



Deval L. Patrick
Governor

Timothy P. Murray
Lieutenant Governor

Andrea J. Cabral
Secretary

The Commonwealth of Massachusetts
Executive Office of Public Safety

PAROLE BOARD

*12 Mercer Road
Natick, Massachusetts 01760*

Telephone # (508) 650-4500

Facsimile # (508) 650-4599



Josh Wall
Chairman

DECISION

IN THE MATTER OF

GERALD HILL

W36748

TYPE OF HEARING: Revocation Review Hearing

DATE OF HEARING: March 27, 2012

DATE OF DECISION: March 26, 2013

PARTICIPATING BOARD MEMBERS: Cesar Archilla, Dr. Charlene Bonner, Sheila Dupre, Ina Howard-Hogan, Roger Michel, Lucy Soto-Abbe. Josh Wall is recused and did not participate in the case.

DECISION OF THE BOARD: After careful consideration of all relevant facts, including the nature of the underlying offense, institutional record, the views of the public as expressed at the hearing both in support and opposition of parole, we conclude by unanimous vote that the inmate is not a suitable candidate for parole at this time. Parole is denied with a review in five years.

I. STATEMENT OF THE CASE

On February 10, 1978, Gerald Hill and his co-defendant, Hubert Smith¹, shot and killed 63-year-old Max Fishman in Egleston Square in Boston while he was delivering oil on the day after the Blizzard of 1978. Mr. Hill was 15 years old. On February 17, 1979, he pleaded guilty to second degree murder and was sentenced to serve life in prison. Mr. Hill has filed numerous post-conviction motions seeking to vacate his conviction and receive a new trial, all of which have been denied.

On the day of the murder, Mr. Hill, Mr. Smith, and another friend, Walter Crumbley, were running errands for Mr. Crumbley's mother. They were discussing robbing a milkman, a delivery truck, or a mini-mart. Eventually, they came across a delivery truck delivering oil to

¹ 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).

residences in the wake of the blizzard and talked about 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 committed this murder while he was on bail 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 when 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 and 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, he pleaded guilty to manslaughter and was sentenced to serve a concurrent term of 18-20 years.

II. INSTITUTIONAL CONDUCT

Mr. Hill's institutional adjustment has been less than exemplary. He has amassed a total of 68 disciplinary reports, many for assaultive conduct against other inmates and Department of Correction staff, along with possession of active credit cards, substance use, throwing urine at a corrections officer, and crippling a goose.² In addition, he has had eight returns to higher custody, four lateral transfers, and one placement in the Disciplinary Segregation Unit. Since his return to custody in 2009, he has received one additional disciplinary report for fighting. Mr. Hill reports that he has been sober since 1991, but admits to having used heroin and cocaine while in prison, and also to using marijuana.

Mr. Hill has had numerous jobs while incarcerated, including working as a janitor, doing laundry, serving as a runner, and being a part of the kitchen and gym crews. He completed the Correctional Recovery Academy in 1991 and has been involved in substance abuse treatment, including AA. He has participated in anger management and violence reduction programming. In addition, he has taken business and computer courses, and completed his GED in 1978. Since his return to custody, Mr. Hill has not participated in any programs because, he claims, he is ineligible. He is on the wait list for employment.

III. PAROLE HISTORY

Mr. Hill first came before the Board for his initial hearing on January 4, 1993. In denying parole, the Board noted that Mr. Hill did not demonstrate remorse or insight into his crimes, that he had had poor institutional conduct, and that he needed additional counseling. The Board denied parole at subsequent hearings in 1994, 1996, 1998, and 2000, reiterating Mr. Hill's problematic institutional adjustment as well as the nature of the offenses.

² At the parole hearing, Mr. Hill denied throwing urine and harming the goose.

On July 29, 2008, the Board voted to parole Mr. Hill conditioned upon his successful completion of six months in pre-release. Mr. Hill complied, and was released into the community on September 3, 2009. On November 9, 2009, Mr. Hill was arrested on various charges stemming from an armed robbery of a taxicab company on Kilmarnock Street in Boston. Approximately \$21,000 was stolen. In the immediate wake, and in the vicinity, of the robbery, Mr. Hill ran across the street through traffic carrying a plastic bag and got into a taxi. A Boston Police Officer saw Mr. Hill and stopped the taxi. When he did, 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 this arrest, the Parole Board initiated parole revocation proceedings. The District Attorney indicted Mr. Hill for the robbery, but the charges were ultimately dismissed because Mr. Hill's motion to suppress evidence was allowed due to an unlawful stop, search, and seizure of the taxicab. As a result, the District Attorney was unable to prosecute the case without the seized evidence.

IV. PAROLE HEARING ON MARCH 27, 2012

At his most recent parole hearing, Mr. Hill was represented by Attorney Gregory St. Cyr. Board Members questioned Mr. Hill extensively about the incident leading to the revocation of his parole. Mr. Hill claimed that he was "in the wrong place at the wrong time," denied that he had participated in the 2009 armed robbery, and stated that the bag and firearm recovered from the taxi that he had been in were not his.³ He believes that it was a "coincidence" that the DNA of an individual with whom he had been incarcerated was recovered in the taxi with him. He declined to answer any questions about his whereabouts prior to his arrest, only stating that he had been driving in a car with an unlicensed relative, and got out because he only had his learner's permit and could not drive without a properly licensed person accompanying him. Board Members expressed skepticism at his version of the events of that day and were concerned about his evasive responses to their questions and his cavalier demeanor during the hearing. During Mr. Hill's closing statement, he expressed his belief that the Boston Police Officer and two of the victims involved in the 2009 incident, who testified in opposition to parole, were being untruthful with the Board.

The Board also questioned Mr. Hill about rape allegations that were lodged against him while he was incarcerated. Mr. Hill explained that the alleged victim was trying to obtain a financial settlement from the Department of Correction and had set him up. After an investigation, the Norfolk District Attorney declined to pursue the prosecution.

With respect to the governing offense, and the 1977 manslaughter, Mr. Hill accepted responsibility for his crimes. When asked about his poor institutional adjustment, he referred to "growing up in prison" and noted the challenges he faced as a child during court-ordered busing.

³ At the parole hearing, Mr. Hill denied knowing Marvin Smith, who was also charged with the 2009 armed robbery and ultimately acquitted. Mr. Smith also testified at the parole hearing that while he knew of Mr. Hill, he was not with Mr. Hill on the day of the robbery and did not associate with him.

Assistant District Attorney Philip O'Brien, Boston Police Officer Jorge Dias, the officer who had arrested Mr. Hill in the wake of the 2009 robbery, and the employees of the taxi cab company who had been robbed spoke in opposition to parole. In addition, Mr. Fishman's (the decedent in the 1978 murder) daughter and son-in-law testified in opposition. Four people testified in support of parole, including Mr. Hill's brother and sister.

V. DECISION

Gerald Hill is responsible for the deaths of two men and, just 66 days after his release into the community, he was accused of participating in a vicious armed robbery. He was stopped shortly after the robbery in a taxi cab from which the police recovered a firearm and a bag containing the robbery proceeds. Upon his return to custody, he has incurred another disciplinary report for fighting, has not engaged in any programming and, instead, spends his days "reading," "relaxing," and "exercising." He has not displayed any appreciation for the severity of the accusations against him that resulted in his parole revocation, nor did he show any compassion for the victims of the 2009 robbery who testified at the hearing. Considering these factors, the Board concludes that Mr. Hill is not rehabilitated. He would be likely to re-offend if released and his release is incompatible with the welfare of society. Accordingly, parole is denied.

Mr. Hill is encouraged to reflect on his actions and behavior during the brief time that he was on parole and engage in meaningful institutional programming to assist with his 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 each member of the Board has reviewed the applicant's entire criminal record. This signature does not indicate authorship of the decision.


Janis DiLoreto Noble, General Counsel

3/26/13
Date