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RECORD OF DECISION

IN THE MATTER OF

EDWARD O'BRIEN
W63353

TYPE OF HEARING: Initial Hearing

DATE OF HEARING: June 25, 2024

DATE OF DECISION: October 28, 2024

PARTICIPATING BOARD MEMBERS: Edith J. Alexander, Dr. Charlene Bonner, Tonomey Coleman, Sarah B. Coughlin, Tina M. Hurley, James Kelcourse, Rafael Ortiz

VOTE: Parole is denied with a review in 3 years from the date of the hearing.¹

PROCEDURAL HISTORY: On October 1, 1997, following a jury trial in Middlesex Superior Court, Edward O'Brien was convicted of murder in the first degree by theory of extreme atrocity and cruelty. He was sentenced to life in prison without the possibility of parole. He became parole eligible following the Supreme Judicial Court's decision in *Diatchenko v. District Attorney for the Suffolk District*, 466 Mass. 655 (2013). On June 25, 2024, Edward O'Brien appeared before the Board for an initial hearing.² He was represented by Attorney John Cunha. The Board's decision fully incorporates by reference the entire video recording of Edward O'Brien's June 25, 2024 hearing.

STATEMENT OF THE CASE: The victim, Janet Downing, was the mother of one of Edward O'Brien's best friends. Mr. O'Brien, who was 15-years-old in July 1995, lived across the street from the Downing residence on Boston Street in Somerville. Edward O'Brien developed a preoccupation with Mrs. Downing during the year prior to her death. He watched her closely, sometimes through a telescope from his bedroom. He frequently asked her sons about their mother's activities, informing them that he had watched her undress.

¹ One Board Member voted to deny parole with a review in two years. One Board Member voted to deny parole with a review in five years.

² Mr. O'Brien waived his previous hearings in 2014 and 2019.

On the evening of June 22, 1995, Mr. O'Brien met Mrs. Downing's son (one of his best friends) and talked. At one point in the conversation, Mr. O'Brien spoke of his desire to hurt someone. At about 7 p.m. on July 23, 1995, some boys, including Mr. O'Brien, gathered in the kitchen at the Downing home to discuss plans for the evening. Mrs. Downing was asleep on the living room couch. Later that evening, when Mrs. Downing's son arrived home at about 10 p.m., he found his mother lying lifeless on the dining room floor. Some furniture had been overturned and there were blood stains in the foyer, the kitchen, dining room, a bathroom, and in the cellar. He ran across the street to the O'Brien home and asked for help. Mr. O'Brien's father called the police. Paramedics attempted to resuscitate Mrs. Downing, then transported her to a hospital, where she was pronounced dead.

Mr. O'Brien's fingerprints were subsequently found in blood on the inside of the front door and on a wooden post in the cellar. A knife hilt found on a stair in the front foyer of the Downing home was identical in size to that of a knife owned by Mr. O'Brien that police found in his trash. DNA test results indicated that blood samples recovered from the Downing home on the front door, the dining room door, and a dress in the cellar matched Mr. O'Brien's blood sample. The blood taken from his shin at the hospital was the same type as that of the victim.

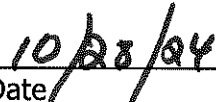
APPLICABLE STANDARD: Parole "[p]ermits shall be granted only if the Board is of the opinion, after consideration of a risk and needs assessment, that there is a reasonable probability that, if the prisoner is released with appropriate conditions and community supervision, the prisoner will live and remain at liberty without violating the law and that release is not incompatible with the welfare of society." M.G.L. c. 127, § 130. In making this determination, the Board takes into consideration an incarcerated individual's institutional behavior, their participation in available work, educational, and treatment programs during the period of incarceration, and whether risk reduction programs could effectively minimize the incarcerated individual's risk of recidivism. M.G.L. c. 127, § 130. The Board also considers all relevant facts, including the nature of the underlying offense, the age of the incarcerated individual at the time of the offense, the criminal record, the institutional record, the incarcerated individual's testimony at the hearing, and the views of the public as expressed at the hearing and/or in written submissions to the Board (if applicable).

In the context of an incarcerated individual convicted of first or second-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 murder, has a meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation. *Diatchenko v. District Attorney for the Suffolk District*, 466 Mass. 655, 674 (2013). See also *Commonwealth v. Okoro*, 471 Mass. 51 (2015). The factors considered by the Board include a juvenile'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." *Diatchenko v. District Attorney for the Suffolk District*, 471 Mass. 12, 30 (2015). The Board also recognizes the incarcerated individual's right to be represented by counsel during their appearance before the Board. *Id.* at 20-24.

DECISION OF THE BOARD: This was Mr. O'Brien's first appearance before the Board after waiving his prior hearings. Mr. O'Brien maintains his innocence and noted he would be filing motions with the court. The Board took particular note of Dr. Kinscheff's report and testimony regarding the absence of the traditional Miller/Diatchenko factors and his findings of Mr. O'Brien's low risk to re-offend. Nonetheless, the Board did review the Miller/Diatchenko factors, given Mr. O'Brien's age at the time of the offense, and recognizes Mr. O'Brien's capacity for change and rehabilitation. While the Board recognizes Mr. O'Brien's desire to not answer certain questions posed by the Board due to what he stated were anticipated, but yet unrealized legal proceedings, the Board had difficulties assessing Mr. O'Brien's credibility and candidness as a result. The Board reviewed Mr. O'Brien's institutional history and noted his significant disciplinary report for possession of a cell phone for 2 years and his return to maximum custody for 5 years as a result. Members of the victim's family testified in opposition and appeared with multiple people in opposition to parole. Middlesex County Assistant District Attorney Adrienne Lynch also opposed parole. Mr. O'Brien had multiple supporters in attendance and provided testimony. The Board concludes by unanimous decision that Edward O'Brien has not demonstrated a level of rehabilitation that would make his release compatible with the welfare of society.

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.


Tina M. Hurley, Chair


Date