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PAROLE BOARD

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Josh Wall
Chairman

DECISION

IN THE MATTER OF

JOHN WHITNEY

W68219

TYPE OF HEARING: Initial Hearing

DATE OF HEARING: January 15, 2013

DATE OF DECISION: January 30, 2014

PARTICIPATING BOARD MEMBERS: Cesar Archilla, Dr. Charlene Bonner, 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, institutional record, the testimony of the inmate at the hearing, and 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 not a suitable candidate for parole at this time. Parole is denied with a review in three years from the date of the hearing.

I. STATEMENT OF THE CASE

On June 9, 2000, after a jury trial in the Norfolk Superior Court, John Whitney was convicted of the second-degree murder of 28-year-old Alberto Portal and sentenced to serve life in prison. Whitney's numerous post-conviction motions for relief were unsuccessful, and the Appeals Court declined to overturn the conviction. *Commonwealth v. Whitney*, 63 Mass. App. Ct. 351 (2005), *rev. denied*, 446 Mass. 1104 (2006). The following facts are culled from the Appeals Court's opinion.

In early December 1997, Whitney asked his friend, Thomas Pratt, for a ride that evening. Pratt, an acquaintance of Whitney's for over 25 years, met him in Natick at approximately 6:30 P.M., and they drove in Pratt's car to a restaurant in Milford, where they purchased food and ate in Pratt's car. Whitney stated that it was still too early to leave, and the men waited an additional 30 minutes, at which point they left and drove toward the Millis and Franklin area. Whitney directed Pratt to a location that was approximately 200 to 300 feet

from Alberto Portal's home. Whitney got out of the car and instructed Pratt to meet him in 30 minutes at a lounge in Millis. Pratt did as he was told and drove to the lounge.

Approximately 30 minutes later, Whitney arrived at the lounge and stated that he had to drop a car off and needed Pratt to follow him. Whitney drove the other car, with Pratt following. Whitney drove toward Norwood, entered an Enterprise Rent-a-Car parking area, drove to the back of a building, and parked. He then got back into Pratt's car. Pratt drove Whitney to Whitney's ex-wife's home. Whitney seemed neither nervous nor upset, but he spoke little during the ride. However, upon reaching his ex-wife's home, but before getting out of the car, he told Pratt that if anyone, especially the police, inquired, he (Pratt) should say that they had spent the night drinking at the American Legion Hall in Natick.

Both Alberto Portal and a Chevy Lumina automobile registered in his name were reported missing as of December 4, 1997. Approximately three months later, the police located the Chevy Lumina registered to the victim in the Enterprise Rent-a-Car parking area. Alberto's partially decomposed body was found in the trunk. It was subsequently determined that death had been caused by blunt head trauma approximately three months earlier. During the investigation, Pratt identified the spot at which Whitney had left the vehicle he had driven in early December. In addition, Pratt took the police to the area near Alberto's home where he had dropped Whitney off.

Whitney had had a previous relationship with Alberto's wife, Laura, resulting in the birth of a son. About two months before Alberto's disappearance, Whitney told a friend that he was seeing Laura more frequently. That friend in fact accompanied Whitney to Alberto's house in early December 1997, so that he could visit his son and bring him a present. On the way to the house, Whitney informed his friend that Alberto had broken his son's arm. After the visit (during which his friend remained in the car), he informed her that his son's arm was only sprained, but that Alberto did not treat the boy well.

Following Alberto's disappearance, Whitney met or visited with Laura on several occasions, and spoke to her on the telephone regularly. On March 13, 1998, Whitney was arrested. As he was led from his home by police, he stated: "I'm not a murderer. I didn't dump no body. I just dropped a car off."

Whitney did not testify at trial, nor did he provide a statement to police at any point during the investigation.

II. PAROLE HEARING ON JANUARY 15, 2013

John Whitney, age 50, appeared for his initial parole hearing represented by Attorney John Rull. He has never taken responsibility for the murder during fifteen years of incarceration, until this hearing. Moreover, in 2009 he arranged to meet with police investigators and proceeded to give them a false statement about the murder with the intent to blame the victim's wife for the murder. It would be very unlikely that Whitney could rehabilitate at the same time that he was making false statements about the case.

Whitney has been appealing and filing post-conviction motions throughout his incarceration with the last appeal decided in federal court on August 30, 2012. He reported at the hearing that, "I've exhausted my appeals and I'm not pursuing anything else." He explained why he pursued the several post-conviction motions: "originally it was out of ignorance; I just relied on my lawyer; I wanted a drop to manslaughter; I'm just doing what my lawyer said; if the appeal succeeded I would plead to manslaughter." He has above average institutional conduct with six disciplinary reports that do not include violence or substance abuse. His most serious disciplinary incident, however, occurred recently: in July 2012 he threatened another inmate and lost his employment at Bridgewater State Hospital and was returned to higher custody. He has completed ABLE Minds and Alternatives to Violence (four phases). He obtained a welding license and in 2003 obtained his GED.

Whitney provided this version of the murder: "I was giving Laura money weekly; on that night I asked Tom Pratt to give me a ride to my son's house; he brought me there; Tom said he would go to Sportsman's Pub and told me to call him there when I needed a ride; when I got to the house Laura and Alberto were yelling at each other; she said, 'pack your bags and get out;' Alberto told me he would treat my son anyway he wanted and that he would slap him if he wanted; he then described what sexual acts he would do to my son and said 'there's nothing you can do about it;' Alberto kicked me in the ribs; I grabbed him and we fell; his head hit the porch railing as we both fell; we started fighting and I reacted by kicking him in the head with my foot; I am pretty sure I killed him then; Laura was in the house at that point; she came out with a bat and I hear something being hit so I go to pull her away from him; I said, 'Let's call the cops,' but Laura said, 'If you call the cops you'll never see your son again,' so we put him in the car." In telling the story, Whitney was saying that Laura was striking Alberto with the bat.

Board Members did not believe Whitney's story, which portrayed the victim as threatening a sexual assault against a child and as being the aggressor, and presented himself as acting in self-defense. One Board Member said, "This looks like blame shifting or minimizing, and those are not good words for rehabilitation." Another Board Member said, "I don't believe that he said anything sexual about your son; you make it sound as if you are the victim but the story does not hold up; you blame the victim." The Board Member said, "you need a program which covers victim impact; have you done any programs with victim impact?" Whitney responded, "None have been available to me," which Board Members concluded was a disingenuous answer.

Board Members asked Whitney about his 2009 statement to State Police investigators. Whitney admitted that, "a lot of the statement is lies; I lied." When asked if the lies matter for the parole decision, Whitney said, "Yes; why would you believe a liar today who was spouting all that nonsense in 2009; I know it's a grievous mistake." A Board Member commented that, "the 2009 interview hurts the perception that you are rehabilitated." The 2009 interview included the following statements that the Parole Board does not accept as true: the victim sexually assaulted Laura and their daughter; Laura beat the victim with the bat outside and inside the house; Laura put the victim in the car without Whitney's knowledge; Whitney drove the car without knowing the victim's body was in the trunk; and a corrupt police officer threatened Whitney with violence to make sure he did not speak with police about the murder committed by Laura.

Whitney's lack of rehabilitation is further evidenced by the numerous threatening letters that he sent to Laura while he was incarcerated, which caused her to seek and obtain a temporary restraining order in October 2007 and permanent restraining order in 2008. In explaining his motivation for the 2009 statement, Whitney said he was "angry and felt betrayed by Laura." The restraining order against Whitney was based on Laura's affidavit which described letters to her from Whitney. According to the affidavit, Whitney's letters were "demanding access to our son . . . and is also demanding that I send him money every week otherwise he has threatened to implicate me in his actions of killing my husband." Whitney's parental rights were terminated several years earlier. The Parole Board has copies of the letters in which Whitney makes those demands and threats.

Mr. Whitney's wife, cousin, and three sisters spoke in support. The victim's sister-in-law, Laela Portal, testified in opposition to parole.

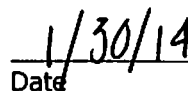
III. DECISION

John Whitney murdered Alberto Portal by beating him in the head and causing multiple skull fractures and brain injury. He hid the victim's body in the trunk of a car where it was not found for three months. Whitney has maintained for 15 years that he was falsely convicted. In 2007 he wrote threatening letters to the victim's widow. In 2009 he contacted State Police investigators in order to give them a false story exonerating himself and accusing Portal's wife of committing the murder alone. At this hearing he acknowledged some responsibility for the first time. He did so, however, in the context of blaming the victim for threatening to sexually assault Whitney's child and starting a fight which forced Whitney to defend himself. After considering the trial evidence and verdict, Board Members concluded that Whitney is not truthful. Whitney's false statements to police investigators in 2009 and at this parole hearing establish that he is not rehabilitated and remains a manipulative and dangerous person.

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, we conclude that Whitney does not merit parole at this time. The review will be in three years, during which time Mr. Whitney should commit to rehabilitation and address issues of anger, violence, lack of remorse, lack of empathy, and dishonesty.

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