



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

Daniel Bennett
Secretary

*Telephone # (508) 650-4500
Facsimile # (508) 650-4599*

Charlene Bonner
Chairperson

DECISION

IN THE MATTER OF

**FREDERICK CLAY
W38444**

TYPE OF HEARING: Initial Hearing
DATE OF HEARING: May 21, 2015
DATE OF DECISION: August 26, 2015

PARTICIPATING BOARD MEMBERS: Charlene Bonner, Tonomey Coleman, Sheila Dupre, Lee Gartenberg, Ina Howard-Hogan, Tina Hurley, and 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 inmate's age when he committed the offense, his testimony at the hearing, and the views of the public as expressed at the hearing or in written submissions to the Board, we are unable to grant a parole permit at this time. While the inmate received a vote of 4 to 3 in favor of parole, that is one vote short of the two-thirds majority required by statute to grant parole.¹ Chairperson Bonner, and Board Members Coleman, Dupre, and Gartenberg voted in favor of parole. Board Members Howard-Hogan, Hurley, and Soto-Abbe voted to deny parole. Accordingly, parole is denied and the review will be one year from the date of the hearing.

I. STATEMENT OF THE CASE

On September 16, 1981, after a jury trial in Suffolk County Superior Court, Fredrick Clay was found guilty of first degree murder and was sentenced to life in prison without the possibility of parole. On November 16, 1979, Clay (age 16) along with two others beat and shot to death 28 year-old cab driver, Jeffrey S. Boyajian. Clay's co-defendant, James Watson (age 20), was also convicted of first degree murder and is currently serving his life sentence

¹ G.L. c. 127, § 133A, providing in relevant part, "...the parole board may, by a vote of two-thirds of its members, grant to such prisoner a parole permit to be at liberty upon such terms and conditions as it may prescribe for the unexpired term of his sentence."

without the possibility of parole at MCI Norfolk. The third individual alleged to have been involved in the murder of Mr. Boyajian has never been identified.

On December 24, 2013, the Massachusetts Supreme Judicial Court (SJC) 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 were invalid as applied to those, like Frederick Clay, who were juveniles when they committed first degree murder. The SJC ordered that affected inmates receive a parole hearing after serving 15 years. Accordingly, Clay (who has served 35 years) became eligible for parole and is now before the Board for an initial hearing.

The facts of the case are derived from *Commonwealth v. Watson*, 388 Mass. 536 (1983), a decision by the SJC affirming the judgment against Clay, and *Commonwealth v. Watson*, 393 Mass. 297 (1984), an SJC decision affirming the first degree murder conviction against Watson. On November 16, 1979, at about 4:00 am, a witness was seated in his parked taxicab on Washington Street in downtown Boston. He saw three young men, two tall and one short, cross the street toward him and enter Independent Taxi Operators Association (ITOA) taxicab No. 649, which was parked immediately in front of his taxicab. Taxicab No. 649 then drove off with the three men inside. Later that day, after learning of the death of the driver of ITOA taxicab No. 649, this witness called the police to report what he had seen. He then went to the police station and positively identified Watson and Clay as two of the three individuals he observed getting into ITOA taxicab No. 649.

At about 4:20 am on the same morning, a resident of an apartment in the Archdale Housing Project in the Roslindale section of Boston went to his parlor window after his mother called out, "Look, they're pulling a cab driver...out of the cab." This witness testified that he recognized Watson and Clay. He saw Watson, Clay, and a third man he did not recognize pull Mr. Boyajian from the taxicab. The witness then heard Mr. Boyajian yell "Leave me alone. Let me go." While Watson held Mr. Boyajian, Clay went through his pockets. The three men then began to beat Mr. Boyajian. This witness heard Mr. Boyajian say, "Take what you want, but let me live." Mr. Boyajian was then knocked to the ground by a dumpster. The witness then observed Clay walk over to the taxi, return to where Mr. Boyajian was located, and pull an object from his pocket. This witness saw Clay point his arm in Mr. Boyajian's direction. The witness then heard at least three gun shots, and saw the three men run away together. When police arrived minutes later, they found Mr. Boyajian's body slumped against the dumpster with gunshot wounds to his head.²

II. PAROLE HEARING ON MAY 21, 2015

This is Clay's first parole hearing before the Board. He committed the murder at age 16 and has been incarcerated for 35 years. Clay is afforded a parole hearing as a result of the SJC's decision in *Diatchenko v. District Attorney for the Suffolk District & Others*, 466 Mass. 655 (2013). Attorney Emanuel Howard, assisted by Attorney Jeffrey Harris, represented Clay at his hearing.

² The medical examiner testified that Mr. Boyajian had been shot five times in the head.

In his opening statement, attorney Howard highlighted findings from a controversial study of the African-American family by Daniel Patrick Moynihan.³ According to Attorney Howard, Mr. Moynihan ascertained that there were a rising number of African-American children growing up in households headed by unmarried mothers. Among other things, a fatherless family reduces the African-American child's chance of educational and economic success. Although Mr. Moynihan's report was denounced and labelled as racist, Attorney Howard stressed that today's experts on child well-being and family structure uphold the premise that a father's absence increases anti-social behavior in a child. Attorney Howard related the findings of this report to the experiences of Clay, who grew up without his biological father.

Attorney Howard described the precipitants that influenced the course of Clay's life as including: being raised by a single, alcoholic mother; having three younger siblings to worry about; and coping with physical and learning disabilities. He also highlighted information from the psychiatric evaluation conducted by the Department of Youth Services (DYS) while Clay was in custody after his arrest in 1979. The DYS evaluation described Clay as having a "dismal" life situation and a "pathological home situation." In addition, Attorney Howard spoke of the findings from Clay's transfer hearing, where a juvenile court judge found that Clay, at the age of 16, had a "developmental deviation of childhood" and had not progressed intellectually, emotionally or socially beyond the age of eight. In closing, Attorney Howard spoke to Clay's suitability for parole and his transformation over the past 35 years.

Clay expressed his sincere condolences to the Boyajian family and friends for their loss. However, Clay maintains his innocence in the murder of Jeffrey Boyajian. He insists that he was incorrectly identified as one of the three men involved, and that he was in a foster home at the time of the murder. Clay then told the Board he now recognizes that getting arrested at the age of 16, and subsequently prosecuted for and convicted of a crime he didn't commit, actually saved his life. He also spoke of his rehabilitation while incarcerated, as he took full advantage of the treatment and programming opportunities that have been afforded to him.

The Board focused their questioning on the relationship between Clay's stage in development, his relationships, and environmental influences as they related to his offense. Clay's mother gave birth to him when she was only 16 years-old. He is the oldest of four children, and has never met his biological father. At the age of eight, Clay and his mother and siblings moved from Mississippi to Massachusetts to reside with his great aunt. Clay highlighted the effects of being raised by a single mother who was an alcoholic. His childhood was troubled. Not only did he suffer from neglect due to his mother's addiction, Clay recounted moving around a lot and being in and out of school. Clay spoke of the abuse he suffered from his peers due to his stuttering, his mother being an alcoholic, and not knowing his father. This abuse resulted in him being involved in fights at school (he estimates there were approximately three to four per week) and the consequent school suspensions.

After their apartment in Dorchester caught fire, Clay and his family relocated to Roslindale, where Clay said his life changed for the worse. His mother's addiction intensified, requiring him to become the head of the household. Clay assumed the responsibility of not

³ "The Negro Family: The Case for National Action," Office of Planning and Research, United States Department of Labor (March 1965). Mr. Moynihan was then the Assistant Secretary for Policy Planning and Research in the United States Department of Labor.

only caring for himself, but also raising his three younger siblings. At the age of 14, to relieve stress, Clay began to smoke marijuana and drink. When his mother became aware of this behavior, she scolded him for drinking but condoned his use of marijuana. Soon after he became addicted, Clay resorted to crime to support his habit and provide for the family by committing larcenies, such as purse snatching and breaking and entering. At the urging of his mother, he dropped out of school in the eighth grade and secured employment as a day laborer or kitchen worker through a temp agency. During his periods of employment, Clay stated he was not involved in criminal activity. It was not until his employment prospects dwindled that Clay reverted back to anti-social behavior to support himself. His anger manifested in his early teenage years, after watching his mother suffer from abuse at the hands of her boyfriend "Tony." During this time, Clay said he continued to smoke marijuana, hung around with kids from the neighborhood, and engaged in fights. He also described how he viewed "Tony" as a father figure. After an incident where "Tony" shot a neighbor in the leg and fled the state, Clay said his own illicit behavior spiraled out of control.

Clay described his continued path of increased criminal activity, risk taking behaviors, and a lifestyle that led to his victimization of others. He was 16 years-old when he was committed to DYS for unarmed robbery, grand larceny, and receiving stolen goods. He was placed in a foster home after spending time in several DYS facilities. He was only at the foster home for three weeks before being kicked out for missing curfew. He was subsequently returned to a DYS facility in Halifax where he remained until his arrest for murder a few days later. Clay maintains that he was at the foster home when Mr. Boyajian was murdered. He stated he had no knowledge or involvement in the commission of the crime.

Clay acknowledged that after being convicted of pre-mediated murder in the first degree, he entered the prison system as a scared young man who had no hope. He was shocked when he was sentenced to life imprisonment without the possibility of parole for something he did not do. Clay, with the assistance of the Committee for Public Counsel Services, sought to have his sentence revised to life with the opportunity of parole, and to have his sentence commuted. Both efforts were denied. He is currently working on his case with the Innocence Project, a national litigation and public policy organization dedicated to exonerating wrongfully convicted people through DNA testing and reforming the criminal justice system to prevent future injustice.

Clay also described being taught the prison code and how to survive by other inmates, which led to his continued anti-social behavior and violent acting out. In 1984, when he was 21 years-old, Clay threatened and pushed a corrections officer, which he describes as his most serious infraction resulting in disciplinary action. Since that incident, Department of Correction records reflect that Clay has otherwise incurred disciplinary reports for non-violent rule infractions, and has not had a disciplinary report since 2008. Clay attributed his youth and learned behavior in the prison system as the primary contributing factors to his actions resulting in disciplinary reports.

According to Clay, it was determined at the onset of his commitment that he was diagnosed with a learning disability, and that he functioned at the emotional and intellectual level of an eight year-old. In 1985, Clay made a conscientious decision to change, stating "I realized that not only did I want to become a person who other people would like, but I wanted to be a person that I would like. I decided that whether I remain in prison, or was fortunate

enough to be released one day, I would try to be a better person than the one I was when I came in. Over the years, even though hope of release was getting lower and lower and then seemed gone, I tried to take part in programs that would give me an opportunity for changing the way of thinking and self-improvement, and for learning something useful." Clay completed the Second Thoughts Program and steadily increased his investment in available productive programming and employment.

Clay acknowledged that his pursuit to change has been met with many challenges, but attributes his willingness to mature and grow and the programs he invested in as the source of his transformation. Clay provided a description of how various programs helped him, and where he felt he needed more rehabilitation. He began to pursue his GED in 1986, and after a few interruptions he received his diploma in June of 2013. Clay informed the Board that his involvement in Able Minds provided him with a greater understanding as to how to think about consequences prior to acting, and how to stay focused and remain in the present moment. He also spoke to how the Alternatives to Violence program allowed him to address the abuse he endured as a youth, and how the Jericho Circle program taught him to be accountable for his actions.

Clay seeks parole to a long term residential program, after a gradual transition through lower security within the Department of Correction. He indicated he has several prospects for employment, including an Assistant Sexton for the First Parish in Cambridge, an entry level position at Boston Baking, Inc., or a position in urban farming. He will also seek out services through the St. Francis House to support his reintegration. Clay also spoke of the positive relationships he has maintained with his family and friends.

Clay had the maximum allotted number of people testify on his behalf at his hearing. Those people included a friend and former California prosecutor, Carol Agate, who testified that she perceives his conviction as a miscarriage of justice and has set aside a large sum of money to aid him in his reintegration into the community. Also speaking in support of Clay's parole were his great aunt, and three close friends. All testified as to their commitment to assisting Clay with his transition. His great aunt also corroborated the traumatic childhood and parental neglect he suffered as a child.

The brother of the victim testified at the hearing, exhibiting great compassion. Although he is troubled by the parole process as Clay had no right to take a life, he also acknowledged that he has no right to have power over Clay's life. He informed the Board that if Clay is paroled, while he will not object, he will also not forgive him.

Speaking in opposition of Clay's parole release was Suffolk County Assistant District Attorney Elianna J. Nuzum. ADA Nuzum urged denial of parole, citing in part that Clay has not taken responsibility or expressed remorse for murdering Mr. Boyajian. Instead, he continues claiming that he was wrongfully convicted. She noted that Clay had a criminal record at the time he murdered Mr. Boyajian, which the sentencing judge described as a "brutal murder." ADA Nuzum also highlighted that Clay's disciplinary record while incarcerated reflected frequent violations of institutional rules during the first few years of his sentence, many involving possession of controlled substances, and at least one fight with another inmate.

III. DECISION

Fredrick Clay at the age of 16, along with co-defendant James Watson and an unidentified third man, beat and shot to death 28 year-old cab driver, Jeffrey S. Boyajian. Clay has been incarcerated for over 35 years and was granted this parole hearing as a result of the *Diatchenko* decision. At the time of the murder, Clay had diverted down a path of self-destruction, self-worthlessness, and reckless abandonment for others. The Parole Board considered Clay's age and stage of development when he committed the offense. While his age and stage of development, coupled with the traumatic and neglectful childhood experiences he endured at a critical stage of his development, does not excuse any of his delinquent behaviors it does provide context in which to evaluate Clay. Based on all relevant factors, Board members recognize that Clay was demonstrating a level of immaturity, impetuosity, and a failure to appreciate risks and consequences, which are attributes that played a role in his destructive and callous lifestyle. Clay also lacked productive peer relationships and mentors to help him progress through his adolescent years, further depriving Clay of opportunities to thrive in a positive direction.

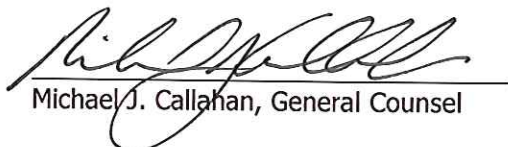
The single most important criteria in the analysis of parole suitability concerns whether Clay meets the legal standard. Clay's efforts in his rehabilitation appear to be both genuine and beneficial. Clay has demonstrated through his conduct, insight, and positive support network that he has acquired the necessary foundation for a successful transition into society. Accordingly, Chairperson Bonner and Board Members Coleman, Dupre, and Gartenberg voted to parole Clay to a long term residential treatment program after successful completion of one year in lower security. Such voting members stressed that the re-entry plan for Clay will be vital to his successful reintegration to society.

While the satisfactory completion of programming is a significant step towards Clay's rehabilitation, it does not guarantee a grant of parole. To receive a grant of parole, not only must the Board be convinced that it is unlikely the prisoner will re-offend, but it must also be of the opinion that a grant of parole is compatible with the welfare of society. Board Members Howard-Hogan, Hurley, and Soto-Abbe voted to deny Clay parole, with a review in three years. Such members gave significant weight to Clay's denial of his involvement in the murder despite the evidence and his conviction. Indeed, in his written submission to the Board, Clay wrote "What I'm about to say does not help Mr. Boyajian's family members and friends with their loss, pain and grief, but the truth is that I did not kill Mr. Boyajian." In denying parole, three Board Members concluded that Clay has yet to accept responsibility for his actions, opting instead to struthiously avoid the fundamental question of his guilt. These Members are of the opinion that Clay must candidly address his responsibility for the death of Mr. Boyajian. In addition, Board Members urged Clay to continue to engage in beneficial programming designed to address his causative factors.

The standard we apply in assessing candidates for parole is set out in 120 C.M.R. 300.04, which provides that, "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." Further, by statute, granting of parole is accomplished only when the Board Members by a two-thirds majority vote to grant a parole.

The two-thirds majority consensus did not occur in Clay's case. Accordingly, parole is denied, with a review in one year from the date of the hearing.

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 J. Callahan, General Counsel

August 26, 2015
Date