



Deval L. Patrick
Governor

Andrea J. Cabral
Secretary

The Commonwealth of Massachusetts
Executive Office of Public Safety

PAROLE BOARD

12 Mercer Road
Natick, Massachusetts 01760

Telephone # (508) 650-4500
Facsimile # (508) 650-4599



Charlene Bonner
Chairperson

Janis DiLoreto Smith
Executive Director

DECISION

IN THE MATTER OF

NEIL NILAND

W58721

TYPE OF HEARING: Review Hearing

DATE OF HEARING: August 5, 2014

DATE OF DECISION: December 2, 2014

PARTICIPATING BOARD MEMBERS: Tonomey Coleman, Sheila Dupre, Ina Howard-Hogan, Tina Hurley, Lucy Soto-Abbe, Josh Wall

DECISION OF THE BOARD: After careful consideration of all relevant facts, including the nature of the underlying offense, institutional record, the testimony of the inmate at the hearing, and the views of the public as expressed at the hearing or in written submissions to the Board, we conclude by a unanimous vote that the inmate is not a suitable candidate for parole at this time. Parole is denied with a review 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.¹ 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).

By the end of May of 1994, Niland, then age 20, shared a three bedroom apartment with his two sisters. The victim, Melissa Herlihy, age 17, moved in with Niland shortly after the birth of their daughter who was born in April of that year.² Their relationship was marked by

¹ 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 Niland's consent, and was not under appeal.

² On June 27, 1994, a civil restraining order was entered against Niland on behalf of the daughter under G.L. c. 209A. The order expired in July of that year.

frequent arguments concerning Niland's drinking and drug use and his unwillingness or inability to act as a responsible father. Niland unlawfully possessed a .22 caliber semiautomatic rifle, which was the weapon he would eventually use to kill Herlihy. Prior to the murder, Niland would point the rifle at Herlihy's face in anger, in the presence of others, and say, "Bang, you're dead." Also, on at least one occasion Niland fired the rifle in the apartment by shooting into a mattress pad.

On June 26, 1994 at approximately 2:05 a.m., while Herlihy lay in bed sleeping, Niland intentionally shot her in the face, at close range, with a single round fired from the .22 caliber rifle. The couple's two and one half month old infant lay in her cradle a few feet from the bed at the time of the shooting. Niland and Herlihy had argued twice during that evening. During his August 11, 2009 parole hearing, which resulted in a denial, the Board noted that Niland "told the Parole Board that he had spent all that day, into the night, drinking alcohol and using cocaine."

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

II. INSTITUTIONAL HISTORY

Niland has served 20 years of a life sentence and has maintained a moderate record within the correctional system, having accrued nine disciplinary reports. His last disciplinary infraction was issued on January 29, 2014, for the use of Buprenorphine³ resulting in placement in the Special Management Unit and termination from his employment for a period of six months. Prior disciplinary infractions include disruptive behavior, possession of contraband, and refusing a direct order. There are no returns to higher custody on record.

In addition to attending Alcoholics and Narcotics Anonymous meetings, Niland has participated in numerous organized programming since his last hearing which include: Emotional Awareness in 2012; he completed several cycles of Alternatives to Violence, including functioning as a coordinator in 2010; ABLE Minds in 2011; Jericho Circle in 2008; and Culinary Arts in 2010. In addition, Niland completed the Correctional Recovery Academy in 2007 and remains on the wait list for the welding program.

He began working at MCI-Concord as a plumber in 1995 and has maintained employment since with the exception of being terminated as a gym worker as a result of his last disciplinary infraction. His institutional employment includes janitorial work as well as a baking tutor in the culinary arts program. His employment evaluations have been and remain positive.

³ Buprenorphine is an opioid medication used to treat opioid addiction when used appropriately.

III. PAROLE HEARING ON AUGUST 5, 2014

On Tuesday, August 5, 2014, Niland appeared before the Massachusetts Parole Board for a review hearing on the second degree life sentence he is currently serving at MCI Norfolk. This is Niland's second appearance before the Board. His initial appearance occurred in August of 2009, at which time his parole was denied with a five year review date. In its 2009 decision, the Board concluded Niland had not accepted responsibility for the murder of Melissa Herlihy as he had changed his version of the offense on at least two occasions and that his program involvement began shortly before his parole hearing.

Niland is serving his first adult incarceration and has a minimal record that commenced in 1994. His criminal history prior to the murder consisted of arraignments for the following: possession of a dangerous weapon, assault and battery, and leaving the scene and property damage. All of these charges were dismissed.

Niland seeks a parole to the Answer House, a long term residential program in South Boston after a year in a minimum security facility. He will have employment opportunities through family members and intends to join the Plumbers Union and seek employment as a plumber. He will continue to engage in Narcotics and Alcoholics Anonymous and participate in a men's group and individual counseling. Niland does have a positive support network in the community.

Niland provided an opening statement to the Board asserting that he accepted full responsibility for his actions and understands the gravity of what he did when he shot Herlihy, the mother of his child, at close range as she slept. He now recognizes the pain he has inflicted on Herlihy's family, stating "she never harmed a soul, and because of me and only because of me she is gone."

Niland described his behavior at the time of the murder as selfish and impulsive; not caring about anyone or anything. Niland's impulsivity was exhibited on prior occasions when he fired the rifle into the floor of his apartment and at the stereo, rendering it inoperable. He was drinking and using drugs daily, and did not perceive his behavior as harmful. He recognizes today that he was masking his problems, which included the pressure of being a young father with financial hardships, through the abuse of alcohol and drugs.

Middlesex Assistant District Attorney Adrienne Lynch and Ms. Herlihy's sister spoke in opposition to Niland's petition for parole. Several family members attended the hearing, two of whom spoke in support of his petition for parole. In closing, Niland stated he was under a lot of stress and was filled with fear. He never harbored resentment towards Herlihy but, instead, resented himself.

IV. DECISION

Neil Niland, now 41 years of age, has been incarcerated for the past 20 years and did not embark on the path of rehabilitation until 2007. During the hearing, Niland attributed his delay to the fact that he was depressed; he didn't want to address anything and did not think he could talk openly about his crime. Although he has participated in numerous programs, Niland could not clearly articulate what precipitated pointing a rifle at the victim at close range

and pulling the trigger. Niland needs to further understand the circumstances that led him to commit this hostile and violent act. He was also encouraged by the Parole Board to invest in programming to address his substance abuse issues.

The standard we apply in assessing candidates for parole is set out in 120 C.M.R. 300.04, which provides that, "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." Applying that appropriately high standard here, it is the unanimous opinion of the Board that Mr. Niland does not merit parole at this time. Parole is denied with a review in two years from the date of the hearing.

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.


Caitlin E. Casey, Chief of Staff

12/2/14
Date