

*The Commonwealth of Massachusetts*  
*Executive Office of Public Safety and Security*

**PAROLE BOARD**

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**RECORD OF DECISION**

**IN THE MATTER OF**

**MALCOLM CARNES**  
**W96897**

**TYPE OF HEARING:**           **Review Hearing**

**DATE OF HEARING:**       **May 23, 2024**

**DATE OF DECISION:**      **October 15, 2024**

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

**VOTE:** Parole is granted to a Long-Term Residential Program after one year step down in lower security.

**PROCEDURAL HISTORY:** On July 28, 2010, following a jury trial in Norfolk Superior Court, Malcolm Carnes was convicted of murder in the second degree for the death of 17-year-old Ezekiel Cuthbert. He was sentenced to life in prison with the possibility of parole. Parole was denied following an initial hearing in 2022. On May 23, 2024, Malcolm Carnes appeared before the Board for a review hearing. He was represented by Attorney Catherine Hinton. The Board's decision fully incorporates by reference the entire video recording of Mr. Carnes' May 23, 2024, hearing.

**STATEMENT OF THE CASE:** On June 27, 2007, at about 5:00 p.m., 16-year-old Malcom Carnes shot and killed Ezekiel Cuthbert at the Mutual Gas Station in Randolph. Investigators obtained a description of the suspect – a thin black male wearing a white t-shirt, dark shorts, and a backpack. They also learned the direction in which he had fled. Approximately two hours after the shooting, investigators identified two witnesses on Waldo Street, which runs parallel to Stacey Street, where the suspect had last been observed fleeing. One of the witnesses reported that, at about 5:30 p.m., he saw a thin black man with a backpack, wearing a white t-shirt and dark shorts, run from behind the bushes at the rear of a Stacey Street home to a shed in the neighboring backyard. The witness momentarily lost sight of the individual as he went behind the shed area, but the witness heard a noise like something had hit the shed. The individual then reappeared without

the backpack, retraced his steps through the rear yard, and continued in a northerly direction toward Waldo Street.

A detective looked in the area behind the shed and discovered a backpack. Inside, the detective observed a pink towel and the butt end of a firearm. Investigators interviewed two residents of the Stacey Street home upon which property the shed was located. The teenage son told police that Mr. Carnes was his best friend and that he had witnessed the shooting. Mr. Carnes was arrested shortly after midnight at his grandparent's home in Boston.

**APPLICABLE STANDARD:** Parole "[p]ermits 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." M.G.L. c. 127, § 130. In making this determination, the Board takes into consideration an inmate's institutional behavior, their participation in available work, educational, and treatment programs during the period of incarceration, and whether risk reduction programs could effectively minimize the inmate's risk of recidivism. M.G.L. c. 127, § 130. The Board also considers all relevant facts, including the nature of the underlying offense, the age of the inmate at the time of the offense, the criminal record, the institutional record, the inmate's testimony at the hearing, and the views of the public as expressed at the hearing and/or in written submissions to the Board (if applicable).

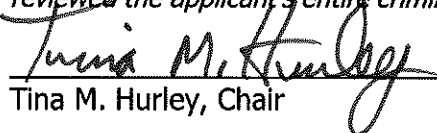
In the context of an incarcerated individual convicted of first or second-degree murder, who was a juvenile at the time the offense was committed, the Board takes into consideration the attributes of youth that distinguish juvenile homicide offenders from similarly situated adult offenders. Consideration of these factors ensures that the parole candidate, who was a juvenile at the time they committed murder, has a meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation. *Diatchenko v. District Attorney for the Suffolk District*, 466 Mass. 655, 674 (2013). See also *Commonwealth v. Okoro*, 471 Mass. 51 (2015). The factors considered by the Board include a juvenile'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." *Diatchenko v. District Attorney for the Suffolk District*, 471 Mass. 12, 30 (2015). The Board also recognizes the incarcerated individual's right to be represented by counsel during their appearance before the Board. *Id.* at 20-24.

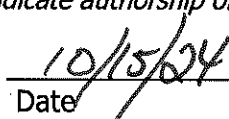
**DECISION OF THE BOARD:** Mr. Carnes is 33-years-old and has been incarcerated since he was sixteen. He documents a troubled and traumatic youth. Mr. Carnes' early transition to incarceration reflected multiple disciplinary reports. Since 2022, he has been disciplinary report free. He has engaged in six rehabilitative programs since his last hearing. He has completed Restorative Justice, Correctional Recovery Academy (CRA), and Criminal Thinking, among others. He also has done vocational training. The Board considered Dr. Tabashneck's forensic evaluations and review of Mr. Carnes' parole plan. Mr. Carnes has family support and possible job opportunities in the community. Multiple family members of Mr. Carnes spoke in support of parole. Norfolk County Assistant District Attorney Michael McGee spoke in opposition to parole.

The Board concludes by unanimous decision that Malcolm Carnes has demonstrated a level of rehabilitation that would make his release compatible with the welfare of society.

**SPECIAL CONDITIONS:** Waive work for Long-Term Residential Program; Curfew – must be at home between 10 PM and 6 AM or at Parole Officer's Discretion; Electronic monitoring for first 6 months upon release, and then, if to continue, at Parole Officer's recommendation to the Board for a Change of Vote; Supervise for drugs – testing in accordance with agency policy; Supervise for liquor abstinence – testing in accordance with agency policy; Report to assigned MA Parole Office on day of release; No contact with victim(s)' family; Must have an updated mental health evaluation for history of ADHD; Must have substance abuse evaluation and must comply with recommended treatment plan; Counseling for adjustment and transition; Long-Term Residential Program.

*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