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**PAROLE BOARD**

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Charlene Bonner  
Chairperson

Janis Diloreto Smith  
Executive Director

**DECISION**

**IN THE MATTER OF**

**HOWARD HAMILTON**

**W53919**

**TYPE OF HEARING:** Initial Hearing

**DATE OF HEARING:** July 22, 2014

**DATE OF DECISION:** December 23, 2014

**PARTICIPATING BOARD MEMBERS:** Dr. Charlene Bonner, Tonomey Coleman, Sheila Dupre, Tina Hurley, Lucy Soto-Abbe, Josh Wall

**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 and the review hearing will be held five years from the date of the hearing.

**I. STATEMENT OF THE CASE**

On June 3, 1990, Howard Hamilton, then 17 years old, participated in a shooting in Dorchester that resulted in the death of Christopher Berry Bailey, age 26, and injuries to both Raymond Ponder and Eugene Barbosa.

On January 29, 1993, after a jury trial in Suffolk County Superior Court, Hamilton was found guilty of murder in the first degree by reason of deliberate premeditation and was given a life sentence 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, Hamilton was given concurrent sentences of nine to ten years for each charge. On that same date, he was found guilty of a firearm violation and was given a concurrent sentence of four to five years. Should Hamilton receive a grant of parole, he would be subject to a U.S. Immigration and Customs Enforcement (ICE) Detainer and an order of deportation to Jamaica, which is his country of origin.



On December 24, 2013, the Massachusetts Supreme Judicial Court (SJC) issued a decision in *Diatchenko v. District Attorney for the Suffolk District & Others*, 466 Mass. 655 (2013) in which the Court determined that the statutory provisions mandating life without the possibility of parole were invalid as applied to those, like Howard Hamilton, who were juveniles when they committed first degree murder. The SJC ordered that affected inmates receive a parole hearing after serving 15 years. Accordingly, Howard Hamilton became eligible for parole and is now before the Board for an initial hearing.

On the night of June 2, 1990, and into the early morning hours of June 3, 1990, 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 and identified as Howard Hamilton, Richard Brooks,<sup>1</sup> and another, 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 Hamilton point a gun and begin shooting toward the porch. In the gunfire that followed, Christopher Berry Bailey was killed and two other victims were wounded.

## **II. PAROLE HEARING ON JULY 22, 2014**

Hamilton was 17 years old when he participated in the shooting that caused the death of Christopher Berry Bailey and injuries to both Raymond Ponder and Eugene Barbosa. He is now 42 years old. Hamilton has been held in custody for over 22 years.

The Parole Board questioned Hamilton regarding his participation in the crime and the precipitants to his behavior. Hamilton discussed his early childhood experience growing up in Jamaica. Due primarily to poverty, his family was dispersed among relatives in order to have their basic needs met. Hamilton also discussed his transition to the United States in 1985 and the struggles he endured trying to acclimate to a new culture, school system, and peer group. Hamilton reported that he coped with some of his struggles by drinking, which became problematic as early as age 14. Hamilton stated that once he found he was gifted at playing football, his life became more structured and positive. He stopped drinking and became more invested in school. Hamilton reported, however, a brutal beating in which he was stabbed 20 times by a friend, John Moore, for reasons that are not entirely clear. Hamilton stated the stabbing changed his life significantly. He was no longer able to play football and he resumed drinking and other experimental drug use. Shortly after being stabbed, he participated in the crimes for which he is now incarcerated. He stated "the stabbing is connected to the murder. The witness on my murder case told his brother I tried to break into his house. I was receiving threats from him."

Hamilton described a series of disputes and accusations between him and his friend, John Moore, that culminated into increased resentment and confusing shifts in loyalties. Hamilton described twists in friendships and accusations that involved pitting people against each other. These disputes re-surfaced, culminating in the events that transpired on June 2, 1990, when Hamilton learned that Ryan Moore was in the process of securing a gun to shoot

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<sup>1</sup> Richard Brooks, (W53918), was convicted of first degree murder and sentenced to life without parole. Brooks was an adult at the time of the offense and thus unaffected by the *Diatchenko* decision.



him. Hamilton detailed the events of that day and evening and attributes drinking, peer pressure, and concern for his well-being, as precipitating factors in his decision making. Hamilton insists that his intentions that evening were very different from what actually occurred. While he agrees that he joined the co-defendants involved, his intended victim was Ryan Moore, not Christopher Berry Bailey. Hamilton insisted when they reached their destination, he saw Ryan Moore and fired his gun at him. Hamilton stated he was given the gun by a co-defendant and that he believes he fired the gun at Ryan Moore approximately seven times. He was unsure at that time if his bullets hit anyone, but insists he did not fire the shot that killed Mr. Berry Bailey. Hamilton stated he did not know any of the victims who were ultimately shot and, to this day, is not sure if he hit anyone. He stated "I would like to think I didn't hit anyone." He stated that after all shots were fired, he fled in a small red car. He then stated that he was told by family that the police were looking for him, so he turned himself in thinking, "things may not work out so bad." The Parole Board pointed out to Hamilton that he did not, in fact, turn himself in until one and half years later. During that time, he reported that he was "back and forth from New York to Boston trying to survive on the street." Hamilton admits that he was scared that he would be locked up.

The Parole Board then focused on Hamilton's institutional adjustment and rehabilitative efforts. His adjustment has been poor and his rehabilitative efforts have been minimal. Each year of his incarceration has involved multiple disciplinary reports for disobeying/refusing direct orders, lying to staff, conduct which disrupts, and insolence. Additionally, Hamilton has had reports for fighting, threatening staff members, possessing weapons, and possessing fermented juices. Hamilton conveyed how difficult it was to enter the adult system with the belief that he would never have an opportunity for parole. He stated that, looking back, he now believes he entered the prison system with undiagnosed and untreated Post Traumatic Stress Disorder (PTSD) and wishes that he had received help earlier. Hamilton conveyed how his mental health symptoms correlated with his difficult adjustment and disciplinary issues. His most violent assaults resulted in two convictions. In 2008, Hamilton was convicted of assault and battery on two correction officers and received a two years probation from and after his sentence. The precipitant to the assaults was Hamilton's assertion to a correction officer that he had not received a package of condiments during meal time, as expected. This culminated into Hamilton's insult of the officer, who then required Hamilton to be locked in his cell for his behavior. Two officers were involved in ordering Hamilton to his cell, and in response, Hamilton punched the female officer several times, wrapped his arm around her, and continued to punch her in the nose. The officer who intervened was repeatedly punched in the face. During the attack, other inmates attempted to pull Hamilton off of the officers.

Hamilton stated he has recently made more of an effort to address his mental health issues. He stated, "I was hopeless when I thought I was never getting out. I think I did lose my mind." In response to his history of significant violence and aggression within the institution, he admitted that he was the aggressor in almost all the incidents, but believes that if he was "thinking correctly," he could have made different choices. The Parole Board pointed out that, because of his aggressive and violent behavior, he has spent over 13 ½ years in special management, DDU, or some form of higher custody. The Parole Board pointed out that there were many rehabilitative programs that he could have participated in, but was not eligible for, due to his poor behavior. Hamilton has also failed to hold long term institutional employment and has not worked since 2000.



Hamilton contends that aside from the violence that resulted in his sentence he now serves, he had never exhibited prior criminal behavior. He asserted that the trauma he has endured was exacerbated by being incarcerated, which then led to his poor institutional behavior. Hamilton believes that the context of his prison behavior is not a true reflection of who he is or what he is capable of.

Hamilton has recently engaged in programming, including programs that will address his history of alcohol abuse. He also received his GED early in his incarceration. He described his programming in the Correctional Recovery Academy (CRA) as "teaching a philosophy of being humble and respectful. I wanted to take CRA because drugs and alcohol played a role in my crime. Now I want to mentor others and give them positive motivation." Hamilton stated that he believes he has come to appreciate and understand himself a lot better and feels ready to continue his progress in the community of his country of origin, Jamaica. His most recent disciplinary issue was in 2013 for refusing a direct order.

Many members of Hamilton's family appeared in support of his parole release. His brother and niece both spoke in support of his parole and ensured the Parole Board that Hamilton has numerous extended family, both in the United States and in Jamaica, who can provide him with the necessary supports to successfully re-enter the community. Family members apologized to the victim's family and provided testimony of their confidence that Hamilton will have the necessary resources to assist him in any area that he may need going forward.

Speaking in opposition to Hamilton's parole was Suffolk County Assistant District Attorney Donna Patalano. ADA Patalano also submitted a detailed letter in opposition to Hamilton's parole. ADA Patalano highlighted the senselessness of the crime as well as the deliberate intent of the crime. She also expressed concern for Hamilton's poor institutional adjustment and lack of rehabilitation.

ADA Patalano stated to the Board that Mr. Berry Bailey's family was too distraught to attend the hearing. However, she read a letter from the victim's family in which the authors described the enduring impact the victim's death has had on their family.

### **III. DECISION**

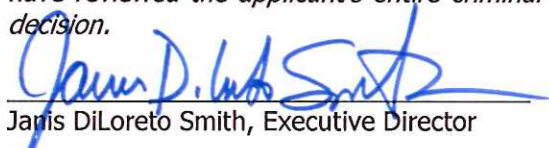
Hamilton committed the murder and the accompanying violent acts, for which he now serves a sentence, by recklessly firing a gun at an intended victim. One innocent bystander was killed, while two others were seriously injured. Hamilton's explanation for the murder is confusing, and begs for more questions, as to his intent and state of mind that evening. Hamilton has incurred numerous violent disciplinary infractions within the institution, as well as other incidents that demonstrate an attempt to be disruptive and destructive. Hamilton has spent the greater part of his incarceration in special management, DDU, and/or higher custody settings that have prevented him from engaging in necessary rehabilitation. He has engaged in minimal programming, lacks occupational skill building, and has not taken advantage of employment opportunities that are offered, all of which could have enhanced a more meaningful rehabilitation.

The Parole Board notes that Hamilton entered the prison as a juvenile, with no hope of the opportunity that has since been presented as a result of the *Diatchenko* decision. That being said, he chose to engage in violent and destructive behavior that inflicted harm on others and delayed any efforts in meaningful rehabilitation.

As a result of his eligibility for parole, Hamilton has since appeared to have gained hope that has motivated him to invest in more meaningful change. The Parole Board strongly encourages Hamilton to avail himself of all opportunities to rehabilitate, including his continuation to address his mental health and substance abuse needs and to engage in all programming that addresses violence reduction, emotional growth, and conflict resolution. The Parole Board also encourages Hamilton to engage in available employment and occupational skill training.

The four goals of sentencing – punishment, deterrence, rehabilitation, and public protection – have not been met. 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, the Parole Board deems that Hamilton is not a suitable candidate for parole. He will receive a review hearing in five years from the date of this hearing, during which time he will be able to engage in much needed 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.*

  
Janis DiLoreto Smith, Executive Director

12/23/14  
Date