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PAROLE BOARD

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Charlene Bonner
Chairperson

DECISION

IN THE MATTER OF

JOSE TEVENAL Jr.

W42119

TYPE OF HEARING: Initial Hearing

DATE OF HEARING: February 26, 2015

DATE OF DECISION: May 5, 2015

PARTICIPATING BOARD MEMBERS: Dr. Charlene Bonner, Tonomey Coleman, Sheila Dupre, Lee Gartenberg, 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, 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 a vote of five to two that the inmate is a suitable candidate for parole.¹ Parole is granted to a long term residential program after successful completion of the Correctional Recovery Academy (CRA) and one year in lower security.

I. STATEMENT OF THE CASE

On February 10, 1986, in Essex County Superior Court, Jose Tevenal was found guilty of first degree murder in the death of Paul Morel and sentenced to life in prison without the possibility of parole. Tevenal was 16-years-old on the date of the murder. The jury also found Tevenal guilty of armed robbery and a firearm violation. The court imposed sentences of 20 to 26 years for the armed robbery and 3 to 5 years for the firearm violation, ordering all sentences to run concurrently.²

¹ Board members Bonner and Howard-Hogan voted to deny parole with a review in two years due to the nature of the offense and Tevenal's lack of programming to address his substance abuse issues.

² The co-defendants in this case are Andre Garcia and Emilio Gonzalez. Garcia received two concurrent 12 to 20 year sentences for manslaughter and armed robbery. Those sentences have expired. Gonzalez passed away while in prison on 11/1/92.

On December 24, 2013, the Massachusetts Supreme Judicial Court (SJC) issued a decision in *Diatchenko v. District Attorney for the Suffolk District & Others*, 466 Mass. 655 (2013) in which the Court determined that the statutory provisions mandating life without the possibility of parole were invalid as applied to those, like Jose Tevenal, who were juveniles when they committed first degree murder. The SJC ordered that affected inmates receive a parole hearing after serving 15 years. Accordingly, Tevenal (who has served 30 years) became eligible for parole and is now before the Board for an initial hearing.

On February 2, 1985, Tevenal, who was approximately three weeks short of his 17th birthday, met with several friends at an apartment in Lawrence. With Tevenal in possession of a handgun, he and two friends agreed "to do a cab and get some money." After some delay, someone called a taxicab company and ordered a taxi. As the taxicab arrived, one of the two friends served as a lookout, while the other entered the passenger side of the front seat of the taxicab and seized the ignition keys. Tevenal approached the driver's side of the taxicab, pointed the gun at the driver, and demanded his money. The driver, Paul Morel, gave Tevenal "a stack of ones." Tevenal then shot Mr. Morel six times from close range. After the shooting, Tevenal divided the money with his companions. He showed the empty gun to several people and admitted to at least six friends or acquaintances that he had shot the taxicab driver.

On February 4, 1985, Tevenal went to the Lawrence police station, along with a friend, to turn himself in. Tevenal confessed to the shooting after his mother and other relatives arrived at the police station and had spoken with him.

II. PAROLE HEARING ON FEBRUARY 26, 2015

This was Tevenal's first parole hearing before the Board. He committed the murder at age 16 and has been incarcerated for 30 years. Tevenal was afforded a hearing as a result of the SJC's decision in *Diatchenko v. District Attorney for the Suffolk District & Others*, 466 Mass. 655 (2013). Attorney Elizabeth Doherty represented Tevenal at his hearing.

Tevenal said that the gun he used in the murder had only been acquired shortly before that time. He admitted that he had been a ruthless individual, but said that he acted in that manner because he wanted to establish a fearsome reputation among his group of friends, as he was vying for respect and leadership. When asked if drugs and alcohol played a role in the crime, Tevenal said that he believes substance abuse played a role, but that his emotions were more of a factor. Tevenal described himself as being part of the problem. He said that he had no direction at the time and had lost his will to live. He further explained that he was very angry when he first came to prison, partly because he was the youngest person in prison at the time, leading to a difficult adjustment. The Board notes that Tevenal has a total of 59 disciplinary reports, 43 of which he incurred during his first 10 years of incarceration. He has had only 16 disciplinary reports in the last 20 years and, with the exception of ingesting methadone in 2006, they were for relatively minor infractions resulting in temporary loss of privileges.

Given Tevenal's young age at the time of the murder, and the parole suitability factors outlined in *Diatchenko* which ensure that a juvenile offender is afforded a meaningful opportunity for release, the Parole Board was interested in what, if any, developmental or societal issues played a role in the commission of such a callous crime. The information

obtained from Tevenal and his attorney indicates that Tevenal grew up in an unstable environment and suffered both physical abuse and emotional neglect. Specifically, Tevenal was born in Chicago, Illinois, the youngest of his mother's four children from three different fathers. Tevenal was very close to his father during his early years. At around age six, his mother uprooted the family and moved to Lawrence, Massachusetts because his father refused to marry her. The separation from his father had a jarring effect on him and triggered emotional isolation. Tevenal's circumstances worsened after his mother converted from Catholicism to Pentecostalism, became deeply immersed in the church, and began to neglect her children's emotional needs. The emotional neglect was compounded by physical abuse, which Tevenal suffered at the hands of his mother and, at times, her boyfriends.

By his early teenage years, Tevenal began to withdraw from school and family life. He began skipping school on a regular basis and began to consume alcohol and smoke marijuana. As his mother's control over him began to wane, she sent him to Chicago to live with his father, where he finished the eighth grade. However, he was sent back to live with his mother in Lawrence after a verbal altercation with his stepmother.

In addition to familial factors, Tevenal's life in the housing projects of Lawrence also had a negative influence on his development. At the time of Tevenal's youth, the Lawrence school system had a very high dropout rate, unemployment was prevalent, and crime was ever present. By age 16, Tevenal had stopped attending school altogether, regularly drank to excess, smoked marijuana daily, and used a variety of other illicit drugs. Feeling rejected and unloved by his parents, he began associating and identifying more and more with other wayward youths. Tevenal's desire for acceptance and status soon compelled him to obtain a firearm in an effort to project a fearsome "tough guy" image. It ultimately ended with Tevenal killing Mr. Morel during a planned robbery.

Since his incarceration for the murder of Mr. Morel, evidence of other issues that may have negatively affected Tevenal's behavior has come to light. A clinical neuropsychologist, Dr. Carol Montgomery, evaluated Tevenal in 2003 after Tevenal complained about declining memory. In her evaluation report, Dr. Montgomery noted that Tevenal reported that at age 13, he had suffered a fractured skull and was hospitalized for a week following an accident where he was hit by a car while riding a bicycle. She wrote:

The etiology of this compromise is not clear. The findings are consistent with shearing and contusion from traumatic brain injury and are consistent with his recall of changes following the accident. It should be noted that he quit school shortly after this accident, which may also imply both increased academic struggle as well as emotional disinhibition.

* * *

The results imply that Mr. Tevenal could likely have experienced changes as a result of his head trauma, which would have typically led to increased anxiety, aggression, and behavioral control.

During a recent parole interview, Tevenal reported that he started consuming alcohol and smoking marijuana at around age 13. His alcohol and marijuana use had become a daily activity by the time of the governing offense. His drug use had escalated to heroin, mescaline,

and any other drugs that became available to him. However, Tevenal has availed himself of both mental health counseling and some substance abuse programs in prison. His mental health case is now closed and institutional mental health staff has determined that he no longer needs treatment. It is worth noting that Tevenal entered and completed many rehabilitative programs even before the *Diatchenko* decision afforded him the opportunity for parole. Such behavior deserves recognition for, as noted by the Supreme Court in *Graham v. Florida*, 130 S. Ct. 2011, 2027 (2010), a sentence of life in prison "means denial of hope; it means good behavior and character improvement are immaterial . . ." A sample of programs he completed prior to becoming parole eligible include Alternatives to Violence (all phases), Anger Management, Emotional Awareness, House of Healing, and the Alcoholics Anonymous 12 Step program. He also obtained his GED and obtained certificates of completion for several vocational programs, including Culinary Arts, HVAC Certification, OSHA Certification, Computer Skills, and Small Engine Repair.

Tevenal credits the House of Healing program with helping him gain greater insight into himself, becoming empathetic and respectful of life, and understanding the callousness and insensitivity he showed in murdering Mr. Morel and the effects it had on Mr. Morel's family and the community. He said he converted to Christianity 10 years ago and has learned how to use forgiveness to dispel ill feelings towards others.

Tevenal continues to attend the Men's Work group, which reportedly provides valuable support for dealing with dependency issues and emotional difficulty. He has also worked throughout his incarceration, whenever possible, and is currently employed as a biohazard cleaner. If paroled, Tevenal expects his most difficult challenge would be adjusting to society after having spent 30 years in prison. He is, therefore, requesting a gradual step-down to a year in lower security and then to a long term residential program, which further addresses substance abuse in order to minimize his risk of relapsing with drugs or alcohol.

Tevenal had many supporters at the hearing, several of whom spoke in support of parole. His older brother testified to his mistreatment as a youth; his friend, a former inmate who served time with Tevenal, stated that Tevenal was a positive influence who introduced him to religion and that he could offer Tevenal employment upon his release; his childhood friend, Jose Martinez, said he runs a boxing gym which is attended by some law enforcement personnel and troubled youth and said that Tevenal would be useful in speaking to the youth; his friend, Susan Burkhart, mentioned that she first met Tevenal through church correspondence and that she has been visiting him in prison since 2001; and Lisa Giglioti, a statewide sentencing advocate, stated that she would continue helping Tevenal to secure a long term residential program, as well as work with him to successfully adjust in the community.

Four individuals spoke in opposition to parole, including Paul Morel's sister and her husband, his sister's brother-in-law, and Essex County Assistant District Attorney David O'Sullivan. ADA O'Sullivan raised several concerns, including the concern that Tevenal, if released, might associate with a former inmate, given that inmate's admission to having ongoing issues with substance abuse.

III. DECISION

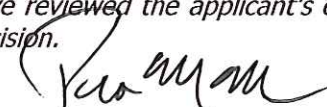
At age 16, Jose Tevenal committed an atrocious and senseless act by taking the life of Paul Morel during a robbery in which Mr. Morel offered no resistance. Now, at age 47, Tevenal has spent his entire adult life in prison and has made steady progress in his rehabilitation throughout the years. His initial immaturity was reflected in 43 disciplinary reports incurred during his first 10 years in prison. Since that time, however, his conduct has markedly improved and he has consistently maintained program involvement to address his failures and to improve his likelihood for successful reentry into the community.

While Tevenal's age and development at the time of the crime, by itself, does not excuse his behavior, the SJC's decision in *Diatchenko* makes clear that these are important factors to consider in assessing his parole suitability. Nevertheless, the most important criteria in the analysis of parole suitability concerns whether Tevenal meets the legal standard. Tevenal has demonstrated through his conduct and insight that he has acquired the necessary foundation for a successful transition to society. He has also submitted a thoughtful reentry plan and has strong family and community support, as exemplified by his supporters at the hearing. Tevenal has engaged in and benefitted from rehabilitation.

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, the Parole Board grants Jose Tevenal parole to a long term residential program after completion of the CRA and one year in lower security. This release plan will allow for important supports during a closely supervised transition.

SPECIAL CONDITIONS: Parole to a long term residential program after completion of the CRA and one year in lower security; no drug or alcohol use, with testing for compliance; attend at least three AA/NA meetings per week; one-on-one counseling to address adjustment and transition; GPS monitoring at parole officer's discretion; abide by curfew, must be home by 10 pm and 6 am, or at parole officer's discretion; have no contact with the victim's family; and report to Parole Office on the day of release.

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.



Peter Mimmo, Staff Attorney



Date