



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:** Review Hearing

**DATE OF HEARING:** November 6, 2018

**DATE OF DECISION:** October 1, 2019

**PARTICIPATING BOARD MEMBERS:** Dr. Charlene Bonner, Tonomey Coleman, Sheila Dupre, Tina Hurley, Colette Santa, Lucy Soto-Abbe,<sup>1</sup> Paul Treseler

**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 7, 1989, after a jury trial in Essex County Superior Court, Joshua Halbert was found guilty of the first degree murder of David McLane. He was sentenced to serve life in prison without the possibility of parole.

On December 24, 2013, The Supreme Judicial Court issued a decision (*Diatchenko v. District Attorney for Suffolk District & Others*, 466 Mass 655(2013)) that the statutory provisions mandating life without the possibility of parole are invalid as applied to juveniles convicted of first degree murder. Further, the Court decided that Diatchenko (and other similarly situated) must be given a parole hearing. Accordingly, Mr. Halbert became eligible for parole and had his initial hearing on November 20, 2014, after which he was denied parole with a four year review.

<sup>1</sup> Board Member Soto-Abbe was no longer a Board Member at the time of vote.

At around 10:00 p.m. on September 28, 1988, 17-year-old Joshua Halbert met his friends, Kevin Pierce and 17-year-old John Nichypor. Mr. Pierce asked Mr. Halbert, "Are you ready to roll a fag tonight?" Mr. Halbert responded, "Why not? It's been a while; as long as he doesn't get severely hurt." Mr. 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 (where Mr. Halbert drank beer and whiskey), both Mr. Halbert and Mr. Nichypor left to buy cigarettes. When they returned around 11:00 p.m., Mr. Pierce took Mr. Halbert aside and informed him that Mr. McLane had grabbed his (Mr. Pierce's) penis, while Mr. Halbert and Mr. Nichypor were out. Mr. Halbert asked, "Do you want me to give him a beating?" Mr. Pierce instead proposed that they kill Mr. McLane. Mr. Halbert initially refused, but when Mr. Pierce asked if he was "chicken," Mr. Halbert said that he was not.

The group reassembled in the apartment, where they watched portions of an old movie and a pornographic film. Mr. Halbert stated that he was "pretty much hammered" at this point. He said that Mr. Pierce told Mr. McLane that he (Mr. Pierce) and his friends were homosexuals. Mr. McLane asked Mr. Halbert, "Josh, what do you want to do?" Mr. Halbert said, "I'm not into that stuff." Mr. 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 Mr. Pierce choked Mr. McLane in this manner, Mr. Halbert kicked and punched him in the testicles saying, "You're going to get hurt because I'm not queer." Mr. 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, Mr. 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, Mr. Halbert began to cry and said, "He's suffering." Mr. Halbert retrieved another steak knife from the kitchen and, with it, Mr. Pierce stabbed the victim in the head a second time, again forcing the knife through the left temple. Mr. Halbert stated that Mr. McLane was dead, but Mr. Pierce continued to kick him in the face saying, "Die faggot. Die faggot."

Mr. Pierce, Mr. Nichypor, and Mr. Halbert then cleaned their fingerprints from everything they had touched and left. Mr. Nichypor took with him a sheet of 32 uncut one-dollar bills that hung framed on the victim's wall. Mr. Pierce stole a wooden box containing commemorative coins.<sup>2</sup> 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 6, 2018**

Joshua Halbert, now 48-years-old, appeared before the Parole Board for a review hearing on November 6, 2018, and was represented by Attorneys Mara Voukydis and Erica Cushna. In his opening statement to the Board, Mr. Halbert provided an apology to the family of David McLane and acknowledged the "brutality and horror of [his] actions." He indicated that each day, he thinks about the "devastating effect" his actions have had on both the family of Mr. McLane and his own, as well as the Gloucester community at large. Mr. Halbert accepted responsibility for the crime, conceding that he chose Mr. McLane as a victim because he was homosexual. Attorney Voukydis also provided an opening statement on Mr. Halbert's behalf, detailing his institutional adjustment and programming, his childhood trauma prior to the crime, the results of his risk/needs assessments and clinical evaluations, and his proposed home plan.

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<sup>2</sup> See, *Commonwealth v. Halbert*, 410 Mass. 534 (1991).

Mr. Halbert acknowledged that at his last hearing, he "thought he was ready," but then "realized that [he] wasn't ready" and "needed to work on self-realization." Mr. Halbert also acknowledged that he was not forthcoming about his role in the governing offense, and that he had not fully accepted responsibility. At this hearing, Board Members asked Mr. Halbert to describe the actions for which he now accepts responsibility. In describing the governing offense, Mr. Halbert told the Board that he "was the initiator" of the crime. He recounted that he "violently punched Mr. McLane in the face, stomach and groin area," and "cut his throat with [a] boxcutter." He also "hit him over the head with a Southern Comfort bottle" and "viciously" attacked him. Board Members pointed out that Mr. McLane was alive during the attack, having died as a result of blood loss. Although he admitted to retrieving the knives used to kill Mr. McLane, Mr. Halbert denied stabbing him in the head, stating, "A part of me wanted to stop it and a part of me wanted to run." Mr. Halbert indicated that the attack lasted approximately a half an hour. Although he had previously indicated that he was "pretty much hammered" at the time of the murder, Mr. Halbert now told the Board that he only had "a couple of beers" and "a couple of swigs of Southern Comfort." He stated that he had not consumed any drugs.

The Board inquired as to the role Mr. Halbert's past victimization played in his participation in the murder. Mr. Halbert said that he had acted out of rage, having experienced childhood trauma and a sexual assault by a man prior to the murder. He has since sought out therapy and mental health care to address his past trauma. When Board Members questioned him about the night of the murder, Mr. Halbert stated that his "intention was to hurt [Mr. McLane]." He claimed that while he intended to rob and beat Mr. McLane, he did not intend to kill him. Board Members pointed out, however, that according to the October 2018 supplemental evaluation (by Dr. Michael Sherry), Mr. Halbert indicated that he "did not have any intent to harm the victim." The Board also inquired as to why it took Mr. Halbert so long to acknowledge that the murder was a hate crime. Mr. Halbert indicated that he "didn't want to admit it to [him]self," and that he had "conflicting feelings and emotions about his own sexuality."

Board Members questioned Mr. Halbert as to the role (he believed) his age played in the commission of the murder. Mr. Halbert said that if he had been older, the murder would not have happened, stating, "I was holding something in that day." Mr. Halbert claimed that if he had spoken to someone about his past trauma, he would not have been involved in such a crime. The Board discussed Mr. Halbert's last disciplinary report in 2010, in which he threatened a correctional officer. Mr. Halbert denied threatening the correctional officer, explaining that the threat was actually a threat to hurt himself. When the Board inquired about a disciplinary report in 2007 for using heroin, Mr. Halbert's explanation was that he had a friend who "stressed [him] out." Regarding his rehabilitative efforts, Mr. Halbert participated in programming to include: one-on-one and group therapy, Alcoholics Anonymous ("AA"), Men's Work, Correctional Recovery Academy ("CRA"), Violence Reduction, and American Vet Dogs. Mr. Halbert was also a caregiver to a friend who is a disabled veteran. He told the Board that in taking care of his friend, he learned "patience" and "how to be a better friend to someone."

The Board considered testimony in support of parole from Jackie Santangelo (of Thrive) and Alexis Harris, a friend of Mr. Halbert. The Board considered the testimony of Dr. Michael Sherry, regarding a psychological evaluation, and the testimony of mental health clinician Kimberly Mortimer, who also submitted an evaluation. The Board considered the testimony of Mr. McLane's sister and brother-in-law, who spoke in opposition to parole. Essex County

Assistant District Attorneys A.J. Camelio and Catherine Semel spoke in opposition to parole and submitted a letter of opposition.

### **III. DECISION**

The Board is of the opinion that Mr. Halbert has not demonstrated a level of rehabilitative progress that would make his release compatible with the welfare of society. He was recently forthright as to his culpability in the commission of the brutal murder. He should continue to avail himself of rehabilitation to address his causative factors.

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 Mas. 51 (2015).

The factors considered by the Parole 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 a unique capacity to change as they grow older." *Id.* The Board also considered Mr. Halbert's institutional behavior, as well as his participation in available work, educational, and treatment programs during the period of his incarceration. The Board considered a risk and needs assessment and whether risk reduction could effectively minimize Mr. Halbert's risk of recidivism, as well as a psychological evaluations. After applying this appropriately high standard to the circumstances of Mr. Halbert's case, the Board is of the unanimous opinion that Joshua Halbert is not rehabilitated and, thus, does not merit parole at this time.

Mr. Halbert's next appearance before the Board will take place in three years from the date of this hearing. During the interim, the Board encourages Mr. Halbert 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.*

  
Pamela Murphy, General Counsel

10/1/2019  
Date