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DECISION

IN THE MATTER OF

PHAIVANH INTHABANE

W66292

TYPE OF HEARING: Review Hearing

DATE OF HEARING: August 23, 2016

DATE OF DECISION: January 9, 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 by unanimous vote that the inmate is not a suitable candidate for parole. Parole is denied with a review scheduled in two years from the date of the hearing.

I. STATEMENT OF THE CASE

On March 30, 1999, in Middlesex Superior Court, Phaivanh Inthabane pled guilty to the second degree murder of 17-year-old Joshua Molina. Mr. Inthabane was sentenced to life in prison with the possibility of parole, after serving 15 years. Mr. Inthabane was 17-years-old at the time of the murder.

Phaivanh Inthabane was a member of a prominent gang and, acting with other gang members, beat Joshua Molina to death on November 20, 1997, on Bridge Street in Lowell. At around 9:30 p.m. that night, Mr. Inthabane and fellow gang members were traveling in two cars looking for rival gang members. Mr. Inthabane was driving one of the cars. Viengsaymay Chaleumphong (a co-defendant) was driving another car that pulled alongside three Hispanic youths walking together on the sidewalk: Joshua Molina, Johnny Lozada, and Juan Santana. Mr. Inthabane did not know Mr. Molina or the boys with him. Someone in one car summoned Mr. Molina. Mr. Molina walked over, spoke briefly with one of the passengers, and then walked

away. The two cars drove away and pulled over in an alleyway. The gang members then got out of their cars and, despite the lack of provocation, decided to attack the three Hispanic youths (who were not members of a rival gang). Mr. Inthabane and his fellow gang members hid in the alley and attacked the three unsuspecting youths when they walked by. Johnny Lozada was able to run to safety, but Joshua Molina and Juan Santana were viciously beaten by the gang members with a shovel, a claw hammer, a ball peen hammer, an automobile antitheft device, pipes, and boards. Mr. Inthabane used the shovel and struck the first blow to Joshua Molina. Mr. Molina went down after the first blow, but Mr. Inthabane continued to strike him in the face, head, and body with the shovel. Mr. Molina was curled in a fetal position and lay motionless on the ground. Mr. Chaleumphong and Donnie Bouphavongsa (another co-defendant) then used hammers to beat Mr. Molina, while more gang members pummeled Mr. Molina with fists, boards, and "The Club" (an automobile antitheft device). Mr. Santana was also beaten unconscious by the gang members, but he survived.

Mr. Molina died three days later from his head wounds, any one of which was life threatening by itself. Each wound was consistent with the blow of a hammer wielding significant force. The official cause of death for Joshua Molina was multiple blunt force trauma to the head.

II. PAROLE HEARING ON MAY 10, 2016

Mr. Inthabane, now 36-years -old, appeared before the Parole Board on August 23, 2016, for a review hearing. He was represented by Attorney Jason Benzaken. Mr. Inthabane's initial hearing in 2012 resulted in the denial of parole with a review in three years. Mr. Inthabane has an Immigration and Customs Enforcement (ICE) detainer lodged against him for deportation to his native country of Laos. According to Mr. Inthabane's counsel, however, Laos does not typically accept deportations.

In his opening statement to the Board, Mr. Inthabane apologized to the victims and their families. He stated that there were no excuses to justify his actions that night. He said that he was a willing participant in taking the life of a young man and his actions were "thoughtless and disgraceful." Mr. Inthabane provided information on his background and upbringing. His parents fled from Laos to Thailand, where he was born in a refugee camp. He came to the United States with his parents and siblings when he was only a few months old, and spent most of his childhood moving from state to state. When he was 15, he and his family moved to Lowell. Although his parents wanted the best for him and his siblings, he chose to be part of a gang at the age of 16, as he felt it provided him with protection and security. He started skipping school, drinking, and smoking marijuana. He told the Board, "I had no care or direction for where my life was headed." When his parents died in a car accident in 2002, he began to reflect on his life, appreciating all they had sacrificed for him.

Mr. Inthabane addressed the troublesome events that occurred prior to the beatings and murder. Hours before they ran into Mr. Molina and his friends, Mr. Inthabane and his fellow gang members went to two rival gang members' homes, where they "terrorized" their houses by flipping over cars and destroying property. Before leaving the second home, they stole some items (a shovel, wood boards, and hammers) that they later used as weapons in the beatings and murder of Mr. Molina and the other victim. Mr. Inthabane could not remember whose idea it was to go "hunting," but said that he takes full responsibility for his choices and actions that night. He had never seen Mr. Molina or his friends prior to that evening, and he

admitted he was not sure whether they were members of a rival gang. He readily acknowledged that he struck Mr. Molina first (with the shovel) and that he kept beating him, even after he had fallen to the ground. He also hit the surviving victim with the shovel. He said that he only stopped because two girls, who happened to be near the scene, had yelled that they were going to call the police. At that point, he and his fellow gang members ran back to their cars and fled.

Mr. Inthabane also acknowledged that after the attack, but prior to their arrests, he and his co-defendants came up with alibis in an attempt to cover-up their involvement. Mr. Inthabane admitted that he lied to police the first time they questioned him, but after thinking about everything for a few hours, he decided to tell police the truth. He then admitted his role in the beating of one victim and the murder of Mr. Molina. Board Members expressed concern about the extraordinary level of violence perpetrated against individuals who were unknown to Mr. Inthabane. Board Members questioned Mr. Inthabane as to how he could continue beating someone who was already down. Mr. Inthabane said that it was a hard question to answer, as he did not intend to kill anyone that night. At the time, he felt "excited" and was "in the moment, there was no thought process." He said he would not have been capable of committing such acts without his fellow gang members.

Since his incarceration in 1997, Mr. Inthabane has had only three disciplinary reports. He formally renounced his gang affiliation in 2000, and stated that he never had any gang affiliations while incarcerated. He has been program involved throughout his incarceration, earning his GED in 2000 and completing many educational and rehabilitative programs. Since his last hearing in 2012, Mr. Inthabane was accepted into the Cadre Program at Bridgewater State Hospital, where he helps maintain the buildings and grounds of the facility and assists other inmates who are infirm.

The Board considered oral testimony in support of parole from Dr. Robert Mendoza, who also provided the Board with a written report of his evaluation. The Board considered testimony from Mr. Molina's sister and Middlesex County Assistant District Attorney Adrienne Lynch, both of whom expressed opposition to parole.

III. DECISION

The Board is of the opinion that Mr. Inthabane has not demonstrated a level of rehabilitative progress that would make his release compatible with the welfare of society. The Board believes that he should continue to engage in available treatment and programming. He should also remain employed, coupled with a longer period of positive adjustment.

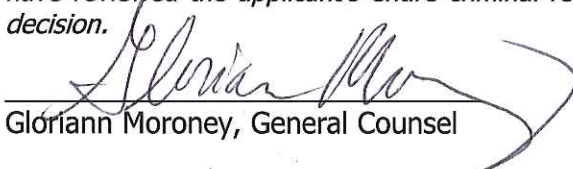
The applicable standard used by the Board to assess a candidate for parole is: "Parole Board Members shall only grant a parole permit if they are of the opinion that there is a reasonable probability that, if such offender is released, the offender will live and remain at liberty without violating the law and that release is not incompatible with the welfare of society." 120 C.M.R. 300.04. In the context of an offender convicted of first or second degree murder, who was a juvenile at the time the offense was committed, the Board takes into consideration the attributes of youth that distinguish juvenile homicide offenders from similarly situated adult offenders. Consideration of these factors ensures that the parole candidate, who was a juvenile at the time they committed murder, has "a real chance to demonstrate maturity

and rehabilitation." *Diatchenko v. District Attorney for the Suffolk District*, 471 Mass. 12, 30 (2015); *See also, Commonwealth v. Okoro*, 471 Mass. 51 (2015).

The factors considered by the Board include the offender's "lack of maturity and an underdeveloped sense of responsibility, leading to recklessness, impulsivity, and heedless risk-taking; vulnerability to negative influences and outside pressures, including from their family and peers; limited control over their own environment; lack of the ability to extricate themselves from horrific, crime-producing settings; and unique capacity to change as they grow older." *Id.* The Board has taken into consideration Mr. Inthabane's institutional behavior, as well as participation in available work, educational, and treatment programs during his incarceration. The Board considered a risk and needs assessment, and whether risk reduction programs could effectively minimize Mr. Inthabane's risk of recidivism. The Board also considered expert testimony from Dr. Mendoza, including his accompanying written psychological evaluation of Mr. Inthabane. After applying this standard to the circumstances of Mr. Inthabane's case, the Board is of the unanimous opinion that Mr. Inthabane is not yet rehabilitated, and his release is not compatible with the welfare of society. Mr. Inthabane, therefore, does not merit parole at this time.

Mr. Inthabane's next appearance before the Board will take place in two years from the date of this hearing. During the interim, the Board encourages Mr. Inthabane to continue working toward 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.


Gloriann Moroney, General Counsel

1/9/17
Date