

The Commonwealth of Massachusetts  
Executive Office of Public Safety and Security



PAROLE BOARD

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**DECISION**

**IN THE MATTER OF**

**PHAIVANH INTHABANE**

**W66292**

**TYPE OF HEARING:** Review Hearing

**DATE OF HEARING:** August 7, 2018

**DATE OF DECISION:** May 23, 2019

**PARTICIPATING BOARD MEMBERS:** Paul M. Treseler, Dr. Charlene Bonner, Tonomey Coleman, Sheila Dupre, Tina Hurley, Colette Santa, 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 that the inmate is a suitable candidate for parole. Parole is granted to an Immigration and Customs Enforcement (ICE) detainer on or after 14 days from the date of the decision, subject to special conditions.

**I. STATEMENT OF THE CASE**

On March 30, 1999, in Middlesex Superior Court, Phaivanh Inthabane pleaded 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.

Phaivanh Inthabane, 17-years-old, 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 Chaleumpong (a co-defendant) was driving another car that pulled alongside Joshua Molina and two other youths walking together on the sidewalk. 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. Joshua Molina and one of the youths were viciously beaten by the gang members with a shovel, claw hammer, ball peen hammer, 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. Molina died three days later from his head wounds.

## **II. PAROLE HEARING ON AUGUST 7, 2018**

Phaivanh Inthabane, now 38-years-old, appeared before the Parole Board on August 7, 2018, for a review hearing. He was represented by Attorney Jason Benzaken. Mr. Inthabane was denied parole after his initial parole hearing in 2012, and after his review hearing in 2016. In Mr. Inthabane's opening statement to the Board, he acknowledged that he was deeply ashamed of his behavior and sorry for the pain he caused to so many people. He indicated that through programming, he has come to see that he was a troubled person. He is no longer the "troubled kid" that committed such violence upon Mr. Molina, stating, "It was a senseless murder." Mr. Inthabane expressed his remorse and acknowledged the tremendous guilt he carries with him.

Mr. Inthabane agreed that his age, maturity, and former lifestyle played a significant role in his ability to murder Mr. Molina. He added that at the time, he did not think, but just acted. Mr. Inthabane stated that he was under the influence of drugs and alcohol at the time of the governing offense. When questioned by the Board, Mr. Inthabane admitted that his intent was to "cause bodily harm, but then it went further than that." He acknowledged that the situation "could have gone differently," if his judgment wasn't impaired. Mr. Inthabane denies using any substances while incarcerated and, if paroled, has family support to help him remain free of substance abuse. He told the Board that he spends his days working on himself. Since his last hearing, Mr. Inthabane completed the Countdown to Freedom program, as well as two Restorative Justice Retreat programs. He has also disassociated from a gang. Mr. Inthabane is currently employed in prison. The Board asked Mr. Inthabane to explain his concerns if paroled to the community. He responded that his concerns would be his ability to find employment and interacting with individuals outside of prison. The Board asked Mr. Inthabane to describe how he would handle his mental health and anxiety, if paroled. If out of custody, he indicated that he would have less worries because he wouldn't have the fear of someone trying to harm him. He explained that the prison environment is stressful. He denies being an open mental health case. He denies the use of medication for the anxiety, and stated that he uses meditation as a tool.

The Board considered testimony in opposition to parole from Middlesex County Assistant District Attorney Terence Kiernan.

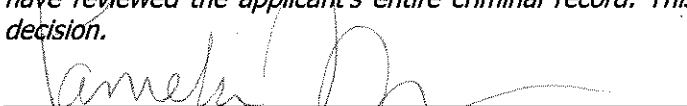
### **III. DECISION**

The Board is of the opinion that Mr. Inthabane has demonstrated a level of rehabilitative progress that would make his release compatible with the welfare of society. 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 also recognizes the petitioner's right to be represented by counsel during his appearance before the Board. *Id.* at 20-24. The Board has also considered whether risk reduction programs could effectively minimize Mr. Inthabane's risk of recidivism. After applying this standard to the circumstances of Mr. Inthabane's case, the Board is of the opinion that Phaivanh Inthabane is rehabilitated, and his release is compatible with the welfare of society. Mr. Inthabane, therefore, merits parole at this time. Parole is granted to an Immigration and Customs Enforcement (ICE) detainer on or after 14 days from the date of the decision, subject to special conditions.

**SPECIAL CONDITIONS:** Approve home plan before release; Release to other authority - ICE; Waive work for 2 weeks; Must be at home between 10:00 pm and 6:00 am or PO's discretion; Electronic monitoring - GPS at PO discretion; Supervise for drugs, testing in accordance with agency policy; Supervise for liquor abstinence, testing in accordance with agency policy; Report to assigned MA Parole Office on day of release; No contact or association with co-defendants, except brother and no contact with gangs; Must have substance abuse evaluation; Must have mental health counseling for adjustment/transition; Mandatory - can have contact with brother (Michael Inthabane).

*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

5/23/2019  
Date