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DECISION

IN THE MATTER OF

JODY OLESON

W68169

TYPE OF HEARING: Initial Hearing

DATE OF HEARING: June 4, 2013

DATE OF DECISION: March 26, 2014

PARTICIPATING BOARD MEMBERS: Cesar Archilla, Dr. Charlene Bonner, Tonomey Coleman, Sheila Dupre, Ina Howard-Hogan, Lucy Soto-Abbe, 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 writing, we conclude by unanimous vote that the inmate is not a suitable candidate for parole at this time. Parole is denied with a review in five years from the date of the hearing.

I. STATEMENT OF THE CASE

On June 4, 2013, Jody Oleson made his first appearance before the Board at an initial parole hearing. Oleson is serving a life sentence for the second degree murder of Alfred Fisher. On May 30, 2000, Oleson was found guilty of murder in the second degree after a jury trial in Suffolk Superior Court.

On July 27, 1998, Fisher, age 71, was alone in his apartment in South Boston speaking on the phone with a friend. Oleson, age 25, came to the door. Fisher knew Oleson through a mutual friend and while still on the small cordless phone let Oleson into the apartment. Oleson then began striking Fisher. The friend, who was still on the line, heard the attack and Fisher's calls for help. The friend called the police immediately. Oleson continued his attack drawing blood from Fisher's head. Oleson then strangled Fisher to death. As a result of the strangling, Fisher had numerous hemorrhages to his neck and eyes. Fisher also suffered from cuts or

bruises to his nose, cheeks, chin, lip, neck arms, and legs. When questioned by police, Oleson stated he went to the apartment to confront Fisher for "stalking" his girlfriend.

II. CRIMINAL AND INSTITUTIONAL HISTORY

Oleson has a history of violence and was on probation when he murdered Fisher. In 1990, an assault and battery with a dangerous weapon was continued without a finding. In 1993, an assault and battery resulted in a 90-day suspended sentence. In 1994, a jury convicted Oleson of possession of a firearm and assault and battery with a dangerous weapon. In February 1995, Oleson was convicted in Suffolk Superior Court of armed robbery and assault and battery by means of a dangerous weapon, and was sentenced to a seven to ten year sentence with six years to serve followed by probation. In that case, Oleson, then age 21, struck the victim, Paul Koninkowski, age 42, in the face with a broken beer bottle on June 10, 1994 in South Boston. Koninkowski, who had just retrieved \$80 from an ATM, fell to the ground and was bleeding profusely. While on the ground, Koninkowski was being kicked, and he heard two voices saying, "Take it." Koninkowski then felt his gold neck chain being taken as well as his cash. Koninkowski was taken to the hospital where he received stitches to the left side of his face and across the bridge of his nose and chin area. He has permanent scarring to his face.

Oleson has two prior restraining orders. On November 9, 1992, Oleson's mother was granted a restraining order that expired on November 24, 1992. Oleson reportedly came home drunk and was verbally abusive. On July 16, 1998, Oleson's girlfriend was granted a restraining order which expired on July 27, 1998.

While incarcerated on the seven to ten year sentence, Oleson was moved to pre-release where he was involved in the work release program, but returned to higher custody in December 1997 for a positive drug screen. He discharged from the committed portion of the sentence on January 24, 1998. Oleson committed the murder approximately six months later while on probation.

Oleson incurred disciplinary reports while incarcerated on the governing offense. While awaiting trial, Oleson received a disciplinary report for having a positive drug screen (marijuana). Also, in August 1999, Oleson refused to provide a urine sample. Since being sentenced, Oleson received 23 disciplinary reports. Many of the disciplinary reports were for positive drug tests and violent altercations with inmates. He has also been disciplined for assaulting correctional staff and possession of a weapon. As a result of the disciplinary reports he received during his incarceration, Oleson has been moved to Souza Baranowski Correctional Center (SBCC), placed in the Special Management Unit (SMU), and restrictive housing. A 2004 disciplinary report for a positive drug test and possession of opiates resulted in an arraignment in Ayer District Court on April 1, 2005 for possession of a Class A controlled substance. The charge was *nolle pross'd* on September 30, 2005.

Oleson was transferred to MCI-Norfolk in August 2010. After approximately one month in medium security, he received a disciplinary report for a positive drug test and was placed in SMU. Prior to his SMU placement, Oleson had enrolled in Correctional Recovery Academy but was terminated due to the disciplinary report. In March 2011, Oleson was placed in the SMU once again for a positive drug test for opiates and was returned to Souza-Baranowski in April

2011. In May 2011, Oleson again tested positive for opiate use. In October 2011, he was involved in a group assault which resulted in another DDU sentence. He returned to Souza-Baranowski in June 2012. Oleson's 2012 classification report lists 18 active enemies, which stem from his being a willful participant in ongoing conflicts between certain inmate groups.

In 2001, Oleson participated in education programs. In September of that same year, he enrolled in Barber Training which lasted until February 2002. He re-enrolled in the program in November 2002 until February 2003. In 2004, Oleson enrolled in Culinary Arts for approximately two months but was removed from the program. In September 2010, Oleson was enrolled in the CRA program but was removed for a positive drug screen.

III. PAROLE HEARING ON JUNE 4, 2013

Jody Oleson, age 40, appeared for his initial parole hearing after serving 15 years of a life sentence for beating and strangling an elderly man. He is being housed in maximum security at Souza-Baranowski prison. Oleson said in his opening statement that, "This was not intentional; the motive was not to harm him in any way but to verbally deter him." The facts of the extended and violent assault, however, show a clear intent to cause grievous bodily harm or kill the victim.

Oleson provided the basic facts of his upbringing. He lived with his mother in South Boston's McCormick housing development. His father was "around and accessible" but did not live with the family. He watched "boyfriends beat my mom." He dropped out of school in the ninth grade and began drinking alcohol and smoking marijuana. At age 15, he was using Klonopin, Xanax, Valium, and cocaine. He discussed his criminal record. Several charges in 1994 resulted from an attack on a taxi driver. Oleson explained that, "I was intoxicated; I left Ace's High bar and got into a cab; the driver wouldn't take me and told me to get out; maybe I was belligerent; I was drunk and I swore at him; we got into a fight outside the cab and the cops broke it up; I beat him bad enough that his blood was on my pants; I kicked him in the face; I had a firearm on me; a friend in the bar asked me to hold onto it." He had two restraining orders issued against him, one on behalf of his mother and one on behalf of a girlfriend. He explained the latter restraining order: "We argued; she attacked me; I pushed her aside; no, I grabbed her to the side and I left."

The most serious prior offense was an armed robbery in 1994 which led to a sentence of seven to ten years with six years to serve. Oleson said, "I was on bail on the taxi driver assault; I was at Ace's High bar again; I went with a friend to an ATM; the victim was at the ATM and had just gotten some money; I hit him with a bottle over the head; I knew him before that night; we were drinking at the bar together; there was no one else with me; I wanted the money so I could drink more." Oleson did return to Ace's High where police found him with blood on his hands and clothes. A Board Member reminded Oleson that the victim is permanently injured from the attack. Oleson reported that "I did a little over three years and was released on probation."

He committed the murder while on probation. He was asked to explain why he had several violent crimes in a short period, including crimes while on bail and probation. He said, "I have a habit of holding a lot of things in; I was having a rough time with a woman; she had an abortion on me; the flood gates opened and unfortunately Mr. Fisher was there; I was in

rough, rough shape." In describing the murder, Oleson represented that he went to Alfred Fisher's apartment to make a calm and reasonable request. He said, "I went to see the victim to tell him that Sheila had a high risk pregnancy and if she had less stress there was more chance that the pregnancy would be successful. I stopped at the store earlier and Sheila told me he gave her a hard time in the store. I told her when I get a chance I will talk to him. I wasn't angry or upset but I seen his truck there so I went up there. I knocked. He opened the door for me and I walked in. He was on the phone. I walked into the kitchen and I saw knives. You have to be prepared; Mr. Fisher had a reputation as a dangerous person, even as a 71-year-old. I said, 'Al, do me a favor and stop that shit.' He said, 'Fuck you,' and hit me in the face with the phone. He hit me first, with the phone; I tried to leave; I tried to leave; he went for the knife and I grabbed it; he said 'Fuck you' and spit at me and he went for the knife again; he bit me; I bit him in the cheek." Oleson spent considerable time disputing that he strangled the victim. He gave a convoluted and unconvincing reason to support his claim: "I bit his cheek; how could I bite him if my hands were around his throat; I didn't strangle him with my hands; I gave you a photo so you could see it's a bite mark; the bite mark shows I was behind him, not in front of him as they said."

Oleson bitterly contested the results of the autopsy report. He presented his own forensic views as being more valid than those of the medical examiner. He also grasped at more recent publicized management problems at the medical examiner's office and tried, unsuccessfully, to assert their relevance to his case. He said, "I have plenty of issues with the autopsy report; he was an elderly man and he could have been attacked at another time; the bruises could have been there before; they said I strangled him; I didn't strangle him with my hands, absolutely no way; I restrained him; the petechial hemorrhages are consistent with asphyxiation" but do not prove strangulation; "his heart was double the normal size; he had two blocked arteries and no appendix." Oleson apparently was making the case that the victim died from those medical causes rather than from the physical assault. He said, "the ME's office was losing body parts at the time." This appeared to be a reference to publicized issues at the Medical Examiner's Office that occurred in 2006 and have no relevance to the autopsy of Mr. Fisher. He also said the medical examiner's forensic expert "was responsible for wrongfully convicting a man." This appeared to be a reference to a publicized case in 1999 in which an opinion on a bite mark turned out to be wrong and the Norfolk County District Attorney *nolle pross'd* the case before trial. The forensic expert did not perform the autopsy of Albert Fisher. There was a bite mark on Mr. Fisher, and Oleson admits that he bit Mr. Fisher. It is unclear, therefore, why a mistake in an unrelated case has any relevance to Mr. Fisher's autopsy.

Upon being asked about incriminating evidence, Oleson admitted that he did tell police, "I gave him a beating," but he aggressively contested the testimony of the woman who was on the phone with the victim at the time of the beating. Oleson has had several post-conviction motions and said, "I am going for another motion for new trial." A Board Member pointed out that, "you don't appear to accept responsibility for the death." Oleson responded, "I do believe my actions contributed to his death." He asserted that "manslaughter would have been fair; 20 years for manslaughter would be fair."

Board Members discussed with Oleson his prison record. He has 23 disciplinary reports, including a serious assault on a corrections officer that resulted in a Disciplinary Detention Unit (DDU) placement and an assault on an inmate in September 2011 that resulted in a DDU placement. He said, "There was a big fight going on between the Spanish guys and the white guys; I pushed a guy aside, then I punched him and he went down; then I kicked him; it wasn't enough to hurt the guy." He has numerous disciplinary reports related to opiate use. He disputes several of those, but does admit that in prison "I was dirty; I was using; I admit to some of them tickets; I was using as recently as 2012; I am an addict." He said, "I have five disciplinary reports in the last month and four were dismissed; the April 2013 disciplinary report is wrong because the DOC is in violation of a bunch of their regulations." At different times, Oleson was terminated from the Correctional Recovery Academy and the culinary arts program due to disciplinary incidents. A Board Member asked, "Do you realize you haven't completed any programs because of your disciplinary record?" Oleson responded, "Yes," and went on to explain, "whatever prison you're in, lifers are at the bottom of the list; I've signed up but I'm at the back of the list."

A Board Member asked Oleson how the Parole Board could consider him rehabilitated with the recent disciplinary incidents involving violence and drug use. He responded, "They couldn't; but they could give me a chance to go to a long term residential program." He added, "I was violent on the street back when I was younger; my prison conduct is not indicative of what my conduct would be in the community; I would never hurt anyone." A Board Member responded, "The DOC won't even let you out of Souza-Baranowski because of your conduct and you want us to let you into the community."

Oleson gave his opinion on his prison status: "I'm not well liked by the administration; that puts you in a tough place; it's because I don't tell; they want you to tell and bow down to them; I've never used my influence to harm anyone or bully anyone; I've never abused my influence."

A Board Member explained to Oleson that "today you have minimized everything: your intent and role in the murder; your criminal record; your disciplinary record; your lack of programming; and your restraining orders; you shift blame to someone else repeatedly."

Five family members spoke in support of Oleson's parole. Suffolk Assistant District Attorney Charles Bartoloni spoke in opposition to parole. He noted, "He has done absolutely nothing to better himself and is one of the least suitable parole candidates I have seen."

IV. DECISION

Jody Oleson beat to death an elderly man. He now ascribes much of the blame to the victim. Given the evidence and the jury verdict, the Parole Board does not accept Oleson's version of the beating. Oleson was a very angry and violent young man who sought out an elderly man who had no criminal record. To assert that the elderly victim started the fight and escalated it with a knife has no support in the evidence. Oleson has a very poor record of institutional conduct with considerable violence and opiate abuse. He has little program participation. Based on Mr. Oleson's record, the Parole Board concludes that he is not rehabilitated.

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 Mr. Oleson does not merit parole. The period of review will be five years, during which time Mr. Oleson needs to commit to rehabilitation and address issues of anger, violence, lack of empathy, substance abuse, criminal thinking, and lack of candor.

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 Noble, General Counsel

3/26/14
Date