



The Commonwealth of Massachusetts  
Executive Office of Public Safety and Security



PAROLE BOARD

12 Mercer Road  
Natick, Massachusetts 01760

Charles D. Baker  
Governor

Karyn Polito  
Lieutenant Governor

Daniel Bennett  
Secretary

Telephone # (508) 650-4500

Facsimile # (508) 650-4599

Paul M. Treseler  
Chairman

Gloriann Moroney  
Executive Director  
General Counsel

**DECISION**

**IN THE MATTER OF**

**JONATHAN CABAN**

**W84906**

**TYPE OF HEARING:** Initial Hearing

**DATE OF HEARING:** January 30, 2018

**DATE OF DECISION:** October 18, 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 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 February 2, 2005, in Essex Superior Court, Jonathan Caban pleaded guilty to the second degree murder of Rodolfo Diaz and was sentenced to life in prison with the possibility of parole.

On February 1, 2003, 17-year-old Jonathan Caban was drinking and taking Klonopin at a party. Mr. Caban ended up on a street in Lawrence with friends, when a car drove by and one of the passengers allegedly said something disrespectful to one of Mr. Caban's friends. Mr. Caban and a friend followed the car and fired several shots, killing passenger Rodolfo Diaz.

## **II. PAROLE HEARING ON JANUARY 30, 2018**

Jonathan Caban, now 32-years-old, appeared before the Parole Board for an initial hearing on January 30, 2018. Mr. Caban was represented by Attorney Michael Bourbeau. In his opening statement to the Board, Mr. Caban admitted that he was responsible for killing Rodolfo Diaz. Mr. Caban apologized to the victim's family and expressed his remorse. When the Board questioned Mr. Caban about his home life, he stated that his father was often abusive, and that he and his mother had to leave the home and live in shelters. Mr. Caban said that he started hanging out with older kids at age 10, and drinking alcohol and smoking marijuana at age 12. He also said that he was arrested for trying to break into a liquor store at 12-years-old. When the Board questioned Mr. Caban about his arrest for attempted murder at age 16, he explained that he and a friend got into a fight with two other people. He said he was accused of stabbing one of the combatants, but that his friend was the assailant.

The Board questioned Mr. Caban about the murder of Mr. Diaz. Mr. Caban described how a car pulled up and a brief argument ensued between the girlfriend of Mr. Caban's co-defendant and the occupants of the car. When the other car drove away, Mr. Caban said that he asked his co-defendant if he was going to let people disrespect his girlfriend like that. Mr. Caban said his co-defendant responded, "Are you riding?" Mr. Caban understood that to mean "are you willing to pursue and attack the occupants of the other car." When they caught up to the other car, Mr. Caban said that his co-defendant (who was driving) fired a gun at the other car, and then handed the gun to Mr. Caban. Mr. Caban took this as an invitation to shoot at the car in order to show that the two were "in this together." Mr. Caban said he fired three rounds at the other car.

The Board noted Mr. Caban's disciplinary reports, including four reports for home brew, and several reports for fighting. In response, Mr. Caban said that he hasn't used drugs or alcohol since 2011, and that he completed the Correctional Recovery Academy. In addition, he said he started going to Alcoholics Anonymous weekly about two months prior to this hearing. Mr. Caban told the Board that his last disciplinary report for fighting was dismissed when it was determined that he was the victim of an assault. Mr. Caban noted his completion of Alternatives to Violence and Jericho Circle, programs that have helped him avoid violent situations. Additionally, Mr. Caban told the Board he completed the Restorative Justice 8 week program and is 14 weeks into the Restorative Justice 32 week program. Mr. Caban is currently unemployed, stating that he recently refused a job working in the kitchen because he felt it would be too easy to get disciplinary reports there.

Mr. Caban told the Board his parole plan is to transfer to a lower security facility, and then to a pre-release facility. He would prefer a reserve to a half-way house or residential home. Mr. Caban earned his G.E.D. and is taking welding classes. He hopes to find work as a welder and would continue to attend Alcoholics Anonymous and Narcotics Anonymous, if released.

Members of Mr. Caban's family sent letters, attended the hearing, and testified in support of parole. Members of Mr. Diaz's family attended, sent letters, and testified in opposition to parole. Essex County Assistant District Attorney Catherine Lengevin Semel testified and submitted a letter in opposition to parole.

### **III. DECISION**

The Board is of the unanimous opinion that Jonathan Caban has not yet demonstrated a level of rehabilitative progress that would make his release compatible with the welfare of society. Jonathan Caban is serving his first commitment. Mr. Caban would benefit from participating in additional programming to address his causative factors. Additionally, he is encouraged to obtain employment and refrain from engaging in anti-social behavior.

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 the 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 20-40. The Board also has considered whether risk reduction could effectively minimize Mr. Caban's recidivism. After applying this standard to the circumstances of Mr. Caban's case, the Board is of the unanimous opinion that Jonathan Caban's release is not compatible with the welfare of society. Mr. Caban, therefore, does not merit parole at this time.

Mr. Caban's next appearance before the Parole Board will take place in three years from the date of this hearing. During the interim, the Board encourages Mr. Caban 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/Executive Director

10/18/18  
Date