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DECISION

IN THE MATTER OF

LUIS BERRIOS

W59917

TYPE OF HEARING: Review Hearing

DATE OF HEARING: November 1, 2016

DATE OF DECISION: April 18, 2017

PARTICIPATING BOARD MEMBERS: Paul M. Treseler, Dr. Charlene Bonner, Tonomey Coleman, Sheila Dupre, 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 by unanimous vote that the inmate is a suitable candidate for parole. Parole is granted to an approved home plan with special conditions, after successful adjustment to 12 months in lower security.

I. STATEMENT OF THE CASE

On February 28, 1995, Carlos Falcon was shot and killed outside a Kentucky Fried Chicken restaurant in Springfield. Three other individuals were shot and wounded, but survived. On January 17, 1996, Luis Berrios pled guilty to one count of accessory before the fact of second degree murder, three counts of accessory before the fact of armed assault with intent to murder, and one count of possession of a firearm. He was sentenced to life in prison with the possibility of parole, after serving 15 years on the accessory before charge and 3-5 years concurrent on each of the remaining charges.

Subsequently, Mr. Berrios filed a motion for a new trial seeking to withdraw his guilty plea. During the evidentiary hearing, he testified that he did not play any role in the decision that resulted in the murder of Mr. Falcon and the injury to others. On September 29, 2005, a Hampden County Superior Court Judge granted him a new trial, and Mr. Berrios was released from custody on bail. The Appeals Court affirmed the Superior Court's decision. The

Commonwealth further appealed to the Supreme Judicial Court (SJC). On November 20, 2006, the SJC concluded that Mr. Berrios was not credible when he testified at the evidentiary hearing. The SJC vacated the Appeals Court decision and reinstated the original convictions. Mr. Berrios remained on bail in the community for over a year without incident, when he returned to custody on November 21, 2006.

On the day of the shooting, Luis Berrios (then 20-years-old) and his codefendants, Robert Francis, Michael Borden, and Jason Jiles were at a friend's apartment across the street from a Kentucky Fried Chicken restaurant. Mr. Berrios was the president of a gang and his co-defendants were members of a gang. At some point, two people came into the apartment and reported that a car (full of rival gang members) was in the Kentucky Fried Chicken parking lot. According to these men, the rival gang was flashing hand signals that showed disrespect to Mr. Berrios' gang. Mr. Berrios and Mr. Francis ordered Mr. Borden and Mr. Jiles to go to the restaurant parking lot to deal with the situation. As a result, Mr. Jiles shot Carlos Falcon in the head at point blank range, killing him. Mr. Borden fired multiple shots into the car and wounded three of Mr. Falcon's companions.

II. PAROLE HEARING ON NOVEMBER 1, 2016

Mr. Berrios, now 42-years-old, appeared before the Parole Board for a review hearing on November 1, 2016. He was not represented by counsel. Mr. Berrios was denied parole after his initial hearing in 2011. In his opening statement, Mr. Berrios apologized to Mr. Falcon's family and to the three other individuals who were shot that day. He said that he takes full responsibility for ordering his co-defendants to murder the victim and injure the others. He also apologized to the Board Members, the Massachusetts criminal justice system, and the city of Springfield for his behavior, and his false testimony, at his initial hearing five years ago.

The Board discussed Mr. Berrios' impressive institutional adjustment, having received only one disciplinary report in over 20 years of incarceration. The Board also acknowledged the multitude of programming and rehabilitative efforts that Mr. Berrios has engaged in. Mr. Berrios is currently incarcerated at Bridgewater State Hospital, where he works in the Cadre Program. He has successfully participated in programs covering a variety of topics, including those recommended by the Department of Correction in his risk reduction plans. Mr. Berrios obtained his GED in 1999, earned his barber's license in 2002, and earned his welder's license in 2010. He also successfully renounced his gang affiliation through completion of the Spectrum Program. Since his hearing in 2011, Mr. Berrios has participated in numerous programs, including: Tutor Training, Law Library Clerk Training, Computer Skills, Life Skills, Anger Management, and several Cognitive Skills Workshops.

The Board asked Mr. Berrios to discuss his lifestyle during the 14 months he was released on bail. Mr. Berrios stated that he went to live with his girlfriend (and mother of his daughter), who he has been with since they were teenagers. He has strong, positive family support that helped with his transition. He immediately sought employment and became gainfully employed part time at a grocery store and part time at a barber shop. After about six months of working two jobs, he went to a job fair and was hired full-time by a national candle company. He obtained his driver's license and obeyed all of his conditions of probation, including that he remain drug and alcohol free.

The Board acknowledged Mr. Berrios' impressive institutional behavior, his efforts to rehabilitate himself, and his positive adjustment to society during his 14 months out on bail. When Board Members expressed some concern about the differing statements he made at his initial hearing, Mr. Berrios told the Board that he takes full responsibility for the inaccurate statements he made previously. He takes full responsibility for ordering the violence that led to Mr. Falcon's death and the injury to three others. He acknowledged that he could have prevented the shootings, if he had not ordered his co-defendants to act in violence. Mr. Berrios stated that it was poor decision-making on his part that he was not truthful in 2011. He informed the Board that when his appeal was denied in 2014, he told his attorney he did not want to appeal again. Rather, he wanted to own his actions and take full responsibility for his participation in the gang violence, murder, and injury that occurred on February 28, 1995.

Mr. Berrios had many supporters in attendance at his hearing. Hampden County Assistant District Attorney Howard Safford spoke to the Board about Mr. Berrios' criminal behavior. However, ADA Safford acknowledged that Mr. Berrios has done exceptionally well in prison and out in the community on bail. In a letter sent to the Board a few weeks after the hearing, ADA Safford wrote, "The Hampden County District Attorney's Office is tentatively supportive of an incremental plan toward release into the community" for Mr. Berrios.

III. DECISION

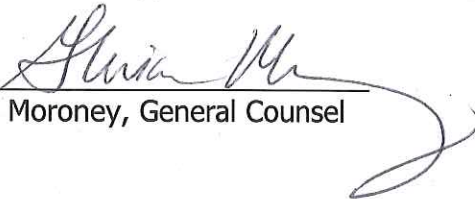
Luis Berrios has been incarcerated for over 20 years and has availed himself to rehabilitation. Incarceration has served its purpose. Mr. Berrios currently has a coveted and trusted Cadre Program position. He has shown a good adjustment and has strong community support.

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. Berrios' institutional behavior, as well as his participation in available work, educational, and treatment programs during the period of his incarceration. The Board also considered a risk and needs assessment and whether risk reduction programs could effectively minimize Mr. Berrios' risk of recidivism. After applying this appropriately high standard to the circumstances of Mr. Berrios' case, the Board is of the unanimous opinion that Luis Berrios is a suitable candidate for parole.

Parole is granted to an approved home plan with special conditions, after successful adjustment to 12 months in lower security.

SPECIAL CONDITIONS: Approve home plan before release; Waive work for two weeks; Must be home between 10:00 pm and 6:00 am; GPS monitoring; Supervise for drugs, testing in accordance with agency policy; Supervise for liquor abstinence, testing in accordance with agency policy; No contact or association with gang affiliation/activity; No contact with victim's family; Must have substance abuse evaluation and adhere to plan; Must have mental health counseling for adjustment/transition; Mandatory After Incarceration Support Systems (AISS) - full intake.

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.


Glorjann Moroney, General Counsel

4/18/17
Date