

The Commonwealth of Massachusetts  
Executive Office of Public Safety and Security



PAROLE BOARD

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**DECISION**

**IN THE MATTER OF**

**GREGORY DIATCHENKO**

**W38579**

**TYPE OF HEARING:** Review Hearing

**DATE OF HEARING:** July 23, 2019

**DATE OF DECISION:** May 12, 2020

**PARTICIPATING BOARD MEMBERS:** Gloriann Moroney, Tonomey Coleman, Sheila Dupre, Tina Hurley, Karen McCarthy, Dr. Charlene Bonner, Colette Santa

**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 that the inmate is not a suitable candidate for parole.<sup>1</sup> Parole is denied with a review scheduled in two years from the date of the hearing.

**I. STATEMENT OF THE CASE**

On November 24, 1981, in Suffolk Superior Court, a jury found 17-year-old Gregory Diatchenko guilty of first-degree murder on the theories of deliberate premeditation, extreme atrocity and cruelty, and felony murder (armed robbery) in the death of 55-year-old Thomas Wharf. He was sentenced to serve the mandatory term of life in prison without the possibility of parole. The Supreme Judicial Court affirmed the conviction on direct appeal.<sup>2</sup>

Thirty years later, the United States Supreme Court decided *Miller v. Alabama*, 132 S. Ct. 2455 (2012), in which it held that the mandatory imposition of life without the possibility of parole on individuals, who were under the age of 18 at the time of the murder, violated the Eighth Amendment prohibition on cruel and unusual punishment. Following that decision, Mr.

<sup>1</sup> Four Board Members voted to deny parole, and three Board Members voted to grant parole.

<sup>2</sup> *Commonwealth v. Diatchenko*, 387 Mass. 718 (1982).

Diatchenko filed a G.L. c. 211, § 3, petition with the Single Justice of the Supreme Judicial Court challenging the constitutionality of Massachusetts law requiring the imposition of life without the possibility of parole on juveniles, who were convicted of first-degree murder. The matter was referred to the full bench of the Supreme Judicial Court and, on December 24, 2013, the Court issued a decision in *Diatchenko v. District Attorney for the Suffolk District & Others*, 466 Mass. 655 (2013), in which it determined that the statutory provisions mandating life without the possibility of parole were invalid as applied to Mr. Diatchenko and others, who were juveniles at the time that they committed murder. The Court ordered that affected inmates receive a parole hearing after serving 15 years. Accordingly, Mr. Diatchenko became eligible for parole. Mr. Diatchenko was granted parole after his initial hearing in 2014, but his parole was revoked in 2018.

On the evening of May 9, 1981, at approximately 9:45 p.m., a Boston police officer received a radio call directing him to an alley at the rear of 860 Beacon Street, near Kenmore Square. When he arrived, he saw Thomas Wharf, slumped over and unconscious, bleeding in the driver's seat of a red Cadillac automobile. Mr. Wharf was pronounced dead. A later autopsy revealed nine stab wounds, including one that penetrated the left lung and another that pierced the heart. The right rear pocket of his pants had been ripped open. Extensive evidence indicated that Mr. Diatchenko committed the murder, as his fingerprints were found in, and on, the victim's car. A witness testified that she was seated at a table in her apartment, at 860 Beacon Street, on the night of the stabbing. The table was located next to an open window, overlooking the alley where the stabbing occurred. At approximately 9:30 p.m., she heard a loud voice from the alley yell out a few times, "Give me your money, you m--- f---." She telephoned the police and reported what she assumed was a robbery. While on the telephone, she heard a car horn sound continuously for approximately five seconds. She then saw someone, wearing a brown leather jacket, run away from the building.

On the same night, at approximately 10:15 p.m., another witness was seated at a shelter at the Brookline Village streetcar station. He saw a light-haired young man, carrying a brown leather jacket, walking along the trolley tracks from the direction of the scene of the murder. The young man came into the shelter, sat down beside the man, and asked him for a match. The witness, who noticed that the young man's hand was covered with blood, asked whether he had cut himself. The young man replied that he had been in a fight and had stabbed someone approximately 20 times. The witness and the young man spoke for about 15 minutes, and the young man told the witness that his name was Greg. On the following day, May 10, the witness read an account of the murder in a newspaper. On May 11, the witness telephoned Boston police and spoke of his meeting with the young man on the night of the stabbing. The witness later identified a photograph of Mr. Diatchenko from an array of 11 photographs.

An arrest warrant was issued for Mr. Diatchenko. A search of Mr. Diatchenko's apartment was conducted during the arrest. A brown leather jacket and a knife were found.

## **II. PAROLE HEARING ON JULY 23, 2019**

Gregory Diatchenko, now 56-years-old, appeared before the Parole Board on July 23, 2019, for a review hearing. He was represented by Attorneys Lisa Newman-Polk and Benjamin Keehn. Mr. Diatchenko was granted parole after his initial hearing in 2014. After violation of his parole conditions, his parole was revoked in 2018. In his opening statement to the Board, Mr. Diatchenko stated that he was "sorry and embarrassed" to be before the Board again. His parole

release was "a second chance at life," which he had taken from Mr. Wharf. By not succeeding on parole, Mr. Diatchenko "dishonored" Mr. Wharf's memory. Mr. Diatchenko and the Board discussed his life before the murder, which was marked by a contentious relationship with his mother and alcohol abuse. Mr. Diatchenko told the Board that his crime was motivated by a desire to rob Mr. Wharf, although he had never robbed anyone before. He explained that "an opportunity arose," and he took advantage of it. Mr. Diatchenko had consumed alcohol on the night of the murder.

At his 2014 hearing, Mr. Diatchenko presented the Board with a detailed and thoughtful parole plan. The Board noted that, central to the plan, was Mr. Diatchenko's dedication to his Zen Buddhist faith. Mr. Diatchenko said that although he still practices, he "slacked off" in times of stress during his release. He also chose not to pursue his planned career in plumbing. Mr. Diatchenko explained that he began to have concerns about his home plan, while in pre-release, as he and his mother argued and his stepfather was terminally ill. He acknowledged that although he shared his concerns with other family members, he did not inform the Board because "the ball was already in motion." He now believes that he should have pursued alternative home plans with parole. Mr. Diatchenko explained that he was not concerned about relapse, at the time, because he had been away from alcohol for so many years. He thought relapse was "impossible."

The Board noted that Mr. Diatchenko had been incident-free for the first two and a half years on parole supervision. He maintained employment in property management and engaged in counseling and medical treatment for a number of issues. Mr. Diatchenko told the Board that he enjoyed positive, respectful relationships with each of his parole officers. He explained that he engaged heavily in the community in order to share his experiences as a juvenile lifer. Despite the positive behavior, Board Members noted significant missteps made by Mr. Diatchenko during his parole supervision, largely grounded in dishonesty with his support network. Mr. Diatchenko admitted that he did not disclose romantic relationships to his parole officer, despite knowing that he had to do so. He was afraid he would lose the relationships, if he did so, and he "knew in his heart and mind" that his partners did not have criminal records. Mr. Diatchenko also admitted to using marijuana on two occasions with a group of friends, but agreed that there was "no justification" for its use. When the Board asked whether he had disclosed his drug use before he tested positive on a routine drug test, Mr. Diatchenko replied that he had not, as he believed he could pass the test.

The Board discussed Mr. Diatchenko's presence at a protest, at MCI-Norfolk, in May 2018. Mr. Diatchenko acknowledged that he was aware of his requirement, as a parolee, to inform his parole officer if he went to a correctional institution. Mr. Diatchenko claimed that he did not do so on this occasion, as he was told by others he did not have to. Further, he believed he only had to tell his parole officer if he intended to visit an inmate inside a correctional institution. Mr. Diatchenko agreed that, "looking back," his attendance was "the wrong decision for [him]" because he was on parole. Mr. Diatchenko understands that he, as well as the community, were better served when he was engaged in educational work or focused on his successful transition back to society.

Mr. Diatchenko told the Board that he began drinking alcohol again in December 2017, but did not share this information with his parole officer. He was depressed about a back injury that prevented him from working, so he decided to buy a six-pack of beer. As time went on, he purchased hard liquor and continued to drink because "he felt like it." When the Board questioned

him as to whether his mother, with whom he lived, knew about his alcohol use, Mr. Diatchenko stated that she did not. He repeatedly lied to her when she confronted him about her suspicion of his alcohol use. Mr. Diatchenko explained that he suffered from the tragic loss of his cousin in February 2018, which worsened his alcohol use. It was not until April 2018, when he posted a suicidal message on Facebook, that a friend tried to intervene in his downward spiral. Mr. Diatchenko said that this friend, and his attorney, met with him to share their concerns about his alcohol use. When questioned as to why he did not share his alcohol use, suicidal ideation, or feelings of depression with his parole officer, Mr. Diatchenko responded that he was afraid he would be returned to custody. Instead of entering a rehabilitation facility, he attempted to pursue other remedies, so that his parole officer would not be alerted by a change in address.

In May 2018, Mr. Diatchenko openly consumed copious amounts of alcohol at a memorial service for his cousin. When his mother confronted him, Mr. Diatchenko said that he was "embarrassed" and told his mother to "mind her own business." The next morning, he was visited by his parole officer. Mr. Diatchenko admitted that he could "smell the alcohol emanating" off his own body, as he blew a .130 on a breathalyzer. The Board noted that Mr. Diatchenko attempted to kill himself during transport to MCI-Cedar Junction, by wrapping a seatbelt around his neck. Mr. Diatchenko acknowledged that parole officers cut the seatbelt to save his life, and that the attempt led to his placement in the HSU. The 10 days he spent in the HSU were "torturous" and contributed to him having a "mental breakdown." During this time, Mr. Diatchenko engaged in a verbal altercation with a correctional officer. Although he acknowledged telling a correctional officer that he was going to "tell his friends on the outside" about the officer, Mr. Diatchenko claimed that his intent was for his friends to post his negative treatment on social media. The Board confronted Mr. Diatchenko with the fact that both a disciplinary report and a criminal case arose out of this incident, which stated that he had threatened the officer with physical harm. Mr. Diatchenko claimed to have had "no recollection" of making a physical threat, but rather, chose to take an Alford plea on the criminal case, so he could put the incident behind him.

The Board informed Mr. Diatchenko of their significant concerns regarding his level of trust, given his lack of openness and honesty with parole staff. Although Board Members acknowledged the many challenges Mr. Diatchenko faced during his release, they noted the numerous poor decisions he made in response, as well as the fact that he did not seek help from his large support network. The Board also informed Mr. Diatchenko of their concern that the murder of Mr. Wharf did not cross his mind, when he resumed abusing alcohol. Mr. Diatchenko responded that he now understands the need to ask for help in order to ensure a successful transition into the community. Since his return to custody, Mr. Diatchenko has participated in the Correctional Recovery Academy and Graduate Maintenance Program. He also serves as a mentor in the Graduate Support Program and attends AA meetings and counseling. If granted parole, Mr. Diatchenko seeks release to a long term residential program to address substance abuse, before moving in with friends in Jamaica Plain. He told the Board that he would continue to attend counseling, faith practice, and AA in order to aid in his transition.

Mr. Diatchenko's stepmother, neighbor, reverend, and two friends testified in support of parole. Suffolk County Assistant District Attorney Paul Linn testified and submitted a letter in opposition to parole. Boston Police Commissioner William Gross submitted a letter in opposition to parole. The Board considered additional letters in support of parole.

### III. DECISION

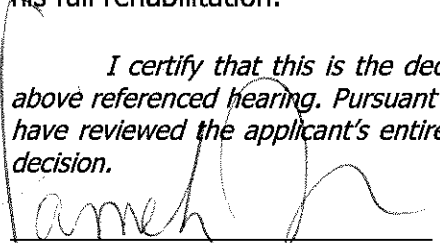
The Board is of the opinion that Gregory Diatchenko has not demonstrated a level of rehabilitative progress that would make his release compatible with the welfare of society. Mr. Diatchenko was in the community for two and one-half years prior to his return to custody. Although there were areas where he had achieved success on parole, he engaged in deceptive behavior and was not forthright with the Massachusetts Parole Board. He struggles with admitting the extent of his missteps and minimizes his own culpability and has made repeated excuses for his behavior. He also exhibited a disregard for the rules of parole supervision.

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 in Mr. Diatchenko's case 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. In forming this opinion, the Board has taken into consideration Mr. Diatchenko's institutional behavior, as well as his participation in available work, educational, and treatment programs during the period of his incarceration. The Board has also considered a risk and needs assessment, and whether risk reduction programs could effectively minimize Mr. Diatchenko's risk of recidivism. After applying this appropriately high standard to the circumstances of Mr. Diatchenko's case, the Board is of the opinion that Gregory Diatchenko is not a suitable candidate for parole at this time.

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

  
Pamela Murphy, General Counsel

  
Date