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PAROLE BOARD

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Josh Wall
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DECISION

IN THE MATTER OF

GERSON CHAVEZ

W65591

TYPE OF HEARING: Initial Hearing

DATE OF HEARING: January 15, 2013

DATE OF DECISION: January 30, 2014

PARTICIPATING BOARD MEMBERS: Cesar Archilla, Dr. Charlene Bonner, Sheila Dupre, Ina Howard-Hogan, Lucy Soto-Abbe, Josh Wall

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 testimony at the hearing, and the views of the public as expressed at the hearing or in writing, 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 from the date of the hearing.

I. STATEMENT OF THE CASE

Gerson Chavez appeared before the Parole Board for an Initial Hearing concerning his life sentence for second degree murder. On November 16, 1998, Chavez, age 24, pleaded guilty to second degree murder in Essex Superior Court for the killing of Paul Cunha. Chavez also pleaded guilty to armed assault with intent to murder for seriously and permanently injuring Anna Marconi, and received a concurrent sentence of eight to ten years.

On Sunday, February 16, 1998, the victims, Paul Cunha and Anna Marconi, worked at Bazooka's Bar at the corner of Central and Walnut Street in Peabody. Cunha was a part time manager and Marconi was a waitress. Chavez, who was a regular customer, was present. At closing time, a crowd of customers left Bazooka's to go to a Dunkin' Donuts next door. Cunha and Marconi remained at Bazooka's to clean up.

Wilson DaSilva, one of the customers who went to the Dunkin Donuts, exchanged words with Cunha, who in turn responded by confronting DaSilva in the Dunkin Donuts parking lot. Cunha and DaSilva chased each other through the parking lot and returned to the back side of Bazooka's Bar, where they continued fighting in the street. A crowd formed, the fight was broken up, and DaSilva fled.

While the crowd's attention was focused on DaSilva's flight, Chavez drove his vehicle down the wrong way on Walnut Street and directly at the crowd. Chavez was intoxicated. The crowd was taken by surprise by Chavez. Both Cunha and Marconi were in the crowd. Chavez came to a screeching halt, lurched his car forward, and knocked both Cunha and Marconi to the ground. Marconi was under the car. When Chavez reversed his vehicle, he ran over Marconi a second time. When he sped forward, Chavez ran over Marconi a third time.

Cunha was pinned on the front of the car, holding on and screaming for his life. As Chavez sped down Walnut Street, Cunha was hanging onto the front bumper with his legs and lower body pinned between the road and the undercarriage of the car. Cunha was dragged approximately four hundred feet down Walnut Street, leaving a trail of hair and blood along the way and screaming for his life. When he could no longer hold on, Cunha let go of the vehicle and Chavez crushed him to death between the road and his vehicle. Chavez was unable to keep control of the vehicle. As Cunha came spinning out the back, Chavez ran head on into a gutter, crashing and disabling the vehicle. Chavez fled the scene to an apartment in Peabody.

The police responded immediately and two sets of paramedics attended to Cunha and Marconi. Cunha died on Walnut Street, with both his lungs and heart crushed by Chavez's vehicle. Marconi, who was very seriously injured, was taken by helicopter to Boston Medical Center, where she remained a patient for weeks. Initially, Marconi was not expected to live. While she survived, Marconi's injuries resulted in permanent brain damage.

Later than morning, police located Chavez in an apartment hiding in the closet. When questioned, Chavez denied driving the vehicle. At his parole hearing, Chavez maintained that he was unaware that he ran over Cunha and Marconi. Had he known, Chavez maintained that he would have assisted the victims. Chavez, who is a native of Brazil, entered the United States illegally in 1994. An ICE deportation detainer to Brazil was ordered in January of 2000.

II. CRIMINAL & INSTITUTIONAL HISTORY

Chavez is serving his first adult state incarceration. On October 27, 1997, Chavez was charged with operating under the influence of alcohol and operating to endanger. Both of these charges were dismissed. He has served fifteen years on his life sentence for the second degree murder of Cunha, and is currently incarcerated at MCI-Norfolk. Chavez worked in the Industries upholstery shop and was featured in a newspaper article regarding his accomplishments there. Chavez has received three disciplinary reports for property related offenses, and has participated in programming, which Chavez highlighted during his January 15, 2013 parole hearing.

III. PAROLE HEARING ON JANUARY 15, 2013

Gerson Chavez appeared for his initial parole hearing on the life sentence he is serving for the second degree murder of Paul Cunha. He has completed his concurrent sentence of eight to ten years for assaulting Anna Marconi with the intent to kill her. Attorney John Rull represented Chavez. He informed the Board that Chavez, at the time of the murder, was working at three different jobs and sending money home to his family in Brazil. He described Chavez's good conduct (three disciplinary reports) and program participation, which includes AA and 12 Step, Alternatives to Violence (two phases), Emotional Awareness, and Jericho Circle. He works in the upholstery shop.

Chavez testified that he did not know that he hit two people with his car or that two people were pinned underneath his car. Chavez admitted that he told police that he had worked that day and that he had no role in the accident because someone had taken his car. At the hearing, Chavez admitted that he was "drinking the whole, entire day; I was drunk all day; I was at area bars." He said, "I don't remember striking the victims; I didn't notice hitting them; I thought there was something mechanical that was wrong with my car; if I had noticed people I would have tried to save their lives; I didn't know what happened until I learned in court; there were a lot of people there and I got scared so I left; if I knew people were hit I would have called police and helped them."

A Board Member pointed out the witness testimony describing the incident: "after you hit Mr. Cunha he hung onto your car while you drove 400 feet down Walnut Street; he couldn't hang on any longer and when he lost his grip you drove over him; you hit Ms. Marconi, ran over her, stopped the car and drove over her again this time in reverse." Chavez continued to insist that he was unaware that he struck either victim. Another Board Member reminded Chavez of the witness who tried to stop Chavez when he ran from his car and told Chavez he needed to stay because he had hit two people.

Board Members did not believe Chavez's story. A Board Member told him, "the Board has to be able to trust you; based on your testimony, I do not trust you." The Board Member pointed out a pattern: "you were placed on bail in California for deportation proceedings and you fled as far away as you could; you were arrested for OUI in Peabody and used an alias; four months later you took an innocent life and ruined another life; the statement that you would administer assistance to the victims if you had known you hit them is an outright lie."

There were no supporters present. The surviving victim, Anna Marconi, and her brother testified in opposition to parole.

IV. DECISION

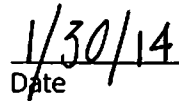
Gerson Chavez committed an egregious and tragic drunk driving homicide for which he was convicted of second degree murder. He also maimed a second victim. The facts establish knowledge, malice, and considerable intentional conduct. Despite good conduct in prison and moderate program participation, Chavez does not present as a viable candidate for parole because of his lack of candor. Based on the evidence and the convictions, the Parole Board cannot accept Chavez's testimony that he had no knowledge that he struck the victims. His untruthful testimony, which minimizes his responsibility, is a clear sign that he is neither

remorseful nor rehabilitated. He has completed some programs, but they have not had the intended effect of helping him reform his character, thinking, and conduct.

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." Applying that appropriately high standard here, the Board finds that Mr. Chavez is not a suitable candidate for parole because he is not rehabilitated. The period of review will be five years, during which time Mr. Chavez should address issues of honesty, remorse, and victim empathy.

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.


Caitlin E. Casey, Chief of Staff


Date