



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

**PAROLE BOARD**

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**DECISION**

**IN THE MATTER OF**

**JOSHUA HALBERT**

**W47550**

**TYPE OF HEARING:** Initial Hearing

**DATE OF HEARING:** November 20, 2014

**DATE OF DECISION:** March 12, 2015

**PARTICIPATING BOARD MEMBERS:** Dr. Charlene Bonner, Tonomey Coleman, Sheila Dupre, Ina Howard-Hogan, Tina Hurley

**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 a not suitable candidate for parole. The inmate will have a review hearing four years from the date of the initial hearing.

**I. STATEMENT OF THE CASE**

On February 7, 1989, after a jury trial in Essex County Superior Court, Joshua Halbert was found guilty of one count of first degree murder and was sentenced to serve life in prison without the possibility of parole.<sup>1</sup>

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 Joshua Halbert, who were juveniles

<sup>1</sup> Joshua Halbert's co-defendants were Kevin Pierce, who is currently serving his first degree life sentence without the possibility of parole at MCI-Concord and John Nichypor (also a juvenile at the time of the murder) and who was eligible to see the Parole Board after the *Diatchenko* ruling. Nichypor is currently serving his sentence at MCI-Norfolk and is scheduled to see the Parole Board for his initial hearing on March 26, 2015.

when they committed first degree murder. The SJC ordered that affected inmates receive a parole hearing after serving 15 years in prison. Accordingly, Joshua Halbert became eligible for parole and is now before the Board for an initial hearing. Halbert is currently serving his sentence at MCI-Shirley, where he has been incarcerated for the last six years.

At around 10:00 pm, on September 28, 1988, Joshua Halbert met his friends, Kevin Pierce and John Nichypor. Pierce asked Halbert, "Are you ready to roll a fag tonight?" Halbert responded, "Why not? It's been a while; as long as he doesn't get severely hurt." Pierce telephoned 38 year-old David McLane, whom he apparently knew. Mr. McLane picked up the three men and drove them back to his apartment.

After a short time at the apartment (during which time Halbert drank beer and whiskey), both Halbert and Nichypor left to buy cigarettes. When they returned around 11:00 pm, Pierce took Halbert aside and informed him that Mr. McLane had grabbed his (Pierce's) penis while Halbert and Nichypor were out. Halbert asked, "Do you want me to give him a beating?" Pierce instead proposed that they kill Mr. McLane. Halbert initially refused, but when Pierce asked Halbert if he was "chicken," Halbert said he was not.

The group reassembled in the apartment, where they watched portions of an old movie and a pornographic film. Halbert stated that he was "pretty much hammered" at this point. He said that Pierce told Mr. McLane that he (Pierce) and his friends were homosexuals. Mr. McLane asked Halbert, "Josh, what do you want to do?" Halbert said, "I'm not into that stuff." Pierce then grabbed Mr. McLane, locked an arm around his neck in a "sleeper" hold, and forced Mr. McLane's face into a sofa. While Pierce choked Mr. McLane in this manner, Halbert kicked and punched him in the testicles saying, "You're going to get hurt because I'm not queer." Halbert (twice) slashed Mr. McLane's neck with a razor blade he was carrying, and then (twice) hit him on the head with a bottle. After releasing his hold on Mr. McLane's neck, Pierce stabbed him in the head (through the left temple) with a steak knife he found in the victim's kitchen. Seeing Mr. McLane convulsing, Halbert began to cry and said, "He's suffering." Halbert retrieved another steak knife from the kitchen, and with it, Pierce stabbed the victim in the head a second time, again forcing the knife through the left temple. Halbert stated that Mr. McLane was dead, but Pierce continued to kick him in the face saying, "Die faggot. Die faggot." Pierce, Nichypor, and Halbert then cleaned their fingerprints from everything they had touched, and left. Nichypor took with him a sheet of 32 uncut one-dollar bills that hung framed on the victim's wall. Pierce stole a wooden box containing commemorative coins.

On September 30, 1998, Joshua Halbert was arrested in front of his high school and charged with the murder of David McLane.

## **II. PAROLE HEARING ON NOVEMBER 20, 2014**

Joshua Halbert, now 45 years-old, appeared for his initial parole hearing represented by Attorney Erica Cushna. He is serving a life sentence for first degree murder. He is eligible for parole due to the Supreme Judicial Court's recent ruling in *Diatchenko*, which granted parole eligibility at 15 years to an inmate who is serving a life sentence for first degree murder committed when the inmate was a juvenile. Halbert has been incarcerated for 26 years.



Halbert began the hearing by apologizing to the victim's family and to all who have been impacted by the murder of David McLane. Halbert has been incarcerated since 1988 and acknowledged that he initially had a difficult transition to prison. He has incurred over 60 disciplinary reports, with the most serious occurring in 1996, when he participated in a group assault on a corrections officer. Halbert also had serious disciplinary reports related to substance abuse, violence, and threatening behavior. Halbert was asked by the Parole Board to explain his state of mind as it related to his conduct and to elaborate on his progress in rehabilitation. Given his age and initial sentence of life without the possibility of parole, Halbert described a sense of hopelessness, immaturity, and fear as he entered the prison system.

Halbert stated that, in 2000, he decided that he no longer wanted to "live in chaos" and made an investment in reforming his life. Halbert said that he decided "to live a more spiritual life," which was the impetus to his change. He began to invest in his education and completed his GED and other available programs that would help him "be productive and live responsibly." Halbert provided a description of programs that have been the most meaningful to him. In particular, he highlighted "Men's Work" as being the most influential in his pursuit of rehabilitation. That being said, Halbert tested positive for heroin in 2007. He admitted that he continued to struggle with his addiction; however, after being permitted to see his dying mother, he stated that he made a pledge to her and to God that he would never abuse drugs or alcohol again. Halbert completed SMART Recovery in 2008 and reports that he has maintained his sobriety since 2007.

Halbert provided a detailed history of his childhood and the issues that precipitated his downward spiral into substance abuse, anti-social behavior, and the eventual murder of David McLane. Halbert was born with opiates in his system and had several physical and emotional issues to contend with at a very young age. He endured a traumatic childhood, as he was the product of an abusive home with parents who also struggled with addiction. Halbert described his history of unstable living arrangements, as well as his increasing substance abuse and mental health issues. While living in one foster home, he stated that he was molested by two males who were brothers. He stated that, for years, he held onto the anger and unresolved feelings associated with being sexually victimized. Halbert also described a period in his life when he was living in Fort Lauderdale and, as a means to survive, he would frequent an area where older homosexual males would look for younger males to engage in sexual encounters. Halbert stated that once inside the car, he would assault the males and steal their money. When asked how many times he engaged in that behavior and how it impacted his life, Halbert stated he "only did it a few times." He stated that no one was ever seriously hurt. At a later point in the hearing, Halbert admitted that he was sexually victimized while in Florida, but denied that such an experience was related to Mr. McLane's murder. At the time of the murder, Halbert was homeless, in need of basic medical care for his rotted teeth and poor eyesight, and had dropped out of school.

The Parole Board questioned Halbert at length regarding his participation in the murder of Mr. McLane. Halbert described his role as being a follower of his co-defendants. After Halbert's account, Parole Board Members questioned him regarding the many inconsistencies that were reported in his co-defendant's accounts and other witness statements, as well as Halbert's own confession in 1988. Some of the more concerning issues raised by the Board were the allegations that Halbert had a principal part in the planning of the vicious and deviant physical assault, as well as the implication that the attack was related to a hate crime.



Halbert denied that he supplied the gloves prior to the murder and denied that he stabbed Mr. McLane in the head with a steak knife. Although he admits that he kicked and punched Mr. McLane in the face, stomach, and groin area, Halbert insisted that Pierce (his co-defendant) "stabbed him while I stood idly by." He also admitted that he hit him over the head with a liquor bottle and that, given the duration and intensity of the assault, he knew Mr. McLane was suffering. Halbert stated that at one point, he wanted the beating to stop and shouted to his co-defendant that Mr. McLane was suffering. Halbert stated that he did not try to further intervene and that some of his actions were out of fear of Pierce. Halbert also admitted that he knew Mr. McLane was a homosexual, but denied that his motivation for hurting him was related to his sexuality. He was confronted with statements that he and others made which contradicted many of the details he now provides; however, Halbert stated that the version he provided was an accurate account. Halbert was also questioned on his defense strategy, which implied diminished capacity as a result of inebriation. Today, Halbert admits that alcohol did not play a major role in his actions that night.

Halbert acknowledged that Mr. McLane suffered a violent death and that he was an active participant in his death. He stated that he has worked on all of the issues that led him to commit such a horrible crime and he believes that he is now ready to re-integrate back into society. Halbert proposed a parole plan that would include a slow transition through lower security and pre-release. He reported that he has been accepted to the Delancey Street Foundation in Brewster, New York, where he can gain necessary supports, including job skills and adjustment counseling, to assist him with a successful re-integration into the community.

Attorney Cushna concluded the hearing on behalf of her client by highlighting that Halbert's criminal behavior depicts the hallmark features of juvenile brain development. She insisted that despite his traumatic history, he is "not a broken man" and in fact, he has engaged in programming that demonstrates that he has been rehabilitated. Attorney Cushna also noted that even in the midst of a horrible act, Halbert showed remorse by insisting to his co-defendant that Mr. McLane was suffering, while Halbert began to cry.

There were several people who spoke in support of Halbert's parole including his aunt, a family friend, and two advocates from CPCS. They highlighted Halbert's progress in his rehabilitation, as well as his positive release plan, including the support he would receive from the Delancey Street Foundation.


Speaking in opposition to Halbert's parole were members of the victim's family, a family friend, and two representatives from the Essex County District Attorney's Office. Essex Assistant District Attorney Catherine Semel described the many inconsistencies between Halbert's current and prior testimony, as well as other witness accounts following the murder. Additionally she stated that Halbert still did not acknowledge why Mr. McLane was attacked and that, in fact, it was directly related to Mr. McLane's sexual orientation. The Essex County District Attorney's Office strongly opposed parole, noting that Halbert has not been rehabilitated and that his parole plan is insufficient given his current needs.

### III. DECISION

David McLane was brutally beaten and stabbed to death by Joshua Halbert and his co-defendants. They targeted Mr. McLane because he was a homosexual and then savagely kicked and beat him. Mr. McLane was found with two steak knives protruding from his temple that were inserted so deep, that the handles were nearly flush with the skin surface. Mr. McLane suffered immeasurable pain. The Parole Board questioned Halbert at length regarding his role, his intent, and the precipitating factors that led to his participation in such a heinous crime.

The four goals of sentencing – punishment, deterrence, rehabilitation, and public protection – have not been met. 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 has determined that Halbert does not meet the legal standard for parole. He is encouraged to engage in further rehabilitation. The Parole Board does not accept Halbert's account of the offense as being accurate. Specifically, Halbert minimizes his role in the vicious beating of Mr. McLane, as well as in the motivation for wanting to harm and murder him. Halbert's lack of candor demonstrates that he has not been rehabilitated. The Parole Board notes that Halbert has improved his conduct over the last 10 years and that he has increased his participation in programming; however, his overall level of rehabilitation is insufficient for release into the community. He will have a review hearing in four years.

*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.*

  
Janis DiLoreto Smith, Executive Director

3/12/15  
Date