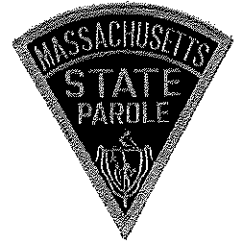


The Commonwealth of Massachusetts
Executive Office of Public Safety and Security

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RECORD OF DECISION

IN THE MATTER OF

JOSHUA FERNANDES
W100958

TYPE OF HEARING: Initial Hearing

DATE OF HEARING: April 16, 2025

DATE OF DECISION: September 9, 2025

PARTICIPATING BOARD MEMBERS: Edith J. Alexander, Dr. Charlene Bonner, Tonomey Coleman, Sarah B. Coughlin, James Kelcourse, Rafael Ortiz¹

VOTE: Parole is denied with a review in 2 years from the date of the hearing.²

PROCEDURAL HISTORY: On June 22, 2012, following a jury trial, Joshua Fernandes was convicted of murder in the second degree for the death of Nicholas Fomby-Davis. He was sentenced to life in prison without the possibility of parole. He became parole eligible following the Supreme Judicial Court's decision in *Diatchenko v. District Attorney for the Suffolk District*, 466 Mass. 655 (2013). On April 16, 2025, Mr. Fernandes appeared before the Board for an initial hearing. He was represented by Attorney Catherine Hinton. The Board's decision fully incorporates by reference the entire video recording of Mr. Fernandes' April 16, 2025, hearing.

STATEMENT OF THE CASE: On May 30, 2010, 16-year-old Joshua Fernandes, along with his co-defendant, Crisostomo Lopes, shot and killed 14-year-old Nicholas Fomby-Davis. That evening, Mr. Fomby-Davis and his older brother were riding their scooter around their neighborhood in Boston. Near an intersection, the brother almost collided with Mr. Lopes as he rode his bicycle

¹Board Members Rafael Ortiz and Charlene Bonner were not present for the hearing, but reviewed the video recording and the entirety of the file prior to vote. Former Chair Hurley participated in the hearing on this matter, but departed the office prior to the decision.

² Two Board Members voted for release to a Long-Term Residential Program or CRJ

into the street. A short time later, the brother stopped at their house, while Mr. Fomby-Davis continued to do laps around the block on the scooter, wearing his brother's helmet.

At around the same time, Anthony Williams, an off-duty Boston police officer, was driving through the neighborhood in his personal vehicle when he saw Mr. Fernandes and Mr. Lopes walking down the street with a bicycle. Officer Williams observed the two waiting by an intersection and crouching down, appearing to be looking for someone. Mr. Fernandes had his hand in his pocket. When Mr. Fomby-Davis passed by on the scooter, Officer Williams observed Mr. Lopes dart out into the street and grab Mr. Fomby-Davis, beckoning to Mr. Fernandes. Mr. Fernandes approached, removed a gun from his pocket, and shot Mr. Fomby-Davis several times at close range. Mr. Fomby-Davis stumbled into a nearby store, where he was observed to be in and out of consciousness and covered in blood. Officers and paramedics attempted to revive Mr. Fomby-Davis, but he was pronounced dead upon reaching the hospital.

Meanwhile, Mr. Fernandes fled down the street and around a corner, while holding a gun, with Officer Williams driving after him. At some point while he was running, Mr. Fernandes slowed down and ducked near a vehicle parked along the street, after which Officer Williams no longer saw the gun in his hand. Officer Williams eventually overtook and arrested Mr. Fernandes with the help of another officer. The officer observed that Mr. Fernandes was smiling. Mr. Fernandes was pat frisked, but no weapon was found. After a brief search, a .25 caliber pistol was located under the vehicle that was parked where Mr. Fernandes had been seen ducking down. Ballistics analysis later established this was the weapon that had been used to kill Mr. Fomby-Davis.

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 incarcerated individual 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 meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation. *Diatchenko v. District Attorney for the Suffolk District*, 466 Mass. 655, 674 (2013). See also *Commonwealth v. Okoro*, 471 Mass. 51 (2015). The factors considered by the Board include a juvenile’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.” *Diatchenko v. District Attorney for the Suffolk District*, 471 Mass. 12, 30 (2015). The Board also recognizes the incarcerated individual’s right to be represented by counsel during their appearance before the Board. *Id.* at 20-24.

DECISION OF THE BOARD: Mr. Fernandes was 16-years-old at the time of the offense and was 31-years-old at the time of the hearing. He has been housed in a minimum-security facility for over 18 months and has been disciplinary report free since 2012. He scores low risk on the LSCMI risk assessment tool. He has been actively involved in rehabilitative programming and has been employed since November 2023. While incarcerated, he received his bachelor’s degree from Boston University. Although Mr. Fernandes’ experiences while incarcerated have been exemplary, the Board is troubled by the crimes for which he is convicted. Mr. Fernandes and a co-defendant stalked and murdered a 14-year-old. The Board considered the Miller/Diachenko factors and reviewed the attributes of juvenile offenders and their capacity for rehabilitation as they apply to Mr. Fernandes. The Board also considered the factors and circumstances of the underlying offense, as well as the testimony from the 14-year-old victim’s family. The Board concludes that Mr. Fernandes has not demonstrated a level of rehabilitation that would make his release compatible with the welfare of society.

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.



Tonomey A. Coleman, Acting Chair

Date