

The Commonwealth of Massachusetts
Executive Office of Public Safety and Security



PAROLE BOARD

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RECORD OF DECISION

IN THE MATTER OF

JAMES BRESCIA
W92480

TYPE OF HEARING: Initial Hearing
DATE OF HEARING: February 23, 2021
DATE OF DECISION: October 18, 2021

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

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 in four years from the date of the hearing.¹

I. STATEMENT OF THE CASE

On June 24, 2008, after a jury trial in Middlesex Superior Court, James Brescia was convicted of first-degree murder in the death of 39-year-old Edward Schiller. He was sentenced to life in prison without the possibility of parole. On that same date, he was convicted of conspiracy and sentenced to a concurrent term of 18 to 20 years in state prison. In 2015, the Supreme Judicial Court affirmed the Superior Court’s 2011 allowance of Mr. Brescia’s motion for new trial. On October 4, 2018, Mr. Brescia pleaded guilty to second-degree murder and was sentenced to life in prison with the possibility of parole.

On January 13, 2006, at around 7:45 a.m., Edward Schiller was shot in the head and killed in the parking garage adjacent to the office building where he worked. The murder of Mr. Schiller had been planned by Mr. Brescia and his co-defendant, Scott Foxworth, since September 2005. At that time, Mr. Brescia contacted Mr. Foxworth, whom he had known for

¹ One Board Member voted to deny parole with a review in 5 years from the date of the hearing.

several years, for the express purpose of procuring Mr. Foxworth's services in "sending a message" to Mr. Schiller. Throughout the fall and early winter of 2005, the two men had frequent contact during which the plot evolved from a contemplated beating to a murder for hire. Mr. Brescia and Mr. Foxworth agreed on the financial terms of the contract murder, where Mr. Brescia would pay Mr. Foxworth cash, half "up front" and the remainder upon completion.

After the murder, the two men made a considerable effort to avoid detection and apprehension for their roles in the death of Mr. Schiller and related criminal offenses. They were arrested on April 4, 2006, after an extensive joint investigation involving Newton police and Massachusetts State Police. Mr. Brescia's culpability is based on his role as an accessory before the fact to the murder who hired and procured Mr. Foxworth to commit the murder of Edward Schiller. Mr. Foxworth's culpability is based on his murdering Mr. Schiller for financial compensation.

II. PAROLE HEARING ON FEBRUARY 23, 2021

James Brescia, now 62-years-old, appeared before the Parole Board on February 23, 2021, for an initial hearing. He was represented by student attorneys from the Harvard Prison Legal Assistance Project. In his opening statement to the Board, Mr. Brescia apologized for the crime and expressed his remorse to the victim, stating that the "outcome of [his] actions caused a great deal of pain." Mr. Brescia stated that he "handled the situation terribly" and felt "ashamed" of what he did. When Board Members questioned him as to the details surrounding the governing offense, Mr. Brescia admitted to paying \$2,000 in exchange for Mr. Foxworth to intimidate Mr. Schiller. More specifically, Mr. Brescia agreed to pay \$1,000 up front and then an additional \$1,000 after the conversation took place. When the Board asked the purpose in setting up such an arrangement, Mr. Brescia explained that he disapproved of his children spending time with Mr. Schiller, who had been in a romantic relationship with his ex-wife.

Board Members expressed their concern as to whether Mr. Brescia was telling the truth, as he had been described as "controlling" and "jealous" by his ex-wife. Moreover, the Board pointed to testimony from co-workers and friends that indicated he was upset over his ex-wife's new relationship with Mr. Schiller. While Mr. Brescia maintained that he only intended for the encounter to be a "strong-arm situation," he admitted to telling Mr. Foxworth that he wouldn't mind "if [Mr. Schiller] got beat up." However, he told the Board that he made that statement "casually" and did not intend to pay Mr. Foxworth to inflict violence. When Board Members asked why the situation turned fatal, if that was not his intention, Mr. Brescia failed to provide any insight. Upon further questioning, Mr. Brescia implied that he was coerced into making the second payment to Mr. Foxworth. He claimed that he "probably wouldn't be here" had he not paid him. While he understands the "perception" of his crime, Mr. Brescia stated that "what [he] was accused of and what [he] did are two different things." Board Members struggled to accept Mr. Brescia's version of the crime, noting significant inconsistencies. The Board also noted that Mr. Brescia did not appear forthcoming and attempted to minimize his culpability when he discussed the discrepancies between his account and witness testimony.

Board Members inquired as to Mr. Brescia's past relationships, noting his abusive and controlling tendencies towards women. When asked if he recalled abusing his previous girlfriends, Mr. Brescia stated, "I never put my hands on anyone." When asked about his ex-wife, Mr. Brescia indicated that he thought "everything was fine" in their marriage. The Board noted, however, that it appeared he struggled to accept that his marriage was ending. Board Members pointed out that Mr. Brescia exhibited stalking behavior, such as hiring a private investigator to follow his ex-wife prior to the murder of Mr. Schiller. In response, Mr. Brescia denied having any negative intentions towards his ex-wife or Mr. Schiller. Rather, his only concern was having his children around Mr. Schiller. When questioned as to whether he gained insight as to his controlling and abusive conduct, Mr. Brescia claimed that he had. Nonetheless,

he failed to admit to any wrongdoing, stating that "I was nice at all times" and "I've never controlled anyone."

Board Members discussed Mr. Brescia's positive institutional adjustment, noting his lack of disciplinary infractions, ability to maintain employment, and his commitment to education. The Board raised concern, however, that his engagement in rehabilitative programs, such as Emotional Awareness, Alternatives to Violence, and Able Minds only began in 2019. Mr. Brescia explained that much of his time was spent preparing for his new trial, rather than participating in programs. When Board Members specifically inquired about Victim Impact and Restorative Justice, Mr. Brescia indicated that, if recommended, he is not opposed to attending.

The Board considered testimony in opposition to parole from the victim's family members. The Board also considered a letter in opposition to parole from Middlesex County District Attorney Marian Ryan.

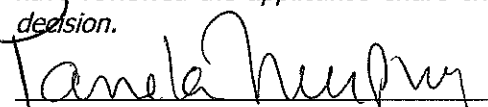
III. DECISION

Mr. Brescia is incarcerated for the murder of 39-year-old Edward Schiller. He is currently incarcerated at MCI-Norfolk. Mr. Brescia just recently engaged in treatment/programming to address his causative factors. He has completed Emotional Awareness, Alternatives to Violence, and Able Minds. Mr. Brescia is encouraged to participate in all recommended programming to include those focused on victim empathy and impact. Mr. Brescia needs to stop minimizing his criminal culpability and present as forthright.

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. Brescia'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. Brescia's risk of recidivism. After applying this standard to the circumstances of Mr. Brescia's case, the Board is of the opinion that James Brescia is not rehabilitated and, therefore, does not merit parole at this time.

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

10/18/2021
Date