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DECISION

IN THE MATTER OF

MICHAEL MCAFEE
W62772

TYPE OF HEARING: Review Hearing

DATE OF HEARING: August 2, 2016

DATE OF DECISION: December 7, 2016

PARTICIPATING BOARD MEMBERS: 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 sober housing with special conditions and after successful adjustment to six months in lower security.¹

I. STATEMENT OF THE CASE

On May 30, 1997, in Suffolk County Superior Court, a jury convicted Michael McAfee of the first degree murder of Cassius Love.² Mr. McAfee was sentenced to life imprisonment without the possibility of parole for the murder of Mr. Love. Mr. McAfee also received concurrent sentences of 9-10 years for assault with intent to kill and 4-5 years for possession of a firearm.

¹ Three of the five Parole Board Members voted to reserve Mr. McAfee to sober housing after six months in lower security. Two of the five Board Members voted to reserve Mr. McAfee to sober housing after one year in lower security.

² Mr. McAfee's co-defendant, Mr. Elliot, was convicted of murder in the second degree, armed assault with intent to kill, and possession of a firearm.

On July 10, 1995, 17-year-old Michael McAfee, Laron "Ronny" Elliot (co-defendant), and three other individuals were involved in a fight with a young man, nicknamed "Country," at a McDonald's restaurant in Roxbury. Another man intervened in the altercation. Later in the day, the violence escalated when the man who had intervened and 16-year-old Cassius Love located Mr. McAfee and Mr. Elliot on Walnut Avenue in Roxbury. After a brief chase, they stopped in front of Mr. Elliot's house. Mr. Elliot ran inside his house and emerged with a rifle. He raised the rifle and pointed it at Mr. Love and the other man, while Mr. McAfee reportedly yelled, "Lace them." When Mr. Elliot did not fire, Mr. McAfee grabbed the rifle and shot Mr. Love six times. He fired once at the other man (as he ran from the scene), missing him. Mr. Love collapsed at the scene and was pronounced dead a short time later at Boston City Hospital. Mr. McAfee fled, but was arrested two days later. Mr. Elliot evaded police and was arrested two months after the murder.

On December 24, 2013, the Massachusetts Supreme Judicial Court (SJC) issued a decision in *Diatchenko v. District Attorney for the Suffolk District & Others*, 466 Mass. 655 (2013), where the Court determined that the statutory provisions mandating life without the possibility of parole were invalid as applied to those, like Mr. McAfee, who were juveniles when they committed first degree murder. The SJC ordered that affected inmates receive a parole hearing after serving 15 years. Accordingly, Mr. McAfee became eligible for parole.

II. PAROLE HEARING ON AUGUST 2, 2016

Mr. McAfee, now 39-years-old, appeared before the Parole Board for a review hearing on August 2, 2016, and was represented by Attorney Jeffrey Harris. Mr. McAfee's initial hearing took place on August 26, 2014, and resulted in the denial of parole. In his opening statement at this hearing, Mr. McAfee apologized to Mr. Love's family for the pain and suffering that he caused them. Mr. McAfee expressed his shame and guilt, taking full responsibility for the murder of Mr. Love.

Since his last appearance before the Board in 2014, Mr. McAfee participated in numerous programs, including Jericho Circle, Stress Reduction, and Emotional Awareness. Mr. McAfee highlighted the programs that have been the most influential in his rehabilitation. He completed the Correctional Recovery Academy (CRA) and was then able to participate in the Graduate Support Program, where he mentored individuals still in the program. As a mentor, Mr. McAfee used the tools he had learned to help others "empower" themselves. Through the Graduate Support Program, Mr. McAfee (along with other inmates) created a program called Change is Real, receiving positive feedback from participants. Mr. McAfee also participated in Restorative Justice and attended three of its annual retreats. During this year's retreat, Mr. McAfee facilitated a talking circle on the impact of crime on the community. Although he always regretted the murder of Mr. Love, Mr. McAfee said that hearing two mothers of homicide victims share their pain "made it real" and gave him "empathy." Through Restorative Justice, Mr. McAfee also had the opportunity to exchange a meaningful dialogue with a couple who acted as his surrogate victims, while he played their surrogate offender.

The Board asked Mr. McAfee about any concerns he might have in returning to the community. Mr. McAfee knows that he will face challenges, but said he does not foresee any obstacles that he would not be able to overcome. The Board noted Mr. McAfee's strong network of supporters and asked how he planned to utilize their support, if granted parole. Mr.

McAfee stated that he is no longer afraid to ask for help and realizes that he cannot do everything on his own. Mr. McAfee said that his supporters have his "best interests at heart" and, in addition, plans to continue working with a therapist in order to maintain another support system. In 2012, Mr. McAfee obtained his barber's license and has been working as an assistant barber instructor for almost five years. He also works in the correctional facility's gym. When asked about his long-term goals, Mr. McAfee said that he received a job offer, if paroled, and plans to eventually earn enough money for his own barber shop.

Mr. McAfee had many supporters at his hearing. The Board considered oral testimony from Mr. McAfee's mother, sister, and counselor Franciscan Brother Paul O'Keeffe (a licensed clinical social worker), all of whom expressed support for his parole. Kimberly Mortimer, a mental health clinician trained in the field of forensics, discussed her findings after conducting a psychosocial evaluation of Mr. McAfee. The Board also received numerous letters in support of parole. Suffolk County District Attorney Daniel F. Conley and Boston Police Commissioner William B. Evans submitted letters in opposition to parole.

III. DECISION

Mr. McAfee has served 21 years in prison. While incarcerated, he has fully availed himself to rehabilitation and took the recommendations of the Board seriously. The Board is of the opinion that Mr. McAfee has demonstrated rehabilitative progress and, consequently, has acquired the tools and skills that will assist him in a successful transition from incarceration. In forming this opinion, the Board has taken into consideration Mr. McAfee's 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. McAfee's risk of recidivism. 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 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 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.

After applying this appropriately high standard to the circumstances of Mr. McAfee's case, the Board is of the unanimous opinion that Mr. McAfee merits parole at this time to sober housing with special conditions and after 6 months in lower security.

SPECIAL CONDITIONS: Waive work for 2 weeks; Must be at home between 10 pm and 6 am or at PO's discretion; Electronic monitoring – GPS 6 months; 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; Must have mental health counseling for transition/adjustment; Residential program - Sober House; Attend AA/NA at least three times/week.

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

12/7/16
Date