

*The Commonwealth of Massachusetts
Executive Office of Public Safety and Security*



PAROLE BOARD

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Executive Director

RECORD OF DECISION

IN THE MATTER OF

**HOWARD PAYNE
W90205**

TYPE OF HEARING: Initial Hearing
DATE OF HEARING: December 10, 2020
DATE OF DECISION: October 27, 2021

PARTICIPATING BOARD MEMBERS: Dr. Charlene Bonner, Tonomey Coleman, Sheila Dupre, Tina Hurley, Colette Santa¹

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 in three years from the date of the hearing.

I. STATEMENT OF THE CASE

On July 2, 2007, after a jury trial in Suffolk County Superior Court, Howard Payne was convicted of second-degree murder in the death of 37-year-old Ismael DelValle. He was sentenced to life in prison with the possibility of parole. On that same date, he was also convicted of unlawful possession of a firearm and unlawful possession of ammunition, receiving concurrent sentences of 4 to 5 years in state prison and six months in the House of Correction, respectively.

On February 10, 2006, Ismael DelValle was visiting the Mattapan home of his wife's parents to see his children. He was estranged from his wife, who happened to be a friend of Howard Payne (age 59). The friendship between Mr. Payne and Mr. DelValle's wife, however, was a source of friction in the DelValle marriage. During the visit, Mr. Payne phoned Mr.

¹ Chair Moroney recused herself from the vote in this matter. Board Member Karen McCarthy was present for the hearing, but was no longer a Board Member at the time of vote.

DelValle's wife, while both Mr. Delvalle and his wife were arguing. The argument ended when Mr. DelValle's mother-in-law asked him to leave the house, which he did.

Minutes after Mr. DelValle left, those inside the home heard three gunshots. Mr. DelValle's wife and two children ran outside where they saw Mr. DelValle on the ground, bleeding from multiple gunshot wounds. All three individuals observed Mr. Payne get into his dark blue Chevrolet Suburban, which was near Mr. DelValle's body, and drive away. Mr. DelValle succumbed to his injuries later that evening. Police went to Mr. Payne's home the next morning and located the dark blue Chevrolet Suburban. A search warrant revealed blood stains inside the vehicle. Police recovered ammunition in Mr. Payne's home that was consistent with the ammunition recovered from Mr. DelValle's body during the autopsy. Finally, additional witnesses informed police that Mr. Payne had two different revolver type firearms that he kept at his business.

In the days after the murder, Mr. Payne fled Massachusetts and traveled to Virginia. He was apprehended on March 1, 2006. At trial, Mr. Payne testified that he believed Mr. DelValle to be armed, so he shot him in self-defense.

II. PAROLE HEARING ON DECEMBER 10, 2020

Howard Payne, now 74-years-old, appeared before the Parole Board on December 10, 2020, for an initial hearing. He was not represented by counsel. In his opening statement to the Board, Mr. Payne apologized, claiming he had no intention of harming Mr. Delvalle or causing pain to his family. Upon questioning, Mr. Payne explained that he became acquainted with Mr. DelValle and his wife approximately six months prior to the murder, when he sold them a car. Over the course of the next six months, he had contact with Mr. DelValle and his wife on numerous occasions, even traveling to their home in Brockton to repair their vehicle. He claimed that he did not return to their home after Mr. DelValle punched him in the head as he attempted to repair their car.

Mr. Payne reported that on February 10, 2006, while waiting for his wife, he parked his vehicle in a vacant lot in Mattapan. He exited the vehicle, claiming that Mr. DelValle approached him with a shiny object in his hand. Believing the object to be a knife, Mr. Payne fired two shots from a firearm he carried with him, aiming for Mr. DelValle's arm. Mr. Payne then claimed that Mr. DelValle climbed on top of him and struck him in the face, knocking him unconscious. He further speculated that the firearm must have fired at that point, claiming he did not intentionally fire the weapon, nor could he recall firing it. After leaving the scene, Mr. Payne stated that he learned of Mr. DelValle's death from the Boston Police Department, who contacted him several days later. Upon questioning, Mr. Payne stated that he did not have a license to possess the firearm he used on February 10, 2006, as he had been denied a license to carry. Nonetheless, he continued to possess both the murder weapon and another firearm.

The Board questioned Mr. Payne as to his institutional adjustment, noting the accrual of multiple disciplinary reports. One disciplinary report was incurred for the possession of a controlled substance, an item that Mr. Payne suggested was placed in his belongings by a cell mate. Mr. Payne informed the Board that he suffers from a variety of medical issues, including diabetes and high blood pressure. He further stated that he recently recovered from COVID-19, after a month-long battle with the illness. When Board Members raised concerns as to his participation in programs, Mr. Payne said that he was enrolled in Correctional Recovery Academy (CRA). He withdrew, however, stating that he did not struggle with a substance-use disorder. He has declined to participate in other programming efforts. Mr. Payne reported that he voluntarily works as a cleaner.

The Board considered testimony from several of Mr. Payne's family members in support of parole. The Board also considered a letter in opposition to parole from Boston Police Commissioner William Gross.

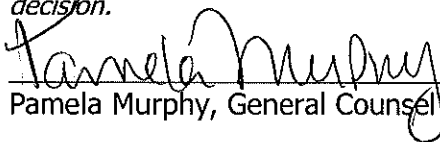
III. DECISION

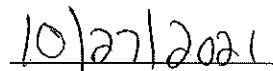
The Board is of the opinion that Howard Payne has not demonstrated a level of rehabilitative progress that would make his release compatible with the welfare of society. Mr. Payne shot and killed Ismael DelValle, 37-years-old, in February of 2006. Mr. Payne has yet to engage in recommended treatment/programming. In addition, his adjustment has been problematic, as evidenced by receipt of 19 disciplinary infractions as recently as 2019. Mr. Payne, now 74, should engage in treatment/programming to address his causative factors. The Board did consider Mr. Payne's underlying medical issues as it relates to the COVID-19 pandemic.

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 forming this opinion, the Board has taken into consideration Mr. Payne'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 a risk and needs assessment and whether risk reduction programs could effectively minimize Mr. Payne's risk of recidivism. After applying this standard to the circumstances of Mr. Payne's case, the Board is of the opinion that Howard Payne is not rehabilitated and, therefore, does not merit parole at this time.

Mr. Payne'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. Payne to continue working toward 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


Date