



Deval L. Patrick  
Governor

Andrea J. Cabral  
Secretary

*The Commonwealth of Massachusetts*  
*Executive Office of Public Safety*

**PAROLE BOARD**

*12 Mercer Road  
Natick, Massachusetts 01760*

*Telephone # (508) 650-4500  
Facsimile # (508) 650-4599*



Charlene Bonner  
Chairperson

Janis DiLoreto Smith  
Executive Director

**DECISION**

**IN THE MATTER OF**

**JOHN MALONEY**

**W34177**

**TYPE OF HEARING:** **Revocation Review Hearing**

**DATE OF HEARING:** **September 23, 2014**

**DATE OF DECISION:** **November 20, 2014**

**PARTICIPATING BOARD MEMBERS:** 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, institutional record, the testimony of the inmate at the hearing, the views of the public as expressed at the hearing or in written submissions to the Board, we conclude by a unanimous vote that the inmate is a suitable candidate for parole at this time. Parole is granted after seven months in pre-release.

**I.STATEMENT OF THE CASE**

On May 30, 1973, after trial had commenced in Suffolk Superior Court, John Maloney pleaded guilty to second degree murder for his role in the killing of Albert Stuart, age 41. Maloney and two co-defendants severely beat and then murdered Stuart when a co-defendant crushed his skull with a large rock.

On February 3, 1973, John Maloney, then age 22, and two associates, James Lindenberg, age 20, and Alan Walmsley, age 20, were drinking at a lounge located on Dudley Street in Roxbury. Also drinking in the lounge was the victim, Albert Stuart, who was homeless, and not acquainted with Maloney or his associates.

Shortly before 1:00 am on February 4, Maloney and Lindenberg got into an argument, took the argument outside, and began pushing each other. Mr. Stuart, who witnessed the pushing, went outside to intercede as a peacemaker. Lindenberg responded by striking Mr.

Stuart and knocking him to the ground. At this point, Walmsley and another associate, Michael King, 19, went to aid Lindenberg. Mr. Stuart, who was intoxicated, picked himself up and then accused Lindenberg of robbing him of \$84 and walked away.

Shortly thereafter, Lindenberg was arrested by Boston police for public drunkenness and taken to the police station. Although Lindenberg's arrest was unrelated to Stuart's accusation that he was robbed, King, Walmsley, and Maloney grabbed Mr. Stuart, forced him into King's car, and drove him to the police station to "settle the matter." Once there, Lindenberg was brought from his cell and Mr. Stuart identified him as the man who robbed him. The police, however, did not make an arrest or take a complaint from Mr. Stuart because of his "drunken condition." Instead, the police instructed Mr. Stuart to return the following day and make a complaint.

After leaving the station, Maloney, King, and Walmsley agreed that they had to kill Mr. Stuart in order to protect Lindenberg. Maloney specifically stated that Mr. Stuart "has got to go," and King stated that, "We'll give him his last drink and then kill him." With their plan in place, Maloney and his co-defendants forced Mr. Stuart into the back seat of King's car. Maloney and Walmsley beat Mr. Stuart with their hands and fists. They drove to a side street, went into an alley, and began hitting him with a 2X4 that was in the car and a railroad tie that was found in the alley. Rather than leave him, Maloney and his co-defendants dragged Mr. Stuart back into the rear seat of the car. With Mr. Stuart bloodied and crying, Maloney repeatedly kicked him in the groin area, demanding that he stop crying.

King drove them to the rear of an establishment located at 500 Albany Street in Boston. Mr. Stuart was dragged from the car and had his shirt and trousers pulled off. Maloney and Walmsley then resumed beating Mr. Stuart. Walmsley then picked up a large rock and dropped it a number of times on Mr. Stuart's head. Maloney and the co-defendants left the scene. According to the medical examiner, Mr. Stuart died as a result of the multiple blows to the head, and in his report, he referred to the skull fractures as "ungodly." The medical examiner also noted that Mr. Stuart suffered from severe lacerations to his lip, reflecting the severe beating he received prior to his skull being crushed.

On February 6, 1973, Maloney was apprehended by police. When questioned, Maloney told police that he was so drunk that he had no recollection of the night in question. Initially indicted for first degree murder, Maloney pleaded guilty to second degree murder after the onset of his trial. For their respective roles in the brutal beating and murder of Albert Stuart, Walmsley pleaded guilty to second degree murder and received a life sentence<sup>1</sup> on the same date when Maloney was sentenced, while King pleaded guilty to manslaughter on June 20, 1973 and received a 15 to 20 year sentence.<sup>2</sup>

## **II. PAROLE HISTORY**

Maloney was denied parole in 1989, 1992, 1994, 1996, and 1999. In each of these denials, the Parole Board noted the violent nature of the offense, Maloney's troubling institutional history and his resistance to treatment as primary reasons for those denials.

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<sup>1</sup> Walmsley was released on parole on July 30, 2002 and is an active parolee.

<sup>2</sup> King was released from Department of Correction custody on December 7, 2000.

Maloney was granted parole in 2003 after two years in pre-release and providing a work or training plan.

Maloney was actually released to the community in 2009. He had a fair adjustment until he moved from a sober house to a rooming house. He began having issues with housing. After moving to various rooming houses, he decided to return to the sober house. Simultaneously, Maloney had a girlfriend and another friend who became seriously ill, and he started to worry about them. Maloney began to feel a significant amount of pressure and stress during this period of time.

In addition to his personal issues, Maloney was having difficulty securing and maintaining employment. He was also behind on his supervision fees and had received graduated sanctions due to his being in arrears. Parole had instructed him to report to OCC (Office of Community Corrections) to assist him with employment needs and further stabilization. He continued to collect SSI and veterans benefits,<sup>3</sup> but was instructed to also secure employment. Maloney failed to do so and made questionable efforts to gain any type of employment.

Maloney reportedly was feeling overwhelmed due to all of his stressors. He ended up seeing his primary care physician who prescribed Fluoxetine (anti-depressant) and helped him obtain follow-up care at South Shore Mental Health. Maloney reportedly did not inform his parole officer that he had been prescribed medication because he did not think he needed to since it was not a narcotic and you could not get "high" from the medication. This was a violation of his parole.

When Maloney met with his parole officer on November 14, 2011, he disclosed that he had been taking medication for depression. After being questioned about his mental health needs further, Maloney reportedly decompensated and presented with concerns that he may not be able to be managed in the community. He stated that he was under a lot of stress due to relationship issues and feeling burdened by helping so many people who needed him. He stated he needed to go to a hospital so that he could separate himself from all of his stressors and the people that were causing him stress. Maloney also had difficulty finding employment and paying his supervision fees. He finally stated he saw going into a mental health facility as a "vacation" from all of his responsibilities and pressures.

His parole officer contacted his therapist at South Shore Mental Health who confirmed that he was being treated with medication for depression. His parole officer asked for further information based on information he was gaining from Maloney and from his therapist. Maloney was apparently vague during his meeting with his parole officer, and failed to provide accurate information regarding all of his violations. He also indicated concern that he was at risk of harm to himself. On November 14, 2011, Maloney was returned to custody as a parole violator for taking the anti-depressant without prior approval by his parole officer, not having full time legitimate employment, and not being current with his supervision fees. The recommendation by the hearings examiner, the parole officer and the Parole Board was to hold Maloney in custody pending a mental health evaluation. The Parole Board revoked his parole on April 12, 2012.

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<sup>3</sup> Maloney enlisted in the United States Navy in 1968 and received an honorable medical discharge from Norfolk, Virginia.

In 2012, the Parole Board requested a mental health evaluation through the Department of Mental Health. The evaluation was reportedly not completed due to various obstacles. The current Parole Board reviewed this case and requested a mental health evaluation to be conducted by Robert Kinscherff Ph.D., Esq. Dr. Kinscherff completed the evaluation on February 10, 2014. In his report, Dr. Kinscherff offered his opinion that after receiving treatment for depression, there was no mental health barrier to Maloney's return to the community on parole, and further advised that Maloney continue his treatment during any period of transition.

### **III. PAROLE HEARING ON SEPTEMBER 23, 2014**

The Parole Board focused on Maloney's struggles on parole, in particular with his mental health and other stressors. Maloney gave a detailed description of various relationships that he had with women he very much cared about; however, such individuals had many of their own medical and mental health issues. He described trying to help these women and other people in their time of need, while simultaneously he was becoming overwhelmed and increasingly depressed. The Parole Board commended him for seeking out mental health treatment and viewed the violation of not reporting this need to his parole officer in the context that his parole officer could have been helpful, and that if in fact he is decompensating, his parole officer needs to know about this. Maloney was very apologetic and explained this oversight to the Parole Board. He described that during that period of time he needed more help than he realized, but he was also scared to let his parole officer know he was struggling. Maloney also explained that he did not have the supports in place to help him succeed and that he would need more help should he be re-paroled. The Parole Board asked questions that assisted Maloney with understanding his own needs more, and provided more information as to how he was functioning in the community. Maloney acknowledged that he was not functioning well at the time of his return.

Maloney stated that he has reached out to a veteran's program that would help him with his needs should he be re-paroled. He provided information to the Parole Board as to what services would be available to him. He provided a letter from Paul E. Carew, the Director of the Veterans' Services in the region where Maloney would like to reside. Mr. Carew stated in his letter that he would assist Maloney with his ongoing housing and re-entry needs.

Maloney presented as hopeful and stated that he no longer feels depressed. He is accepting treatment for sleep issues; however, Maloney acknowledged that the medication also assisted with managing his symptoms of depression. Maloney stated that he has been sober since 1985, and continues to benefit from AA. He stated that he will seek continued counseling, employment and will attend AA in the community should he be released.

Maloney did not have anyone in attendance to speak on his behalf. The District Attorney's Office from Suffolk County provided a letter citing several concerns primarily that Maloney may be institutionalized and unable to function in the community. The District Attorney's Office deferred to the Parole Board as to whether Maloney meets the legal standard for parole.

#### **IV. DECISION**

After being incarcerated for thirty six years, Maloney was released to the community in 2009. He went to live at a sober house initially. He had a fair adjustment. Maloney began to decompensate in late 2010 or early 2011. He had a series of housing issues, moving from one rooming house to another after many conflicts and various issues, including a dispute with his landlord. During this period of time, Maloney was struggling with numerous issues, including stress in his closest relationships due to his girlfriend and best friend's serious medical illnesses, his own financial issues due to lack of employment, and general adjustment issues. He sought out mental health care from his primary care physician who prescribed him Fluoxetine, and referred him for ongoing mental health treatment. Maloney met with his parole officer on November 14, 2011 and disclosed that he had been taking medication and receiving treatment for depression. He acknowledged that he never reported that he was taking medication or in treatment to his parole officer. The parole officer reviewed all of Maloney's issues, and the conditions of parole for which he was in violation. During the course of that meeting, Maloney began to further decompensate and requested inpatient mental health treatment. He was reportedly vague and not willing to provide necessary information to the parole officer in order to make a clear determination of what he needed and what his intentions were at that time. The parole officer initiated steps to have him returned to custody due to concerns for public safety and Maloney's safety.

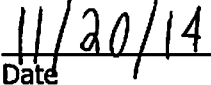
Since that period of time, the Parole Board attempted to arrange an appropriate mental health evaluation for Maloney. Following many obstacles in accessing a mental health evaluation, Dr. Robert Kinscherff was able to complete an evaluation with Maloney. It is Dr. Kinscherff's opinion that there "is no mental health barrier to his return to the community on parole." Dr. Kinscherff recommends that Maloney continue his treatment during any period of transition. Dr. Kinscherff stated that he will also benefit from structuring his day in a manner he finds meaningful and satisfying, and to connect interpersonal supports. Dr. Kinscherff provided a full report that would be accessible to the parole officer.

The standard 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 an 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, it is the unanimous decision of the Parole Board to grant Maloney's request for parole. The Parole Board deems that given the appropriate resources, Maloney, now 64 years old, could successfully re-integrate back into the community. The Parole Board will impose a brief step-down process where Maloney can gain access to community resources via a pre-release program that is linked to SPAN Inc. The Parole Board believes that this transition and assistance from SPAN will provide him with the necessary resources to better address all of his needs.

**SPECIAL CONDITIONS:** Parole to an approved home plan after seven months in pre-release; report to assigned MA parole office on day of release; must have mental health counseling; AA at least 3 times per week with an identified sponsor; supervise for drugs with testing required; supervise for alcohol abstinence with testing required.

*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, Chief of Staff

  
Date