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DECISION

IN THE MATTER OF

PATRICK NERETTE
W49164

TYPE OF HEARING: Initial Hearing
DATE OF HEARING: July 30, 2015
DATE OF DECISION: November 4, 2015

PARTICIPATING BOARD MEMBERS: Charlene Bonner, Tonomey Coleman, Sheila Dupre, Lee Gartenberg, 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 the 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 in five years from the date of the hearing.

I. STATEMENT OF THE CASE

On March 13, 1990, Patrick Nerette, age 17, and Michael Adams, age 17, shot and killed 57-year-old liquor store clerk Jeanne Stranberg during the commission of an armed robbery. On December 5, 1990, a Suffolk Superior Court jury found Nerette guilty of first degree murder and sentenced him to life in prison without the possibility of parole. The jury also found Nerette guilty of armed robbery and unlawfully carrying a firearm, and the court sentenced him to serve concurrent sentences of 15 to 20 years, and 2½ to 3 years, respectively.¹ Nerette subsequently appealed his conviction and was granted a new jury trial.² After his re-trial, Nerette was again convicted of the same charges, including first degree murder, and was sentenced to life without

¹ Nerette and his co-defendant were tried together, over their objection, and both were found guilty of first degree murder after the 1990 trial.

² The Supreme Judicial Court overturned both Nerette and Adams' convictions, ruling that the joint trial was a constitutional violation under the circumstances. *Commonwealth v. Adams*, 416 Mass. 55 (1993). Nerette was tried separately on retrial.

the possibility of parole.³ On appeal, the Supreme Judicial Court vacated the armed robbery conviction as duplicative, but affirmed the murder and firearms convictions.⁴

On December 24, 2013, the Massachusetts Supreme Judicial Court (SJC) issued a decision (*Diatchenko v. District Attorney for the Suffolk District & Others*, 466 Mass. 655 (2013)) in which the Court determined that the statutory provisions mandating life without the possibility of parole were invalid as applied to juveniles convicted of first degree murder, such as Nerette. The SJC ordered that affected inmates receive a parole hearing after serving 15 years. Accordingly, Nerette became eligible for parole and is now before the Board for his initial parole hearing. Nerette is currently serving his sentence at a Maryland Division of Correction institution, where he has been located since November 2009. Nerette also has an open and active INS detainer to Haiti lodged against him.

The following information concerning the offense is taken from Comm. v. Nerette, 432 Mass. 534 (2000):

On March 13, 1990, 57-year-old Jeanne Stranberg was killed by a gunshot wound to her head while working as a liquor store clerk in Dorchester. Police officers on patrol saw Adams running out of the store. When approached by the officers, Adams ran and then dropped a bag holding a container of coins and a few dollar bills. One of the officers saw Adams reach into his pants and pull out what appeared to be weapon. After a chase, Adams was caught and arrested. The weapon Adams had been carrying was a .22 caliber semiautomatic rifle with its stock cut off and its barrel shortened. Adams confessed his involvement in the crime, but identified Nerette as the mastermind of the venture. Two days later, police found Nerette hiding in a closet in a Dorchester apartment and was arrested.

After his arrest, Nerette gave the police a statement in which he admitted that he had gone with Adams to hold up the store. He said that he (Nerette) had loaded the rifle and had given it to Adams before they reached the store, but that Adams was the one holding the rifle when it fired and killed the victim. Nerette also admitted that he had tried to open the cash register, but could not do so. He stated that after Adams shot the victim, both he and Adams ran from the store. At the time of the crime, Nerette was on probation for larceny from a person and assault with a dangerous weapon. He had been convicted of those crimes on March 5, 1990, and was on probation for only a week before committing the governing offense.

Nerette has been incarcerated for 25 years. During this period, he has incurred over 40 disciplinary reports and three returns to higher custody. His disciplinary transgressions include fighting, assaulting other inmates, assaulting a correctional officer, insolence, threatening staff, possessing weapons, and possessing homebrew. In 2009, Nerette was transferred to the state of Maryland due to enemy issues in Massachusetts. His last four disciplinary reports were incurred while incarcerated in Maryland and include two incidents for stealing food (2013 and 2012), assaulting another inmate (2011), and possession of a weapon (2011).⁵ Nerette earned

³ On Adams' retrial, a separate jury found Adams guilty of second degree murder, and he was sentenced to life imprisonment with the possibility of parole after serving 15 years. Adams was paroled in 2010, after serving 20 years in prison.

⁴ *Commonwealth v. Nerette*, 432 Mass. 534 (2000).

⁵ Nerette's attorney reported to the Board that as a result of his possession of a weapon disciplinary infraction, Nerette received a six month consecutive Maryland sentence for possessing a weapon in prison.

his GED in 2001, but has not completed any rehabilitative programs in Massachusetts or Maryland to address his causative factors and criminal behavior.

II. PAROLE HEARING ON JULY 30, 2015

Patrick Nerette, now age 43, appeared for his first hearing before the Massachusetts Parole Board on July 30, 2015, having been afforded a hearing as a result of the SJC's decision in *Diatchenko*. He was represented by Attorney Edward Hayden at the hearing. Attorney Hayden submitted a packet and memorandum in support of parole, which included a July 22, 2015 written evaluation of Nerette's emotional state and readiness for parole by Dr. Elizabeth Davis. Attorney Hayden requested that Nerette be paroled to his six month Maryland sentence, and then to the Immigration and Customs Enforcement (ICE) agency for deportation to Haiti.

Nerette told the Board that his actions led to the death of Jeanne Stranberg and that he will have to live with that for the rest of his life. He believes that he now deserves parole because he has an immigration detainer and will be deported back to his home country of Haiti. Given Nerette's young age at the time of the murder, and the parole suitability factors outlined in *Diatchenko* (which ensure that a juvenile offender is afforded a meaningful opportunity for release), the Parole Board was interested in what, if any, developmental or societal issues may have played a role in the commission of the governing crime.

Nerette recounted a background of growing up poor in Haiti and immigrating to the United States at age 15, where he was raised by his paternal grandmother. He was bullied when he entered school in Massachusetts and adjusted poorly. On one occasion, he stabbed a schoolmate who was "picking on" him. He performed terribly in school and dropped out in the eighth grade. He committed crimes and served time within the Department of Youth Services, where he first met his co-defendant, Michael Adams. Prior to the murder, he had committed several robberies and sold crack-cocaine. He was also a member of a local gang and was in the habit of smoking marijuana daily. When asked about the murder, Nerette said that he and Adams had planned to rob the store at a time when Ms. Stranberg was not working, as he and his fellow gang members had liked her because she "was good to them." He learned from a fellow gang member that money was kept in the basement of the store, so Nerette and Adams (who was not a gang member) formed a plan to rob the store. Nerette secured and supplied the loaded rifle to Adams and the plan was for Nerette to enter the store first to see if there were any surveillance cameras inside. However, once he entered the store, he saw Ms. Stranberg and two patrons therein. Before he could return outside to tell Adams, Adams had entered the store and shot Ms. Stranberg. Nerette said that he would not have robbed the store had he known Ms. Stranberg was working, but he also admitted that he made no attempt to stop once Adams entered the store brandishing the shotgun. His explanation for this contradiction is that he "froze." Yet, after Adams shot Ms. Stranberg, Nerette tried to open the cash register. He then fled the store after seeing Ms. Stranberg's body lying on the floor.

Nerette admitted to a troubled institutional adjustment. He recounted an event in 2006, while housed at MCI Walpole, where he stabbed another inmate multiple times with a sharpened piece of plexiglass that he obtained while working in the plate shop. Later, in 2009, after he had served 19 months in disciplinary detention and was transferred to Souza Baranowski Correction Institution (the state's maximum security facility), he was found in possession of another weapon, and subsequently moved out of state to a facility in Maryland.

Nerette admitted that his last disciplinary report for possession of a weapon was in 2011, at age 38, while he was housed at an ultra-maximum security facility in Maryland.

Nerette acknowledged that he has participated in minimal rehabilitative programming to address his criminal and disciplinary history. He complained that there are very limited opportunities for programming in Maryland. Notwithstanding this lack of opportunity, Nerette requested to remain in Maryland (if not paroled) due to enemy issues in Massachusetts. Nerette said that he "acted up" in prison because he is in "a dark place" where there is "no hope." He advocates for parole, regardless of his poor prison record, because he believes he can prove his rehabilitation "on the street." One of Nerette's brothers spoke in support of parole at the hearing. He said that it was his first time seeing Nerette in 10 years, but that housing is available for Nerette in Haiti, if he were to be deported there.

Two people spoke in opposition to parole: the victim's niece and Suffolk County Assistant District Attorney Paul Linn. Both stated that Nerette did nothing to earn parole and is, therefore, not suitable for parole.

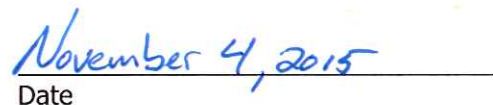
III. DECISION

At age 17, Patrick Nerette was involved in a joint venture to rob a store that resulted in the murder of Jeanne Stranberg. Nerette was involved in gang activity and had demonstrated violent and antisocial behavior prior to the murder. His antisocial, oppositional, and violent behavior has continued throughout his incarceration. Now, at age 43, he has spent over 25 years in prison with little or no rehabilitative programming.

While Nerette's age and development at the time of the crime are important factors to consider in assessing his parole suitability, the most important criteria in the analysis of parole suitability remains whether Nerette meets the legal standard for parole. 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 Patrick Nerette does not merit parole at this time because he is not rehabilitated. The review will be in five years, during which time Nerette should drastically improve his behavior and engage in substantive rehabilitative programming to address substance abuse, anger, violence, and any potential mental health issues that may impair his ability to function as a law abiding member of society.

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 J. Callahan, Executive Director


Date