONNIE BOUPHAVONGSA
W65663

TYPE OF HEARING: Initial Hearing
DATE OF HEARING: August 20, 2015
DATE OF DECISION: December 10, 2015

PARTICIPATING BOARD MEMBERS: Charlene Bonner, Tonomey Coleman, Sheila Dupre, Ina Howard-Hogan, Tina Hurley, Lucy Soto-Abbe.

DECISION OF THE BOARD: After careful consideration of all relevant facts, including the nature of the underlying offense, criminal record, institutional record, the age of the inmate at the time of the offense, 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 in three years from the date of the hearing.¹

I. STATEMENT OF THE CASE

On January 13, 1998, after a jury trial in Middlesex Superior Court, Donnie Bouphavongsa was found guilty of first degree murder in the beating death of Joshua Molina. He was sentenced to life without the possibility of parole. On that same day, Bouphavongsa was also convicted of assault and battery by means of a dangerous weapon and was sentenced to 9 to 10 years concurrent with the life sentence.² Bouphavongsa was 16-years-old at the time of the murder.

¹ Five Board Members voted to deny parole with a review in three years. One Board Member voted to deny parole with a review in two years.

² Bouphavongsa, joined by co-defendant Vlengsaymay Chaleumphong, filed an appeal which resulted in their first degree murder convictions being affirmed. *Commonwealth v. Vlengsaymay Chaleumphong*, 434 Mass. 70 (2001).

On December 24, 2013, the Massachusetts Supreme Judicial Court (SJC) issued a decision in *Diatchenko v. District Attorney for the Suffolk District & Others*, 466 Mass. 655 (2013), in which the Court determined that the statutory provisions mandating life without the possibility of parole were invalid as applied to those, like Donnie Bouphavongsa, who were juveniles when they committed first degree murder. The SJC ordered that affected inmates receive a parole hearing after serving 15 years of their sentence. Accordingly, Bouphavongsa (who has served 18 years) became eligible for parole and is now before the Board for an initial hearing.

Donnie Bouphavongsa was a member of a prominent gang and, acting with other gang members, beat Joshua Molina (age 17) to death on November 20, 1997 on Bridge Street in Lowell. Around 9:30 p.m. that night, Bouphavongsa and fellow gang members were traveling in two cars looking for rival gang members. Co-defendant Viengsaymay Chaleumphong was driving one of the cars and pulled alongside three Hispanic youths walking together on the sidewalk: Joshua Molina, Johnny Lozada, and Juan Santana. Bouphavongsa was riding in the other car. Someone in Chaleumphong's car summoned Mr. Molina. Mr. Molina walked over, spoke briefly with one of the passengers, and then walked away. The two cars drove away and pulled over in an alleyway. The gang members decided to attack Mr. Molina and his friends because Bouphavongsa and Mr. Molina had experienced "problems" two years earlier. The gang members then got out of their cars and, despite the lack of provocation, decided to attack the three Hispanic youths (who were not members of a rival gang). Bouphavongsa and his fellow gang members hid in the alley and attacked the three unsuspecting youths when they walked by. Johnny Lozada was able to run to safety, but Joshua Molina and Juan Santana were viciously beaten by the gang members with a shovel, a claw hammer, a ball peen hammer, an automobile antitheft device, pipes, and boards. Co-defendant Phaivanh Inthabane used the shovel and struck the first blow to Joshua Molina. Mr. Molina went down after the first blow, but Inthabane continued to strike him in the face, head, and body with the shovel. Mr. Molina was curled in a fetal position and lay motionless on the ground. Bouphavongsa and Chaleumphong then used hammers to beat Mr. Molina, while more gang members pummeled Mr. Molina with, fists, boards, and "The Club" (an automobile antitheft device). Mr. Santana was also beaten unconscious by the gang members, but he survived.

Mr. Molina died three days later from his head wounds, any one of which was life threatening by itself. Each wound was consistent with the blow of a hammer wielding significant force. The official cause of death for Joshua Molina was multiple blunt force trauma to the head.

II. PAROLE HEARING ON AUGUST 20, 2015

Bouphavongsa, now 34-years-old, appeared for his initial hearing and was represented by Attorney Michael Bourbeau. Bouphavongsa began the hearing with an apology to the family of his victims. He described the precipitants to his violent, assaultive behavior as primarily being a 16-year-old misguided youth of immigrant Laotian parents. At a very young age, Bouphavongsa joined a gang like many of his Laotian peers. He described the culture of that time period, as well as the violence that persisted between rival gangs for senseless territorial boundaries and the need to assert dominance among the community.

Bouphavongsa discussed the violent mindset that he and his peers engendered. He described a routine of going on "hunting expeditions" with fellow gang members that involved seeking out rival gang members to brutally beat. He also admitted that victims were not always affiliated with rival gangs, but may have just happened to be at the wrong place at the wrong time. During this period of Bouphavongsa's life, he was entrenched in a gang lifestyle, where he stated that he felt "accepted." He had stopped attending school due to being bullied because of racial tensions, which drew him closer to his Laotian friends. Bouphavongsa started drinking and smoking marijuana, and he engaged in criminal activity. Simultaneously, his home life became increasingly dysfunctional. His parents lost their jobs and had difficulties assimilating and dealing with the trauma they experienced as refugees who fled Laos after a violent war. Bouphavongsa has since learned about the atrocities his family endured as a result of the war, and he made references to how their traumatic experiences affected his life.

Bouphavongsa described the precipitants to the brutal beating death of Joshua Molina on November 20, 1997. He described carrying out acts of violence to property, cars, and homes of other individuals whom they wanted to retaliate against. Although they were drinking "hard liquor" and smoking marijuana, Bouphavongsa acknowledged that he was aware of what he was doing and had planned and participated in more violence as the night continued. The Parole Board questioned Bouphavongsa extensively as to why he targeted Joshua Molina. He admitted to harboring resentment from a fight with Mr. Molina that occurred over two years earlier, but he also admitted that Mr. Molina had made amends and the matter was settled. However, Bouphavongsa still harbored significant rage, arming himself with a ball peen hammer and lying in wait to ambush and severely beat Mr. Molina. While his co-defendants were also armed and participated in the beating of both victims, Bouphavongsa reluctantly admitted that his blows alone, according to the autopsy report, could very well have been enough to end Joshua Molina's life. He also acknowledged that he left Mr. Molina lying unconscious on the sidewalk when he fled.

One Board Member questioned Bouphavongsa extensively about his motivation to beat Molina to death. Bouphavongsa stated that this incident was not specifically motivated by gang rivals, but rather racial tensions between Asian youth and Hispanic youth. Bouphavongsa insisted that growing up in the projects, there were racial divides that were a part of the culture at that time. He was also asked why it was necessary to inflict such "extreme atrocity and cruelty." Bouphavongsa responded that "we went out there to cause harm to somebody. I don't know what it was, we just grabbed a weapon to cause harm." Bouphavongsa then began to cry and said that "a life has been lost and I was a part of it." Bouphavongsa stated that throughout his incarceration, he has examined what he did and his lifestyle at that time, and how his actions have impacted so many other families.

The Parole Board focused at length on Bouphavongsa's institutional rehabilitation. Department of Correction records indicate that Bouphavongsa formally renounced his gang involvement in 2004, but his disassociation was terminated in March 2014 when he admitted (during booking at MCI-Norfolk) that he was a member of a gang. However, aside from the 2014 self-disclosure, there is no evidence that supports that Bouphavongsa has had any affiliation with a gang since his incarceration. Most Parole Board Members accepted Bouphavongsa's contention at the hearing that he is not gang affiliated, which is based on his conduct and records that show no gang related incidents since his incarceration. Bouphavongsa has had an overall positive adjustment to incarceration, with only two non-

violent disciplinary reports throughout. He has not had a disciplinary report since 2002, and he has received positive housing and employment evaluations. Bouphavongsa stated that Restorative Justice and his religious and spiritual practices have been most influential towards his positive growth. He also stated that achieving his GED, and completing the Correctional Recovery Academy, was influential in his rehabilitation.

The Parole Board also focused on Bouphavongsa's history of mental illness. The Parole Board cited the evaluation by Dr. Frank DiCataldo, and highlighted pertinent points of concern with Bouphavongsa's need for repeat hospitalizations secondary to acute psychotic episodes and self-injurious behaviors. Bouphavongsa was hospitalized at Bridgewater State Hospital three times, most recently on December 5, 2013, after discontinuing his medication for the treatment of Schizoaffective Disorder and found to be "catatonic" and unresponsive in his cell. A progress note on December 20, 2013 stated that "his insight into his mental illness appears minimal, although he is able to verbalize benefits of his medication. His insight into precipitants of his decompensation appears limited although slightly improved from previous interviews." Past hospitalizations have been precipitated by self-inflicted cuts to his wrist that caused him to lose blood pressure and go in and out of consciousness. He stated that he cut himself to "get the bad blood out of his body." He has intermittently refused meals and medications, requiring intramuscular (IM) medication to compensate for disorganization and delusional thoughts, as well as assaultive behavior toward staff when they tried to intervene.

Given such a history, Bouphavongsa was questioned extensively about his understanding of his mental illness and his need for medication. Bouphavongsa has been accepting IM medications, which he was prescribed primarily due to his history of non-compliance with oral medications. Bouphavongsa insists that he now understands he has a mental illness and accepts that, in the absence of medication and treatment compliance, he will become very sick. He also stated that his family is aware of his mental illness. In discussing his proposed parole plan, Bouphavongsa stated that he has been accepted for Department of Mental Health Services and, following a step down process through the DOC, he will await placement at the Elliot Mobile Respite Program that will assist him with appropriate level of care services. He would ultimately like to live back at home with his family. Dr. DiCataldo's evaluation also discussed Bouphavongsa's age, mind-set, and living environment as factors contributing to the murder of Mr. Molina.

Speaking in support of parole was Bouphavongsa's father, Xay Bouphavongsa, who began by offering an apology to the victim's family. His father discussed his son's history and why he went astray. Mr. Bouphavongsa stated that he would like to have his son become a monk and learn about religion. The Parole Board questioned Mr. Bouphavongsa as to his understanding of his son's mental illness. Mr. Bouphavongsa acknowledged that he understood his son has a mental illness, but when asked about his son's non-compliance with medications, Mr. Bouphavongsa stated, "I believe it's not that serious."

The victim's sister spoke in opposition to Bouphavongsa's parole. She relayed the lasting and devastating effects that the murder of her brother has had on their family. She also expressed concern for her family's personal safety, should he be released to their community. Also speaking in opposition to Bouphavongsa's parole was Middlesex County Assistant District Attorney Kerry Kilroyne. ADA Kilroyne emphasized the brutal nature of the crime and described the 9 wounds to the head inflicted by a hammer that both Bouphavongsa and his co-defendant

used on the victim. In addition, ADA Kilroyne expressed concerns for the pre-meditated nature of the offense, as 10 gang members were lying in wait, with Bouphavongsa as the lookout. Finally, ADA Kilroyne expressed concern that Bouphavongsa was motivated by an incident that pre-dated the murder by two years, and questioned whether he was still affiliated with his gang.

III. DECISION

At the age of 16, Donnie Bouphavongsa committed the violent murder of Joshua Molina. Bouphavongsa and his fellow gang members lay in wait and swarmed two individuals, killing one and seriously injuring the other. Bouphavongsa used a ball peen hammer as his weapon and repeatedly struck Mr. Molina in the head which contributed to, if not caused, his death. He was sentenced to life in prison without the possibility of parole. Pursuant to the SJC ruling in *Diatchenko*, Bouphavongsa is now eligible for parole.

Bouphavongsa has been incarcerated for 18 years. He has engaged in minimal programming, which can be attributed to his initial sentence structure, his lack of motivation until learning he was eligible for parole, and his repeated mental health hospitalizations that limited his ability to engage in more specific programs. Bouphavongsa's most recent hospitalization was in 2013, after voluntarily discontinuing his medication which resulted in decompensation of his mental state. This has been a pattern demonstrated by Bouphavongsa during the course of his incarceration. He had two prior psychiatric hospitalizations, one of which was followed by an acute psychotic episode that led him to cut his wrist "in order to get the bad blood out." Dr. Frank DiCataldo, Forensic Examiner, provided a comprehensive report for the purposes of his parole hearing. The Parole Board found Dr. DiCataldo's report to be informative and helpful. After considering Dr. DiCataldo's assessment, and as evidenced in Bouphavongsa's institutional history, the Parole Board has significant concerns regarding Bouphavongsa's pattern of voluntarily discontinuing his medication. When this occurs, Bouphavongsa experiences rapid decompensation with psychotic thought processes, self-injurious behavior, and violent behavior toward corrections officers who attempt to intervene. This pattern of non-compliance of medication and treatment has been recent and has required his admission to Bridgewater State Hospital for stabilization.

Such hospitalization, which indicates that he presented a danger to himself or to others, raises considerable concern for public safety. While the Parole Board recognizes that Bouphavongsa is now stating that he understands the seriousness of his mental illness and the need for medication compliance, his cooperation with DMH services in the community requires a voluntary commitment. In addition, it appears that Bouphavongsa's primary supports may benefit from education regarding the symptoms of his mental illness and his need to remain compliant with his treatment plan. 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, it is the unanimous opinion of the Board that Donnie Bouphavongsa does not merit parole at this time because he is not rehabilitated. The review will be in three years from the date of the hearing, during which time Bouphavongsa should continue to learn about his mental illness, demonstrate a continued commitment to treatment, and engage in additional programming that will support his 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.


Michael J. Callahan, Executive Director

December 10, 2015
Date