

The Commonwealth of Massachusetts
Executive Office of Public Safety and Security



PAROLE BOARD

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DECISION

IN THE MATTER OF

LOUIS TIBURCIO

W84895

TYPE OF HEARING: Initial Hearing

DATE OF HEARING: January 30, 2018

DATE OF DECISION: November 28, 2018

PARTICIPATING BOARD MEMBERS: Paul M. Treseler, Dr. Charlene Bonner, Tonomey Coleman, Sheila Dupre, Tina Hurley, Colette Santa, 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 by unanimous vote that the inmate is not a suitable candidate for parole. Parole is denied with a review scheduled in four years from the date of the hearing.

I. STATEMENT OF THE CASE

On February 1, 2005, after a trial by jury in Essex Superior Court, Louis Tiburcio was found guilty of the second degree murder of Rodolfo Diaz and sentenced to life in prison with the possibility of parole.¹ This conviction was affirmed on appeal.²

On February 1, 2003, 18-year-old Louis Tiburcio was drinking, smoking marijuana, snorting cocaine, and taking Klonopin at a party. When the party broke up, he and his friends ended up on a street in Lawrence. A green car drove by, and one of the passengers allegedly said something disrespectful to Mr. Tiburcio's girlfriend. Mr. Tiburcio and a friend (in Mr. Tiburcio's

¹ Mr. Tiburcio was prosecuted under alternative theories of joint venture and principal liability.

² *Commonwealth v. Louis Tiburcio*, 73 Mass. App. Ct. 1122 (2009)

car) chased the green car, with Mr. Tiburcio firing several shots at it. Mr. Tiburcio's passenger then took the gun and also fired at the car, killing passenger Rodolfo Diaz.

II. PAROLE HEARING ON JANUARY 30, 2018

Louis Tiburcio, now 33-years-old, appeared before the Parole Board for an initial hearing on January 30, 2018. Mr. Tiburcio was represented by Northeastern University School of Law Student Attorneys Malikeya Khantrece and Alex Martinez-O'Reilly. In his opening statement to the Board, Mr. Tiburcio admitted his responsibility for killing Rodolfo Diaz. Mr. Tiburcio apologized to the victim's family and expressed his remorse.

When Board Members questioned Mr. Tiburcio about his home-life, he said that both his parents were violent, abusive, neglectful, and addicted to crack cocaine. His parents were incarcerated for selling drugs when Mr. Tiburcio was four-years-old, and he never saw his father again. From the age of four to eight, Mr. Tiburcio said that he lived with his abusive grandparents in Florida. When Mr. Tiburcio was eight, he was reunited with his mother and, for two years, all was well until she started drinking and using heroin. Mr. Tiburcio explained that he was sexually molested by his mother when he was 10-years-old. After this incident, Mr. Tiburcio said that he stopped coming home, dropped out of school in eighth grade, and started drinking alcohol and smoking marijuana. Mr. Tiburcio said that he began stealing cars at age 12 and, by the time he was 15-years-old, he was selling stolen cars to 'chop shops' for parts. At age 15, Mr. Tiburcio said that he had fathered a daughter. He was involved in gang activity and sold crack cocaine to support himself and his family. Mr. Tiburcio (at age 15) was committed to the Department of Youth Services for a year, after he stole a car and crashed it into a police car during a high speed chase. At age 17, Mr. Tiburcio started a romantic relationship and moved in with a 32-year-old woman, who was a friend of Mr. Tiburcio's mother. This woman supplied Mr. Tiburcio with alcohol and prescription pills.

When the Board questioned him about the murder of Mr. Diaz, Mr. Tiburcio explained that he was drunk and high on cocaine, marijuana, and Klonopin at the time. He was parked in front of a friend's house with his girlfriend and some friends, when a green car pulled up. Mr. Tiburcio said that his girlfriend got into an argument with the occupants of the green car and, when he (Mr. Tiburcio) joined the argument, the car drove off down the dead end street. When the car came back up the street, Mr. Tiburcio and his co-defendant pulled up behind the car, and Mr. Tiburcio fired, at least, two shots at the car. When the car stopped at an intersection, Mr. Tiburcio pulled up along the left side of the car. He then handed his gun to his passenger/co-defendant, who fired several times at the car before it sped off. When the Board asked him whose shots killed the passenger, Rodolfo Diaz, Mr. Tiburcio said he believed that his co-defendant fired the fatal shot. Mr. Tiburcio told the Board, however, that "it doesn't matter who fired the fatal shots. It was my car, my gun. It was my influence over [the co-defendant] that ultimately lead him to make that decision. If it wasn't for my influence, he wouldn't have done it."

The Board questioned Mr. Tiburcio about his disciplinary reports and his involvement in security threat groups (STGs). Mr. Tiburcio said that he received seven disciplinary reports over the course of his incarceration, with only one violent report on his record from 2011. Mr. Tiburcio said that he was a leader and council member of a security threat group, but that he has renounced his involvement in the group. The Board asked Mr. Tiburcio about his involvement in one security threat group's "beat-down" of another inmate and questioned him as to why he

denied that he was a leader of the group in the Department of Correction disciplinary hearing. Mr. Tiburcio told the Board that he denied his involvement because he feared the consequences of admitting his level of affiliation. Mr. Tiburcio also informed the Board about his affiliation with other security threat groups prior to being incarcerated. The Board noted that Mr. Tiburcio has completed programs addressing violence and substance abuse, in addition to obtaining his G.E.D. and attending Boston University. Mr. Tiburcio participated in the Restorative Justice Program, which he said helped him identify with his victims' pain.

Friends and family of Mr. Tiburcio attended, sent letters of support, and testified in support of parole. Friends and family of Mr. Diaz attended and sent letters of opposition. Mr. Diaz's sister and his daughter testified in opposition to parole. Essex County Assistant District Attorney Catherine Semel testified and sent a letter in opposition to parole.

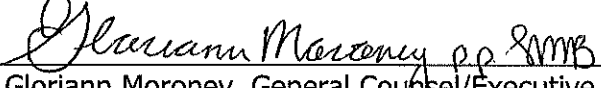
III. DECISION

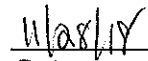
The Board is of the opinion that Louis Tiburcio has not yet demonstrated a level of rehabilitative progress that would make his release compatible with the welfare of society. Mr. Tiburcio is serving his first state, second commitment. He is encouraged to maintain a positive adjustment and engage in relative programs. It appears he continues to minimize his criminal culpability.

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. Tiburcio'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 whether risk reduction programs could effectively minimize Mr. Tiburcio's risk of recidivism. After applying this standard to the circumstances of Mr. Tiburcio's case, the Board is of the unanimous opinion that Louis Tiburcio is not yet rehabilitated and, therefore, does not merit parole at this time.

Mr. Tiburcio's next appearance before the Parole Board will take place in four years from the date of this hearing. During the interim, the Board encourages Mr. Tiburcio 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/Executive Director


Date