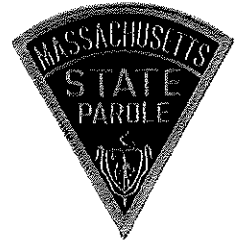


*The Commonwealth of Massachusetts*  
*Executive Office of Public Safety and Security*

**PAROLE BOARD**

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**RECORD OF DECISION**

**IN THE MATTER OF**

**JOSE RODRIGUEZ<sup>1</sup>**  
**W44821**

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

**DATE OF HEARING:** **March 26, 2024**

**DATE OF DECISION:** **October 15, 2024**

**PARTICIPATING BOARD MEMBERS:** Edith J. Alexander, Dr. Charlene Bonner, Tonomey Coleman, Sarah B. Coughlin, Tina M. Hurley, James Kelcourse

**VOTE:** Parole is granted to C.R.J. or a Long-Term Residential Program subject to District Attorney clearance.<sup>2</sup>

**PROCEDURAL HISTORY:** On July 20, 1977, in Norfolk Superior Court, Jose Rodriguez was convicted of rape and assault and battery by means of a dangerous weapon. The Supreme Judicial Court reversed the conviction and ordered a new trial in 1979. *Commonwealth v. Rodriguez*, 378 Mass. 296 (1979). Mr. Rodriguez was released on bail following the issuance of the opinion, but did not appear on the date of his scheduled re-trial. He remained a fugitive at large for seven years, when he was arrested in California and extradited to Massachusetts. He was convicted of the same charges again in 1987, and sentenced to serve life in prison for the rape and a concurrent term of 8 to 10 years in prison for assault and battery by means of a dangerous weapon. His subsequent appeal and motions for post-conviction relief were unsuccessful. *Commonwealth v. Rodriguez*, 50 Mass. App. Ct. 405 (2000), *rev. denied*, 433 Mass. 1102 (2001). He was similarly denied federal *habeas corpus* relief. *Rodriguez v. Spencer*, 412 F.3d 29 (1st 2005), *cert. denied* 546 U.S. 1142 (2006).

<sup>1</sup> On the mittimus, Mr. Rodriguez's last name is spelled "Rodrigues".

<sup>2</sup> One Board Member voted to deny parole with a one year review, so Mr. Rodriguez could complete the VOEG program. One Board Member voted to deny parole with a two year review, noting Mr. Rodriguez's history of sexual assaults and lack of insight.

Mr. Rodriguez was denied parole after his initial hearing in 1999. He was subsequently denied parole after his review hearings in 2006, 2013, and 2019. Mr. Rodriguez appeared before the Parole Board for a review hearing on March 26, 2024. He was represented by Attorney Melissa Celli. The entire video recording of Mr. Rodriguez's March 26, 2024 hearing is hereby incorporated by reference in this decision.

**STATEMENT OF THE CASE:** On September 27, 1976, Jose Rodriguez (age 16) raped and assaulted a Boston University student while she was walking home from a train station in Brookline. As the victim was walking, she soon realized that she was being followed. A few minutes later, Mr. Rodriguez called out to her and, when she turned around, he pretended to ask for directions and proceeded to walk toward her. When he arrived within a few feet of her, he thrust a broken bottle under her throat, spun her around, and pushed her up a driveway and into a backyard. He threw her to the ground, covered her head with his jacket, and raped her. When he left, the victim ran home, called the police, and provided them with a description of her assailant.

**APPLICABLE STANDARD:** Parole "[p]ermits shall be granted only if the Board is of the opinion, after consideration of a risk and needs assessment, that there is a reasonable probability that, if the prisoner is released with appropriate conditions and community supervision, the prisoner will live and remain at liberty without violating the law and that release is not incompatible with the welfare of society." M.G.L. c. 127, § 130. In making this determination, the Board takes into consideration an incarcerated individual's institutional behavior, their participation in available work, educational, and treatment programs during the period of incarceration, and whether risk reduction programs could effectively minimize the incarcerated individual's risk of recidivism. M.G.L. c. 127, § 130. The Board also considers all relevant facts, including the nature of the underlying offense, the age of the incarcerated individual at the time of the offense, the criminal record, the institutional record, the incarcerated individual's testimony at the hearing, and the views of the public as expressed at the hearing and/or in written submissions to the Board (if applicable).

In the context of an offender who was sentenced to life in prison who was a juvenile at the time the offense was committed, the Board takes into consideration the attributes of youth that distinguish juvenile 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 offense, 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). Although *Okoro* and *Diatchenko* dealt with homicide offenders, the court noted "our reasoning in the *Diatchenko* cases applies with equal or greater force to juveniles sentenced to life in prison for nonhomicide offenses." *Rodriguez v. Massachusetts Parole Board*, 490 Mass. 596, 600 (2022).

The factors considered by the Board in the case of a juvenile offender 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.

**DECISION OF THE BOARD:** Mr. Rodriguez was 16 years old at the time of the instant offense. He is now 64 years old. He has completed the Sex Offender Treatment Program (SOTP) and was in maintenance for three years. He has had no disciplinary reports since 2005. He participated in the Restorative Justice Retreat. Mr. Rodriguez has been sober for four decades. He has been assessed as a medium risk on the LS/CMI needs/risk assessment tool and a low risk on the Department of Corrections COMPASS assessment tool. The Board reviewed the 2019 psycho-sexual report of Dr. Joseph Plaud finding that Mr. Rodriguez was not currently a risk to the public for sexual recidivism. The Board considered the Miller/Diatchenko factors, Mr. Rodriguez's age at the time of the offense, and Mr. Rodriguez's potential for growth and rehabilitation after a self-reported traumatic childhood. Mr. Rodriguez's family offered support at the hearing.

The Board finds by a majority that Mr. Rodriguez has demonstrated a level of rehabilitation that makes his release not incompatible with the welfare of society.

**SPECIAL CONDITIONS:** Waive work for CRJ program or Sober House program; Curfew – must be at home between 10 pm and 6 am or at Parole Officer's discretion; Electronic monitoring at Parole Officer's 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 with victim(s) or victim(s)'s family; Must have substance abuse evaluation and must comply with recommended treatment needs; Counseling for transition, relationships, past trauma; CRJ program or Long-Term Residential Program; Mandatory Sex-A Conditions.

*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.*

  
Tina M. Hurley, Chair

10/15/24  
Date