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DECISION

IN THE MATTER OF

LOUIS COSTA
W44737

TYPE OF HEARING: Initial Hearing

DATE OF HEARING: February 25, 2016

DATE OF DECISION: July 28, 2016

PARTICIPATING BOARD MEMBERS: Dr. Charlene Bonner, Tonomey Coleman, Sheila Dupre, Ina Howard-Hogan, Tina Hurley, Lucy Soto-Abbe

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. Parole is denied with a review scheduled in two years from the date of the hearing.¹

I. STATEMENT OF THE CASE

On February 19, 1986, at around 9:30 p.m., Joseph Bottari and Frank Chiuchiolo were shot and killed by Louis Costa, Frank DiBenedetto, and another man². Mr. Bottari was shot 16 times, including six shots to the head. Mr. Chiuchiolo was shot seven times, including five shots to the head. Both men were shot at close range. The murder occurred at Slye Park, a neighborhood in Boston's North End. A witness, who resided in an apartment overlooking the park, heard four or five "cracks or pops" that he thought were fireworks. He looked out his window and saw orange-red flashes in the area near Mr. Costa's hand. The sounds continued, but eventually, the three shooters left the park. Mr. Costa and his co-defendants were arrested

¹ Four Members of the Parole Board voted to schedule a review hearing on Mr. Costa's petition for parole in two years. Two Board Members voted to reserve with conditions. One Board Member abstained from voting.

² Mr. Costa maintains that Richard Storella, a fully immunized witness at Mr. Costa's and Mr. DiBenedetto's second trial, was the third shooter. Mr. Storella testified that Paul Tanso was the third shooter. Mr. Storella gave a number of different and inconsistent accounts of the events that took place on the night of the murder. In one version, Mr. Storella claimed that he had been one of the murderers. Mr. Tanso was acquitted of the murder charges in 1994.

on February 23, 1986. On May 21, 1986, the Suffolk County Grand Jury returned two indictments against Mr. Costa that charged him with the murders. Mr. Costa was 16-years-old at the time of the murders and indictment.

On April 11, 1988, in Suffolk Superior Court, Louis Costa was convicted by a jury of the first degree murders of Joseph Bottari and Frank Chiuchiolo. Mr. Costa filed an appeal. In December 1992, the Supreme Judicial Court concluded that Mr. Costa's right to confront a witness against him, under the Sixth Amendment of the United States Constitution, had been violated. The Court vacated the convictions and remanded the case for a new trial. Mr. Costa's second trial took place in 1994. A jury found him guilty on two counts of first degree murder. Mr. Costa was sentenced to two consecutive life sentences without the possibility of parole for the murders of Mr. Bottari and Mr. Chiuchiolo.

II. PAROLE HEARING ON FEBRUARY 25, 2016

On December 24, 2013, the Supreme Judicial Court issued a decision in *Diatchenko v. District Attorney for Suffolk District & Others*, 466 Mass. 655 (2013), in which the Court determined 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 others similarly situated) must be given a parole hearing. Following the *Diatchenko* decision, Mr. Costa filed a motion for re-sentencing in Suffolk Superior Court. On October 9, 2015, Mr. Costa was re-sentenced to serve two concurrent life sentences with the possibility of parole for the first degree murders of Mr. Chiuchiolo and Mr. Bottari. Accordingly, Mr. Costa was granted a hearing before the Parole Board.

Mr. Costa, now 46-years-old, appeared before the Parole Board on February 25, 2016, for an initial hearing and was represented by Attorney David Apfel. In Mr. Costa's opening statement to the Board, he apologized to the families of both victims, to his community in the North End, and to his own family. Mr. Costa said that growing up in the North End, he thought that "fear and violence were the road to respect." He expressed shame for having previously held this belief, and remorse for the murders of Mr. Chiuchiolo and Mr. Bottari.

During the course of the hearing, Mr. Costa discussed the events that took place on the day of the murder. Mr. Costa stated that he was at a friend's house when Paul Tanso and Frank DiBenedetto came over and said that the murder was going to take place that night. A little while later, Richard Storella arrived at the friend's house. Mr. Storella, Mr. Tanso, and Mr. DiBenedetto discussed where Mr. Chiuchiolo and Mr. Bottari were going to meet. After Mr. Storella left to pick up Mr. Chiuchiolo and Mr. Bottari (to bring them to Slye Park), Mr. Tanso gave Mr. Costa a gun. Mr. Tanso loaded the gun for Mr. Costa and explained how to use it. Mr. Costa, Mr. DiBenedetto, and Mr. Tanso walked to Slye Park about a half an hour later. Mr. Tanso went home because he was not feeling well. Shortly after the men met at Slye Park, Mr. DiBenedetto proceeded to shoot Mr. Chiuchiolo, and then Mr. Costa shot Mr. Bottari. As Mr. Costa was shooting Mr. Bottari, Mr. DiBenedetto and Mr. Storella started shooting Mr. Bottari as well. Mr. Chiuchiolo attempted to run away from the scene and Mr. Costa fired two to three shots at him as he ran. Mr. DiBenedetto and Mr. Storella were also shooting at Mr. Chiuchiolo. Once Mr. Chiuchiolo fell down, Mr. Costa ran out of the park. Mr. Costa remembers firing seven or eight shots total. He admits to aiming at Mr. Bottari's chest and head. After leaving Slye Park, Mr. Costa threw the gun that he had used into the harbor.

Mr. Costa also discussed his reasons for participating in the murder. Mr. Costa said that he did not want the men dead, but committed the murders out of loyalty to his friends. Growing up, Mr. Costa had been taught to always be loyal to your friends. Mr. DiBenedetto and Mr. Tanso had been selling drugs in the North End. Mr. Costa claimed that the victims had wanted Mr. DiBenedetto and Mr. Tanso to pay them money if they planned to sell drugs in that neighborhood. Mr. Costa stated that about two weeks prior to the murders, Mr. Tanso had been beaten up by one of the victims, and that both men had threatened Mr. DiBenedetto. The men first started talking about shooting the victims at around this time.

While discussing his childhood, Mr. Costa said that he came from a very loving, caring family who gave him everything. He was raised by his mother and grandmother. Despite his positive home life, Mr. Costa was a witness to significant violence that began at around the age of 7 or 8-years-old. He saw people in his neighborhood get beaten and stabbed, and he knew men that were murdered. Mr. Costa believes his own troubles began when he tried to meet the expectations of how some people in his community thought he should be, given his father's criminal reputation. Mr. Costa stated that he became "more infatuated with the street life," distancing himself from his family and hanging out with his friends while they sold drugs.

Mr. Costa also spoke about his relationship with his father, who was incarcerated for most of his childhood. He remembers visiting his father in prison when he was about 5-years-old. After that, he did not see him again until he was around 12-years-old. They spoke for about 30 to 45 minutes on that occasion. That was the last time Mr. Costa saw his father as a child. Mr. Costa acknowledged that he had wanted to be like his father, based on his reputation in the street, but did not know him well until they were in the same prison. After getting to know him, Mr. Costa realized that although he has love for his father, he did not want to be like him. Mr. Costa referenced the saying "don't meet your heroes." He realized that he did not want to be like the man that he had "looked up to and respected" his entire life. Eventually Mr. Costa distanced himself from his father, and the two men would "walk by each other like strangers."

When the Board indicated that Mr. Costa seems to have only recently demonstrated that he takes responsibility for his crimes, Mr. Costa said that it has been a "tension" for him the whole time that he has been incarcerated. He stated that he always felt "remorse and shame" for what he has done, including the pain that he put the victims' families through. He stated that he knows it is "selfish," but he believed that if he demonstrated his remorse and admitted what he had done, he would "die in prison," and he did not want that to happen. At another point during the hearing, Mr. Costa mentioned that he confessed his crimes to a priest in 1986.

Mr. Costa has not had a disciplinary report since 1989. While incarcerated, he earned his GED in 1988 and graduated Cum Laude from Boston University in 2011. The Board questioned why Mr. Costa did not begin programming until later in his incarceration. Mr. Costa said that he began working on his degree from Boston University in 2004, and that becoming educated inspired him to better himself. He participated in numerous programs, including Restorative Justice, Alternatives to Violence, and Alternatives to Violence Advanced. He also obtained a barber's license while in prison.

The Board considered oral testimony from Mr. Costa's aunt, a friend, and a representative from an organization that provides support services to prisoners and former

prisoners, all of whom expressed support for Mr. Costa's parole. Two forensic psychologists, Dr. Robert T. Kinscherff and Dr. Frank DiCataldo, also presented their findings after assessing Mr. Costa. Mr. Costa had many supporters in attendance at his hearing, and the Board received numerous letters in support of his parole. The Board also considered testimony from Suffolk County Assistant District Attorney Helle Sachse and Boston Police Sergeant Detective William Doogan, both of whom expressed opposition to Mr. Costa's parole. A letter in opposition to Mr. Costa's parole was submitted by Boston Police Commissioner William Evans.

III. DECISION

The Board is of the opinion that Mr. Costa has not demonstrated a level of rehabilitative progress that would make his release compatible with the welfare of society. The Board believes a longer period of positive institutional adjustment and programming would be beneficial to Mr. Costa's rehabilitation.

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 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 Mass. 51 (2015).

The factors considered by the 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 unique capacity to change as they grow older." *Id.* The Board also recognizes the petitioner's right to be represented by counsel during his appearance before the Board. *Id.* at 20-24. The Board has also considered whether risk reduction programs could effectively minimize Mr. Costa's risk of recidivism. After applying this standard to the circumstances of Mr. Costa's case, the Board is of the opinion that Mr. Costa is not yet rehabilitated, and his release is not compatible with the welfare of society. Mr. Costa, therefore, does not merit parole at this time.

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


Gloriann Moroney, General Counsel

7/28/16
Date