



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

Paul M. Treseler  
Chairman

Michael J. Callahan  
Executive Director

**DECISION**

**IN THE MATTER OF**

**GERALD HILL**

**W36748**

**TYPE OF HEARING:** Review Hearing

**DATE OF HEARING:** March 23, 2017

**DATE OF DECISION:** January 3, 2018

**PARTICIPATING BOARD MEMBERS:** Paul M. Treseler, Dr. Charlene Bonner, Tonomey Coleman, Sheila Dupre, Tina Hurley, Lucy Soto-Abbe

**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 February 17, 1979, in Suffolk Superior Court, Gerald Hill pleaded guilty to second degree murder and was sentenced to serve life in prison.

On February 10, 1978, 15-year-old Gerald Hill and his co-defendant, Hubert Smith,<sup>1</sup> shot and killed 63-year-old Max Fishman in Egleston Square in Boston, while Mr. Fishman was delivering oil on the day after the Blizzard of 1978. On the day of the murder, Mr. Hill, Mr. Smith, and another friend, Walter Crumbley, were running errands for Mr. Crumbley's mother. They discussed robbing a milkman, a delivery truck, or a mini-mart. Eventually, they came across a delivery truck delivering oil to residences in the wake of the blizzard and talked about

<sup>1</sup> Hubert Smith was convicted of first degree murder and sentenced to life in prison without the possibility of parole. *Commonwealth v. Smith*, 384 Mass. 519 (1981).

robbing it. At that point, Mr. Crumbley withdrew from the plan and walked away. Mr. Hill, however, did not.

One of the deliverymen, James Gilmore, was on the side of a house preparing to make the delivery, while Mr. Fishman was standing alone at the rear of the truck. Mr. Smith approached Mr. Fishman and pulled out his gun, stating, "Give me your money or I'll blow your head off." Mr. Hill reached over and grabbed Mr. Fishman, who pushed him away. Mr. Smith fired a .38 caliber revolver at Mr. Fishman, striking him in the head. Mr. Hill and Mr. Smith fled. They were subsequently identified by a witness, who had watched them run from the scene.

Mr. Hill had committed the murder of Mr. Fishman, while on bail (and awaiting trial) for his participation in the October 1977 stabbing death of 53-year-old Leo Murphy. During that incident, Mr. Hill and his three co-defendants had been walking in the South End of Boston. Ashes from Mr. Murphy's pipe landed on one of the men, causing the boys to exchange words with Mr. Murphy. An altercation ensued, and Mr. Murphy grabbed Mr. Hill's leg. Mr. Hill stabbed Mr. Murphy, killing him. Mr. Hill was convicted after a jury trial. He was originally sentenced to serve life in prison for the second degree murder of Mr. Murphy; however, the United States Court of Appeals vacated the conviction because of a faulty jury instruction. *Hill v. Maloney*, 927 F.2d 646 (1990). On December 28, 1990, Mr. Hill pleaded guilty to manslaughter and was sentenced to serve a concurrent term of 18-20 years.

## **II. PAROLE HEARING ON MARCH 23, 2017**

Gerald Hill, 54-years-old, appeared before the Parole Board for a review hearing on March 23, 2017, and was represented by Attorney Brian Murphy. This is Mr. Hill's second hearing before the Board, since his return to custody in 2009. In Mr. Hill's opening statement, he offered an apology to the families of Max Fishman and Leo Murphy. He described his actions as selfish and thoughtless, and stated that he is fully aware that neither time, nor words, will heal the emotional trauma that he inflicted upon others.

Previously, on July 29, 2008, the Board had voted to parole Mr. Hill upon his successful completion of six months in pre-release. He was subsequently released on September 3, 2009. On November 9, 2009, however, Mr. Hill was arrested on various charges stemming from an armed robbery of a taxicab company in Boston. In the vicinity of the robbery, a Boston police officer had seen Mr. Hill running across the street with a plastic bag and getting into a taxi. When the policeman stopped the taxi, he saw Mr. Hill reach toward his waistband, revealing the handle of a firearm. Officers searched the bag that Mr. Hill had been carrying and recovered hand ties (restraints), clothing, and approximately \$21,000. A firearm was recovered from the floor of the taxi. In addition, a hat containing the DNA of Marvin Smith (a man with whom Mr. Hill had been incarcerated) was discovered in the bag. As a result of his arrest, the Parole Board initiated parole revocation proceedings. The District Attorney indicted Mr. Hill for the robbery, but the charges were ultimately dismissed when Mr. Hill's motion to suppress evidence was allowed, due to an unlawful stop, search, and seizure of the taxicab.

At this hearing, the Board questioned Mr. Hill about his parole supervision and subsequent arrest (a mere 66 days later) for armed robbery. The Board continued to express skepticism as to Mr. Hill's testimony concerning his arrest and subsequent indictment. Mr. Hill continues to assert that it was a coincidence he was in the cab containing the stolen money,

firearms, and items associated with the robbery. In addition, he did not provide the arresting officers with the alibi (that he has since presented to the Board) that he was driving with his nephew, whose license had been suspended.

The Board also discussed Mr. Hill's positive institutional adjustment, having received only one disciplinary since his re-incarceration, and acknowledged his programming efforts.

Mr. Hill had several supporters in attendance at his hearing. The Board considered testimony from his mother and two of his siblings, all of whom expressed strong support for parole. Several members of Mr. Fishman's family spoke in opposition. In addition, Suffolk County Assistant District Attorney Charles Bartoloni strongly opposed parole.

### **III. DECISION**

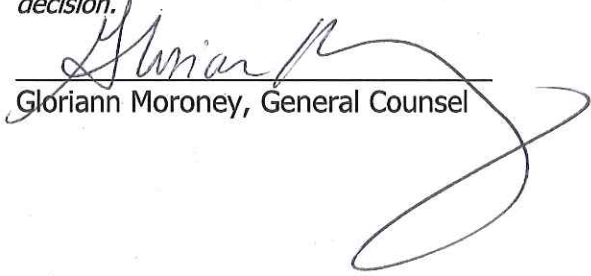
The Board is of the opinion that Gerald Hill has not demonstrated a level of rehabilitative progress that would make his release compatible with the welfare of society. Gerald Hill was on parole a mere 66 days, when he was accused of participating in a vicious armed robbery. He was given a generous parole; he is responsible for taking the lives of two innocent men in a matter of months. The Board does not find Mr. Hill's version of the events, resulting in his revocation, plausible. He is not rehabilitated.

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.* The Board has also considered a risk and needs assessment, and whether risk reduction programs could effectively minimize Mr. Hill's risk of recidivism. After applying this standard to the circumstances of Mr. Hill's case, the Board is of the opinion that Mr. Hill is not yet rehabilitated, and his release is not compatible with the welfare of society. Gerald Hill, therefore, does not merit parole at this time.

Mr. Hill's next appearance before the Board will take place in five years from the date of this hearing. During the interim, the Board encourages him 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.*

  
Gloriann Moroney, General Counsel

1/3/18  
Date