



Charles D. Baker
Governor

Karyn Polito
Lieutenant Governor

Daniel Bennett
Secretary

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



Paul M. Treseler
Chairman

Michael J. Callahan
Executive Director

DECISION

IN THE MATTER OF

HERBY CAILLOT
W65360

TYPE OF HEARING: Initial Hearing

DATE OF HEARING: March 24, 2016

DATE OF DECISION: August 11, 2016

PARTICIPATING BOARD MEMBERS: Paul M. Treseler, Dr. Charlene Bonner, Tonomey Coleman, Sheila Dupre, 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, 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 unanimous 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.

I. STATEMENT OF THE CASE

On October 5, 1998, in Plymouth Superior Court, a jury convicted Herby Caillot of the first degree murder of Carlo Clermy as a joint venture. He was sentenced to life without the possibility of parole. After initially being denied post-conviction relief, Mr. Caillot and his co-defendant, Manuel Santos, were granted a new trial. The Commonwealth appealed, and the Supreme Judicial Court vacated the order granting Mr. Caillot and Mr. Santos a new trial. Their original convictions were reinstated. Mr. Caillot and Mr. Santos appealed their convictions. The Supreme Judicial Court affirmed the judgments of conviction and declined to grant Mr. Caillot and Mr. Santos a new trial.

On November 19, 1996, at around 5:45 p.m., three men opened fire in front of Mr. Clermy's mother-in-law's home in Brockton. When the shooting stopped, a witness saw two of the men get into a green car and drive away. No one was injured. After the shooting, Mr. Clermy's wife called her brother (Mr. Clermy's brother-in-law). In response to the call, Mr.

Clermy and his brother-in-law drove to the house and talked with family members about the shooting. Angry and upset, Mr. Clermy and his brother-in-law left the home and drove around Brockton in a blue Honda, looking to retaliate. When Mr. Clermy and his brother-in-law were about a half a mile from the mother-in-law's home, they spotted a light green Chrysler. The Chrysler, which carried both Mr. Caillot and Mr. Santos, stopped and the rear door on the driver's side opened. As Mr. Clermy's brother-in-law ducked down and slouched in his seat, he heard multiple gunshots. Mr. Clermy was shot and the Honda drifted forward and to the left, crashing into a utility pole. The brother-in-law grabbed a nine millimeter semiautomatic pistol from Mr. Clermy's body and got out of the vehicle. As the men in the Chrysler drove away, the brother-in-law chased the car on foot and fired at the Chrysler until he was out of ammunition. Mr. Clermy died as a result of gunshot wounds to his neck and back.

Shortly thereafter, police were directed to a nearby hospital where they spotted a green Chrysler parked in front of the emergency room. There was glass inside the car and blood on the back seat and carpet. Officers located, and questioned, Mr. Caillot and Mr. Santos about Mr. Clermy's murder. Both men were placed under arrest that evening. Mr. Caillot was 17-years-old on the date of the murder.

II. PAROLE HEARING ON MARCH 24, 2016

On December 24, 2013, the Supreme Judicial Court issued a decision in *Diatchenko v. District Attorney for Suffolk District & Others*, 466 Mass. 655 (2013), in which the Court determined that the statutory provisions mandating life without the possibility of parole are invalid as applied to juveniles convicted of first degree murder. Further, the Court decided that *Diatchenko* (and others similarly situated) must be given a parole hearing. Accordingly, Mr. Caillot is now before the Massachusetts Parole Board.

Mr. Caillot, now 36-years-old, appeared before the Parole Board on March 24, 2016 for an initial hearing and was represented by Attorney John J. Barter. In Mr. Caillot's opening statement to the Board, he apologized to Mr. Clermy's family and expressed his remorse. He also apologized to the surviving victim and victim's family, as well as to his own family and friends. The Board asked Mr. Caillot what had caused him to pursue a criminal lifestyle. Mr. Caillot described his parents as hard working people, who provided him with a "good life" that prioritized education and faith. At some point, though, he "lost sight of those principles." At the time, he thought his parents were being "mean" and "harsh" when they tried to keep him away from the streets, so he acted out. He began "selfishly" looking up to criminals in his neighborhood who had expensive possessions, attention from women, and the respect of their peers. Mr. Caillot wanted to be a part of that lifestyle. He began acting out anti-socially when he was 13-years-old. When Mr. Caillot was 14 or 15-years-old, he began selling marijuana, which eventually escalated to selling crack cocaine. He had viewed his first arrest (at age 16) as a "rite of passage."

During the course of the hearing, Mr. Caillot discussed the events that precipitated Mr. Clermy's murder. Three months prior to Mr. Clermy's murder, Mr. Caillot's cousin, Steven Auguste, was murdered. Mr. Caillot was "devastated" by the loss of his cousin, who had been like a brother to him. At the time of Mr. Auguste's death, Mr. Caillot and his group of friends had been in a feud with Mr. Clermy's group of friends. Mr. Caillot believed that the killing of Mr. Auguste was a result of the feud, and considered Mr. Clermy to be one of the individuals

responsible for his cousin's murder. Mr. Caillot described the murder of Mr. Auguste as the "sole" reason why he killed Mr. Clermy. When asked what prompted the feud, Mr. Caillot indicated that he had not known what sparked the feud at that time, but later found out that it was "over a girl." Mr. Caillot expressed his dismay by saying, "Something as trivial as a relationship gone bad resulted in two people losing their lives."

On the day of the murder, Mr. Caillot had been hanging out at a friend's house when two members of his group came by and said they just "shot up" members of the rival group. Mr. Caillot loaded a gun and prepared to leave the Brockton area with Mr. Santos. As they were preparing to leave, they saw a blue Honda containing two men from the rival group. Mr. Caillot got out of the vehicle he was in, gun in hand, and began firing at (and into) the Honda. As he continued walking toward the Honda, and while firing the gun, he saw the car suddenly surge forward, cross an intersection, and crash into a utility pole. Mr. Caillot said that he "panicked" and tried to turn to get back into Mr. Santos' car. At that moment, he was shot. He got into the car and they sped out of the area. Mr. Caillot and Mr. Santos went around the block to their friend's house and gave the guns to their friend. They then drove back to the intersection where the Honda was located, and Mr. Santos broke the back windows of the Honda. Mr. Santos then drove Mr. Caillot to the hospital.

Mr. Caillot indicated he made the decision to change himself (before his sentence allowed) for the possibility that he may one day be eligible for parole. He acknowledged, however, that there are numerous fights on his disciplinary record, the last of which occurred in 2009. Mr. Caillot now realizes that his conduct was "irresponsible" and has identified the triggers of his anger. Mr. Caillot said that he no longer allows his emotions to dictate his behavior. He credits his renewed religious faith with influencing his positive transformation. Mr. Caillot describes his faith has having transitioned from "superficial" to genuine during his incarceration. While incarcerated, Mr. Caillot participated in programming that included Anger Management and Violence Reduction. He developed (and ran) an exercise program for interested Bridgewater State Hospital patients. Mr. Caillot has also taken two computer classes, life skills classes, and parenting courses. He does not have children, but felt it was his obligation as an uncle of many nieces and nephews to learn how to become a parent. He also took part in two documentary film projects aimed at assisting at-risk youth. Mr. Caillot is presently participating in the Companion Program by assisting patients at Bridgewater State Hospital.

The Board considered oral testimony from Mr. Caillot's mother, sister, fiancé, cousin, and pastor, all of whom expressed support for Mr. Caillot's parole. Mr. Caillot had many supporters in attendance at his hearing, and the Board received numerous letters in support of Mr. Caillot's parole. The Board also considered testimony from the victim's wife and mother-in-law, as well as Plymouth County Assistant District Attorney Stacey Gauthier, all of whom expressed opposition to Mr. Caillot being granted parole. The Board also received an opposition letter from Plymouth County District Attorney Timothy Cruz.


III. DECISION

Although progress has been made, the Board is of the opinion that Mr. Caillot has not 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 institutional adjustment and programming would be beneficial to Mr. Caillot's rehabilitation.

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 a juvenile homicide offender's right to be represented by counsel during his initial appearance before the Board. *Id.* at 20-24.

In forming this opinion, the Board has taken into consideration Mr. Caillot's institutional behavior, as well as his participation in available work, educational, and treatment programs during the period of his incarceration. The Board also considered a risk and needs assessment, and whether risk reduction programs could effectively minimize Mr. Caillot's risk of recidivism. After applying this standard to the circumstances of Mr. Caillot's case, the Board is of the unanimous opinion that Mr. Caillot is not yet rehabilitated and, therefore, does not merit parole at this time. Mr. Caillot's next appearance before the Board will take place in two years from the date of this hearing. During the interim, the Board recommends that Mr. Caillot engage in additional programming, including the Restorative Justice Program and Violence Reduction, and encourages Mr. Caillot 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

8/11/16
Date