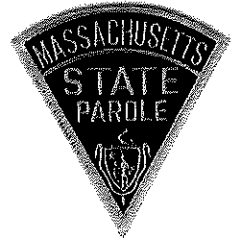


The Commonwealth of Massachusetts
Executive Office of Public Safety and Security



PAROLE BOARD

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DECISION

IN THE MATTER OF

NEIL NILAND

W58721

TYPE OF HEARING: Review Hearing

DATE OF HEARING: August 28, 2018

DATE OF DECISION: June 12, 2019

PARTICIPATING BOARD MEMBERS: Paul M. Treseler, Dr. Charlene Bonner, Tonomey Coleman, Sheila Dupre, Tina Hurley, Lucy Soto-Abbe, 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 by unanimous vote that the inmate is not a suitable candidate for parole. Parole is denied with a review scheduled in four 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.¹ 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 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 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 28, 2018

Neil Niland, now 45-years-old, appeared before the Parole Board for his review hearing on August 28, 2018. He was not represented by counsel. Mr. Niland was denied parole after his initial hearing in 2009, and after his review hearings in 2014 and 2016. In his opening statement to the Board, Mr. Niland offered an apology to the victim's family for taking her life and for the pain and suffering he caused them. In discussing the governing offense, Mr. Niland did not dispute the facts of the case. Board Members asked Mr. Niland to reflect and identify the precipitant as to why he murdered the victim as she slept. Mr. Niland had been in a relationship with Ms. Herlihy for over two years, and she had recently given birth to their daughter. Mr. Niland informed the Board that at the time of the offense, he was abusing alcohol and cocaine and had begun to feel overwhelmed with his current situation. As he watched her sleep, he pointed the firearm and fired one shot at her head. He believed killing her was his only way out. Mr. Niland also acknowledged that he was often mentally abusive to Ms. Herlihy, deflecting his problems onto her.

Mr. Niland is currently incarcerated at MCI-Norfolk, where he works as a houseman in the Graduate Maintenance Program. The Board questioned Mr. Niland as to his progress in rehabilitation since his commitment, as well as his level of insight and candor, in order to evaluate his parole suitability. Since his last parole hearing, he completed the Correctional Recovery Academy and Countdown to Freedom. He continues to attend Narcotics Anonymous and Alcoholics Anonymous on a regular basis. However, he has incurred several disciplinary infractions, including a positive test for the unauthorized use of drugs.

Mr. Niland had supporters at his hearing, and letters of support were submitted on his behalf. The Board considered oral testimony from two of Mr. Niland's brothers, both of whom expressed strong support for parole. Several family members and friends of Ms. Herlihy attended the hearing. Ms. Herlihy's sister spoke in opposition to parole. Middlesex County Assistant District Attorney Caitlin Gemmell also spoke in opposition to parole.

III. DECISION

The Board is of the opinion that Neil Niland has not demonstrated a level of rehabilitative progress that would make his release compatible with the welfare of society. Mr. Niland shot his 17-year-old girlfriend as she slept. Although he has made strides in his rehabilitation, he continues to incur concerning disciplinary infractions.

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. The Board also considered a risk and needs assessment, and whether risk reduction programs could effectively minimize Mr. Niland's risk of recidivism. The Board considered Mr. Niland's institutional behavior, as well as his participation in available work, educational, and treatment programs during the period of incarceration. After applying this standard to the circumstances of Mr. Niland's case, the Board is of the opinion that Neil Niland is not rehabilitated and, therefore, does not merit parole at this time.

Mr. Niland's next appearance before the Board will take place in four years from the date of this hearing. During the interim, the Board encourages Mr. Niland 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.



Pamela Murphy, General Counsel



Date