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Paul M. Treseler
Chairman

Michael J. Callahan
Executive Director

DECISION

IN THE MATTER OF

HERIBERTO HERNANDEZ
W64557

TYPE OF HEARING: Review Hearing

DATE OF HEARING: May 26, 2016

DATE OF DECISION: November 7, 2016

PARTICIPATING BOARD MEMBERS: Paul M. Treseler, Dr. Charlene Bonner, Tonomey Coleman, Sheila Dupre, Ina Howard-Hogan, Tina Hurley, Lucy Soto-Abbe¹

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 unanimous opinion that the inmate is not a suitable candidate for parole. Parole is denied with a review scheduled in three years from the date of this hearing.

I. STATEMENT OF THE CASE

On April 29, 1998, in Hampden County Superior Court, Heriberto Hernandez pleaded guilty to the second degree murder of Juan Cruz Santiago and was sentenced to life in prison with the possibility of parole. Mr. Hernandez and his two co-defendants, Jose Robles and Miguel Lozada, secured plea agreements to second degree murder by testifying against Angel Rivera, the leader of a gang who ordered the murder. Mr. Rivera was convicted of first degree murder.

Mr. Santiago was murdered on January 30, 1994, after Mr. Hernandez participated with fellow gang members in a planned and deliberate execution. Mr. Hernandez was 16-years-old and enrolled at the Westover Job Corps program in Chicopee at the time of these events. Initially, Mr. Rivera had ordered Mr. Santiago to kill a female staff person (who had angered the

¹ One Board Member abstained from voting on this case.

gang) at Job Corps. However, at the time of the planned murder, Mr. Santiago was overcome by conscience and did not carry out the mission. Mr. Rivera (angered by the Mr. Santiago's failure to kill the staff person) then ordered Mr. Robles, Mr. Hernandez, and Mr. Lozada to murder Mr. Santiago. The three gang members lured Mr. Santiago to a remote location by stating that the four of them would kill the female Job Corps staff member. However, the three gang members set upon Mr. Santiago. They kicked and punched him, held him down, wrapped a belt around his neck, and choked him until he appeared dead with blood coming from his mouth. Mr. Lozada described at trial that "me and [Mr. Hernandez] were pulling on both ends of the belt [while] Jose was holding [the victim] down." Mr. Lozada further described that as the victim "started giving up his struggle, Jose started jumping up and down on his chest." As Mr. Hernandez and his co-defendants hid the body, they noticed that the victim was still "gurgling and gasping for air," so they threw Mr. Santiago (who was unconscious) into the freezing waters of the Connecticut River.

Mr. Santiago's body was found in April 1994. Because police initially considered the death an accidental drowning, they did not begin an investigation until October 1994. Mr. Hernandez and his co-defendants were arrested in the spring of 1996.

II. PAROLE HEARING ON MAY 26, 2016

Mr. Hernandez, now 39-years-old, appeared before the Parole Board for a review hearing on May 26, 2016, where he was represented by Attorney Michael Bourbeau. This was Mr. Hernandez's second appearance before the Board. On April 17, 2012, Mr. Hernandez appeared for an initial hearing, which resulted in parole being denied. During this hearing, Mr. Hernandez spoke about his involvement with drugs and a gang, prior to committing the crime. He said that he first abused PCP at age 13, and then started to use the drug three to four times per week, in addition to smoking marijuana. Mr. Hernandez recounted to the Board how PCP made him violent and angry. At age 14, Mr. Hernandez was held in a juvenile detention facility after being arrested for stealing cars.

Over the course of the hearing, Mr. Hernandez spoke about the night of Mr. Santiago's murder. Mr. Hernandez stated that at the time of the murder, he was the "Enforcer" in the gang and his co-defendants were soldiers. He stated that missions were handed down by the president of the gang. He told the Board that Mr. Santiago had a mission to murder the woman running the Job Corps program, but did not follow through. As a result, Mr. Hernandez said that he was then assigned the killing of Mr. Santiago. Angel Rivera told him that the mission "needed to be done," gave him a knife, and told him to bring back one of Mr. Santiago's eyes as proof that he had killed him. Mr. Hernandez, Mr. Lozada, and Mr. Robles brought Mr. Santiago to a secluded area. Mr. Robles brought Mr. Santiago to the ground, putting a belt around his neck. Mr. Hernandez stated that he pulled on the belt along with Mr. Robles. Mr. Hernandez said that they heard noises, so they tried to hide Mr. Santiago's body, thinking he was dead. Mr. Hernandez said that since Mr. Lozada thought that Mr. Santiago was alive, they went back and put Mr. Santiago into the Connecticut River.

Mr. Hernandez expressed remorse for his actions, as well as anger towards Mr. Rivera for ordering him to kill Mr. Santiago. Mr. Hernandez also told the Board that he felt he had no choice, but to murder Mr. Santiago, as he (Mr. Hernandez) would have been killed had he defied Mr. Rivera's orders. The Board questioned Mr. Hernandez about his institutional

adjustment, stating that Department of Correction records have him designated as a gang member. Mr. Hernandez stated that he has no involvement with the gang, and that he was interested in renouncing. Mr. Hernandez also addressed his programming efforts, stating that he completed his General Equivalency Degree, graduated from a culinary arts program, and received vocational training in the wood shop. However, after the Board questioned him about two disciplinary reports that he recently received, he agreed that he had violated the rules and regulations of the Department of Correction. When questioned about his daily activities, Mr. Hernandez said that he spends much of his time reading in the library and on the computers. If released, Mr. Hernandez expressed his desire to return to Connecticut after completing a step down program. He said that he could live with his cousin in Connecticut and had a job waiting for him at a lumber company.

The Board considered testimony from Mr. Hernandez's friend, who expressed support for Mr. Hernandez's parole. The Board also considered testimony from Hampden County Assistant District Attorney Howard Safford, who expressed opposition to Mr. Hernandez being granted parole. Additionally, the Board received a letter in opposition to Mr. Hernandez's parole from the victim's family, which was read into the record at the hearing.

III. DECISION

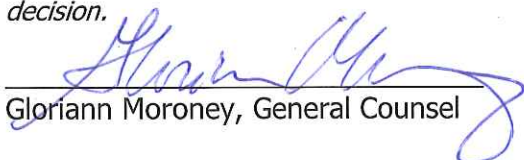
The Board is of the opinion that Mr. Hernandez has not demonstrated a level of rehabilitative progress that would make his release compatible with the welfare of society. The Board believes that a longer period of positive institutional adjustment and programming would be beneficial to Mr. Hernandez's 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 has also considered whether risk reduction programs could effectively minimize Mr. Hernandez's risk of recidivism. After applying this standard to the circumstances of Mr. Hernandez's case, the Board is of the opinion that Mr. Hernandez is not yet rehabilitated, and his release is not compatible with the welfare of society. Mr. Hernandez, therefore, does not merit parole at this time.

Mr. Hernandez's next appearance before the Board will take place in three years from the date of this hearing. During the interim, the Board encourages Mr. Hernandez 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

11/7/14
Date