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DECISION

IN THE MATTER OF

FRANKIE JAMES GARNER

W66262

TYPE OF HEARING: Review Hearing

DATE OF HEARING: November 17, 2015

DATE OF DECISION: January 21, 2016

PARTICIPATING BOARD MEMBERS: Paul M. Treseler, Dr. Charlene Bonner, Sheila Dupre, Tonomey Coleman, 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, the inmate's age 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 three years from the date of the hearing.

I. STATEMENT OF THE CASE

On March 24, 1999, in Hampden Superior Court, Frankie James Garner was convicted of the second degree murder of Orlando Taylor. A sentence of life in prison, with the possibility of parole, was imposed on Mr. Garner for the murder of Mr. Taylor. Mr. Garner was also convicted of unlawful possession of a firearm. Mr. Garner was sentenced to a concurrent term of not more than 4 years and not less than 2 years in prison for this conviction. Mr. Garner is currently 39 years old.

On January 25, 1998, Mr. Garner was involved in a shootout during an after-hours gathering at Roscoe's nightclub in Springfield. Mr. Garner smuggled a gun through nightclub security by asking a female friend to hide it in her purse. Once inside the club, friends of Mr. Garner argued with Orlando Taylor and tried to take a chain from his neck. Mr. Garner fired his

gun from across a pool table and struck Orlando Taylor in the chest. Other shots were fired in the club, one of which struck Mr. Garner's girlfriend. She was not injured as the bullet was deflected by a lipstick container in her pocket.

Mr. Garner fled from the club, but was apprehended by police a short time later. Police recovered six live rounds of ammunition, all of which could be fired from a .357 magnum, from Mr. Garner's back pants pocket. Police recovered a .357 magnum handgun in the club parking lot. Forensic testing determined that the .357 magnum contained Frankie Garner's fingerprint, and that it was used to fire the shot that killed Orlando Taylor. As documented in the autopsy report, the bullet traveled through the abdomen, and caused "severe damage to the liver, intestine, and abdominal aorta".

Frankie Garner was 21 years old at the time of the crime. He has a substantial criminal history. His adult convictions included three assault and battery cases and five drug offenses. Two cases involving firearms did not result in convictions. His numerous juvenile delinquencies, which began at age 12, include two unlawful possession of a firearm cases, two cocaine distribution cases, two receiving stolen motor vehicle cases, possession of an air rifle, several marijuana possession cases, and an indecent assault and battery on a child.

II. PAROLE HEARING ON NOVEMBER 17, 2015

Mr. Garner came before the Parole Board on November 17, 2015 for a review hearing. This was his second appearance before the Board. Mr. Garner's initial hearing took place on November 20, 2012 and resulted in parole being denied.

Mr. Garner gave an opening statement to the Board, in which he apologized to Mr. Taylor's family and expressed remorse. During the course of his hearing, he spoke about the night of the murder. According to Mr. Garner, he had been previously acquainted with Mr. Taylor through his involvement in the music business. On the night of Mr. Taylor's death, Mr. Garner went to a night club called Roscoe's after a recording session at his studio. The shooting occurred after an argument broke out between friends of Mr. Garner and Mr. Taylor. Eventually a fight broke out in which Mr. Garner witnessed Mr. Taylor pistol whipping a friend of his. At the same time two shots were fired in the club. Mr. Garner aimed his gun at Mr. Taylor and fired once, killing him.

The gun used by Mr. Garner to shoot Mr. Taylor was brought into the club by a female who was able to enter the club without being searched. Mr. Garner gave the gun to the female for that purpose. Mr. Garner told the Board he had carried a gun on a daily basis since he was a teenager, for personal protection. Mr. Garner admitted to the Board that he had fired his gun at other individuals on numerous occasions, prior to killing Mr. Taylor.

When questioned by the Board, Mr. Garner cited his troubled childhood as the source of his anger issues. According to Mr. Garner he and his brother were raised by his mother as a single parent. Mr. Garner first engaged in criminal activity at the age of 11, when he started selling crack cocaine in his neighborhood. The Department of Youth Services took custody of Mr. Garner at age 12 after he was involved in an indecent assault and battery on a female classmate. During that incident, Mr. Garner and multiple other students punched, kicked, and touched the breast of a female classmate. After his release, Mr. Garner returned to school briefly, before dropping out in the 9th grade. It was at this time that the health of Mr. Garner's mother began to deteriorate. Mr. Garner's mother passed away when he was approximately 15 years old. Mr. Garner's criminal activity began to escalate at that point in his life and he became associated with a gang.

Acknowledging the role his lack of programming played in the Board's decision making process at his last parole hearing, Mr. Garner described the activities he has engaged over the past 3 years. Since his 2012 appearance before the Board, Mr. Garner has participated in phase 1 and 2 of the Alternatives to Violence program, graduated from a course in culinary arts, participated in Toast Masters, the Music Unlimited program, and recently taught a course in conflict management. Mr. Garner informed the Board that he has also continued to maintain steady employment.

Mr. Garner described the difficulties he experienced confronting and managing his anger issues while incarcerated. The Board recognizes improvement in this aspect of Mr. Garner's institutional behavior. When he last appeared before the Board, Mr. Garner had accumulated 16 disciplinary reports. Since that time, Mr. Garner has remained disciplinary report free. The Board acknowledges the strides Mr. Garner has made toward his rehabilitation through this significant improvement in his institutional behavior.

In addition to Mr. Garner, the Board also received live testimony from numerous witnesses, both in support of and in opposition to Mr. Garner's petition for parole. The Board considered testimony from members of Mr. Garner's family, all of whom expressed support for his release. Testimony from Mr. Taylor's mother and a representative of the Hampden County District Attorney's Office was also taken under consideration.

III. DECISION

The Board is of the opinion that Mr. Garner has not demonstrated a level of rehabilitative progress that would make his release compatible with the welfare of society. The Board believes a longer period of positive institutional adjustment would be beneficial to Mr. Garner's rehabilitation.

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. Garner'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 whether risk reduction programs could effectively minimize Mr. Garner's risk of recidivism. After applying this standard to the circumstances of Mr. Garner's case, the Board is of the unanimous opinion that Mr. Garner is not yet rehabilitated and therefore does not merit parole at this time. A review hearing will be held for Mr. Garner in three years.

The Board recognizes the significant length of time that has passed since Mr. Taylor's death. During that time, Mr. Garner has made significant progress toward his rehabilitation. In addition to taking advantage of institutional programming, Mr. Garner has recognized his poor institutional behavior and taken steps to improve it. Testimony on behalf of Mr. Garner provided at his hearing also demonstrated the existence of a strong family network that could offer support to Mr. Garner during his re-entry into society.

Mr. Garner's next appearance before the Board will take place in three years from the date of the review hearing related to this decision. During the interim, the Board encourages Mr. Garner to remain discipline report free, to continue working towards his full rehabilitation by participating in institutional programming that will ease his transition back into society, and to maintain his family relationships and support network.

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 Callahan, Executive Director


Date