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RECORD OF DECISION

IN THE MATTER OF

MALCOLM CARNES

W96897

TYPE OF HEARING: Initial Hearing

DATE OF HEARING: May 24, 2022

DATE OF DECISION: December 5, 2022

PARTICIPATING BOARD MEMBERS: Gloriann Moroney, Dr. Charlene Bonner, Tonomey Coleman, Tina Hurley, Colette Santa

STATEMENT OF THE CASE: On July 28, 2010, following a jury trial in Norfolk Superior Court, Malcolm Carnes was convicted of second-degree murder in the death of Ezekiel Cuthbert. He was sentenced to life in prison with the possibility of parole.

Mr. Carnes appeared before the Parole Board for an initial hearing on May 24, 2022. He was represented by Attorney Catherine Hinton. The entire video recording of Mr. Carnes' May 24, 2022, hearing is fully incorporated by reference to the Board's decision.

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 parole¹.

The Board is of the opinion that Malcolm Carnes has not demonstrated a level of rehabilitative progress that would make his release compatible with the welfare of society. On June 27, 2007, Mr. Carnes shot and killed 17-year-old Ezekiel Cuthbert. Mr. Carnes was 16 years old at the time of the offense. Within the past 9 years of his incarceration, Mr. Carnes has committed to his rehabilitation. However, the Board feels he needs to strengthen his conflict resolution skills, as evidenced by 13 disciplinary reports, 8 of which were sanctioned. Several of the D-

¹ Three board members voted to deny parole with a review in two years and two board members voted to deny parole with a review in three years.

reports are indicative of issues with anger and self-control. Most concerning was that at the time of his hearing, there was a pending D-report for a physical assault. The Board considered the evaluation and testimony of Dr. Tabashneck. The Board remains concerned about conflict resolution skills and would encourage Mr. Carnes to address this area of need. Mr. Carnes should remain D-report free and engage in Restorative Justice Victim Offender Education Group (VOEG), as well as address anger management.

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 of the offense, 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. In forming this opinion, the Board has taken into consideration Mr. Carnes' 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 a risk and needs assessment, and whether risk reduction programs could effectively minimize Mr. Carnes' risk of recidivism. After applying this standard to the circumstances of Mr. Carnes' case, the Board is of the unanimous opinion that Malcolm Carnes is not rehabilitated and, therefore, does not merit parole at this time.

Mr. Carnes' next appearance before the Board will take place in two years from the date of this hearing. During the interim, the Board encourages Mr. Carnes to continue working toward his full rehabilitation.

I certify that this is the decision and reasons of the Massachusetts Parole Board regarding the above referenced hearing.



Pamela Murphy, General Counsel

12/5/22
Date