



The Commonwealth of Massachusetts  
Executive Office of Public Safety and Security



PAROLE BOARD

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**DECISION**

**IN THE MATTER OF**

**HOWARD HAMILTON**

**W53919**

**TYPE OF HEARING:** Review Hearing

**DATE OF HEARING:** March 26, 2019

**DATE OF DECISION:** January 21, 2020

**PARTICIPATING BOARD MEMBERS:** Dr. Charlene Bonner, Tonomey Coleman, Sheila Dupre, Tina Hurley, Gloriann Moroney, Colette Santa, Paul Treseler<sup>1</sup>

**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 that the inmate is not a suitable candidate for parole. Parole is denied with a review scheduled in three years from the date of the hearing.<sup>2</sup>

**I. STATEMENT OF THE CASE**

On January 29, 1993, after a jury trial in Suffolk County Superior Court, Howard Hamilton was found guilty of first-degree murder in the death of 26-year-old Christopher Berry Bailey. He was sentenced to life in prison without the possibility of parole. He was also found guilty of two counts of assault to kill and two counts of assault and battery by means of a dangerous weapon. As a result, Mr. Hamilton was given concurrent sentences of 9 to 10 years for each charge. On that same date, he was found guilty of a firearm violation and given a concurrent sentence of 4 to 5 years.

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

<sup>1</sup> Board Member Treseler was present at the hearing, but was no longer a Board Member at the time of vote.

<sup>2</sup> Two Board Members voted for parole to an ICE Detainer.

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. Following the *Diatchenko* decision, Mr. Hamilton became eligible for parole.

On the night of June 2, 1990, and into the early morning hours of June 3, a group of five young men were gathered on the porch of a house in the Dorchester section of Boston. They had walked to a nearby restaurant and bought food. On the way back, a small red automobile slowly passed the group twice. As the men socialized on the porch, the same red automobile passed the house. Shortly thereafter, three men wearing hooded sweatshirts, including 17-year-old Howard Hamilton and Richard Brooks, approached the house from the direction of the red automobile and stood on the sidewalk in front of the porch. A witness on the porch saw Mr. Hamilton point a gun and then shoot toward the porch area. In the gunfire that followed, Christopher Berry Bailey was killed and two other victims were wounded.

## **II. PAROLE HEARING ON MARCH 26, 2019**

Howard Hamilton, now 45-years-old, appeared before the Parole Board on March 26, 2019, for a review hearing and was represented by Attorney Amy Belger. He was denied parole after his initial hearing in 2014.<sup>3</sup> In his opening statement to the Board, Mr. Hamilton apologized to the victim's family and friends and indicated that his actions were unjust. He also acknowledged the poor choices he made, stating that the victim was innocent. Mr. Hamilton denied knowing the victim prior to the incident. Mr. Hamilton explained that he was a high school student and admitted to drinking on the night of the offense. Mr. Hamilton further explained that the victim was not the intended target of the shooting, but rather, his intent was to shoot another individual. When asked by the Board how many shots he fired, Mr. Hamilton stated, "I fired as many shots as the weapon carried, and I just kept shooting."

The Board noted that Mr. Hamilton had 46 disciplinary reports prior to 2013. When Board Members discussed Dr. Mendoza's evaluation, Mr. Hamilton stated that the doctor is entitled to his opinion. The Board noted that Dr. Mendoza found Mr. Hamilton's empathy to be "profoundly absent" during the testing and explanations provided by Mr. Hamilton. Further, the Board was concerned with Mr. Hamilton's response when Dr. Mendoza questioned him about lying. Mr. Hamilton had stated, "No, I just explain things in a way that's favorable to me." Mr. Hamilton claimed that he answered that question in a "form of litigation" and to make a particular point stronger.

Since his last hearing, Mr. Hamilton completed the Beacon Program and Restorative Justice Retreat, among other programs. He indicated that the Beacon Program helped him take a deeper look inside himself. Mr. Hamilton stated that he was trying to fix emotional obstacles in his life, including his impatience. Currently, he works as a cleaner in the unit and participates in the runners club. Mr. Hamilton acknowledged that he is subject to a U.S. Immigration and Customs Enforcement (ICE) Detainer and an Order of Deportation to Jamaica. When the Board asked Mr. Hamilton to describe his support network in Jamaica, he stated that he has a brother who lives there and who could assist him with employment. In addition, Mr. Hamilton told the Board that he has kept up to date with current events by reading the newspaper and watching the news.

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<sup>3</sup> After an appeal filed by Mr. Hamilton in 2015, the Board reduced Mr. Hamilton's review hearing date to 4 years. In 2018, he postponed the review hearing.

The Board considered oral testimony in support of parole from Mr. Hamilton's nieces. Suffolk County Assistant District Attorney Charles Bartoloni submitted a letter of opposition.

### **III. DECISION**

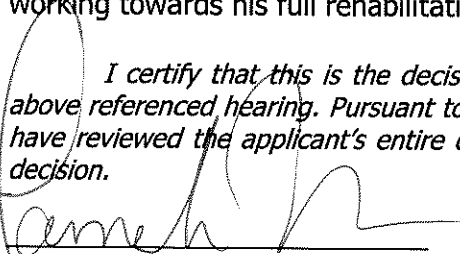
The Board is of the opinion that Mr. Hamilton has not demonstrated a level of rehabilitative progress that would make his release compatible with the welfare of society. Mr. Hamilton has made strides in his rehabilitative progress. He should continue to invest in treatment/programming and refrain from incurring any disciplinary infractions.

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 the petitioner's right to be represented by counsel during his appearance before the Board. *Id.* at 20-24. The Board has also considered whether risk reduction programs could effectively minimize Mr. Hamilton's risk of recidivism. After applying this standard to the circumstances of Mr. Hamilton's case, the Board is of the opinion that Howard Hamilton is not yet rehabilitated, and his release is not compatible with the welfare of society. Mr. Hamilton, therefore, does not merit parole at this time.

Mr. Hamilton'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. Hamilton 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

1/21/2020  
Date