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**PAROLE BOARD**

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**DECISION**  
**IN THE MATTER OF**  
**JEFFREY ROBERIO**

**W43885**

**TYPE OF HEARING:** Initial Hearing  
**DATE OF HEARING:** June 25, 2015  
**DATE OF DECISION:** November 4, 2015

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

**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 the 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 five years from the date of the hearing.

**I. STATEMENT OF THE CASE**

On August 11, 1987, a Plymouth County Superior Court jury found Jeffrey Roberio guilty of first degree murder, and the court sentenced him to life in prison without the possibility of parole. Roberio was 17-years-old at the time of the offense. The jury also found Roberio guilty of armed robbery, for which he was sentenced to serve a concurrent life sentence. Thereafter, Roberio filed a motion for a new trial which claimed that his trial attorney was ineffective by failing to investigate and raise an insanity defense. In 1998, the Supreme Judicial Court reversed the conviction and remanded the case for retrial, ruling that the question of Roberio's sanity was a question for the jury. *Commonwealth v. Roberio*, 428 Mass. 278 (1998). Roberio was allowed to present the insanity defense to a jury on retrial in January 2000. Nevertheless, he was again convicted of first degree murder and armed robbery. The convictions were subsequently affirmed on appeal. *Commonwealth v. Roberio*, 440 Mass. 245 (2003).



On December 24, 2013, the Massachusetts Supreme Judicial Court (SJC) issued a decision (*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 Jeffrey Roberio, who were juveniles when they committed first degree murder. The SJC ordered that affected inmates receive a parole hearing after serving 15 years in prison. Accordingly, Roberio became eligible for parole and is now before the Board for an initial hearing. Roberio is currently serving his sentence at Old Colony Correctional Center (OCCC), where he has been incarcerated since 1996.

The facts of this case are derived from *Commonwealth v. Roberio*, 440 Mass. 245 (2003). On the evening of July 29, 1986, Jeffrey Roberio (age 17) and his co-defendant, Michael Eagles (age 20),<sup>1</sup> entered the Middleborough trailer home of 79-year-old Lewis Jennings. Mr. Jennings lived alone and kept a large amount of cash in his trailer. The following day, Mr. Jennings' body was discovered, savagely beaten with a blunt force object. Several bones, including his spine, were broken and he had been strangled with his own pillow case. Mr. Jennings had extensive injuries to his face and head, as well as numerous lacerations on his right hand that were indicative of defensive wounds. Cash, a shotgun, and miscellaneous personal property had been stolen from his home.

Several weeks before the victim's death, Roberio had asked a friend to "do a break with him" to get money from "an old man who had a lot of money" and who "didn't believe in banks." On the evening of the murder, Roberio and Eagles were driven to an area near the victim's trailer. Roberio said that he "was going to break into some man's house" and asked for a return ride about one hour later. On the return trip, Roberio was shirtless and wet (it had been raining) and Eagles was seen holding a roll of money. On the day after the murder, Roberio was observed with a \$50 bill and had revealed the brutal details of the murder to a friend. He also had the friend drive him back to the area near the victim's trailer, where he retrieved the victim's shotgun and a metal box. The police later found these items. Further investigation revealed that a fingerprint on a beer stein in Jennings' home belonged to Roberio.

At the second trial, a neuropsychologist testifying for Roberio opined that Roberio had attention deficit hyperactivity disorder, oppositional defiant disorder, and a learning disability. He said that when those conditions were exacerbated by alcohol use, Roberio lacked the substantial capacity to conform his conduct to the requirements of the law.

Roberio has been incarcerated for approximately 29 years. During this period, he has incurred 39 disciplinary reports, most of which involve violation of count procedure, possession of tattoo paraphernalia, and other rule violations. Roberio had one fighting incident in 1988, possessed three marijuana cigarettes in 1988, refused to give a urine sample in 1990 (suggestive of substance abuse), and was insolent with staff on a few occasions between 1988 and 1990. He received his last disciplinary report in November 2011, for possession of contraband items.

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<sup>1</sup> Michael Eagles was tried separately and convicted of murder in the first degree and armed robbery. His convictions were affirmed on appeal (*Commonwealth v. Eagles*, 419 Mass 825 (1995)), and he is serving a life sentence without the possibility of parole.



Roberio has spent the last 26 years at Old Colony Correctional Center in Bridgewater. He has worked (sporadically) in the print shop at Old Colony for a total of 16 years, and he currently works as the shop's chief mechanic. Roberio obtained his GED in 2005, and has submitted certificates of completion for programs that include Toastmasters (Speaking without Fear, March 2015 and Speechcraft Program Facilitator, June 2015) and Alternatives to Violence (Basic Course, April 2008 and Second Level Course, November 2008). Roberio attends AA/NA meetings and participates in the facility's music program. However, he has not had any intensive rehabilitative programming to address his history of substance abuse and criminal thinking.

## **II. PAROLE HEARING ON JUNE 25, 2015**

Jeffrey Roberio, age 46, appeared for his first hearing before the Massachusetts Parole Board on June 25, 2015, as a result of the SJC's decision in *Diatchenko*. He was represented by Attorneys Benjamin Keehn and Dulcinea Goncalves.

Roberio apologized for the murder, but said that he cannot undo the damage done in committing the murder. He said that he believes he now merits parole because he has overcome many disabilities. He said that he was "an out-of-control kid with no direction" at the time, and that it was particularly hard in the summer because he wanted to go out and do what he wanted to do. Roberio said that he suffered from lead poisoning as a youngster and had difficulty learning in school. He was a "scrawny, geeky-looking kid that no one wanted to be with." His father was not active in his life; he was just a provider. He felt like an outsider and "so being on the outside, [he] found kids that were on the outside also, that had problems." He believes that things took a turn for the worse when he began regularly abusing alcohol, which he claims turned him into a different person. When he drank, he became "the kid that nobody wanted to be around" because he would become "angry."

In describing himself prior to the murder, Roberio said that he did not have good judgment and would do things "on impulse." Roberio said that his alcoholism started "roughly around 13-years-old" and that alcoholism runs in his family. His father was an alcoholic and he became a full blown alcoholic, as well. He said that drinking made him "combative," and that he had no respect for people or their property around the time of the murder. He said that if he was determined to do something, he "just did it." He said that he was drinking regularly, but was not in any type of treatment.

Roberio described the circumstances surrounding the murder as follows: Roberio knew Mr. Jennings prior to the murder and had been by his house "a couple of times." A friend of his had sold a car to Mr. Jennings. Mr. Jennings decided he didn't want the car and asked for his money back. After his friend gave the money back, the friend decided to make a plan to rob Mr. Jennings. However, Roberio didn't want to go through with his friend's robbery plan, which involved Roberio waiting in the woods while his friend took Mr. Jennings to the dog track, and then robbing Mr. Jennings' house while they were gone. Roberio formulated his own robbery plan, separate and apart from his friend, and a couple weeks later began soliciting help from others he knew that were involved in criminal activities.

Roberio encountered Michael Eagles and told him about his idea to rob Mr. Jennings. So, they went to a store and stole a roll of tape to prepare for the robbery. Eagles bought a bottle of liquor, which they both drank, and they made their way to Mr. Jennings' home in the



woods. Roberio went behind Mr. Jennings' home and ripped out some wires "in case if there was somebody home, they could not call for help if they heard someone outside." They walked to the front and knocked on the front door. Mr. Jennings opened the door and Roberio asked to use his phone. Mr. Jennings "kindly" pointed to the phone and, as Roberio walked over to the phone, Eagles entered the house and pushed Mr. Jennings to the floor. Roberio told Eagles to watch Mr. Jennings while he looked for the money. When he could not find the money, he went over to Mr. Jennings and asked him where the money was. Mr. Jennings "wasn't cooperating," so Roberio started "punching him" and "kicking him" and "asking him where the money was." Mr. Jennings refused to cooperate, and Roberio continued to search the house without success. He returned to Mr. Jennings and again asked where the money was. Mr. Jennings refused to say, so he "proceeded to keep punching Mr. Jennings, kicking Mr. Jennings, breaking his ribs, his spine, his arm, punching him in the face." At some point, Mr. Jennings said that he would show them where the money was, so he was allowed to go retrieve it. Mr. Jennings went into a bedroom, went under a bed, and "came up with a shotgun." Mr. Jennings pointed the shotgun at Roberio and backed him out of the bedroom. Eagles picked up a barstool and threw it at Mr. Jennings, knocking the shotgun out of his hand. Roberio said he lost control at that point. He was "furious and angry" at not finding the money, as well as having a shotgun pulled on him. He therefore "took it all out on Mr. Jennings."

Roberio said he did not have any moral compass when he first went to prison, so he acted the same as he had acted in the streets. He was a "young kid" and "scared to death" and would hang out with older guys for protection and to learn "the ropes." Roberio said his moral compass came years later when he "started getting involved with other guys who were doing programs" (and not getting disciplinary tickets) and had a lot going for themselves despite being in prison. He said that he no longer has any impulse issues and no longer acts up.

Roberio said alcohol abuse was a major cause of the murder because it fed his rage. When he first entered prison, he realized that he had to address his alcoholism and so he entered the substance abuse block. He was terminated after three months due to misconduct. He has not had any other substance abuse programming since then. However, he has regularly attended AA/NA meetings since 2008. A few Board Members questioned Roberio about the many tattoo-related disciplinary reports he incurred over the years. Roberio said that he was involved in tattooing for around 10 years because he likes to draw and was being paid to give tattoos. He said "tattooing in prison is like an ATM machine" because everybody in prison wants one. He said that he has tattooed over 100 inmates, with the last occurring in 2002, at age 34.

When confronted with his minimal programming, Roberio admitted as much and offered the following explanation: "I've taken my own steps to understand what my issues were . . . . I've maintained my own stability against violence in prison . . . . I've taken my own steps to try bettering myself." When a Board Member inquired as to why he did not advocate for a lateral transfer to an institution that offered more rehabilitative programs, Roberio stated that he actually advocated to stay at OCCC when the Department of Corrections sought to transfer him for good behavior. He preferred to stay at OCCC because his family lives about five minutes from the institution and he wanted to remain close to them for support. He said, "I've become very complacent at Old Colony. It's a comfortable situation of what I know."



Given Roberio's young age at the time of the murder, as well as the parole suitability factors outlined in *Diatchenko* that ensures a juvenile offender is afforded a meaningful opportunity for release, the Parole Board was interested in which, if any, developmental or societal issues played a role in the commission of such a brutal crime. The information from Roberio and his attorneys indicate that Roberio had difficulties in school as far back as kindergarten, and he began receiving special education support in elementary school. At around age 16 (after Roberio had been brought before the juvenile court for the fourth time), he was referred to a community counseling center, which described him as a "boy in serious emotional trouble" and who's "lack of self-esteem, impulsiveness, and difficulty in negotiating interpersonal relationships put him at risk for further acting out." Other reports from this period indicate that Roberio's mother was emotionally distant and neglectful, and that his father was an alcoholic and typically unavailable for support.

Roberio reportedly dropped out of school at age 16, with little guidance or support from his parents. He would often stay out all night and, at one point, left home and moved in with an older woman. He drank alcohol to excess to mask his shyness at social events, and he would often drink to the point of becoming confrontational and combative. Binge drinking was a regular occurrence, and often resulted in blackouts and memory loss. Roberio submitted a 2013 neuropsychological evaluation that was performed by Dr. Paul A. Spiers (now deceased). In his report, Dr. Spiers stated that prior to the murder, Roberio suffered from learning disabilities, attention deficit hyperactivity disorder, oppositional defiant disorder, two separate closed head injuries, lead poisoning, and alcohol and drug use. These factors resulted in "impulsivity, poor planning and judgment" and "a lack of insight." Dr. Spiers opined that Roberio "was not acting in a rational, premeditated, or intentional fashion at the time of the crime." Dr. Spiers further opined that Roberio was "extremely remorseful" and "accepts full responsibility for his actions." He said that Roberio "has also gained marked insight into the role that his developmental disabilities and vulnerability to the effects of drugs and alcohol had on his behavior." He concluded that Roberio was now fully functioning and stated, "The process of human maturation has effectively dissipated the neurological and developmental disabilities that resulted in the commission of a terrible crime by a teenage boy with untreated mental disease and defects."

Four individuals spoke in support of parole at the hearing, including Roberio's mother, Roberio's cousin, neuroscientist Dr. Marlene Oscar Berman (expert witness), and statewide sentencing advocate Lisa Gigliotti. Dr. Berman stated that she reviewed Dr. Spiers' 2013 evaluation report and conducted her own tests on Roberio earlier this year. She said that she agreed with Dr. Spiers' 2013 opinion that Roberio's delayed neurological maturation had resolved itself.

Four people spoke in opposition to parole, including the victim's daughter, two granddaughters, and Plymouth County District Attorney Timothy Cruz. DA Cruz stated that the brutality of the murder, as well as Roberio's lack of sufficient institutional programming, make him unsuitable for parole. A member of the Victim Services Unit read written statements of opposition from two additional granddaughters of the victim.



### III. DECISION

At age 17, Jeffrey Roberio (admittedly) was the mastermind and primary actor in a robbery where he viciously, and brutally, beat and strangled an elderly man to death. Roberio claims that alcohol abuse was responsible for his violent behavior. Nevertheless, he spent the last 26 years at Old Colony working and getting "comfortable," rather than aggressively pursuing rehabilitative programming to address his issues of substance abuse, anger, and violence. For the 29 years that he has been incarcerated, he has only completed two courses of anti-violence programming, and he has not had any substantive rehabilitative programming to address his substance abuse.

Despite having spent his entire adult life in prison without adequate programming, Roberio (age 46) asks the Board to trust that he is rehabilitated and that he no longer presents a risk of harm to society because he has changed of his own volition. While his overall conduct in prison does not raise heightened concern for violence and substance abuse, the fact that he has been complacent in addressing these issues leaves serious concern of whether he still presents a risk of harm to the community, and whether his release is compatible with the best interest of society. While Roberio's age and development at the time of the crime are important factors to consider in assessing his parole suitability, the most important criteria in the analysis of parole suitability remains whether Roberio meets the legal standard for parole.

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 here, it is the unanimous opinion of the Board that Jeffrey Roberio does not merit parole at this time because he is not fully rehabilitated. The review will be in five years, during which time Roberio should engage in rehabilitative programming that addresses substance abuse, anger, violence, and any potential mental health issues that may impair his ability to function as a law abiding citizen in society.

*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.*

  
Michael J. Callahan, Executive Director

November 4, 2015  
Date