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DECISION

IN THE MATTER OF

KELVIN GUTIERREZ

W68353

TYPE OF HEARING: Initial Hearing

DATE OF HEARING: October 7, 2014

DATE OF DECISION: December 1, 2014

PARTICIPATING BOARD MEMBERS: Dr. Charlene Bonner, Sheila Dupre, Tonomey Coleman, Tina Hurley, Josh Wall

DECISION OF THE BOARD: After careful consideration of all relevant facts, including the nature of the underlying 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 in five years from the date of the hearing.

I. STATEMENT OF THE CASE

On July 14, 2000, in Hampden Superior Court, Kelvin Gutierrez, then age 18, pleaded guilty to second degree murder for killing 21 year old Alexander Rosa in Holyoke, Massachusetts. Gutierrez was sentenced to life in prison with a possibility of parole. On that same date, Gutierrez also pleaded guilty to two related firearms charges and received concurrent sentences of one year and three to five years, which have since expired. The co-defendant in this case is Gutierrez's nephew, Jean Almodovar, who was then age 16. Almodovar also pleaded guilty to second degree murder and related gun charges and likewise received a life sentence with the possibility of parole.

On October 26, 1999, at about 11:30 pm, Holyoke police officers responded to the area in front of 605 Southbridge Street, where they found Alexander Rosa on the sidewalk suffering from multiple gunshot wounds and near death. Despite first aid, Mr. Rosa died at the hospital a short time later. The autopsy revealed that Mr. Rosa had been shot from two different weapons. He had four bullets in his back from a .38 caliber handgun and a shotgun blast to his lower left side, leaving numerous small buckshot-type pellets.

Earlier that evening, Mr. Rosa and an associate were attempting to break into a vehicle parked on Southbridge Street in Holyoke when they were approached by Gutierrez and Almodovar. Gutierrez said, "That's the guy that ratted on my brother." Mr. Rosa began to flee the area when Gutierrez pulled out a .38 caliber handgun and shot Mr. Rosa. Almodovar then shot Mr. Rosa with a sawed-off shotgun. Another witness stated that he saw Almodovar and Gutierrez "stash" the murder weapons on the fourth floor of an apartment building before dumping them in the Connecticut River the following day.

II. PAROLE HEARING ON OCTOBER 7, 2014

The Parole Board asked Gutierrez to provide an account of his role and motivation for the murder of Alexander Rosa. Gutierrez stated he agrees with the official version, but insisted that the motivation behind the murder had nothing to do with gangs and nothing to do with retaliation. Gutierrez stated that he knew Mr. Rosa and Mr. Rosa's family for many years, as he had grown up in the same neighborhood. Gutierrez stated that as he became more engaged in gangs and criminal activity, he developed a reputation as being a drug dealer. Growing in status as leader of a gang, Gutierrez stated he asked Mr. Rosa to deal drugs for him from time to time. Gutierrez stated that he had recently given Mr. Rosa a lot of drugs to sell, but that he never collected the money. Gutierrez said he that looked for Mr. Rosa for several months, but when he finally ran into him, it was not planned.

Gutierrez stated that he only intended to fight Mr. Rosa, and when he confronted Mr. Rosa, that is what he told him. Gutierrez told him to follow him to an area where they would fight. Gutierrez stated he was with Almodovar and they were both armed. Gutierrez stated as they walked to the destination, Mr. Rosa was behind him and he "heard a commotion." He stated when he turned around he saw Almodovar holding his stomach and he thought he had been stabbed by Mr. Rosa. Gutierrez stated that, in response, he shot at Mr. Rosa several times as he was running. Gutierrez stated that when Mr. Rosa dropped, he realized he was dead, and at that point he ran. While running, Gutierrez stated he heard Almodovar shoot his shotgun and later learned he shot Mr. Rosa again, after he was already down. Gutierrez stated that he and his nephew met up a short time later.

Gutierrez denies any other motivations, as has been proposed by other parties. One such theory was that Gutierrez sought to retaliate against Mr. Rosa for "being a rat." Gutierrez denied that theory and maintained that their conflict was over drug money he owed him and that he only intended to fight Mr. Rosa so that he would pay him what he owed him. Another theory offered by Gutierrez is that he began shooting only after he thought Almodovar had been stabbed. Gutierrez also stated he agreed to plead guilty to the murder because he was told that his nephew would get a deal of 12 to 15 years.

Gutierrez described his personal history as being indoctrinated into a gang at a very early age and rising in the ranks to be an influential member of that gang. Gutierrez insisted he was forced into a lifestyle of gangs, drugs, and crime because of his family. He stated that his whole family has criminal records and all of his siblings were associated with that gang. Gutierrez insisted that he never enjoyed the "street life," but felt he had no choice. "I tried to encourage younger kids to stay in school and not to join the gang. I paid each kid one hundred dollars for every 'A' they received on their report card." Gutierrez admits that all he has known

is his criminal and gang lifestyle which has been typified by violence, drug dealing, and other crimes, but insists that he no longer wants to live that life. Gutierrez insisted that his primary motivation for wanting to change is to be a father to his (now) 15 year old daughter with whom he has no relationship.

Gutierrez stated he renounced from his gang in 2002 and Department of Correction records confirm that he completed the Security Threat Group (STG) program in October 2002. However, Gutierrez has otherwise completed a minimal amount of programming and acknowledges that it is primarily due to his poor conduct in prison. Indeed, Gutierrez has received over 40 disciplinary reports consisting of egregious conduct including violence against staff and inmates, gang related activity since completing the STG Program, abusive and obscene language toward staff (including several reports of sexually degrading comments Gutierrez directed at female staff), weapons offenses, and participating in group demonstrations. Due to his poor conduct, Gutierrez acknowledged that he has spent numerous times in and out of the Segregation and Special Management Unit, including one year in the Departmental Disciplinary Unit (DDU) after assaulting a staff member. Gutierrez's most recent disciplinary issue occurred in late August 2014, or just four weeks prior to the hearing, for infractions that included abusive language and threatening medical staff.

When asked about his conduct, Gutierrez responded that he recognizes he has anger issues and needs to work on them. Gutierrez rationalized his abusive behavior towards staff (particularly female staff) by stating that he engaged in this behavior because he felt the only way to be moved from housing units he did not want to be in was to make offensive comments to female staff. Gutierrez insisted, "I didn't like doing it. I'm not really like that. I'm a very respectful person. I have seven sisters, a mother and a daughter." Gutierrez agreed that he has yet to engage in meaningful rehabilitation. Gutierrez stated he has struggled to earn his General Equivalency Diploma and fears that, due to his learning disability, he may not be able to pass the requirements. Gutierrez stated he has spent a lot of time writing and hopes to produce a movie from some of his scripts one day. He stated he finds writing to be a good use of his time.

Gutierrez stated that he would like to be paroled through pre-release with the intention of working, saving money for his own apartment, and eventually working with at-risk youth. His ultimate goal is to move to Hollywood, California, with the hope that one of his two movie scripts will be produced.

Gutierrez had no members of the public present in support of his petition for parole. Hampden Assistant District Attorney Howard Safford spoke in opposition to Gutierrez's parole, citing his poor disciplinary history, lack of programming, and lack of insight. ADA Safford stated that he cannot remember seeing an individual who is more ill-suited for parole and encouraged Gutierrez to engage in rehabilitation and change his behavior.

III. DECISION

Gutierrez has led a life of gang affiliation, crime, and violence since he was 13 years old. He followed in the footsteps of his family members and has had no positive mentoring or role models in his life. He committed a murder at age 18, and his stated motivation for the murder is not only implausible, but in direct conflict with witness statements and his co-defendant's

version. The reasons he murdered Alexander Rosa are relevant when evaluating Gutierrez's insight, progress in rehabilitation, and intentions if he were to be released to the community.

Moreover, Gutierrez continued his poor conduct and violence while incarcerated, incurring over 40 disciplinary sanctions which consisted of the most egregious and violent conduct. He entered prison as a high ranking member of a gang. Gutierrez has spent numerous years in and out of segregation and has not engaged in meaningful rehabilitation. While Gutierrez stated he has renounced from the gang and wants to live a different life, his conduct reflects very little effort in making a true positive change.

The standard for parole is set out in 120 C.M.R. 300.04(1), 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 an 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, it is the unanimous decision of the Parole Board that Kelvin Gutierrez is not suitable for parole. He will be eligible for a review hearing in five years from the date of the hearing. The Parole Board encourages Gutierrez to improve his conduct and engage in meaningful 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.


Caitlin E. Casey, Chief of Staff

12/1/14
Date