

The Commonwealth of Massachusetts
Executive Office of Public Safety and Security



PAROLE BOARD

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DECISION

IN THE MATTER OF

KELVIN GUTIERREZ

W68353

TYPE OF HEARING: Review Hearing

DATE OF HEARING: April 27, 2021

DATE OF DECISION: December 30, 2021

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 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 this hearing.

I. STATEMENT OF THE CASE

On July 14, 2000, in Hampden Superior Court, 18-year-old Kelvin Gutierrez, pleaded guilty to second degree murder in the shooting death of 21-year-old Alexander Rosa in Holyoke. Mr. Gutierrez was sentenced to life in prison with the possibility of parole.¹ On that same date, he also pleaded guilty to two related firearm charges and received concurrent sentences of 1 year and 3 to 5 years, which have since expired.

On October 26, 1999, Alexander Rosa and an associate were attempting to break into a vehicle when they were approached by Kelvin Gutierrez and Jean Almodovar. Mr. Gutierrez said, "That's the guy that ratted on my brother." As Mr. Rosa began to flee, Mr. Gutierrez pulled out a .38 caliber handgun and shot him. Mr. Almodovar then shot Mr. Rosa with a

¹ The co-defendant in this case was Jean Almodovar.

sawed-off shotgun. Later that evening, Holyoke police officers found Mr. Rosa on the sidewalk, suffering from multiple gunshot wounds. Mr. Rosa was transported to the hospital, but succumbed to his injuries shortly thereafter. The autopsy revealed that Mr. Rosa had been shot multiple times by two different weapons.

II. PAROLE HEARING ON APRIL 27, 2021

Kelvin Gutierrez, now 40-years-old, appeared before the Parole Board for a review hearing on April 27, 2021, and was represented by Attorney Lorenzo Perez. Mr. Gutierrez was denied parole after his initial hearing in 2014.² In his opening statement to the Board, Mr. Gutierrez apologized to Mr. Rosa and his family for the "pain [he] put them through." He acknowledged the impact that his crime had on the community and expressed remorse for his actions. At the time, Mr. Gutierrez thought that "what he was doing was right," explaining that "it was a mistake he made as a kid."

When Board Members inquired as to his lifestyle leading up to the governing offense, Mr. Gutierrez explained that he was "running the streets" as a gang member since age 13. He was also selling drugs. When Board Members questioned him as to why he gravitated towards the streets at such a young age, Mr. Gutierrez indicated that he was influenced by his older siblings and other men from the neighborhood. He stated, "I looked up to my older brothers and wanted to be just like them." Due to his surroundings, he felt as if he "didn't have a choice." In fact, when he was older, Mr. Gutierrez explained how he recruited his nephew to join the same gang, just as his family members had recruited him. At age 17, he was promoted to an "enforcer" in the gang, explaining that he "made sure all the rules of the gang were followed." When asked what type of criminal conduct precipitated the promotion, Mr. Gutierrez said that he participated in "public beat downs, here and there."

Board Members noted that Mr. Gutierrez gave conflicting statements as to the motive behind Mr. Rosa's murder at his initial parole hearing. In response, Mr. Gutierrez admitted to making false statements in the past that minimized his culpability and gang involvement. Upon reflection, he apologized for lying and confirmed that Mr. Rosa's murder was gang related. He further explained that he was acting on the orders of a higher-ranking gang member who "imbedded in his head" that Mr. Rosa had been involved in the murder of a fellow gang member. However, contrary to what Mr. Gutierrez believed at the time, Mr. Rosa had not been involved in the murder of any gang members. Upon Board Member questioning, Mr. Gutierrez expressed regret for acting on such orders, but indicated that if he did not comply, he would have "gotten handled." Mr. Gutierrez also took full responsibility for involving his 16-year-old nephew in the murder, admitting that his own gunshots killed Mr. Rosa, not those of his nephew.

Board Members noted Mr. Gutierrez's problematic institutional adjustment, citing recent disciplinary infractions, as well as his failure to fully renounce his Security Threat Group (STG) affiliation. Following his 2014 hearing, the Board acknowledged that Mr. Gutierrez appeared to be on a positive path, as he was employed and remained disciplinary report free for approximately two years. When asked to explain why his behavior deteriorated in 2016, Mr. Gutierrez stated that he was wrongly accused of having an inappropriate relationship with a Department of Correction staff member, causing him to feel "stressed and frustrated." As such,

² Mr. Gutierrez elected to postpone his 2019 hearing.

he reverted to problematic conduct. When Board Members pointed out that stress appeared to be a causative factor, Mr. Gutierrez agreed, admitting that he began to use synthetic marijuana ("K-2") to "alleviate his stress." He explained that he sought mental health treatment and medication to deal with his stress-related issues. Nonetheless, Board Members raised concern as to Mr. Gutierrez's lack of substance abuse treatment, considering his statements regarding K-2. Although he is not opposed to seeking help, Mr. Gutierrez does not believe his substance abuse is a problem because he "stays away from it."

The Board discussed Mr. Gutierrez's rehabilitative efforts, noting a significant increase in program participation since his last hearing. Mr. Gutierrez reported that the Alternatives to Violence programs "taught him to think differently" and "forced" him to handle and interpret situations appropriately. As a program facilitator, he "likes helping people" and benefits from sharing his story with other inmates. The Board noted that Mr. Gutierrez has not engaged in victim empathy programming and stressed the importance of such efforts, to which Mr. Gutierrez agreed. When the Board inquired about his mental health treatment, Mr. Gutierrez shared that speaking with a clinician has been beneficial. He has been able to address his childhood trauma and his ability to manage stress. Ultimately, Mr. Gutierrez acknowledged that he has more work to do and understands the importance of focusing on his mental health.

The Board considered testimony and letter in opposition to parole from Hampden County Assistant District Attorney Howard Safford.

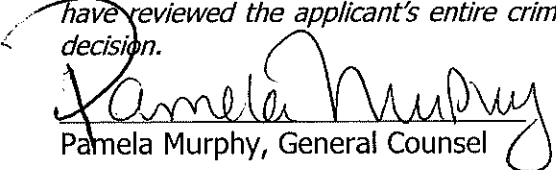
III. DECISION

The Board is of the opinion that Kelvin Gutierrez has not demonstrated a level of rehabilitative progress that would make his release compatible with the welfare of society. Mr. Gutierrez has a concerning disciplinary history and continues to incur disciplinary reports as recently as August of 2020. He is encouraged to pursue renouncing from his STG affiliation. Mr. Gutierrez should continue to engage in all recommended programming and refrain from incurring any additional Disciplinary reports. He would benefit from Restorative Justice and substance abuse education. Mr. Gutierrez admitted to using K-2 several times since his last hearing and, by his own admission, he used it to relieve stress. Additionally, he fully admits to the facts of the case for the first time. At this hearing, Mr. Gutierrez admitted that at his 2014 hearing, he was not forthcoming about the facts of the governing offense.

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 forming this opinion, the Board has taken into consideration Mr. Gutierrez's institutional behavior, as well as his participation in available work, educational, and treatment programs during the period of his incarceration. The Board has also considered a risk and needs assessment and whether risk reduction programs could effectively minimize Mr. Gutierrez's risk of recidivism. After applying this standard to the circumstances of Mr. Gutierrez's case, the Board is of the opinion that Kelvin Gutierrez does not merit parole at this time.

Mr. Gutierrez'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. Gutierrez 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

12/30/2021
Date