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Josh Wall
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DECISION

IN THE MATTER OF

PHAI YOU

W59378

TYPE OF HEARING: Review Hearing

DATE OF HEARING: January 7, 2014

DATE OF DECISION: August 19, 2014

PARTICIPATING BOARD MEMBERS: Charlene Bonner, Tonomey Coleman, Sheila Dupre, 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 inmate's testimony at the hearing, 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 four years.

I. STATEMENT OF THE CASE

On October 5, 1995, Phai You ("Mr. You") pleaded guilty in Middlesex Superior Court to the second degree murder of Bunra Oeur, age 20, and received a life sentence. He also pleaded guilty to possession of a firearm, and received a 3 to 5 year sentence, to run concurrent with his life sentence. This is Mr. You's second appearance before the Parole Board, having been denied parole following an initial hearing on January 22, 2009 with a five year review.

Early in the morning of December 26, 1993, there was an altercation inside Clyde's, a billiard hall in Lowell, and then known to Lowell police as a gathering spot for gang members. Mr. You, who was 26 years old and was not drinking, was in Clyde's at the time of the altercation. The altercation involved approximately 15 rival gang members and resulted in head injuries to at least one person. The establishment was closed following this altercation.

Bunra Oeur, who was a member of the "Tiny Rascals Gang" (TRG), remained outside of Clyde's along with three members of the "Asian Boyz" (AB), which included Mr. You and his roommates. Mr. You lived in California prior to relocating to Lowell and was known to California authorities as being deeply involved with the AB gang. Massachusetts officials had arrested him during the summer of 1993 on a warrant from Long Beach, California, alleging that he had stabbed a TRG member.¹

Oeur was intoxicated and began taunting Mr. You and his AB associates. Oeur reportedly announced that he wanted to fight a member of the "Street Boyz" (SB), another gang, or an AB member, one on one. At the time of this incident, the SB and AB were on friendly terms, while the TRG was a rival to both the SB and AB gangs.

Mr. You and those with him told Oeur not to include AB in the fight that took place in Clyde's because they were not involved. Oeur responded that the AB and SB were the same, and that he wanted to fight the leader of the SB. Mr. You, who was sober, then took a .38 caliber revolver from his long overcoat and fired at Oeur from approximately two feet away.

As Oeur fell backwards against the building, Mr. You walked up to him and fired several more shots into his face. Mr. You fired a total of four shots and fled. The autopsy confirmed that Oeur had been shot four times, with two of the shots being in close proximity to the right side of his face. Mr. You fired the remaining shots into Oeur's neck and shoulder.

When police went to his residence to execute an arrest warrant, officers observed Mr. You to be in the rear of the second floor apartment attempting to open two windows and wearing surgical gloves. He was unable to open either window and placed under arrest. Approximately thirty shot gun shells and a front page newspaper article reporting the murder were found in the apartment.

II. INSTITUTIONAL HISTORY

Throughout his incarceration, Mr. You has incurred 19 disciplinary reports, including three since his initial parole hearing. His disciplinary reports include fighting, use of a weapon during a physical altercation, possession of contraband, tattoos, involvement in a Security Threat Group,² un-secure medication, flooding out his cell, and conduct which disrupts. In December 1997, he received a disciplinary report for being an active leader of the "Asian Family/Boyz" gang. Mr. You awaited trial at four different facilities for 647 days. During that time, he was involved in two fights; both resulting in a lock down. While awaiting trial at the Middlesex House of Correction, Mr. You wrote a letter to a fellow gang member referring to a witness as a "snitch" and a "back stabber," and otherwise referred to this witness in a profane, highly derogatory, and threatening manner.

¹ California authorities declined to extradite Mr. You at that time.

² Security Threat Group (STG) is defined as groups, gangs or inmate organizations that have been determined to be acting in concert so as to pose a threat or potential threat to the safety of the public, the staff or the secure orderly operation of an institution or are predatory upon other inmates. Mr. You was deeply involved in the AB gang, and was known to have a four inch tattoo of the letters "AB" on his chest.

In July 1998, Mr. You renounced his gang membership after completing the Security Threat Group Reintegration Program. He has completed multiple rehabilitative and educational programs, including two phases of Alternative to Violence, ABLE Minds, Emotional Awareness, Welding Program, Commercial Driver's License Program, and Jericho Circle. Mr. You is currently working in the Canteen Unit at MCI-Norfolk and participates in Asian Cultural Awareness Committee, Buddhist Zen Studies, Catholic Services and Toastmasters International Program.

III. PAROLE HEARING ON JANUARY 7, 2014

Phai You, age 46, appeared for a review parole hearing on January 7, 2014, after receiving a five year setback subsequent to his initial hearing in 2009. He felt the decision was fair and was denied because "I was not being truthful, didn't address my issues and didn't explain the gang lifestyle...I was making too much excuses." He explained to the Board he has changed "because I know now I am way comfortable with myself, I blame nobody, I'm sorry for taking a life. I've changed because I no longer live that lifestyle anymore of a gang member." Mr. You has been incarcerated for twenty years and as indicated through his disciplinary reports, suggests that he is doing things in his own way regardless of the rules and regulations of the institutions. He stated, "It's a long process, but I can do the work. From now on I will stay out of trouble and remain ticket free. I made a vow to myself on the day of the last ticket."

Mr. You stated he and his family emigrated from Cambodia to the United States when he was seven years old. He described how they lived in refugee camps until they were relocated and settled in Utah. They later moved to Long Beach, California. He reported being traumatized by the effects of the violence witnessed in Cambodia and described his adjustment in Long Beach as "not good" due to the neighborhoods being "ravaged by gangs and a lot of violence and I was tortured and abused by the Spanish kids."

Mr. You became a member of the Asian Boyz gang at age sixteen and immersed himself in criminal activity. He reported stealing and robbing when he needed money. "I liked to steal," he said. His criminal history in California consists of assault, weapons possession, robbery, and burglary. He served two short sentences in California for misdemeanor charges and later lived at a Buddhist Temple. Although Mr. You lived a criminal lifestyle, he reported he graduated from high school in 1987, maintained employment, got married and briefly attended Long Beach Community College. Mr. You stated he moved to Lowell because he wanted to "leave the gang behind and find a job"; however, he later admitted "I had a warrant that's why I came here. I stabbed someone. I believe he was a gang member."

When questioned initially about the California warrant, Mr. You claimed it was for witness intimidation. When asked to elaborate, however, Mr. You claimed he did not say he stabbed someone, as if he did not commit a violent act. Mr. You reported he was in Massachusetts for six to seven months when he killed Bunra Oeur. He found work through a temporary staffing agency but had not obtained steady work. He was laid off for two months prior to the offense and continued to "drink and party." While Mr. You admitted that he stole money, committed robberies, broke into homes and used a gun to forcefully take victims' property, it was only after Board Members confronted him about his criminal history. When asked by Board Members why he was not candid, he stated "I'm sorry, I didn't understand the question."

Mr. You was asked to provide further details of the governing offense, which he described as, "I visited Clyde's pool hall/bar two to three times, a lot of people hung out there. Lowell gang members hung out there as well. I never had any problems. I had a problem prior to going to the bar. My friend Sammy didn't want to have any problems. 'Flat Top' was a member of Tiny Rascals Gang. I was a member of Asian Boyz Gang." Mr. You stated the fight was gang related over territory. He said, "At that time I lost my temper and shot the gun, a friend of mine gave it to me. I always carried a gun. I had that gun one month prior." Mr. You described shooting Oeur four times. "I was mad, Sammy was trying to help his friend and Flat Top cursed at Sammy, so I got mad. I lost my temper that day. It comes from the issues with my father, resentment because of what happened in Utah with my mom." He stated "my family in California did not know what was going on here. I lost contact with my family." Mr. You stated he never knew or learned anything about Mr. Oeur. Mr. You stated he pleaded guilty to the murder of Mr. Oeur and decided to do so while he awaited trial at the Cambridge Jail because he had to "man up and take responsibility." Mr. You claimed he received a letter from Mr. Oeur's brother forgiving him for the murder.

When asked to further elaborate about his gang involvement in California, Mr. You stated he was the "enforcer" and "third in charge." Although Mr. You was involved in gang incidents during his incarceration, he stated he had no gang issues in prison and renounced from the gangs. He described the tattoos of stars on his shoulder stating, "It symbolizes I support the military. I respect all generals." He described the tattoo of "ARZ" as "Asian Family" and received it during his incarceration. While Mr. You has a marijuana tattoo, which he described as "gang related," he denied using marijuana. Later in the hearing he stated, "I'm sorry for not telling the Board about my substance abuse issues."

Mr. You was asked to depict his role in the institutional gangs and stated he was in it for "protection, but there was no violence." Mr. You further stated that he is "labeled" at the institution as a gang member, however he stated he merely "helped my friends, the Asian inmates, if they needed food or money I would help them, the gang was established to protect our own, we would take care of it." Initially, Mr. You denied any gang involvement and attempted to withhold it rather than discuss it with the Board. He stated, "I didn't understand the question."

Mr. You reported attending counseling since his initial incarceration. "If I need counseling I will attend counseling," and described the Alternatives to Violence Program as most significant to his rehabilitation as "it helped me solve conflict resolution." He stated the Buddhist faith has helped him address his issues with violence. Mr. You asked to parole to an Immigration and Customs Enforcement (ICE) detainer. He stated he has requested help from re-entry groups in Cambodia and his family has made contact with Cambodian re-entry groups and relatives. Mr. You described his sister as the one person who supports him the most. She resides in Las Vegas and he maintains contact with her through letters. He has no contact with his parents or family members in Cambodia.


Mr. You had no supporters in attendance and stated "I didn't ask Catholic community to come here to support my parole"; however "I asked the Buddhist community to come but they are working and busy so they are not here." Middlesex County Assistant District Attorney Doug Cannon spoke in opposition of parole. Three members of Mr. Oeur's family were present at the hearing.

IV. DECISION

Phai You is seeking a parole to an ICE detainer with a deportation order to Cambodia. Mr. You has a long history of gang activity and violent behavior, including multiple robberies, stabbings, and the murder of Bunra Oeur. After stabbing another individual in California he fled to Lowell, Massachusetts, where he resided for six to seven months prior to murdering Mr. Oeur. Throughout the hearing, Mr. You was not forthcoming about his prior criminal history, substance abuse issues and gang activity, both institutionally and in the community. Mr. You needs to be more forthcoming about his gang activity in the prisons, California, and Massachusetts. It is evident that Mr. You needs further rehabilitation as he lacks insight into his violent criminal history and antisocial behavior. His lack of candor is an ongoing display of criminal thinking.

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. You is not a suitable candidate for parole because he is not rehabilitated. The period of review will be in four years, during which time Mr. You should maintain positive institutional behavior and make an active commitment to his rehabilitation and address issues of substance abuse, criminal thinking, violence, anger, anti-social behavior, lack of empathy, and lack of candor.

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.


Janis DiLoreto Smith, General Counsel

8/19/14
Date