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Paul M. Treseler
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DECISION

IN THE MATTER OF

NEIL NILAND

W58721

TYPE OF HEARING: Review Hearing

DATE OF HEARING: August 23, 2016

DATE OF DECISION: February 2, 2017

PARTICIPATING BOARD MEMBERS: Paul M. Treseler, 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 that the inmate is not a suitable candidate for parole.¹ Parole is denied with a review scheduled in two years from the date of the hearing.

I. STATEMENT OF THE CASE

On May 31, 1995, in Middlesex Superior Court, Neil Niland was found guilty of second degree murder following a jury trial and was sentenced to life in prison with the possibility of parole.² The victim of the offense was 17-year-old Melissa Herlihy. The statement of facts is derived principally from a Massachusetts Appeals Court decision affirming his conviction. *Niland v. Commonwealth of Massachusetts*, 45. Mass.App.Ct. 526 (1998).

¹ Five Members of the Parole Board voted to schedule a review hearing in two years. One Board Member voted to reserve upon successful completion of 18 months in lower security, followed by a long term residential program.

² Mr. Niland was also charged and found guilty of unlawful possession of a rifle pursuant to G.L. c. 269, § 10(h). The trial judge placed that conviction on file with Mr. Niland's consent and was not under appeal.

On June 26, 1994, at approximately 2:05 a.m., Mr. Niland intentionally shot Ms. Herlihy in the face (at close range) with a single round fired from a .22 caliber rifle, while she lay in bed sleeping. The couple's infant daughter lay in her cradle a few feet from the bed at the time of the shooting. Mr. Niland and Ms. Herlihy had argued twice during that evening. Mr. Niland said he had spent the day before, and into that night, drinking alcohol and using cocaine.

After receiving 911 calls from both Mr. Niland and one of his sisters, Medford police responded along with emergency medical personnel. Ms. Herlihy was removed from the apartment and taken to Mass. General Hospital. Ms. Herlihy never regained consciousness and, on June 29, 1994, died as a result of the gunshot wound to her head inflicted by Mr. Niland. Mr. Niland offered police officers three versions of the shooting that were not only implausible, but also inconsistent with the physical evidence.

II. PAROLE HEARING ON AUGUST 23, 2016

Mr. Niland, now 43-years-old, appeared before the Parole Board for a review hearing on August 23, 2016. This was his third appearance before the Board, having been denied parole in 2009 and 2014. In his opening statement, Mr. Niland expressed his sorrow and accepted responsibility for the actions that caused the death of Ms. Herlihy.

Mr. Niland described his upbringing as being among the youngest of 12 children that were raised by alcoholic parents. He said that although there was no physical abuse by his parents, there was little guidance or support, as his parents were largely absent from his life. He dropped out of school in the 11th grade, after substance abuse had become a part of his life. He told the Board he began drinking at age 12 and smoking marijuana at age 13 or 14. He had a steady cocaine habit by the time he was 17-years-old. At age 18, he began dating 15-year-old Melissa Herlihy, and she became pregnant with their child a year later. He detailed a troubled relationship with Ms. Herlihy, especially after she became pregnant and they had moved in together. He admitted to the Board that he had other girlfriends, but said that he always denied his infidelity to Ms. Herlihy. He was going out most nights, drinking and using cocaine. He was also stealing money from one of his two jobs to feed his cocaine habit. He said that he was terrified of becoming a father and did not want that responsibility. He told the Board that "everything in my life at that time was focused on myself – I did not care about anything, I just wanted to go out and have a good time."

Board Members noted that it took Mr. Niland years to come to terms with the fact that the shooting of Ms. Herlihy was not an accident. The Board pointed out that it was not until his last hearing in 2014, did Mr. Niland finally acknowledge that Ms. Herlihy's death was not an "accidental shooting," but rather, the result of his purposeful actions of taking the gun out, aiming it at her head, and pulling the trigger in close range of her face. When asked by a Board Member what caused him to pull out the gun and point it at the victim, he replied, "I wasn't planning to kill or shoot her, I just shot it...I wasn't thinking when I pulled the trigger." He said that he was high on cocaine and alcohol, and had been drinking and drugging for the entire day and night prior to the shooting. Mr. Niland admitted that after the shooting, none of the versions of events he told police were true.

Board Members expressed their difficulty in understanding why Mr. Niland could not directly answer the question of why he pulled out a gun and shot the victim in the face, several feet from their sleeping infant. The Board expressed their concern with Mr. Niland trying to reconcile his admission to shooting the gun in close range of the victim's face, but without any intent to kill her. The Board also expressed concern with Mr. Niland's failure to adequately address the aspect of domestic violence in his relationship with the victim, as well as his inability to learn how to be in a healthy relationship. Mr. Niland acknowledged that during the first decade of his incarceration, he did not want to change or participate in any programming. He told the Board that he expected to spend the rest of his life in prison. His attitude changed when he began to participate in programs, like Jericho Circle, that helped him see he could be rehabilitated by utilizing institutional programming. The Board acknowledged his participation in programming that addressed substance abuse issues, as well as the start of the rehabilitative process of understanding why he murdered his girlfriend. The Board Members, however, questioned Mr. Niland on his two most recent disciplinary reports. In addition, they noted that he received a disciplinary report just prior to his last two parole hearings.

Mr. Niland had multiple supporters at his hearing. The Board considered oral testimony from two of his brothers, both of whom expressed support for his parole. The Board considered testimony in opposition to parole from the victim's sister, as well as from Middlesex County Assistant District Attorney Adrienne Lynch.

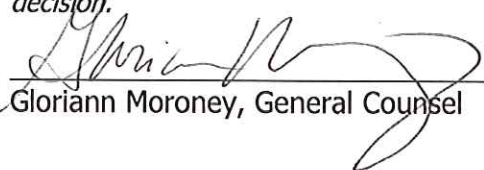
III. DECISION

The Board is of the opinion that Mr. Niland has not yet demonstrated a level of rehabilitative progress that would make his release compatible with the welfare of society. Despite his continued program involvement, Mr. Niland has yet to fully comprehend and articulate why he committed this violent offense.

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. Niland'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. Niland's risk of recidivism. After applying this standard to Mr. Niland's case, the Board is of the majority opinion that Mr. Niland is not yet rehabilitated and, therefore, does not merit parole at this time.

Mr. Niland's next appearance before the Board will take place in two years from the date of this hearing. During the interim, Mr. Niland should continue to engage in treatment and programming, as well as maintain a positive adjustment.

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

2/2/17
Date