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*The Commonwealth of Massachusetts*  
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**PAROLE BOARD**

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**Charlene Bonner**  
Chairperson

**Janis DiLoreto Smith**  
Executive Director

**DECISION**

**IN THE MATTER OF**

**JAMES COSTELLO**

**W39491**

**TYPE OF HEARING:** Initial Hearing

**DATE OF HEARING:** February 26, 2015

**DATE OF DECISION:** April 7, 2015

**PARTICIPATING BOARD MEMBERS:** Dr. Charlene Bonner, Tonomey Coleman, Sheila Dupre, Lee Gartenberg, Ina Howard-Hogan, Tina Hurley

**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 a suitable candidate for parole. Parole is granted to a long term residential program after one year in lower security.

**I. STATEMENT OF THE CASE**

In January 1983, after a week-long jury trial in Suffolk County Superior Court, James Costello was found guilty of first degree murder, armed assault in a dwelling, and armed robbery.<sup>1</sup> He was sentenced to life in prison without the possibility of parole on the murder charge, and to life in prison on the armed assault in a dwelling (to be served from and after the

<sup>1</sup> Phillip Pennellatore (W39371) was 20 years-old at the time of the crime. He was found guilty of first degree murder and sentenced to life without the possibility of parole. He was committed on December 8, 1982.

Donna Westbrook (F26725) was 20 years-old at the time of the crime. She was charged with accessory after the fact and eventually paroled.

Frederick Gutierrez was 18 years-old at the time of the crime. He was charged with accessory after the fact.

first degree sentence). The armed robbery sentence was to run concurrent to the armed assault sentence.

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 James Costello, who were juveniles when they committed first degree murder. The SJC ordered that affected inmates receive a parole hearing after serving 15 years. Accordingly, Costello became eligible for parole and is now before the Board for an initial hearing.

In March and April of 1981, the second-floor Boston apartment of Donna Westbrooks was occupied (at various times) by Donna Westbrooks, Phillip Pennellatore, James Costello, and a number of other individuals, most of whom were youths of junior high school or high school age. Palmira Piciulo, 84 years-old, lived alone upstairs in a third-floor apartment. On March 30, 1981, after Westbrooks observed that Ms. Piciulo owned several valuable items of jewelry (and had communicated that fact to the occupants of her apartment), a plan was hatched to steal these items. On April 6, 1981, Westbrooks and Costello went to Ms. Piciulo's apartment, ostensibly for a visit. They were invited in and served orange juice by Ms. Piciulo. After James Costello put the glasses in the sink, he walked up behind Ms. Piciulo, removed a length of heavy black telephone cable from his sleeve, and struck her several times with the cable on the back of her head.

Westbrooks then returned to her apartment and told Pennellatore that Costello needed his assistance. Pennellatore asked (by Westbrooks' account), "What happened? Did he hit her yet?" Pennellatore then ran upstairs and saw the victim lying on the kitchen floor, screaming in pain. As the victim began to rise from the floor, Pennellatore took the cable and (by Pennellatore's account) struck the victim 50 or 60 times until she lay motionless on the floor. Pennellatore and Costello then proceeded to steal items from the victim's apartment. Just prior to their departure, they noticed that the victim was still alive. An attempt was then made to suffocate her with a pillow and strike her face several times with a hammer. Finally, they slit her wrist and then, both Pennellatore and Costello, departed. An arrest warrant was issued for James Costello. He was arrested three days later, after calling police to see if they were looking for him.

## **II. PAROLE HEARING ON FEBRUARY 26, 2015**

This was Costello's first parole hearing before the Board. He committed the murder at age 15 and has been incarcerated for almost 34 years. Costello was afforded a hearing as a result of the Massachusetts Supreme Judicial Court (SJC) decision in *Diatchenko v. District Attorney for the Suffolk District & Others*, 466 Mass. 655 (2013). Attorney Helen Holcomb represented Costello at his hearing. At the start of the hearing, Costello apologized to the victim's family and accepted responsibility for his role in the murder of 84 year-old Palmira Piciulo. Costello then informed the Board of the precipitating factors that led to his criminal behavior, as well as how he has used his time in prison to reform his life.

The Parole Board reviewed pertinent information with Costello that regarded his childhood. Given the age at which Costello committed this offense (15 years-old), the Parole Board was interested in what, if any, developmental or social issues may have played a role in



the commission of such a heinous crime. Costello described in detail a childhood that was replete with parental neglect, addiction, abuse (both physical and sexual), and other traumatic experiences that affected him. The Parole Board acknowledged that such a horrific childhood would certainly have had a negative effect on most people. However, the Parole Board was most interested in whether Costello has been rehabilitated and how he could successfully re-enter society, given such a traumatic history and lengthy period of incarceration.

Costello answered each question by describing his transformation from an angry and dysfunctional kid to a man who has gained insight, self-worth, job skills, education, and respect for others. Costello highlighted the most difficult periods of his life, while continuing to remind the Parole Board that none of the trauma he endured "excuses my responsibility." Costello described an incident when his three year-old brother was severely burned after playing with matches. His mother was reportedly passed out when this happened, so he and his sister had to drag their brother into the bathtub. Following the incident, Costello stated that his mother blamed him and his sister, which increased the intensity of the physical abuse they had already endured. He described a pattern of detachment, but also acknowledged periodic feelings of love and affection from his mother. Costello stated that his life took an even darker turn when he was raped by a neighbor at age six. He was then threatened by the man not to tell anyone or he and his family would be killed. Costello kept the experience to himself and stated that "the next four years were even more difficult." As a result of his childhood trauma, Costello started to disengage from his family, school, and any positive influences that he may have had. He became involved in criminal activity, which included stealing cars, abusing drugs and alcohol, and breaking into homes. By age 13, Costello was committed to the Department of Youth Services (DYS).

Costello then described an experience that further exacerbated his level of anger, distrust, and detachment from adult figures. He stated that his mother (who was at a loss for how to provide Costello with positive direction) insisted that he engage in pastoral counseling with Father John J. Geoghan. While in Geoghan's care, Costello was sexually abused by him. Despite Costello's resistance, his mother (who was unaware of the abuse) insisted that he continue the relationship and even encouraged Costello to become one of Geoghan's altar boys. Costello described this abusive relationship as being a significant catalyst to his violent and criminal behavior. The abuse by a man (who was held to be a pillar of society) came during a time when Costello was in desperate need of strong, supportive, and compassionate parental guidance. As a result, Costello discussed the level of hopelessness and despair that he experienced during this stage of his life. Approximately two years after his last victimization by Geoghan, Costello committed the murder. By then, he had forged a relationship with his older co-defendants. He had virtually no positive role models or direction at that time.

Costello described his state of mind on the day of the murder, as well as the amount of drugs and alcohol he consumed. His description was consistent with the known facts about the offense. Costello described his co-defendant, Phillip Pennellatore, as being the mastermind and leader throughout the robbery and violent attack. Costello was asked why he would agree to inflict such violence on an elderly woman, who was nothing but kind to all involved. Costello stated, "I was told to do it." Costello described the dynamic between himself and his co-defendants. While he insisted that "I am responsible for what I did," he attributed his actions as being performed under duress. Costello described the violent attack in detail. He stated that "as I stood behind her, I took out the cable and struck Ms. Piciulo on the back of the head. She



put her hands up and screamed. I struck Ms. Piciulo again, and she fell to the floor screaming. Phil came into the kitchen, took the cable from me, and told me to go and search the bedroom." Costello stated, "I struck the first blows. I did this to a small vulnerable woman who took pity on a street kid." He also described the further violence he inflicted on Ms. Piciulo, which included his return to ensure that she was dead by "hitting her with a hammer and cutting her wrists." Costello again prefaced his behavior by stating, "Phil told us to do it to make sure she was dead."

Following the murder, Costello stated he was so distraught that he resorted to smoking more angel dust. He stated that they "pawned all the proceeds (that they stole) and divided some up. I bought new sneakers and a marijuana pendant, and a jacket I think. I never returned home after that. Every single day I live it over, and over again. When I see elderly people on television and in the visiting room, I think about it." Costello was asked to describe again what relationship his age, trauma history, and drug abuse had on his willingness to participate in such a horrific act. Costello stated, "I don't mitigate anything." He was then specifically asked if he could have committed such a horrific and violent act in the absence of his co-defendants' influence and he stated "no."

It is worth noting that during the 1981 transfer hearing to the adult system (after Costello was held in juvenile custody for the murder of Ms. Piciulo), Father Geoghan resumed his relationship with Costello, due to Costello's young age. Father Geoghan also testified at Costello's transfer hearing and stated that he had an ongoing relationship with Costello and that he gave him both guidance and direction. In addition, the former Director of the Cambridge Court Clinic identified Costello's strengths, which included his mutual relationship with Geoghan. The psychiatrist (obviously oblivious to the abuse) recommended to the Court that Costello maintain his relationship with Geoghan, in the hope that he would benefit from his mentoring. In deciding to bind Costello over for trial as an adult, the Juvenile Court judge rejected expert evidence that Costello was rehabilitated, specifically referencing the failure of Costello to benefit from Geoghan's efforts to help him. Costello's response to that period of his life was that it was traumatic. Yet, he insists that it does not explain what he did to Ms. Piciulo. When asked about how he felt when he learned that Geoghan had been murdered in prison, he stated, "I got emotional, because I connected the age of him to Ms. Piciulo and what he must have suffered." Costello added that he believes in resurrection and it is his belief (based on the kind of person Ms. Piciulo was) that she will be resurrected. Costello stated that he tries to focus on the resurrection in order to make some peace for what he has done.

The remainder of the hearing focused on Costello's degree of rehabilitation and how he merits parole. Costello stated that when he first learned that he would be transferred to the adult system (and was tried and found guilty of first degree murder), he lost all hope. Costello, who was already in a state of despair, stated that his mindset shifted to survival. He described being a young and broken 17 year-old entering (from what he was informed) the most dangerous prison in Massachusetts. He stated that he was in constant fear for his safety. He followed the direction that he was accustomed to and listened to older inmates, who directed him on prison culture. Costello admits to accruing over 100 disciplinary issues, which included fighting and possession of controlled substances. The large majority of his disciplinary issues, however, involved not standing for count and other oppositional behaviors. Costello has had no disciplinary issues since 1993 and nothing notable since the early 1980's. He receives above average work and housing evaluations. When asked about his rehabilitation, Costello attributes



his commitment to his religion, as a Jehovah's Witness, as being the greatest source of personal reform. He was baptized in 1991 and stated that in order to be accepted into the religion, his "conduct had to be exemplary so that I would not reflect bad on my God." Costello stated that he is viewed as a leader among his religious community. He also stated that his transformation into "the man I wanted to be" came with his investment in programs. Costello has engaged in all relevant programs that address anger, trauma, conflict resolution skills, substance abuse, education (GED 1983), and job training. Costello stated that he completed the welding and culinary arts program and prides himself on being one of the head cooks. Costello provided letters of employment from A-Plus Welding and Engineering INC and from Berry's Greenhouses Inc. Costello responded to specific questions about his emotional and personal growth, as well as the relationships he formed as a result of his true commitment to rehabilitation.

Costello outlined a comprehensive parole release plan that includes a gradual step-down, through the Department of Correction, in order to slowly re-integrate back into the community. He proposed a supportive housing plan and has secured long term employment with a company who will provide him with further training.

Costello had many members of his family, as well as the community, speak in support of parole. His brother and niece described Costello's childhood and his transformation into being a productive member of society. Bernard Fox, a former teacher of Costello's in the 1970's, spoke at length about the trauma Costello was subjected to as a child. He stated that when he read an article about him in the paper, he began writing to him and has been visiting him ever since. Mr. Fox views Costello as being reformed and stated that he will continue to mentor him upon his release. Several experts, as well as those with professional relationships, testified on Costello's behalf, including a former Corrections Officer who worked with Costello, and an expert in assisting men in transition from long-term incarceration. Each described Costello as being a person of strong character and who has the growth and ability to succeed in the community. Finally, the Parole Board reviewed numerous psychological evaluations, including those from John E. Christian (who also provided testimony) and Dr. David Lisak. Dr. Lisak, an experienced psychologist, evaluated Costello for the purposes of a petition for commutation. His report yielded promising prognostic indicators, with insight regarding Costello's potential to succeed. Mr. Christian provided numerous actuarial tools for the Parole Board's review. In addition, Mr. Christian provided an in-depth re-entry plan that addresses Costello's ongoing needs.

Speaking in opposition to Costello's parole was Suffolk County Assistant District Attorney Cailin M. Campbell. ADA Campbell highlighted her testimony by reminding the Board that, despite Costello's young age, he chose to inflict violent pain upon Ms. Piciulo. Furthermore, as outlined in the letter provided by ADA Campbell, she stated that Costello minimizes his involvement now. Unlike his co-defendants, she stated that it was Costello that had a significant juvenile record, while Pennellatore had only one entry on his record at the time. The Commonwealth asked the Board to question the degree to which Costello was actually influenced by his co-defendant to commit such a vicious homicide. The Commonwealth acknowledged Costello's efforts to participate in available programming, but urged the Board to have Costello demonstrate that he can work his way through progressively less levels of security before he could be considered for parole. The Commonwealth asked that Costello be denied parole, as he is not yet a suitable candidate.



### III. DECISION

Costello committed a horrific murder at the age of 15 years-old. His life, to that point, was replete with parental neglect and abuse. Further, Costello endured the sexual abuse by a Catholic priest, John Geoghan (later incarcerated for crimes related to sexually abusing children), who was entrusted by the community to mentor young misguided boys. Not only was Costello told by his mother to accept Geoghan's mentoring, the Court (at the time of the transfer hearing) took into account the expert opinion of a psychiatrist, and that of Geoghan, that perhaps Costello was not amenable to rehabilitation, as he failed to thrive under Geoghan's mentoring.

At the time of the murder, Costello had diverted down a path of self-destruction, self-worthlessness, and reckless abandonment for others. Costello, by most accounts known today, lacked the capacity for perspective, autonomous choice, and forethought. While his age and stage of development alone does not excuse his behavior (combined with the traumatic and neglectful experiences he endured at a critical stage in development), it provides some context in which to evaluate Costello. The most important criteria in the analysis of parole suitability concerns whether Costello meets the legal standard. The Parole Board regards Costello's efforts in his rehabilitation to be both genuine and beneficial. Costello has demonstrated through his conduct, insight, and positive support that he has acquired the necessary foundation for a successful transition into society. The Parole Board also considered the expert actuarial assessments and opinions provided as further indicators that, under specific conditions of parole, he is ready for the opportunity to begin his transition back to society.

The four goals of sentencing – punishment, deterrence, rehabilitation, and public protection – have 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 grants parole to a long term residential program after one year in lower security. This release plan will allow for important supports during a closely supervised transition.

**SPECIAL CONDITIONS:** Parole to a long term residential program after one year in lower security; no drug use or alcohol use, with testing for compliance; one-on-one counseling to address adjustment, transition, and prior abuse; GPS monitoring at the discretion of the Parole Officer; must abide by curfew; no contact with the victim's family; and report to Parole Office on the day of release.

*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

4/7/15  
Date