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PAROLE BOARD

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Executive Director
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DECISION

IN THE MATTER OF

JOHN NICHYPOR

W47457

TYPE OF HEARING: Review Hearing

DATE OF HEARING: March 20, 2018

DATE OF DECISION: October 31, 2018

PARTICIPATING BOARD MEMBERS: Paul M. Treseler, Dr. Charlene Bonner, Tonomey Coleman, Sheila Dupre, Tina Hurley, Colette Santa, 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 a suitable candidate for parole. Parole is granted to Florida via Interstate Compact after 18 months of lower security and with special conditions.

I. STATEMENT OF THE CASE

On November 21, 1989, after a jury trial in Essex Superior Court, John Nichypor was found guilty of first degree murder in the death of 36-year-old David McLane. He was sentenced to life without the possibility of parole. Mr. Nichypor was 17-years-old at the time of the murder. Mr. Nichypor appealed his first degree murder conviction. In 1994, the Supreme Judicial Court affirmed the judgment.¹

On September 28, 1988, Mr. Nichypor telephoned his co-defendant, Kevin Pierce, and the two men talked about "rolling a fag" that evening. Shortly after their telephone conversation, Mr. Nichypor and Mr. Pierce went to a restaurant in Gloucester, accompanied by co-defendant, Joshua Halbert. Mr. Pierce then telephoned David McLane. Mr. Pierce told Mr. Nichypor that Mr. McLane was homosexual. They all went to Mr. McLane's apartment in

¹ *Commonwealth v. Nichypor*, 419 Mass. 209 (1994).

Gloucester and drank alcohol, along with Mr. Halbert. At some point, Mr. Pierce approached Mr. McLane from behind and locked his arm around Mr. McLane's neck, choking him until his face turned purple. During this struggle, Mr. Nichypor "threw one punch" at the victim. Mr. Halbert pulled a razor blade from his back pocket and cut the victim's throat several times. Mr. Pierce went into the kitchen and grabbed a steak knife, which he thrust into the victim's left temple. Either Mr. Pierce or Mr. Halbert picked up a second knife and thrust it through the victim's left temple. When Mr. McLane was "making strange noises," Mr. Pierce told Mr. Nichypor to put a cushion over his face to keep him quiet and muffle his moans, which he did.

After the attack, they took a framed, uncut sheet of dollar bills and a box of coins from the apartment. Mr. Nichypor took a share of the stolen property. The three men also tried to remove any fingerprints in the apartment. They left the scene on foot and, several days later, police arrested Mr. Nichypor for his role in the murder.

II. PAROLE HEARING ON MARCH 20, 2018

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. Following the *Diatchenko* decision, Mr. Nichypor became eligible for parole. After his initial hearing on March 26, 2015, he was denied parole with a three year review.

John Nichypor, now 47-years-old, appeared before the Parole Board on March 20, 2018, for a review hearing. He was represented by Attorney Edward Hayden and Attorney Justin Patch. In Mr. Nichypor's opening statement to the Board, he apologized to the Mr. McLane's family, friends, and loved ones, as well as the community. He stated that he was sorry for his cowardly actions and that he thinks about the victim every day. Mr. Nichypor stated that Mr. McLane was a volunteer suicide hotline operator, and realizes that many people counted on him for help. Mr. Nichypor stated that he took Mr. McLane away from people that needed him, and acknowledged that Mr. McLane was murdered because of his sexual orientation.

Mr. Nichypor told the Board that he now has a much broader understanding of the impact of the crime, since he was 17-years-old at the time of the murder. He stated that the original motive for the crime was to "assault a man," but that it escalated when weapons became involved. Mr. Nichypor also stated that, at the time, he didn't know Mr. McLane would be murdered. He acknowledges placing a pillow over Mr. McLane's face, but denies putting any pressure on it. Mr. Nichypor explained that he was drinking on the night of the murder, but that he was not impaired. At that point in his life, Mr. Nichypor explained that he used alcohol and drugs as an "escape tool" and as a means to socialize. Mr. Nichypor indicated that the last time he used any substances was in 1988. He denies being treated for any mental health issues, currently.

A Board Member asked Mr. Nichypor to describe how he spends his time in the institution. He stated that he focuses on the Neads program, as well as his puppy that he trains every day. Currently, he participates in Jericho Circle (facilitator), Alcoholics Anonymous (AA)/Big Book, and Narcotics Anonymous (NA). He told the Board that he has completed all

required programming, including Emotional Awareness, Jericho Circle Project, Violence Reduction, Cognitive Skills-Problem Solving, Criminal Thinking, and Anger Management. A Board Member noted that Mr. Nichypor did not have any disciplinary reports since his last hearing. Mr. Nichypor told the Board that he obtained his G.E.D. while incarcerated. In addition, he utilizes his vocational skills in the upholstery industry, working for seven years. Further, Mr. Nichypor stated that he would like to be certified in the H.V.A.C. field.

A Board Member asked Mr. Nichypor to describe any challenges he would face upon re-entry. Mr. Nichypor indicated that adjusting to society would be a challenge, as he has been incarcerated for 30 years. He stated, however, that he has strong family support to help him transition. He told the Board that his mother, step-father, brother, aunts, uncles, and cousins reside in Florida. If paroled, he would maintain his sobriety "by utilizing the tools" he learned in AA/NA. He plans to participate in a program, such as the Mankind Project, and indicated that he would have a job available to him. He would like to transfer to a minimum security facility, and then to a pre-release facility, before being released to a "half-way house." This plan will allow him to adjust slowly and appropriately. Also, he would like to obtain a sponsor. He stated, "I am not the person that I was" and added, "I am not going to ever commit anything like this again."

The Board considered oral testimony in support of parole from Mr. Nichypor's mother and step-father. The Board considered testimony in opposition to parole from Mr. McLane's two sisters and brother-in-law. Essex Assistant District Attorney A.J. Camelio testified in opposition to parole.

III. DECISION

The Board is of the opinion that Mr. Nichypor has demonstrated a level of rehabilitative progress that would make his release compatible with the welfare of society. Mr. Nichypor has availed himself of rehabilitation, as he has engaged in numerous programs to address his causative factors. At the institution level, he has been recommended for transfer to lower security. The Board took into consideration his age and maturity at the time of the offense.

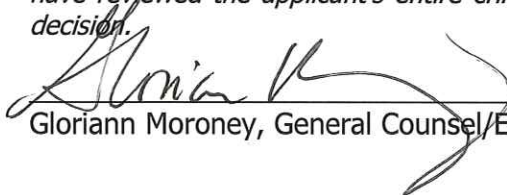
The applicable standard used by the Board to assess a candidate for parole is: "Parole Board Members shall only grant a parole permit if they are of the opinion that there is a reasonable probability that, if such offender is released, the offender will live and remain at liberty without violating the 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. Nichypor's risk of recidivism. After applying this standard to the circumstances of Mr. Nichypor's case, the Board is of the opinion that John Nichypor is rehabilitated, and his release is compatible with the welfare of society. Mr. Nichypor, therefore, merits parole at this time. Parole is granted to Florida via Interstate Compact after 18 months of lower security and with special conditions.

SPECIAL CONDITIONS: Release to other authority – Interstate Florida approved home plan; Waive work for two weeks; Must be at home between 10:00 pm and 6:00 am – P.O. discretion; Electronic monitoring – P.O. discretion; Supervise for drugs, testing in accordance with agency policy; Supervise for liquor abstinence, testing in accordance with agency policy; Report to assigned MA Parole Office on day of release; No contact or association with co-defendants; No contact w/ victim's family; Must have mental health counseling for adjustment/transition; Attend AA/NA at least 3 times/week.

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/Executive Director

10/31/18
Date

INDICATE ALL CONDITION(S) THAT APPLY:
☐ COMPLETED BY BOARD MEMBER

☐ NONE - NO SPECIAL CONDITIONS

HOME REQUIREMENTS

☐ HOME - APPROVE HOME PLAN BEFORE RELEASE

OTHER REQUIREMENTS

☒ OHOM - RELEASE TO OTHER AUTHORITY Florida
Department of Corrections
WORK/TRAINING REQUIREMENTS

☐ W/T - APPROVE WORK OR TRAINING PLAN BEFORE RELEASE

☒ WAVV - WAIVE WORK FOR 2 wks

☐ WORK - APPROVE WORK PLAN BEFORE RELEASE

☐ WRKR - RESTRICT WORK FOR

☐ TRNG - TRAINING PROGRAM REQUIRED AFTER RELEASE

LIVING AND TRAVEL RESTRICTIONS

☐ LIVE - NOT LIVE IN

☐ LOC - NOT TO ENTER

UNLESS APPROVED BY

☐ TVL - MUST NOT TRAVEL TO

☐ NTVL - BOARD MUST APPROVE ALL OUT-OF-STATE TRAVEL

SUPERVISION REQUIREMENTS

☐ CRTO - MUST COMPLY W/ COURT ORDER TO

☐ GSO - MUST COMPLY W/ CHILD SUPPORT ORDER

☒ CURF - MUST BE AT HOME BETWEEN 10PM & 6AM

OR

☒ ELMO - ELECTRONIC MONITORING

☐ FRVC - MUST HAVE HEARING IN CUSTODY UPON FIRST

INDICATION OF SUBSTANCE ABUSE

☐ FRVH - MUST HAVE HEARING (ON STREET) AT FIRST

INDICATION OF SUBSTANCE ABUSE

☐ PMED - MUST TAKE PRESCRIBED MEDICATION

☒ SD - SUPERVISE FOR DRUGS; TESTING IN ACCORDANCE WITH

AGENCY POLICY

☒ SLA - SUPERVISE FOR LIQUOR ABSTINENCE; TESTING IN

ACCORDANCE WITH AGENCY POLICY

☐ POLY - POLYGRAPH TESTING

MANDATORY SPECIAL CONDITIONS

REPORTING REQUIREMENTS

☒ PORR - REPORT TO ASSIGNED MA PAROLE OFFICE ON DAY OF RELEASE

☐ PROB - REPORT TO PROBATION OFFICE IN COURT

NO CONTACT OR ASSOCIATION REQUIREMENTS

☒ NC - NO CONTACT OR ASSOCIATION WITH FOLLOWING: OS - de fendants

☐ NCCU - NO CONTACT W/ CHILDREN UNDER 18 YEARS OLD UNLESS SUPERVISED

☒ NCVF - NO CONTACT W/ VICTIM'S FAMILY

☐ NCVI - NO CONTACT W/ VICTIM(S)

☐ NCWT - NO CONTACT W/ WITNESS(ES)

EVALUATION REQUIREMENTS

☐ MHE - MUST HAVE MENTAL HEALTH EVALUATION AT CLINIC/PROGRAM

☐ SAE - MUST HAVE SUBSTANCE ABUSE EVALUATION AT

COUNSELING REQUIREMENTS

☐ BABC - BATTERER'S COUNSELING

☐ CINS - COUNSELING FOR

☒ MHC - MUST HAVE MENTAL HEALTH COUNSELING FOR adjustment / trauma

☐ SAC - MUST PARTICIPATE IN INDIVIDUAL AND/OR GROUP SUBSTANCE ABUSE COUNSELING AT

☐ SEXC - MUST PARTICIPATE IN SEX OFFENDER GROUP COUNSELING

NAME:

COMMITMENT NUMBER:

SPIRIT ID:

Hearing Date:

RESIDENTIAL PROGRAM REQUIREMENTS

☐ STIT - SHORT TERM

☐ LTRT - LONG TERM

☐ MHR - MENTAL HEALTH

☐ SEXR - Sex Offender

☐ OTHER

PROGRAMMING REQUIREMENTS

☒ AA - AA AT LEAST 3 TIMES/WEEK N/A

☐ BOOT - BOOTCAMP AFTERCARE PROGRAM

☐ COMC - COMMUNITY CORRECTIONS CENTER

☐ COMR - REGIONAL REENTRY CENTER

☐ GA - GA AT LEAST ONCE A WEEK

☐ NA - NA AT LEAST 3 TIMES/WEEK

☐ PRG - COMPLETE PROGRAM (OTHER THAN LISTED ABOVE)

☐ OTHER

OTHER SPECIAL CONDITIONS

MAND - RECORD ONLY IF NOT LISTED IN ABOVE CODES.

REMOVE CONDITION

R - REMOVE CONDITION (NOTE CODE AFTER "R" AND DESCRIBE CONDITION OR PART OF CONDITION TO BE REMOVED)

☐ R

☐ R

☐ R

Revised 1/11/2013