



The Commonwealth of Massachusetts
Executive Office of Public Safety and Security

PAROLE BOARD

12 Mercer Road
Natick, Massachusetts 01760

Telephone # (508) 650-4500
Facsimile # (508) 650-4599



Charles D. Baker
Governor

Karyn Polito
Lieutenant Governor

Daniel Bennett
Secretary

Charlene Bonner
Chairperson

DECISION

IN THE MATTER OF

HECTOR CUSTODIO

W59389

TYPE OF HEARING: **Review Hearing**

DATE OF HEARING: **March 24, 2015**

DATE OF DECISION: **June 4, 2015**

PARTICIPATING BOARD MEMBERS: Tonomey Coleman, Sheila Dupre, Lee Gartenberg, Ina Howard-Hogan, Tina Hurley, Lucy Soto-Abbe

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 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 two years from the date of the hearing.

I. STATEMENT OF THE CASE

On February 27, 1995, Custodio (who was 21 years old) shot and killed 16-year-old Daniel Brassil in a drive-by shooting. On October 6, 1995, Custodio pleaded guilty to second degree murder in Hampden Superior Court and was sentenced to life in prison. On the same date, Custodio also pleaded guilty to unlawful possession of a firearm and receipt of a stolen motor vehicle. The court sentenced him to serve one year for each crime and ordered the sentences to run concurrently with the life sentence.

On the evening of February 27, 1995, Custodio, a gang member, was driven by an unknown accomplice to an address in Springfield, Massachusetts. Custodio intended to seek revenge against rival gang members who he believed were responsible for a previous assault upon a member of his gang. Upon arriving at the location, Custodio rolled down the vehicle's window and shouted, "Represent!" (a request to identify gang affiliation) to the two young men who were standing in front of the building. Mr. Brassil responded, "Solo!" (meaning no gang

affiliation). However, Custodio, believing the response was that of a gang name, pointed a .38 caliber pistol towards Brassil and fired five shots. Brassil, who was 16-years-old and not affiliated with any gang, was struck in the chest and killed. Custodio and his accomplice fled the scene after the shooting.

Custodio was identified as the shooter shortly after an investigation, which revealed that Custodio had informed others he had mistakenly shot Brassil. The vehicle used in the shooting was determined to be stolen. Two days after the shooting, on March 1, 1995, Custodio confessed to the shooting, but failed to identify his accomplice.

II. PAROLE HEARING ON MARCH 24, 2015

On March 24, 2015, Hector Custodio appeared before the Massachusetts Parole Board for his second parole hearing, having been denied parole after his initial hearing in 2010. He is currently 41-years-old and serving his second incarceration.¹

When Custodio appeared before the Parole Board for his initial hearing in 2010, he was working towards obtaining his GED, had already renounced his gang affiliation, completed a significant amount of rehabilitative and educational programming, and maintained steady institutional employment. The Board nevertheless raised concerns about his suitability for parole at that time, noting that although Custodio renounced gang affiliation and took responsibility for the shooting, his failure to identify his accomplice "and his explanation regarding their relationship strains credibility." Since his last parole hearing, Custodio has obtained his GED and has engaged in additional programs that address anger, substance abuse, criminal thinking, education, and spiritual and emotional wellbeing. He continues to work in the institution and has remained free of further disciplinary reports. Custodio is not an open mental health case.

Custodio apologized for his crime and asked Mr. Brassil's family for forgiveness. Custodio recounted a very difficult early history. He said he grew up with a single mother in New York City, but that she died of liver cancer when he was age 11. He then went to live with his father in Puerto Rico, but his father neglected and rejected him, prompting his return to the United States. He moved to the Springfield area of Massachusetts at age 16 with no family and no place to live. He drifted in and out of homeless shelters until he ended up joining a gang at age 18.

At this hearing, Custodio recounted the circumstances leading to the murder of 16-year-old Daniel Brassil as follows: Members of a rival gang had beaten and stabbed one of Custodio's fellow gang members a few days earlier. In response, Custodio had gone to the leaders of his gang and had gotten approval to go on a mission to retaliate against a target named Carlos. He said his intention when he saw Carlos was only to scare him by "firing shots," not to shoot or kill him. After he got approval for the mission, he encountered a previously unknown teenager (approximately 16-years-old) named "Junior" in downtown Springfield, who was talking to himself about wanting to kill someone. Upon hearing this, Custodio jokingly responded by asking Junior if he needed help. Junior approached him in a

¹ On May 5, 1995 Custodio was convicted of three charges stemming from three separate incidents. They include two convictions for possession of marijuana, for which he received 30 and 60-day sentences, respectively, and a third conviction for possession of ammunition, for which he was sentenced to 60 days.

car the following day and said "Come on, let's go!" He did not know the car was stolen at the time. After he got in the car, Junior handed him a firearm. Custodio shot the firearm five times without looking where he was shooting and "unfortunately ended up hitting the wrong person." Custodio said a female friend turned him in to the police shortly after the killing. He was adamant that Junior was not a fellow gang member and further stated that Junior was never caught. The police never asked him about his accomplice.

Custodio told the Board he was "a knucklehead" earlier in his incarceration, as he was still involved with gang activity. He eventually began to grow up "little by little" and eventually took a "termination" from the gang. He officially renounced gang affiliation through the Department of Correction in 2001. He had his last disciplinary report in 2007 and became more involved in rehabilitative programming since then.

Two of the victim's sisters testified at the hearing. One sister reported that she had prepared a written statement in support of parole, but changed her mind after hearing Custodio's testimony. Like the Board, this sister could not believe the story that Custodio was now telling. It was difficult to believe that Custodio, a gang member with permission from gang leaders to carry out this "mission," would unilaterally engage the services of a 16 year-old non-gang-affiliated teenager to participate in the "mission." She tore up the statement and said she opposed parole because she does not believe Custodio has changed. The other sister said she also attended the hearing with the intent to support Custodio's parole request, but felt "conflicted" after hearing his testimony. She said that she forgives Custodio for killing her brother, but is unwilling to comment on his suitability for parole.

Hampden County Assistant District Attorney Howard Safford was also in attendance. ADA Safford said he, likewise, intended to speak in support of parole based on Custodio's progress in prison. However, he does not believe Custodio's claim that he only intended "to scare" the victim when he fired the gun, and he stated that "credibility matters." ADA Safford said Custodio needs to "fess up" before he is ready to return to society, although he believes that he is otherwise suitable for parole.

III. DECISION

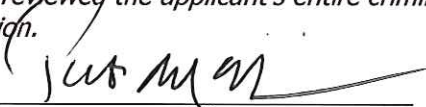
The Board agrees that credibility does matter. The version of events Custodio offered at the hearing not only contravenes common sense, but also conflicts with the written statement he recently offered in support of parole. Specifically, the parole packet that Custodio submitted in support of this hearing contains a section entitled "Inmate's Current Version [of the crime]," wherein he relates the following:

A fellow gang member had been jumped previously that day and I was determined to retaliate against the [rival gang]. So I grabbed my unregistered gun, got in a car with a fellow gang member named Junior, and drove to where the [rival gang] hung out. It is this sense of allegiance that I was sold out to back then which I reject today. I felt the allegiance to retaliate for my fellow gang member being beat up and then I demanded that Junior drive the vehicle for me to get revenge. I did not even know Junior's real name or how committed to the [gang] he was, I just called him into allegiance.

This account seems more plausible than the account Custodio gave at the hearing, for it is difficult to believe that Custodio would attempt to carry out a gang-assigned mission with an unaffiliated accomplice who was on a separate mission to kill someone. That Custodio would choose to present such an implausible version at the hearing leaves one to wonder whether he has truly benefitted from his extensive rehabilitative programming and whether he has made sufficient progress to merit parole. His presentation suggests that he has not.

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, it is the unanimous opinion of the Board that Hector Custodio does not merit parole at this time because he is not fully rehabilitated. The review will be in two years from the date of the hearing, during which time Mr. Custodio should engage in available programming, continue his positive behavior, and prepare to be more forthright and truthful in addressing his crime.

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.


Peter Mimmo, Staff Attorney

6/4/2015
Date