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Paul M. Treseler
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DECISION

IN THE MATTER OF

GIBNEY GABRIEL
W47019

TYPE OF HEARING: Review Hearing

DATE OF HEARING: July 28, 2016

DATE OF DECISION: December 8, 2016

PARTICIPATING BOARD MEMBERS: Paul M. Treseler, Dr. Charlene Bonner, Tonomey Coleman, Sheila Dupre, Tina Hurley, and 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 the 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 a majority vote that the inmate is not a suitable candidate for parole. Parole is denied with a review scheduled in two years from the date of the hearing.¹

I. STATEMENT OF THE CASE

On September 11, 1989, in Suffolk Superior Court, Gibney Gabriel pled guilty to the second degree murder of 16-year-old Michael Alexandre and was sentenced to life in prison with the possibility of parole. At the time of Mr. Alexandre's murder, Mr. Gabriel was 17-years-old.

On September 7, 1988, at approximately 8:30 p.m., Gibney Gabriel went to the Dorchester home of Ralph and Michael Alexandre. Mr. Gabriel told Ralph Alexandre that another teenager wanted to "beef" with him outside. Ralph Alexandre went outside with his

¹ Five Members of the Parole Board voted to schedule a review hearing on Mr. Gabriel's petition for parole in 2 years. One Board Member voted to reserve to an approved home plan upon completion of 9 months in lower security.

brother Michael Alexandre and Mr. Gabriel. Ralph Alexandre and the other teenager began to shove each other when his brother Michael Alexandre attempted to intervene. Mr. Gabriel then grabbed Michael Alexandre, told him to "stay out of this," produced a black .22 revolver, and fired it once into Michael Alexandre's face. Ralph Alexandre stated that Mr. Gabriel turned the gun on him and pulled the trigger twice, but the gun did not fire. Ralph Alexandre ran home and called the police. Michael Alexandre was transported to Boston City Hospital and was pronounced dead on September 8, 1988. A warrant for Mr. Gabriel was issued, and he was subsequently arrested in South Burlington, Vermont.

II. PAROLE HEARING ON JULY 28, 2016

Gibney Gabriel, now 45-years-old, appeared before the Parole Board on July 28, 2016, for a review hearing and was represented by Attorney Jason Benzaken. Mr. Gabriel was first paroled in December 2005, and then returned to custody on June 13, 2008. Revocation was not affirmed and he was returned to parole supervision on August 13, 2008. On October 11, 2010, Mr. Gabriel was returned to custody on a parole violation warrant and revocation was affirmed. A parole hearing was held on October 18, 2011, and parole was denied with a four year review.

In Mr. Gabriel's opening statement, he apologized to the victim's family and said that Michael (Alexandre) was his best friend; that he was more like a family member. In Attorney Benzaken's opening statement, he addressed Mr. Gabriel's parole revocation in 2010. Attorney Benzaken said that Mr. Gabriel was doing well until 2008, when he had a setback leading to his failure to report to parole. Attorney Benzaken stated that Mr. Gabriel had tried to mitigate his behavior, but his failure on parole arose from drug usage and failure to follow parole requirements. Mr. Gabriel told the Board that he thought the four year setback he received after his last hearing was harsh, but had allowed him time to reflect. He stated he had been fighting to regain the success that he had in his prior release. He had been trying to make a turn-around, but could not. Mr. Gabriel said that he had requested a postponement of his parole hearing last year in order to obtain an attorney and to receive additional time to prepare.

At this hearing, Board Members questioned Mr. Gabriel about his crime. Mr. Gabriel said that Ralph Alexandre and another teenager had an issue over a basketball game. He also said that his sister's boyfriend had asked him to hold his gun, which he did. Mr. Gabriel said that Ralph Alexandre grabbed the other teenager and they started wrestling. He said that Michael Alexandre wanted to join in, but he held him back. Upon hearing someone call his name, he turned in that direction with his hand on the gun. Mr. Gabriel said that he saw a quick movement on his side and fired in that direction. He said that at the time, he did not know who he had hit. He then realized he had shot Michael Alexandre. He stated that Ralph Alexandre grabbed him and asked him what he had done. The Board questioned Mr. Gabriel about the report that after shooting Michael Alexandre, he pointed the gun at Ralph Alexandre and tried to shoot him twice. Mr. Gabriel stated that it may have been possible, but that he doesn't remember doing so. He told the Board that he had never before carried a weapon and denied any gang affiliation. He stated that among the group gathered that night, he only knew his sister's boyfriend. Mr. Gabriel said that after shooting Michael, he ran from the scene and dropped the gun. He sought out his brother and told him he had just shot Michael. He said that he went to Vermont and was arrested there.

While on parole, Mr. Gabriel said he worked at different times at a party rental place, an auto body place, and a transportation company. He stated that he was working at the party rental place until his arrest and thought that he had been doing well on parole. He told the Board that when he was released in September 2008, he returned to his mother's house and all his property had been destroyed. He tried to reestablish himself, and he moved in with his sister. However, there was a fire at his sister's place and he lost everything and had to move in with another sister. He then moved to Boston once an apartment became available, and he took in his nieces and nephews. He stated he was trying to keep his family together and out of trouble, but that he couldn't cope. He said that he confided in his parole officer and his brother that he was having trouble. He admitted to using marijuana, starting in 2010. He said that he closed himself off to everything, and that he never forgave himself for shooting Michael. He said he did not take his parole officer's suggestion to seek counseling because he just "shut down."

Mr. Gabriel said that he has participated in the Lifers Group, Toastmasters, computer classes, barber school, music programs, exercise and meditation. He said that he has learned better coping skills and that this latest incarceration has given him time to reflect. He admitted, however, that he hasn't gone to counseling. Upon questioning from the Board as to why it took until 2014 to enroll in programming, Mr. Gabriel said that due to his sentence structure, he was limited as to which programs he could enroll in. He told the Board that he hadn't been to AA/NA in the last three months, as he has been spending his time preparing for this hearing. Mr. Gabriel also said that he has a job as a houseman in his unit. If paroled, Mr. Gabriel wants to go back to work and school. He plans on being more forthcoming with his family and anticipates returning to a more stable home environment. The Parole Board informed Mr. Gabriel that it had reviewed an assessment report to help objectively evaluate him. The Board commented that the report indicated a good prognosis for Mr. Gabriel, if he was willing to accept its recommendations. Board Members also encouraged him to work through his fears and to work with parole; that trust with parole was paramount to any success. Mr. Gabriel told the Board that "sometimes you have to lose in order for you to win and, this right now, I take this as a winning situation because I have come to understand what it was and better understand what I was doing wrong".

Mr. Gabriel's cousin testified in support of his parole. Dr. Mendosa submitted a report to the Board and also testified in support of Mr. Gabriel's parole. The Suffolk District Attorney's Office submitted a letter in opposition to parole.

III. DECISION

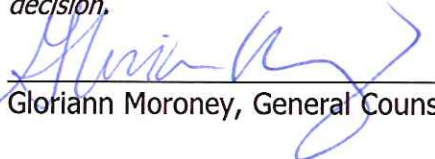
The Board is of the opinion that Mr. Gabriel has not yet demonstrated a level of rehabilitative progress that would make his release compatible with the welfare of society. The Board believes that a longer period of positive adjustment and programming would be beneficial to Mr. Gabriel's rehabilitation. The Board found that Mr. Gabriel has a history of not being forthcoming with parole and that his conduct under supervision is suspect. In addition, he has multiple parole violations involving non-compliance with supervision requirements. Mr. Gabriel needs to continue with programming that addresses his lack of candor and criminal thinking. He also needs to participate in violence reduction programming and the Correctional Recovery Academy.

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 also recognizes the petitioner's right to be represented by counsel during his appearance before the Board. *Id.* at 20-24. The Board has also considered whether risk reduction programs could effectively minimize Mr. Gabriel's risk of recidivism. After applying this standard to the circumstances of Mr. Gabriel's case, the Board is of the opinion that Mr. Gabriel is not yet rehabilitated, and his release is not compatible with the welfare of society. Mr. Gabriel, therefore, does not merit parole at this time.

Mr. Gabriel's next appearance before the Board will take place in two years from the date of this hearing. During the interim, the Board encourages Mr. Gabriel to continue working towards 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


Date