



The Commonwealth of Massachusetts
Executive Office of Public Safety and Security

PAROLE BOARD

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RECORD OF DECISION

IN THE MATTER OF

MIGUEL A. RIVERA
W69989

TYPE OF HEARING: **Review Hearing**

DATE OF HEARING: **December 21, 2023**

DATE OF DECISION: **April 9, 2024**

PARTICIPATING BOARD MEMBERS: Edith J. Alexander,¹ Dr. Charlene Bonner, Tonomey Coleman, Sarah B. Coughlin,² Tina M. Hurley, James Kelcourse

VOTE: Parole is denied with a review in two years from the date of the hearing³.

PROCEDURAL HISTORY: On September 25, 2001, in Essex County Superior Court, Miguel A. Rivera pleaded guilty to the second-degree murder of Jason Ford. He was sentenced to life in prison with the possibility of parole. Parole was denied following an initial hearing in 2015. Miguel A. Rivera had postponed his initial hearing twice. He postponed his review hearings in 2018 and 2021. On December 21, 2023, Miguel A. Rivera appeared before the Board for a review hearing. He was represented by Lisa Newman-Polk. The Board's decision fully incorporates, by reference, the entire video recording of Miguel A. Rivera's December 21, 2023 hearing.

STATEMENT OF THE CASE: In December 1999, 17-year-old Miguel A. Rivera was living in Lynn. On the evening of December 3, 1999, Mr. Rivera was socializing with 18-year-old-Jason Ford and a small group of men at the Lynn home of Mr. Ford's uncle. Mr. Rivera had been drinking, smoking marijuana, and using ecstasy. At some point, an argument broke out inside the home. Mr. Ford,

¹ Edith Alexander was not present for the hearing, but she reviewed the video recording of the hearing and the entirety of the file prior to participating in the vote.

² Sarah B. Coughlin was not present for the hearing, but she reviewed the video recording of the hearing and the entirety of the file prior to participating in the vote.

³ One Board member voted to grant parole to a long-term residential program.

Mr. Rivera, and a third male were eventually told to leave and were then locked out of the house. Angry at what had occurred, Mr. Rivera went to his own home, located a short distance away, and retrieved his pistol. Mr. Rivera was aware his pistol was loaded with three rounds of ammunition at the time he returned to the home of Mr. Ford's uncle. Mr. Rivera and Mr. Ford then waited outside for the men they had argued with. At approximately 4:30 am on December 4, 1999, three men exited the home onto the street. During the ensuing confrontation, Mr. Rivera emptied his pistol, firing a total of three times. After firing a warning shot at the three men, Mr. Rivera discharged two more rounds in their direction as they ran from the scene. One of the rounds fired by Mr. Rivera struck Mr. Ford in the back of the head. The other round lodged in a house down the street. None of the men Mr. Rivera had intended to shoot were struck by the gunfire.

Mr. Ford was transported to Salem Hospital, where he remained for two days, eventually succumbing to his wounds on December 6, 1999. Mr. Rivera was arrested at his home by members of the Lynn Police Department within hours of the shooting. Later that day, Mr. Rivera gave a full confession. In his confession and subsequent plea agreement, Mr. Rivera acknowledged having intentionally fired his pistol at the three men he had argued with. He maintained, however, that Mr. Ford's death was accidental. Mr. Rivera's plea was accepted by the Essex Superior Court on a theory of transferred intent.

APPLICABLE STANDARD: Parole "permits 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 incarcerated individual'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 incarcerated individual'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 incarcerated individual at the time of the offense, the criminal record, the institutional record, the incarcerated individual'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. Rivera has a lengthy history of disciplinary reports, including discipline for violence and, specifically, for assaults resulting in injuries. His LS-CMI risk level is high. He recently re-engaged in the disassociation process with the DOC. Mr. Rivera has a long history of substance use, including use of substances while incarcerated. He has recently connected with medical supports to prescribe medications. The Board reviewed the letter submitted by four Board-certified physicians regarding substance use disorders and fundamental components of recovery. The Board also considered the psychological evaluation of Dr. Katherine Herzog and her opinion that Mr. Rivera's substance use problems require proper treatment. The Board recognizes Mr. Rivera recently entered into treatment, including medication for opioid use disorder (MOUD) through Spectrum. The Board finds that Mr. Rivera will benefit from a period of stabilization as he utilizes treatment and programming. The Board also encourages Mr. Rivera to explore the relationship between mental health, trauma, and substance use.

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