



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 30, 2021

**DATE OF DECISION:** July 13, 2022

**PARTICIPATING BOARD MEMBERS:** Gloriann Moroney, Dr. Charlene Bonner, Tonomey Coleman, Sheila Dupre, Tina Hurley, Colette Santa

**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 that the inmate is not a suitable candidate for parole.<sup>1</sup> Parole is denied with a review scheduled in one year 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> Three Board Members voted to deny parole and three Board Members voted to grant parole. A majority vote is required for parole to be granted. Accordingly, Mr. Halbert is scheduled to see the Board in one year from the date of the hearing.

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 at around 11:00 p.m., Mr. Pierce took Mr. Halbert aside and informed him that Mr. McLane had grabbed his penis, while they 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 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 left after they cleaned their fingerprints from everything they touched. Mr. Nichypor took 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 30, 2021<sup>3</sup>**

Joshua Halbert, now 51-years-old, appeared before the Parole Board for a review hearing on November 30, 2021, and was represented by Attorney Erica Cushna. Mr. Halbert had been denied parole after his initial hearing in 2014, and after his review hearing in 2018. Attorney Cushna provided a brief opening statement to the Board. In Mr. Halbert's opening statement to the Board, he apologized to the McLane family and stated that, if he could speak to Mr. McLane, he would tell him: "I'm so sorry I robbed everything from you, and I hope that you can forgive me." Mr. Halbert explained that he is "not that injured 17-year-old" anymore. Mr. Halbert described a troubled childhood, during which he and close family members navigated drug addiction, mental health crises, and sexual assault. He lives with learning

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

<sup>3</sup> The entire video recording of Mr. Halbert's November 30, 2021 hearing is fully incorporated by reference to the Board's decision.

disabilities and experienced foster care as a child. Mr. Halbert reported that his unresolved childhood trauma contributed to his participation in the brutal murder of Mr. McLane. Mr. Halbert explained that, at the time of the murder, he was only "thinking about what happened to [him]... and all [he] wanted to do was hurt [someone else]."

The Board noted that Mr. Halbert's initial institutional adjustment was poor, as evidenced by a significant number of disciplinary reports and a 30 month commitment to the DDU in 1996, for assaulting a correctional officer. However, Mr. Halbert's adjustment has since improved. He has maintained both his sobriety and his employment, while engaging in programs to include Restorative Justice and Menswork. Mr. Halbert also trains dogs as companions for injured veterans. Mr. Halbert is interested in living in the structured environment of a long-term residential program, if granted parole. The Board noted that he has worked with his support system to identify programs that would address his needs.

The Board considered the testimony of four of Mr. Halbert's supporters. The Board considered the testimony of two of Mr. McLane's sisters, both of whom opposed parole. The Board also considered the testimony, and a letter in opposition to parole, from the Essex County District Attorney's Office.

### **III. DECISION**

The Board is of the opinion that Joshua Halbert has not demonstrated a level of rehabilitative progress that would make his release compatible with the welfare of society. Mr. Halbert would benefit from additional programming to address empathy - Restorative Justice Program. [He has had] minimal programming since the 2018 hearing - COVID contributed to lack of available programming.

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 psychological evaluations. After applying this appropriately high standard to the circumstances of Mr. Halbert's case, the

Board is of the 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 one year 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

7/13/22  
Date