

The Commonwealth of Massachusetts  
Executive Office of Public Safety and Security



PAROLE BOARD

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RECORD OF DECISION

IN THE MATTER OF

HUBERT SMITH

W36895

**TYPE OF HEARING:** Initial Hearing

**DATE OF HEARING:** January 27, 2022

**DATE OF DECISION:** July 6, 2022

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

**Statement of the case:** On October 17, 1978, after a jury trial in Suffolk County Superior Court, Mr. Smith was convicted of first-degree murder in the death of Max Fishman and sentenced to life in prison without the possibility of parole. On that same date, Mr. Smith was convicted of armed assault with intent to rob and carrying a firearm for which he received respective sentences of seven to ten years and three to five years. For unrelated offenses stemming from two separate incidents in 1977, Mr. Smith was also convicted of two counts of armed assault with intent to rob, one count of assault and battery by means of a dangerous weapon, and one count of armed robbery. He was sentenced to concurrent terms of eighteen to twenty years, nine to ten years, and eight to twelve years, respectively. On August 4, 2021, in Suffolk County Superior Court, pursuant to Rule 25(b)(2), Mr. Smith's first-degree murder conviction was reduced to a second-degree murder conviction, and, as such, he became eligible for parole.

Mr. Smith appeared before the Parole Board for an initial hearing on January 27, 2022, and was represented by Attorney Kelly Cusack. This was Mr. Smith's first appearance before the Board. The entire video recording of Mr. Smith January 27, 2022, hearing is fully incorporated by reference to the Board's decision.

**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

<sup>1</sup> Chair Moroney was recused.

expressed at the hearing or in written submissions to the Board, we conclude by a unanimous vote that the inmate is a suitable candidate for parole.

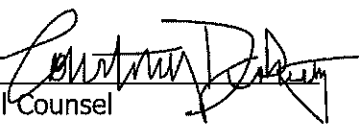
Reserve to People Affecting Community Change (PACC) Reentry Program after six months in lower security. On February 10, 1978, 20-year-old Hubert Smith shot and killed 63-year-old Max Fishman as part of a robbery. In August 2021, Mr. Smith's first-degree murder conviction was vacated and was reinstated to life in prison with the possibility of parole on a second-degree conviction. He has been incarcerated for 44 years and has been sober for 10 years. His institutional adjustment has greatly improved since 2012 and he has satisfied all program requirements. He has completed the Correctional Recovery Academy and attends narcotics and alcoholics anonymous. Mr. Smith has insight into his mental health needs and has demonstrated stability and investment in treatment. The Board did consider the expert opinion of Dr. Tabashneck regarding his current reentry needs.

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."

In forming this opinion, the Board has taken into consideration Mr. Smith'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. Smith's risk of recidivism. After applying this appropriately high standard to the circumstances of Mr. Smith's case, the Board is of the opinion that Mr. Smith is rehabilitated and merits parole at this time.

**Special Conditions:** People Affecting Community Change (PACC) Reentry Program – must complete; Waive work for two weeks or program; Curfew must be at home between 10 p.m. and 6 a.m.; ELMO-electronic monitoring; Must take prescribed medication; Supervise for drugs; testing in accordance with agency policy; Supervise for liquor abstinence; testing in accordance with agency policy; Report to assigned MA Parole Office on day of release; No contact or association with his co-defendants; No contact with victim's family; Must have mental health counseling for adjustment/transition, antisocial disorder, major depressive disorder; AA/NA at least 3 times/week.

*I certify that this is the decision and reasons of the Massachusetts Parole Board regarding the above referenced hearing.*

/s/ Pamela Murphy p.p.   
Pamela Murphy, General Counsel

7/6/22  
Date