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PAROLE BOARD

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Gloriann Moroney
Chair

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Executive Director

AMENDED RECORD OF DECISION

IN THE MATTER OF

EUGENE IVEY

W64154

TYPE OF HEARING: Review Hearing

DATE OF HEARING: October 1, 2019

DATE OF DECISION: February 9, 2021

PARTICIPATING BOARD MEMBERS: Gloriann Moroney, Dr. Charlene Bonner, Tonomey Coleman, Sheila Dupre, Tina Hurley, Karen McCarthy, Colette Santa

STATEMENT OF THE CASE: On February 19, 1998, Eugene Ivey pleaded guilty in Plymouth Superior Court to second-degree murder of Shawn Kapustin and received a life sentence with the possibility of parole. On November 27, 2002, Mr. Ivey was convicted of three counts of assault and battery on a correctional officer and one count of assault and battery by means of a dangerous weapon and received sentences of 4-5 years for each. These sentences are to run from and after his life sentence. Mr. Ivey was 17-years-old at the time of the murder.

Mr. Ivey, now 42-years-old, appeared before the Parole Board for a review hearing on October 1, 2019 and was represented by Attorney Lisa Newman-Polk. Mr. Ivey was denied parole after his initial hearing in 2009. He postponed his review hearing in 2014. The entire video recording of Mr. Ivey's October 1, 2019 hearing is fully incorporated by reference to the Board's decision.

DECISION OF THE BOARD: On January 19, 2021, the Supreme Judicial Court in William Dinkins & Another v. Massachusetts Parole Board, 486 Mass. 605 (2021) invalidated 120 Code Mass. Regs. § 200.08(3)(c) and held that the Board must aggregate the parole ineligibility period of a life sentence with the parole ineligibility period of consecutive sentences for purposes of determining a single parole ineligibility date. In accordance with the SJC ruling, Mr. Ivey's parole eligibility was recalculated in order to determine a single parole eligibility date. The Board subsequently re-reviewed Mr. Ivey's case and amended its original decision paroling Mr. Ivey to his consecutive sentence and, 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, parole is granted to CRJ-Transitional Housing: Brook House, but not before twelve months in lower security.¹ Mr. Ivey has served approximately 26 years for the shooting death of 22-year-old Shawn Kapustin. Mr. Ivey was 17-years-old when he committed the governing offense. Mr. Ivey's release after a gradual transition meets the legal standard. Mr. Ivey needs to demonstrate that he can be successful in a lesser restrictive environment.


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 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 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 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.*

In forming this opinion, the Board has taken into consideration Mr. Ivey'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. Ivey's risk of recidivism. After applying this appropriately high standard to the circumstances of Mr. Ivey's case, the Board is of the opinion that Mr. Ivey is rehabilitated and merits parole at this time, subject to special conditions.

Special Conditions: Reserve to CRJ-Transitional Housing: Brook House, but not before twelve months in lower security; Waive work for two weeks; Must be at home between 10 p.m. and 6 a.m.; ELMO-electronic monitoring; Supervise for drugs; testing in accordance with agency policy; Supervise for liquor abstinence; testing in accordance with agency policy; Report to assigned MA Parole Office on day of release; No contact with victim's family; Must have substance abuse evaluation and adhere to plan; Must have mental health counseling for adjustment and transition; Must complete CRJ-Transitional Housing: Brook House.

IMPORTANT NOTICE: The above decision is an abbreviated administrative decision issued in an effort to render an expedited resolution in response to the COVID-19 pandemic. Mr. Ivey, through counsel, has waived his right to a full administrative decision.

I certify that this is the decision and reasons of the Massachusetts Parole Board regarding the above referenced hearing.


Pamela Murphy, General Counsel

2/19/2021
Date

¹ The decision was unanimous.