

The Commonwealth of Massachusetts
Executive Office of Public Safety and Security



PAROLE BOARD

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DECISION

IN THE MATTER OF

HERBY CAILLOT

W65360

TYPE OF HEARING: Review Hearing

DATE OF HEARING: March 6, 2018

DATE OF DECISION: October 23, 2018

PARTICIPATING BOARD MEMBERS: Paul M. Treseler, Dr. Charlene Bonner, Tonomey Coleman, Sheila Dupre, Tina Hurley, Colette Santa, 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 a suitable candidate for parole. Parole is granted to an approved home plan after 6 months in lower security with special conditions.

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 under a theory of joint venture. He was sentenced to life without the possibility of parole. On appeal the Supreme Judicial Court affirmed Mr. Caillot's conviction.¹

On November 19, 1996, Herby Caillot, then 17 years old, shot and killed Carlo Clermy. At the time Mr. Caillot was involved in a security threat group that was involved in an escalating feud with a rival security threat group. Mr. Caillot believed that this rival group was responsible for the murder of his cousin a few months earlier. Mr. Caillot also believed that Mr. Clermy was affiliated with this rival group and suspected he may have been involved in his cousin's murder.

¹ Commonwealth v. Herby Caillot, 454 Mass. 245 (2009)

On the evening of the murder Mr. Caillot armed himself with a loaded 9mm hand gun and he and his accomplice got into a green Chrysler sedan intending to drive to Boston. While still in Brockton, Mr. Caillot and his accomplice encountered Mr. Clermy driving a blue Honda. Mr. Caillot exited his vehicle and began shooting at Mr. Clermy and Mr. Clermy's passenger. Mr. Clermy was shot dead and crashed the blue Honda into a telephone pole. The passenger of the blue Honda returned fire, shooting Mr. Caillot in the arm and wrist as Mr. Caillot got back in his green Chrysler and fled the scene.

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 his accomplice about Mr. Clermy's murder. Both men were placed under arrest that evening.

II. PAROLE HEARING ON MARCH 6, 2018

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.

Herby Caillot, now 38-years-old, appeared before the Parole Board for a review hearing on March 6, 2018. Mr. Caillot was represented by Attorney John Barter. Mr. Caillot had been denied parole after his initial hearing on March 24, 2016. In his opening statement to the Board, Mr. Caillot admitted his responsibility for killing Carlo Clermy and apologized to both his family and the community. The Board, noting that Mr. Caillot was 17-years-old when he murdered Mr. Clermy, questioned him as to whether he thought that youth played a role in his decision to kill. Mr. Caillot responded that it did, stating that he had a lot on his shoulders when he was young. He had no "release valve" and no coping skills. Mr. Caillot explained that he was upset when he lost contact with his half-siblings after his parents divorced. He subsequently began having trouble in school. As a teen, he was greatly affected by his cousin's murder, which occurred a few months prior to Mr. Clermy's shooting. Mr. Caillot told the Board that he suspected Mr. Clermy was either directly, or indirectly involved, in his cousin's murder.

The Board noted that Mr. Caillot did not accrue any disciplinary reports since his last hearing. When asked about his recent programming efforts, Mr. Caillot told the Board that he had taken 12 programs. He said that Restorative Justice was not offered at Bridgewater State Hospital. However, he encouraged the chaplain to start a similar program, called "Seven Times Seventy," which he completed. After Mr. Caillot transferred to MCI-Norfolk, he completed Restorative Justice Weekend retreats and publicly shared his Offender Apology. He said that he is on the waitlist for the 32 week Restorative Justice Program. Mr. Caillot also completed several Alternatives to Violence Programs, including facilitator training, as well as the Emotional Awareness program. Mr. Caillot explained that these programs helped him develop coping skills to avoid violent conflict and to de-escalate confrontations. In addition, the programs helped him realize that his crime did not end with the shooting. Rather, the effects on the victims last for decades. Mr. Caillot also learned that a shooting that occurs at a time when most people are

sitting down to dinner, or going over homework, leaves footprints of fear, anxiety, and stress in the community. He now looks for opportunities to give something back, or to help improve another person's quality of living, rather than just taking from society.

When asked about a parole plan, Mr. Caillot would prefer a step down to a lower security facility for 6 months, before being released to live with either his mother or father. He noted that he could work in his mother's store and help manage her rental properties. Eventually, Mr. Caillot would like to live with his wife and become an electrician. Mr. Caillot said that he has the strong support of family, church, and friends.

Mr. Caillot's sister, wife, and pastor testified in support of parole. His parents and friends sent letters of support. Dr. Hilary Ziven, Psy.D. submitted a forensic mental health evaluation of Mr. Caillot and testified about her findings. Mr. Clermy's wife testified in opposition to parole. Plymouth County Assistant District Attorney Stacey Gauthier testified in opposition to parole and submitted a letter of opposition.

III. DECISION

The Board is of the opinion that Mr. Caillot has demonstrated a level of rehabilitation that would make his release compatible with the welfare of society. He has availed himself of all relevant programming and maintained a positive deportment.

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).

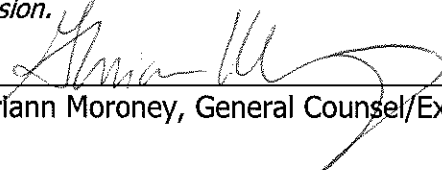
The factors considered by the Board in Mr. Caillot's case include the offender's "lack of maturity and an underdeveloped sense of responsibility, leading to recklessness, impulsivity, and heedless risk-taking; vulnerability to negative influences and outside pressures, including from their family and 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. Caillot'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 Dr. Hilary Ziven's evaluation, a risk and needs assessment, and whether risk reduction programs could effectively minimize Mr. Caillot's risk of recidivism. After applying this appropriately high standard to the circumstances of Mr. Caillot's case, the Board is of the unanimous opinion that Herby Caillot merits

parole at this time. Parole is granted to an approved home plan after 6 months in lower security with special conditions.

SPECIAL CONDITIONS: Approve home plan before release; Waive work for 2 weeks; Must be at home between 10pm and 6am; Electronic monitoring - GPS at Parole Officer's discretion; Supervise for drugs, testing in accordance with agency policy; Supervise for alcohol abstinence, testing in accordance with agency policy; Report to assigned Massachusetts Parole Office on day of release; No contact with victim's family; Must have substance abuse evaluation and adhere to plan; Must have mental health counseling for adjustment/transition.

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/Executive Director

10/23/18
Date