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

**PAROLE BOARD**

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Paul Treseler  
Chairperson

Michael J. Callahan  
Executive Director

**DECISION**

**IN THE MATTER OF**

**MIGUEL ANGEL RIVERA**

**W69989**

**TYPE OF HEARING:** Initial Hearing

**DATE OF HEARING:** September 29, 2015

**DATE OF DECISION:** January 14, 2016

**PARTICIPATING BOARD MEMBERS:** Paul M. Treseler, Dr. Charlene Bonner, Sheila Dupre, Tonomey Coleman, Ina Howard-Hogan, 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 not a suitable candidate for parole. Parole is denied with a review scheduled in three years from the date of the hearing.

**I. STATEMENT OF THE CASE**

On September 25, 2001 in Essex County Superior Court, Miguel Angel Rivera pled guilty to the second degree murder of Jason Ford. Subsequently he was sentenced to life in prison, with the possibility of parole. Mr. Rivera is currently 33 years old. At the time of Mr. Ford's murder, Mr. Rivera was 17 years old.

During December of 1999, Mr. Rivera was living in Lynn, Massachusetts. On the evening prior to Mr. Ford's death, which occurred in the early morning hours of December 4<sup>th</sup>, Mr. Rivera and Mr. Ford were socializing with a small group of men at the home of Mr. Ford's uncle, in Lynn. Mr. Rivera had been drinking, smoking marijuana and using ecstasy during the evening of December 3<sup>rd</sup>. At some point an argument broke out inside the home. Mr. Ford, Mr. Rivera, and a third male were eventually told to leave and were 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, 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 away 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 the Salem Hospital where he lingered for two days, eventually succumbing to his wounds on December 6<sup>th</sup>. 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 whom he had argued with, but maintained that Mr. Ford's death was accidental. Mr. Rivera's plea was accepted by the Essex Superior Court on a theory of transferred intent.

## **II. PAROLE HEARING ON SEPTEMBER 29, 2015**

Mr. Rivera came before the Parole Board on September 29, 2015 for an initial parole hearing. Mr. Rivera was first eligible for Parole in December of 2014. Mr. Rivera, however, was unavailable for an appearance before the Board until July of 2015. Prior to that time, Mr. Rivera was incarcerated in an out of state federal facility that he had been transferred to in 2009. Mr. Rivera's initial parole hearing was postponed in June and August of 2015, at his request. Mr. Rivera was represented by Attorneys Patricia Garin and Rebecca Shapiro during his appearance before the Board.

Mr. Rivera gave an opening statement to the Board, in which he apologized for Mr. Ford's murder and took responsibility for the effect of his actions on Mr. Ford's family and the community. During the course of the hearing, he spoke about the night of the murder. According to Mr. Rivera, he had been driving around Boston during the day leading up to the murder. At some point he received a telephone call from his friend, Mr. Ford, who invited him to come to his uncle's home in Lynn. Mr. Rivera arrived at the residence later that evening where he and Mr. Ford socialized with a few other male individuals. Mr. Rivera acknowledged drinking, smoking marijuana and ingesting ecstasy upon his arrival at the home. Mr. Rivera eventually passed out on the couch.

Subsequently, he was awoken to the sound of Mr. Ford banging on the door and yelling to be let into the home. At that time, Mr. Rivera noticed there were other males in the home, who had not been present earlier in the evening. Mr. Rivera and one of these males became involved in a verbal altercation, after the individual made a comment directed at Mr. Ford's attempts to gain entry to the home. As a result of this argument, Mr. Rivera was told to leave and was locked out of the house. In the hallway, Mr. Rivera saw Mr. Ford and another companion. In describing to the Board the deep anger he felt when he was kicked out of the house, Mr. Rivera stated "I was highly upset. I felt disrespected by this individual." Mr. Rivera acknowledged it was his idea to retrieve his pistol. According to Mr. Rivera he had never fired the pistol before but he was aware it was loaded at the time he retrieved it.

When he returned to the scene, Mr. Rivera and Mr. Ford confronted the men as they were leaving the house. Although he claimed to have never fired the pistol before, Mr. Rivera



described to the Board, in detail, how he removed the safety mechanism, chambered a round and aimed the pistol at one of the men's chest. Mr. Rivera then fired a warning shot into the ground. Noticing Mr. Ford had fallen to the ground, Mr. Rivera chased after the men as they fled the scene, firing two more rounds in their direction. When he returned, Mr. Rivera realized Mr. Ford had been shot. During the hearing, Mr. Rivera maintained the shooting was accidental.

Over the course of the hearing, Mr. Rivera expressed his belief that he was rehabilitated. Mr. Rivera described the benefits he has experienced from participating in a variety of programs during his incarceration. The Board received documentation of these programs and heard testimony in support of Mr. Rivera's release. Mr. Rivera acknowledged having no prior work experience and struggling to attain his General Educational Development Certificate. Mr. Rivera also described his involvement in selling drugs, prior to Mr. Ford's murder. According to Mr. Rivera, it was his involvement in the drug trade that led him to purchase the firearm used in Mr. Ford's murder.

When questioned about his behavior during his incarceration, Mr. Rivera acknowledged being a high ranking member of a gang. According to Mr. Rivera he joined the gang after Mr. Ford's murder, during his pre-trial detention. At the time, he claimed to be under the mistaken impression that the gang was a social organization. Despite acknowledging his awareness of the gang's association with violence, Mr. Rivera described his assent to a leadership position, while he was incarcerated at MCI-Cedar Junction. According to Mr. Rivera there were 60 fellow gang members under his control. During this time he also maintained contact with members involved in gang activities in the community and made efforts to organize a state wide election of gang leadership. In addition to recognizing a disciplinary report for concealing a dangerous weapon in his cell, Mr. Rivera further acknowledged having personally ordered violent attacks on other inmates by gang members under his control.

When questioned about his transfer to an out of state federal facility in 2009, Mr. Rivera acknowledged the basis for the transfer was the significant influence he exercised in the gang and the disruption the gang had caused at his correctional institution. Despite this extensive contact and involvement with the gang, including numerous tattoos, Mr. Rivera claimed to be inactive and expressed his willingness and desire to renounce his membership with the gang. In a letter dated September 23, 2015, less than one week prior to the date of his appearance before the Board, Mr. Rivera renounced his membership in the gang. According to Mr. Rivera, this was his first chance to do so, as he alleged there was no opportunity for renunciation in the federal prison system.

### **III. DECISION**

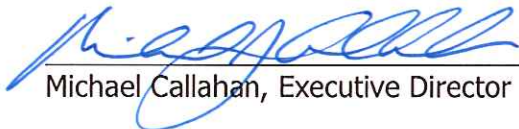
The Board is of the opinion that Mr. Rivera has not demonstrated a level of rehabilitative progress that would make his release compatible with the welfare of society. The Board believes a longer period of positive institutional adjustment and programming, including job skills training and obtaining a General Educational Development Certificate would be beneficial to Mr. Rivera's rehabilitation. The Board also encourages Mr. Rivera to stay discipline free and to maintain his renunciation of membership in the gang for a sustained period of time.

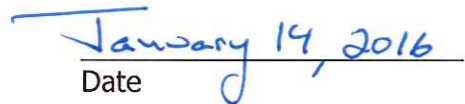
The applicable standard used by the Board to assess a candidate for parole is: "Parole Board Members shall only grant a parole permit if they are of the opinion that there is a reasonable probability that, if such offender is released, the offender will live and remain at liberty without violating the 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 the parole candidate, who was a juvenile at the time they committed murder, has "a real chance to demonstrate maturity and rehabilitation". 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". The Board also recognizes the petitioner's right to be represented by counsel during his appearance before the Board. [Citations and quotations omitted] *Diatchenko v. District Attorney for the Suffolk District*, 471 Mass. 12, 30 (2015); See also *Commonwealth v. Okoro*, 471 Mass. 51 (2015).

After applying this standard to the circumstances of Mr. Rivera's case, the Board is of the unanimous opinion that Mr. Rivera is not yet rehabilitated and his release is not compatible with the welfare of society. Mr. Rivera, therefore, does not merit parole at this time. Mr. Rivera's next appearance before the Board will take place in three years from the date of the hearing related to this decision. During the interim, the Board encourages Mr. Rivera to continue working towards 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.*

  
Michael Callahan, Executive Director

  
Date