



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:** Review Hearing

**DATE OF HEARING:** August 7, 2018

**DATE OF DECISION:** April 8, 2019

**PARTICIPATING BOARD MEMBERS:** Paul M. Treseler, Dr. Charlene Bonner, Tonomey Coleman, Sheila Dupre, Tina Hurley, Colette Santa, 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 two years from the date of the hearing.

**I. STATEMENT OF THE CASE**

On January 13, 1998, after a jury trial in Middlesex Superior Court, Donnie Boupavongsa 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, Mr. Boupavongsa was also convicted of assault and battery by means of a dangerous weapon and sentenced to 9 to 10 years concurrent with the life sentence.<sup>1</sup> Mr. Boupavongsa was 16-years-old at the time of the murder.

<sup>1</sup> Mr. Boupavongsa, joined by co-defendant Viengsaymay Chaleumphong, filed an appeal which resulted in their first degree murder convictions being affirmed. *Commonwealth v. Viengsaymay Chaleumphong*, 434 Mass. 70 (2001).

On November 20, 1997, 16-year-old Donnie Bouphavongsa and a group of his friends beat to death 17-year-old Joshua Molina on Bridge Street in Lowell. Around 9:30 p.m. that night, Mr. 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; Mr. Molina and 2 of his friends. Mr. Bouphavongsa was riding in the other car. Someone in Mr. 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 Mr. 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, attacked the three Hispanic youths (who were not members of a rival gang) as they walked by. One of the youths was able to run to safety, but Mr. Molina and his other friend were viciously beaten by the gang members. Co-defendant Phaivanh Inthabane used the shovel and struck the first blow to Mr. Molina. Although Mr. Molina went down after the first blow, Mr. 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. Mr. Bouphavongsa and Mr. 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. Molina's companion 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. After investigating and interviewing witnesses, Mr. Bouphavongsa was arrested for the murder of Mr. Molina.

## **II. PAROLE HEARING ON August 7, 2018**

On December 24, 2013, the Massachusetts Supreme Judicial Court 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 are invalid as applied to juveniles convicted of first-degree murder. Further, the Court decided that such juvenile offenders must be given a parole hearing. Accordingly, Mr. Bouphavongsa was granted a hearing before the Parole Board in August 2015. He was denied parole at this initial hearing.

On August 7, 2018, Donnie Bouphavongsa (age 37) appeared before the Parole Board for a review hearing. He was represented by Attorney Michael Bourbeau. In his opening statement to the Board, Mr. Bouphavongsa took responsibility for his actions and apologized to the friends and families of his victims. Attorney Bourbeau noted the Board's concern about his client's mental health at the last hearing, stating that Mr. Bouphavongsa has not had a mental break down since that time. He explained that Mr. Bouphavongsa's diagnosis of schizoaffective disorder is in remission, and that he has engaged in rehabilitative programming, including Restorative Justice, Jericho Circle, and the Wellness program.

Upon questioning by a Board Member regarding the attack on his victims, Mr. Boupavongsa explained how being young and caught up in a "gang environment" lead to the attacks and vicious murder of Mr. Molina. Mr. Boupavongsa added that he had fought previously with Mr. Molina in a 'rumble' and suggested that the previous fight might have contributed to the motive in his attack on Mr. Molina. Mr. Boupavongsa explained, however, how the Restorative Justice program opened his eyes to the unnecessary pain he caused to the victims and their families. The Board noted that Mr. Boupavongsa had begun the security threat group (STG) renunciation process and questioned him about its completion. Mr. Boupavongsa explained that there was a misunderstanding in his intake at MCI-Norfolk, where he erroneously reported that he was still gang involved, as he was in the probation period of the renunciation process. Mr. Boupavongsa stated, however, that he has had no involvement with security threat groups since his incarceration. He has resubmitted a renunciation letter and has restarted the process. The Board noted that Mr. Boupavongsa has only had two disciplinary reports during his incarceration, neither of which were violent or gang related.

Board Members discussed Mr. Boupavongsa's mental health at length, asking him why he takes once-a-month intravenous injections, rather than daily pills. Mr. Boupavongsa disclosed that, in the past, he sometimes forgot to take his daily pills, resulting in social withdrawal, catatonia, delusional thinking, and hospitalizations. When asked how he would stay on medication if released, Mr. Boupavongsa, as well as his attorney, assured the Board that he now has a better understanding of symptoms, triggers, and warning signs precedent to a psychotic episode. Mr. Boupavongsa is asking to step down to a lower lever security facility, followed by treatment with the Department of Mental Health at the Elliot Mobile Respite, where a case worker would help him manage his issues. Alternatively, Mr. Boupavongsa could live with his parents in Lowell, where he has the support of family and friends. He would like to continue his involvement with music and work with at risk young people.

Mr. Boupavongsa's family and friends attended his hearing in support of parole. One friend testified in support of parole and another friend, as well as Mr. Boupavongsa's brother, sent letters of support. A psychological evaluation, prepared in 2015 by Dr. Frank DiCataldo, was resubmitted to the Board. Middlesex Assistant District Attorney Raquel Frisardi testified in opposition to parole and submitted a letter of opposition.

### **III. DECISION**

The Board is of the opinion that Mr. Boupavongsa has not yet demonstrated a level of rehabilitative progress that would make his release compatible with the welfare of society. Mr. Boupavongsa should continue to engage in the renunciation process and remain compliant with his mental health and medication regimen.

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 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 the 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 in Mr. Bouphavongsa's case 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.* The Board also recognizes the petitioner's right to be represented by counsel during his appearance before the Board. *Id.* at 20-40. The Board has also considered Dr. DiCataldo's evaluation, a risk and needs evaluation, and whether risk reduction programs could effectively minimize Mr. Bouphavongsa's risk of recidivism. Additionally, the Board considered Mr. Bouphavongsa's institutional behavior, as well as his participation in available work, educational, and treatment programs during the period of his incarceration. After applying this standard to the circumstances of Mr. Bouphavongsa's case, the Board is of the unanimous opinion that Donnie Bouphavongsa is not yet rehabilitated and, therefore, does not merit parole at this time.

Mr. Bouphavongsa's next appearance before the Board will take place in two years from the date of this hearing. During the interim, the Board encourages Mr. Bouphavongsa 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.*

  
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Shara Benedetti, Acting General Counsel

4/8/15  
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Date