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Paul M. Treseler
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DECISION (AMENDED)

IN THE MATTER OF

JOHN JONES
W40028

TYPE OF HEARING: Initial Hearing

DATE OF HEARING: December 17, 2015

DATE OF DECISION: May 16, 2016

PARTICIPATING BOARD MEMBERS: Paul M. Treseler, Dr. Charlene Bonner, Tonomey Coleman, Sheila Dupre, 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 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 scheduled in three years from the date of the hearing.

I. STATEMENT OF THE CASE

On October 19, 1983 in Essex County Superior Court, John Jones was convicted of the first degree murder of Donald Pinkham. Subsequently, he was sentenced to life in prison without the possibility of parole. At the time of Mr. Pinkham's murder, Mr. Jones was 17-years-old.

On December 24, 2013, the Supreme Judicial Court issued a decision in *Diatchenko v. District Attorney for Suffolk District & Others*, 466 Mass. 655 (2013) in which the Court determined that the statutory provisions mandating life without the possibility of parole are invalid as applied to juveniles convicted of first degree murder. Further, the Court decided that *Diatchenko* (and others similarly situated) must be given a parole hearing. Accordingly, Mr. Jones is now before the Massachusetts Parole Board.

On the evening prior to Mr. Pinkham's death, which occurred in the early morning hours of October 1, Mr. Jones and a juvenile co-defendant targeted Mr. Pinkham for the robbery of a check that he had recently received. Mr. Pinkham was then killed in an area known as "Dead Man's Path" in Gloucester. After killing Mr. Pinkham, Mr. Jones and his co-defendant went to the home of Mr. Jones' friend in the Maplewood Park section of Gloucester. After arriving between 2:20 a.m. and 2:30 a.m., Mr. Jones and his co-defendant (both of whom were covered in blood) were admitted to the home. As the group discussed Mr. Pinkham's murder, Mr. Jones both laughed and cried. The following day, on the advice of his friend, Mr. Jones led the police to Mr. Pinkham's body. Subsequent investigation indicated that Mr. Pinkham was struck in the head with rocks and set on fire. When Mr. Pinkham was discovered, his body was badly burned and bruised, his head was crushed, and part of his face was missing.

Mr. Jones' co-defendant was also convicted of first degree murder and committed to the Department of Youth Services until his 18th birthday. At the time of Mr. Pinkham's murder, Mr. Jones' co-defendant was 16-years-old.

II. PAROLE HEARING ON DECEMBER 17, 2015

Mr. Jones, now 50-years-old, appeared before the Parole Board on December 17, 2015 for an initial parole hearing and was represented by Attorney Richard Goldman. Mr. Jones was also assisted by social worker Kelsey Haggett during the hearing. In Mr. Jones' opening statement, he apologized for his actions and expressed his remorse. During the course of the hearing, he spoke about the night of the murder. According to Mr. Jones, he began drinking beer at approximately 9 a.m. on September 30, 1982. Mr. Jones continued to drink throughout the day, eventually meeting up with friends and smoking marijuana. Later that day, Mr. Jones traveled to a nearby bar and purchased valium. He then went home to shower and to prepare to meet back with his friends for a drinking party.

Mr. Jones and his friends convened on a set of railroad tracks later that night, where they continued to drink and smoke marijuana. Mr. Jones also ingested valium. As the party continued, Mr. Jones was approached by his co-defendant, who suggested that they rob and kill Mr. Pinkham. Mr. Jones agreed. Mr. Pinkham was known to Mr. Jones from the neighborhood and was also a distant family relative. Although Mr. Jones accepted full responsibility for the murder of Mr. Pinkham, he told the Board that he has no memory of the incident. Mr. Jones' last memory (after speaking to his co-defendant) is socializing with his friends at the party. Mr. Jones' next memory is from the following day, when he met his co-defendant at a nearby basketball court. Mr. Jones first learned of his involvement in Mr. Pinkham's death that afternoon at the apartment of a friend. At the urging of his friend, Mr. Jones led the authorities to Mr. Pinkham's body later that day.

When asked if his age had anything to do with Mr. Pinkham's murder, Mr. Jones responded, "No, it was my lifestyle. The unhealthy, chaotic lifestyle that I was living from age 9 up until then. If that didn't happen, something bad was going to happen, either to myself or somebody else. It's just the truth of who I was at that point in my life." Mr. Jones explained to the Board that he started smoking marijuana at age 9 and abused alcohol and other drugs, including valium and barbiturates, throughout his life. Mr. Jones' drug abuse continued during his incarceration until 1993. Mr. Jones reported that he has not engaged in any substance abuse since that time. In 1994, Mr. Jones received his last disciplinary report. Up until that

point in his incarceration, Mr. Jones had received a total of 104 disciplinary reports for a variety of offenses involving violence, weapons, substance abuse, and insubordination. The Board notes, however, that Mr. Jones has not received a single disciplinary report in over 20 years.

Currently, Mr. Jones is involved in such programming as Cognitive Skills, Jericho Circle, and Narcotics Anonymous. He is also involved in other activities, including employment with the Correctional Industries. The Board notes that Mr. Jones first engaged in programming long before he ever had an expectation of being eligible for parole. From 1995 to 2013, however, Mr. Jones did not engage in any programming. When asked about this period of his incarceration, Mr. Jones told the Board that he had become resigned to his fate. He said that he believed he had committed a terrible crime and, therefore, deserved to remain incarcerated for the remainder of his life. After learning he was eligible for parole, Mr. Jones reengaged in programming in 2013 and has been active since that time.

The Board considered testimony from Dr. Robert Kinscherff, who discussed the interaction between Mr. Jones' childhood development and his criminal behavior. The Board also considered testimony from Mr. Jones' friends, as well as from Lyn Levy from Span, Inc., all of whom expressed support for his release. The Board considered testimony from Essex County Assistant District Attorney James Gubitose, who expressed opposition to Mr. Jones' parole. ADA Gubitose also informed the Board that his office was able to make contact with Mr. Pinkham's brother, who lives out of state, and learned that he does not oppose Mr. Jones' parole.

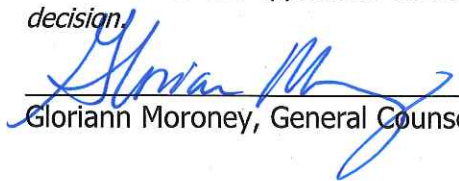
III. DECISION

The Board is of the opinion that Mr. Jones has not demonstrated a level of rehabilitative progress that would make his release compatible with the welfare of society. The Board believes that a longer period of positive institutional adjustment and programming would be beneficial to Mr. Jones' rehabilitation.

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 the context of an offender convicted of first or second degree murder, who was a juvenile at the time the offense was committed, the Board takes into consideration the attributes of youth that distinguish juvenile homicide offenders from similarly situated adult offenders. Consideration of these factors ensures that the parole candidate, who was a juvenile at the time they committed murder, has "a real chance to demonstrate maturity and rehabilitation." *Diatchenko v. District Attorney for the Suffolk District*, 471 Mass. 12, 30 (2015); See also *Commonwealth v. Okoro*, 471 Mass. 51 (2015). The factors considered by the Board include the offender's "lack of maturity and an underdeveloped sense of responsibility, leading to recklessness, impulsivity, and heedless risk-taking; vulnerability to negative influences and outside pressures, including from their family and peers; limited control over their own environment; lack of the ability to extricate themselves from horrific, crime-producing settings; and unique capacity to change as they grow older." *Id.* The Board also recognizes the petitioner's right to be represented by counsel during his appearance before the Board. *Id.* at 20-24. The Board has also considered whether risk reduction programs could effectively minimize Mr. Jones' risk of recidivism.

After applying this standard to the circumstances of Mr. Jones' case, the Board is of the opinion that Mr. Jones is not yet rehabilitated, and his release is not compatible with the welfare of society. Mr. Jones, therefore, does not merit parole at this time. Mr. Jones' next appearance before the Board will take place in three years from the date of this hearing. During the interim, the Board encourages Mr. Jones to continue working towards 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.


Gloriann Moroney, General Counsel


Date