



The Commonwealth of Massachusetts
Executive Office of Public Safety and Security



PAROLE BOARD

12 Mercer Road
Natick, Massachusetts 01760

Charles D. Baker
Governor

Karyn Polito
Lieutenant Governor

Terrence Reidy
Secretary

Telephone # (508) 650-4500
Facsimile # (508) 650-4599

Gloriann Moroney
Chair

Kevin Keefe
Executive Director

DECISION

IN THE MATTER OF

MESAIL HERNANDEZ

W52939

TYPE OF HEARING: Review Hearing

DATE OF HEARING: January 4, 2022

DATE OF DECISION: September 21, 2022

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

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 July 16, 1992, in Middlesex County Superior Court, Mesail Hernandez pleaded guilty to the second-degree murder of his 21-month-old son, Mesail Hernandez, Jr and was sentenced to life in prison with the possibility of parole. On that same date, he pleaded guilty to arson of a dwelling and sentenced to a concurrent term of 6 to 10 years, as well as two counts of assault and battery by means of a dangerous weapon and sentenced to concurrent terms of 3 to 5 years each. A charge of armed assault with intent to murder was placed on file without a change of plea. The effective date of sentence was January 26, 1992, creating a parole eligibility date of January 25, 2007.

¹ One Board Member voted to deny parole with a review in four years.

In addition, following a January 2000 incident at MCI-Cedar Junction, Mr. Hernandez was found guilty of two counts of assault and battery on February 9, 2001. He was sentenced to 2 and a half years each at the Dedham House of Correction to be served consecutive to one another and consecutive to his life sentence. Pursuant to Dinkins & another v. Massachusetts Parole Board, 486 Mass. 605 (2021), the Parole Board must aggregate parole eligible life terms that are first in a series with from and after terms for purposes of determining the parole eligibility date. Mr. Hernandez was identified as a person directly impacted by the Court's decision. The parole ineligibility terms on his sentences have been aggregated, creating a new parole eligibility date of July 25, 2009. Mr. Hernandez appealed his 2001 conviction for assault and battery, Commonwealth vs. Mesail Hernandez, 55 Mass. App. Ct. 1109 on July 17, 2002. The judgment was affirmed.

On January 25, 1992, in Waltham, 22-year-old Mesail Hernandez set fire to the home of the mother of his two children, causing the death of their 21-month-old son, Mesail Hernandez, Jr. On the night of the incident, Waltham police responded to a report of a domestic dispute at the victims' home. Upon arrival, officers observed the second floor of the home engulfed in flames. The mother of Mesail Jr. approached the officers, yelling that her son was trapped in the upstairs bedroom. Mr. Hernandez had already fled the apartment. Despite three successful attempts to enter the home, officers were repelled by the heavy smoke and flames. The autopsy report identified the cause of death of Mesail Jr. as smoke inhalation. Police also discovered that Mr. Hernandez had stabbed his friend during an altercation at the home. An investigation revealed that a few days prior to the fire, Mr. Hernandez punched and kicked his girlfriend in the head during an argument.

II. PAROLE HEARING ON JANUARY 4, 2022²

Mesail Hernandez, now 44-years-old, appeared before the Parole Board for a review hearing on January 4, 2022. He was not represented by an attorney. Mr. Hernandez was denied parole after his initial hearing in 2007. He waived his review hearings in 2012 and 2017. In his opening statement to the Board, Mr. Hernandez apologized, stating how grateful he was for the opportunity to show the Board his growth. Upon Board Member questioning, Mr. Hernandez said that he was physically and emotionally abused as a child and had been bullied and robbed by kids in his neighborhood. He dated his girlfriend (the mother of his children) since he was 16-years-old, but admitted to a history of domestic violence. Mr. Hernandez claimed that his girlfriend would hit him at times, triggering memories of childhood abuse that caused him to view his girlfriend as an "opponent".

When the Board questioned him as to the governing offense, Mr. Hernandez said that he was visiting his sons at his girlfriend's apartment. He had too much to drink and called a friend for a ride home. When his friend arrived, his girlfriend asked him to stay the night, so his friend left without him. However, his girlfriend changed her mind and asked him to leave. When a fight ensued and his girlfriend threatened him with a knife, Mr. Hernandez said that he grabbed it from her. However, he could not remember stabbing anyone that night. Upon

² The entire video recording of Mr. Figueroa's January 4, 2022 hearing is fully incorporated by reference to the Board's decision.

further Board Member questioning, Mr. Hernandez admitted to saying that he was going to kill his girlfriend, but claimed that he meant he was "going to whip [her] butt." Later that night, Mr. Hernandez lit a piece of cardboard on fire and said, "If I can't stay here, then neither can you." He then lit a curtain on fire, told everyone to get out of the apartment, and left through a fire escape.

The Board noted that Mr. Hernandez has incurred several violent disciplinary reports, including one resulting in a from and after sentence. Mr. Hernandez stated that he tried to help a friend who was being attacked by another inmate and kicked his friend's assailant in the head. Also, in 2015, Mr. Hernandez and his cellmate attacked each other with a cribbage board. The Board noted that Mr. Hernandez has maintained employment and completed many programs. However, Board Members expressed concern that he has not completed many vocational programs or programs focusing on domestic violence.

A family member and a friend of Mr. Hernandez testified in support of parole. Middlesex Assistant District Attorney Adrienne Lynch testified and submitted a letter in opposition of parole.

III. DECISION

The Board is of the opinion that Mesail Hernandez has not demonstrated a level of rehabilitative progress that would make his release compatible with the welfare of society. Mr. Hernandez has made significant improvements since his last waiver in 2017. This was the first time he saw the Board since 2007, as he waived his last two hearings. By his own admission, he waived his hearings due to disciplinary issues around those times. He has been d[isciplinary] report free since 2019. Although he is on the right path, the Board encourages him to continue his positive adjustment that only recently began and participate in vocational programming, as well as programming to address domestic violence and past trauma.

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

Mr. Hernandez'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. Hernandez 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. 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.

/s/ Pamela Murphy p.p. Courtney Doherty
Pamela Murphy, General Counsel

9/21/22
Date