

The Commonwealth of Massachusetts
Executive Office of Public Safety and Security



PAROLE BOARD

12 Mercer Road
Natick, Massachusetts 01760

Charles D. Baker
Governor

Karyn Polito
Lieutenant Governor

Terrence Reidy
Secretary

Telephone # (508) 650-4500

Facsimile # (508) 650-4599

Gloriann Moroney
Chair

Kevin Keefe
Executive Director

DECISION

IN THE MATTER OF

FERNAND DAVIAU

W67446

TYPE OF HEARING: Initial Hearing

DATE OF HEARING: April 8, 2021

DATE OF DECISION: April 26, 2022

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

DECISION OF THE BOARD: 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, we conclude by unanimous vote that the inmate is not a suitable candidate for parole. Parole is denied with a review scheduled in five years from the date of the hearing.

I. STATEMENT OF THE CASE

On December 13, 1999, after a jury trial in Hampden Superior Court, Fernand Daviau was found guilty of rape of a child by force and sentenced to life in prison with the possibility of parole.¹ On that same date, Mr. Daviau was convicted of five additional counts of rape of a child by force. He was sentenced to 15-20 years in state prison to run concurrently with the life sentence for four of those offenses and to a term of probation from and after for one offense. He was also convicted of two counts of indecent assault and battery of a child and was sentenced to 9-10 years in state prison to run concurrently with the life sentence. Mr. Daviau was also convicted of two counts of assault and battery and sentenced to two additional concurrent 2-year sentences.

¹ Mr. Daviau's co-defendant, Justina Talbot, was tried and convicted separately in Hampden Superior Court.

Over the course of approximately four years, Fernand Daviau and his co-defendant, Justina Talbot, sexually assaulted Ms. Talbot's two daughters (repeatedly), both of whom were under the age of 14 at the time. With respect to the elder of the two victims, Mr. Daviau vaginally raped the child and explained that he and Ms. Talbot were preparing the girl for her future husband. On other such occasions, Mr. Daviau touched the elder child's private areas and forced her to touch his own. With respect to the younger of the two victims, Mr. Daviau performed various sexual acts on numerous occasions and forced the child to participate in sexual acts, as well. He also forced the child to drink his urine. When the children disclosed the sexual assaults to their mother, she (Justina Talbot) informed the children that the sexual assaults were "God's will." The children also reported Mr. Daviau's frequent physical abuse that involved both them and their mother.

In December 1998, the two victims fled the home. Holyoke police located the children after their mother reported them missing. The children then disclosed the abuse they had suffered. Mr. Daviau was placed under arrest on December 20, 1998.

II. PAROLE HEARING ON APRIL 8, 2021

Fernand Daviau, now 64-years-old, appeared before the Parole Board on April 8, 2021, for an initial hearing and was represented by Attorney Inna Landsman. Mr. Daviau postponed his 2014 hearing. Mr. Daviau's 2019 hearing was postponed at the request of his counsel. Attorney Landsman provided an opening statement to the Board in which she discussed Mr. Daviau's intellectual disability. Upon Board Member questioning, Mr. Daviau reported that he was married twice prior to his relationship with Justina Talbot. Although he and Ms. Talbot maintained separate residences, Mr. Daviau said that he frequently spent time at her home, where she lived with her two daughters. Mr. Daviau admitted that he abused Ms. Talbot's two daughters for approximately four years. He first abused the elder daughter from approximately ages 10-14. The abuse "escalated" to include the second child, from approximately ages 8-10.

When questioned by the Board as to why he sexually abused the children, Mr. Daviau responded, "It was something the mother wanted." He reported that Ms. Talbot conceived the idea to abuse the children, and she "took power and authority over my disabilities" to coerce him to comply. Mr. Daviau stated that Ms. Talbot repeatedly raised the issue with him, but claimed that he did not understand her purpose, specifically the "God stuff." He admitted that he sexually abused the children, but claimed that he did not think he was doing anything wrong at the time. Nonetheless, he maintains that he "disagreed" with the acts. Mr. Daviau also stated that he believed the abuse to be consensual because Ms. Talbot wanted him to commit the rapes. Mr. Daviau further claimed to be unaware that he was hurting the children when he abused them, stating that he did not remember the children ever crying, objecting, or attempting to spurn his advances. Mr. Daviau reported that he suffered from "stressors" at the time, including the discontinuation of his disability payments. He further denied any memory of physically abusing the victims.

Upon Board Member questioning, Mr. Daviau confirmed that he suffers from a long-term intellectual disability and has frequent difficulty in understanding various issues, as he is functionally illiterate. He described a head injury that he suffered in the early 1980's and confirmed that he had been hospitalized several times during the early course of his

incarceration. When asked about the status of his mental health and stability, Mr. Daviau responded that he felt like a child and could "do nothing [him]self." Mr. Daviau told the Board that he was sexually abused by a priest around the time of his confirmation, but did not report the abuse at the time. When asked if his own sexual abuse played a role in his criminal behavior, Mr. Daviau responded that he did not know. Mr. Daviau has participated in limited programming, including a modified version of sex offender treatment due to his limited abilities. As of the time of the hearing, Mr. Daviau had not completed or graduated from the program.

The Board considered testimony from Dr. Stephanie Tabashneck in support of parole. The Board also considered the testimony of one of the named victims, and a letter from David Daviau, read into the record at the hearing in opposition to parole. The Board reviewed written submissions from the Hampden County District Attorney's Office and the Holyoke Police Department in opposition to parole.


III. DECISION

The Board is of the opinion that Fernand Daviau has not demonstrated a level of rehabilitative progress that would make his release compatible with the welfare of society. Mr. Daviau physically and sexually assaulted two children under the age of 14 for a number of years. The Board considered intellectual deficits, as well as mental health issues, the evaluation and testimony of Dr. Tabashneck and records from Bridgewater State Hospital in relation to the questions posed in the hearing as well as in rendering the final decision. Mr. Daviau presented with self-serving justifications that were in direct conflict of the victim's testimony. Mr. Daviau had a profound lack of empathy and understanding of the impact of his crimes. Mr. Daviau is encouraged to complete the Sex Offender Treatment Program and victim empathy.

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 forming this opinion, the Board has taken into consideration Mr. Daviau'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. Daviau's risk of recidivism. After applying this standard to the circumstances of Mr. Daviau's case, the Board is of the opinion that Fernand Daviau is not rehabilitated and, therefore, does not merit parole at this time.

Mr. Daviau's next appearance before the Board will take place in five years from the date of this hearing. During the interim, the Board encourages Mr. Daviau to continue working toward 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.


Pamela Murphy, General Counsel


Date