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DECISION

IN THE MATTER OF

JEAN ALMODOVAR

W68354

TYPE OF HEARING: Initial Hearing

DATE OF HEARING: October 7, 2014

DATE OF DECISION: December 4, 2014

PARTICIPATING BOARD MEMBERS: Dr. Charlene Bonner, Tonomey Coleman, Sheila Dupre, Ina Howard-Hogan, Tina Hurley, Josh Wall

DECISION OF THE BOARD: After careful consideration of all relevant facts, including the nature of the underlying 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 four years from the date of the hearing.

I. STATEMENT OF THE CASE

On July 17, 2000, in Hampden Superior Court, Jean Almodovar, then age 16, pleaded guilty to second degree murder for killing 21-year-old Alexander Rosa in Holyoke, Massachusetts. Almodovar was sentenced to life in prison with a possibility of parole. On that same date, Almodovar also pleaded guilty to two related firearms charges and received concurrent sentences of one year and three to five years, which have since expired. The co-defendant in this case is Almodovar's uncle, Kelvin Gutierrez, who was then age 18. Gutierrez also pleaded guilty to second degree murder and related gun charges and likewise received a life sentence with the possibility of parole.

On October 26, 1999, at about 11:30 pm, Holyoke police officers responded to Southbridge Street, where they found Alexander Rosa on the sidewalk suffering from multiple gunshot wounds and near death. Despite first aid, Mr. Rosa died at the hospital a short time later. The autopsy revealed that Mr. Rosa had been shot from two different weapons. He had four bullets in his back from a .38 caliber handgun and a shotgun blast to his lower left side, leaving numerous small buckshot-type pellets.

Earlier that evening, Mr. Rosa and an associate were attempting to break into a vehicle parked on Southbridge Street when they were approached by Almodovar and Gutierrez. Gutierrez said, "That's the guy that ratted on my brother." Mr. Rosa began to flee the area when Gutierrez pulled out a .38 caliber handgun and shot Mr. Rosa. Almodovar then shot Mr. Rosa with a sawed-off shotgun. Another witness stated that he saw Almodovar and Gutierrez "stash" the murder weapons on the fourth floor of an apartment building before dumping them in the Connecticut River the following day. On November 3, 1999, Almodovar turned himself in to Holyoke Police, eventually confessing to the murder of Mr. Rosa.

Almodovar filed a *pro se* motion to withdraw his guilty plea and an accompanying motion for a new trial in 2002 asserting ineffective assistance of counsel, which was denied. In April 2004, the denial was affirmed by an Appeals Court panel, which the Supreme Judicial Court likewise affirmed in June 2004. In April 2013, Almodovar filed another *pro se* motion for a new trial via a motion to withdraw his guilty plea, which was withdrawn on July 21, 2014. There are no outstanding appellate issues.

II. CRIMINAL & INSTITUTIONAL HISTORY

Almodovar's juvenile record commenced in December 1994 when he was arraigned for indecent assault on a child and assault and battery. The indecent assault on a child charge was later disposed of via pretrial probation. However, the companion assault and battery charge resulted in a delinquent adjudication and eventual commitment to the Department of Youth Services.¹ His additional juvenile adjudications include an assault and battery, wanton destruction of property in 1996, possession of a class B substance in 1998, and possession of a firearm and ammunition in 1999.

Almodovar is serving his first state adult incarceration. His overall adjustment has been problematic. Department of Correction Classification Reports confirm that Almodovar has had numerous returns to higher security and multiple special management unit placements. He has accrued at least 50 disciplinary infractions. Significant disciplinary infractions include Security Threat Group (STG) activity (gang activity), possession of contraband, possession of homebrew, weapon possession, ingestion of heroin, conduct which disrupts, lying to staff, refusing direct orders, insolence, being out of place, refusing a urine test, fighting other inmates, refusing to lock in, and flooding his cell. His latest Classification Report, conducted in February 2014, was initiated following the receipt of his most recent disciplinary report in which he pleaded guilty to being insolent towards staff. As a result, Almodovar was transferred from MCI-Norfolk to Souza-Baranowski Correctional Center (SBCC). In addition, the Classification Report provides that Almodovar remains a validated member of an STG (gang).

Institutional programming, education, and employment have been limited during Almodovar's incarceration, due to his inability to conform his behavior. His programming consists of Sex Offender Orientation in 2000;² Security Threat Group Orientation in 2000;

¹ As the charges are related, this assault and battery charge falls within the definition of G.L. c. 123A, §§ 1, 12, as a conviction requiring notification to the District Attorney and clearance before any pre-lease on parole.

² In 2000, Almodovar's criminal record did not yet reflect that the charge of indecent assault on a child had been dismissed.

Alternatives to Violence in 2008; Emotional Awareness in 2008 and 2011; Correctional Recovery Academy in 2012; Non-violent Conflict Resolution – Training for Facilitators in 2012; and Jericho Circle in 2012. In addition to the above, he received his General Equivalency Diploma in 2012 and his welding certificate in 2013. He served as the Latin Chairman of the Norfolk Inmate Council between 2012 and 2013. Prior to his transfer to SBCC, Almodovar engaged in institutional employment, holding several positions such as unit runner, kitchen worker, and plate shop worker at MCI-Cedar Junction. Almodovar was also a gym worker and a janitor for the program offices at MCI-Norfolk and worked in the kitchen and health services unit at MCI-Shirley. He is currently employed as a unit worker.

III. PAROLE HEARING ON OCTOBER 7, 2014

On Tuesday, October 7, 2014, Almodovar appeared before the Massachusetts Parole Board for an Initial Hearing on the life sentence he is currently serving. Almodovar seeks a parole to reside with his fiancé in the greater Boston area after a gradual transition into the community through lower security. He plans to obtain employment as a welder. Long-term, he envisions himself working with at-risk youth. He will continue to pursue educational opportunities, as he has a desire to continue to learn. Almodovar has a positive support network in the community, as evidenced by the testimony provided at his hearing and the numerous letters submitted on his behalf.

During his hearing, he was represented by Christopher Magnani and Julie Dickerson, student attorneys from the Harvard Prison Legal Assistance Project. Ms. Dickerson provided an opening statement to the Board outlining his suitability for parole, as he has accepted full responsibility for the shooting of Alexander Rosa. Dickerson stated that Almodovar has utilized his incarceration to change through his participation in numerous programs in preparation of reintegration. His criminal behavior was attributed to a troubled upbringing that included numerous foster care placements and the influence of a local gang at an early age. Almodovar (during his opening statement) expressed sorrow and grief for his senseless and violent behavior, as well as, its effect on the victim's family and its impact on the community.

At the hearing, Almodovar described how he became attracted to street life at an early age and that he had thoughts of joining a local gang at the age of 11. He officially joined a gang at the age of 15 and held the position of "soldier." His childhood was troubled, having grown up in a dysfunctional family riddled with drugs and violence. At the time of the murder, Almodovar was smoking marijuana daily, drinking alcohol on a regular basis, and selling cocaine and heroin for the gang. In addition, Almodovar does not dispute that, at points during his incarceration, he has been an active member of the local gang. He indicates that he would like to participate formally in the renunciation process available at the Department of Correction.

Almodovar's co-defendant and uncle, Gutierrez, was a high ranking member of the local gang. At the time of the murder, Gutierrez held a prominent position within the gang as an "Enforcer." It was believed that Mr. Rosa had provided the weapon used to murder a member of Almodovar's gang. Avenging that killing was the primary motive for this murder. Almodovar has since learned Mr. Rosa was not responsible for providing the weapon, something Rosa vehemently denied when confronted by Almodovar and Gutierrez on October 26, 1999. To this day, Almodovar's behavior that evening haunts him, and he does not understand why he went back and shot Mr. Rosa as he lay motionless on the sidewalk. Almodovar contends that he was

not always in possession of a firearm, but on that evening, he was transporting the weapon from one location to another due to the ongoing war with another local gang.

Almodovar has been incarcerated for the past 15 years. He attributes his poor institutional adjustment to a clerical error on his criminal record indicating that he was found delinquent on the related 1994 juvenile charges of assault and battery and indecent assault, which has been recently rectified. During his incarceration, Almodovar has embarked on a path toward rehabilitation. He has completed numerous phases of Alternatives to Violence, a program that has allowed him to identify viable solutions to conflict. In addition, he has developed a greater understanding of how his criminal behavior impacted the community through participation in Jericho Circle.

Hampden Assistant District Attorney Howard Safford spoke in opposition to parole, citing that although Almodovar appears to have a good attitude, work ethic, program involvement, and community support, this is in stark contrast to his institutional adjustment, which has been problematic. ADA Safford stressed that Almodovar needs to continue this improvement for a longer period of time. Several family members and friends attended the hearing, three of whom spoke in support of his petition for parole.

IV. DECISION

Jean Almodovar, at age 16 and with the help of his uncle, murdered a 21 year old man in order to fulfill his role in a local gang. Further, it is apparent that this killing was motivated by a misplaced sense of revenge, as Almodovar and his co-defendant killed the victim because they believed, wrongly, that the victim provided the weapon used to kill another gang member. Almodovar and his co-defendant were mistaken and, thus, are responsible for a killing that was as tragic as it was senseless.

Even though he expressed interest in renouncing ties with the local gang at the hearing, Almodovar has not done so. It is unclear and of concern to the Board if Almodovar has any continued gang affiliation. Also, while he has engaged in positive programming, Almodovar has a contrasting poor institutional history, which includes a transfer from MCI-Norfolk (where he had been showing positive improvement) to SBCC, due to a disciplinary report for insolence. This occurred in February 2014, or less than a year before this parole hearing, and when he was 31 years old. In short, Almodovar is not yet rehabilitated.

The standard we apply in assessing candidates for parole is set out in 120 C.M.R. 300.04(1), 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 here, it is the unanimous opinion of the Board that Jean Almodovar does not merit parole at this time. Parole is denied with a review in four years from the date of the hearing.

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.

Caitlin E. Casey
Caitlin E. Casey, Chief of Staff

12/4/14
Date