

The Commonwealth of Massachusetts
Executive Office of Public Safety and Security
PAROLE BOARD

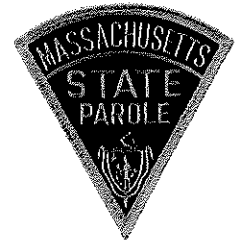
12 Mercer Road
Natick, Massachusetts 01760

Maura T. Healey
Governor

Kimberley Driscoll
Lieutenant Governor

Terrence M. Reidy
Secretary

Telephone: (508)-650-4500
Facsimile: (508)-650-4599



Tina M. Hurley
Chair

Lian Hogan
Executive Director

DECISION

IN THE MATTER OF

KIRK FERNETTE

W40819

TYPE OF HEARING: Initial Hearing

DATE OF HEARING: October 29, 2024

DATE OF DECISION: December 18, 2024

PARTICIPATING BOARD MEMBERS: Edith J. Alexander, Dr. Charlene Bonner, Tonomey Coleman, Sarah B. Coughlin, Tina M. Hurley, James Kelcourse, and Rafael Ortiz.

VOTE: Parole is granted to an approved home plan.

PROCEDURAL HISTORY: On October 19, 1984, after a jury trial in Plymouth Superior Court, Kirk Fernette was convicted of first-degree murder, armed robbery, assault with intent to rob a victim over 65 years old, assault and battery by means of a dangerous weapon, and three counts of armed assault with intent to murder. Mr. Fernette was sentenced to a term of life without the possibility of parole for first-degree murder. He also received a sentence of 7-10 years for armed robbery and armed assault with intent to rob a victim over 65, to run concurrently with one another and with the murder conviction. For the three counts of armed assault with intent to murder convictions, Mr. Fernette received 3-5 years to be served consecutively to the life sentence.

Mr. Fernette became parole eligible following the Supreme Judicial Court's decision in Commonwealth v. Mattis, 493 Mass. 216 (2024), where the court held that sentencing individuals who were ages 18 through 20 at the time of the offense (emerging adults) to life without the possibility of parole is unconstitutional. As a result of the SJC's decision regarding his first-degree murder conviction, Mr. Fernette was re-sentenced to life with the possibility of parole after 15 years. Because Mr. Fernette received a prison sentence that ran consecutively to his life sentence, Mr. Fernette's parole ineligibility terms were aggregated pursuant to Dinkins v. Massachusetts Parole Board, 486 Mass. 605 (2021).

Mr. Fernette appeared before the Parole Board for an initial hearing on October 29, 2024, and was represented by Attorney Ryan Schiff. The Board's decision fully incorporates, by reference, the entire video recording of Mr. Fernette's October 29, 2024, hearing.

STATEMENT OF THE CASE:¹ Kirk Fernette and Glen Bourgeois² robbed and shot 75-year-old Hollis Jackson inside his home on September 19, 1983, in Middleborough. Earlier in the day, Mr. Fernette (age 18) and Mr. Bourgeois planned to leave Middleborough to travel to Florida. The men, who were both armed, passed Mr. Jackson's home and barn while they walked to the bus station. Mr. Fernette stopped to relieve himself outside of the barn. Mr. Jackson came into the barn and offered to drive the men part of the way to the bus station. The men accepted Mr. Jackson's offer. After he dropped them off, the men decided to go back to Mr. Jackson's home, wait for him to return, and then take his money and car. When Mr. Jackson arrived home, he was blindfolded, gagged, and tied to his bed by the men. They emptied his pockets and took his keys. While Mr. Bourgeois went to the store to get soda, Mr. Fernette indicated that he stayed with Mr. Jackson and loosened his restraints. Mr. Fernette and Mr. Bourgeois took Mr. Jackson's cash, shotgun, supplies, and car keys as they prepared to leave. As the men were departing, Mr. Jackson freed himself from the restraints and attempted to defend himself and his property with a crowbar. Mr. Fernette shot Mr. Jackson in the mouth and once in the back. The men fled in Mr. Jackson's car. Mr. Jackson was able to get to a neighbor's house, and police were called. The police located the men in Mr. Jackson's vehicle, and a chase ensued. During the chase, Mr. Fernette leaned out of the vehicle and fired at the police with the stolen shotgun. The car crashed into a field, but Mr. Fernette got away on foot. He was not apprehended until the next day. Mr. Jackson bled to death 30 days after the shooting, when his tongue wound worsened.

APPLICABLE STANDARD: Parole shall be granted "only if the Board is of the opinion, after consideration of a risk and needs assessment, that there is a reasonable probability that, if the prisoner is released with appropriate conditions and community supervision, the prisoner will live and remain at liberty without violating the law and that release is not incompatible with the welfare of society." G. L. c. 127, § 130. The Board considers multiple factors in making its decision, including the incarcerated individual's institutional behavior; their participation in available work, education, and treatment programs during their incarceration; and whether the incarcerated individual's chances of recidivism could be reduced by participation in risk reduction programs. G. L. c. 127, § 130. The Board considers all relevant facts, including the nature of the underlying offense, the age of the incarcerated individual at the time of the offense, the entirety of the incarcerated individual's criminal record, the incarcerated individual's institutional record, the incarcerated individual's testimony at the hearing, and the views of the public expressed at the hearing and/or in written submission to the Board.

Where a parole candidate was convicted of first-degree murder for a crime committed when he was ages 18 through 20 years old, the Board considers the "unique aspects" of emerging adulthood that distinguish emerging adult offenders from older offenders. Commonwealth v. Mattis, 493 Mass. 216, 238 (2024). Individuals who were emerging adults at the time of the offense must be afforded a "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation" and the Board evaluates "the circumstances surrounding the

¹ The Statement of the Case is derived from Commonwealth v. Fernette, 398 Mass. 658 (1986) and statements of Mr. Fernette.

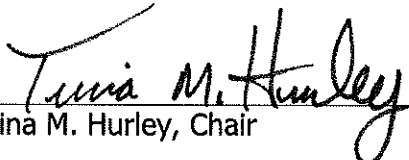
² Mr. Bourgeois was tried separately from Mr. Fernette and was convicted of multiple charges.

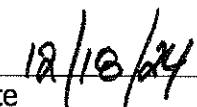
commission of the crime, including the age of the offender, together with all relevant information pertaining to the offender's character and actions during the intervening years since conviction." Id. (citing Diatchenko v. District Attorney for the Suffolk Dist., 466 Mass. 655, 674 (2013) (Diatchenko I); Miller v. Alabama, 567 U.S. 460, 471 (2012); Graham v. Florida, 560 U.S. 48, 75 (2010)). Since brain development in emerging adulthood is ongoing, the Board also considers the following factors when evaluating parole candidates who committed the underlying offenses as an emerging adult: 1) a lack of impulse control in emotionally arousing situations; 2) an increased likelihood to engage in risk taking behaviors in pursuit of reward; 3) increased susceptibility to peer influence which makes emerging adults more likely to engage in risky behavior; and 4) an emerging adult's greater capacity for change. See Mattis, 493 Mass. at 225-229.

DECISION OF THE BOARD: Mr. Fernette was 18-years-old at the time of the offense and has been incarcerated for over 40 years. While incarcerated, Mr. Fernette has engaged in extensive programming to address his need areas, including significant programming at a time when he was not eligible for parole. Mr. Fernette's last disciplinary report occurred 15 years ago, and Mr. Fernette has been sober for 38 years. The Board considered Mr. Fernette's adverse childhood experiences, his age at the time of the offense, and his capacity for change. The Board also considered the expert testimony and report of Kimberly Mortimer, LICSW. Mr. Fernette has a very strong support network, stable housing, and a solid home plan. The Board considered the opposition testimony of Plymouth Assistant District Attorney Karen Polumbo. The Board considered the opposition testimony of the victim's family member. Numerous family members of Mr. Fernette spoke in support of parole. The Board also considered post-hearing materials and submissions received from the District Attorney's Office.

SPECIAL CONDITIONS: Approve home plan before release; Report to assigned MA Parole Office on day of release; Waive work for two weeks; Electronic monitoring for 90 days; Supervise for drugs and testing in accordance with Agency policy; Supervise for liquor abstinence with testing in accordance with Agency policy; No contact with victim(s)' family; Must have mental health counseling for adjustment; Expressly permitted to associate with [3 named individuals].

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.


Tina M. Hurley, Chair


Date