



The Commonwealth of Massachusetts
Executive Office of Public Safety and Security



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DECISION

IN THE MATTER OF

RASHIDI SMITH

W95558

TYPE OF HEARING: Initial Hearing

DATE OF HEARING: May 3, 2022

DATE OF DECISION: September 28, 2022

PARTICIPATING BOARD MEMBERS: Gloriann Moroney, Dr. Charlene Bonner, Tonomey Coleman, Sheila Dupre, Tina Hurley, Colette Santa

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 in two years from the date of the hearing.

I. STATEMENT OF THE CASE

On December 9, 2009, following a jury trial in Plymouth Superior Court, Rashidi Smith was found guilty of second-degree murder in the death of Marvin Constant and sentenced to life in prison with the possibility of parole. His conviction was affirmed by the Appeals Court in 2013.¹ In 2014, further appellate review was granted,² and the Supreme Judicial Court affirmed his conviction in 2015.³

In June 2007, members of two gangs were gathered at a cookout on Crescent Street in Brockton. A fight broke out, and a window was broken. The following day, Rashidi Smith (age 17) returned to the home and spoke with 14-year-old Marvin Constant. They left the home

¹ Commonwealth v. Rashidi Smith, 84 Mass.App.Ct. 1116 (2013).

² Commonwealth v. Rashidi Smith, 467 Mass. 1101 (2014).

³ Commonwealth v. Rashidi J. Smith, 471 Mass. 161 (2015).

together. Mr. Smith was wearing a red sweatshirt with black sleeves. A few minutes later, witnesses heard three gunshots. One witness saw Mr. Constant lying on the street, while a person wearing a red sweatshirt rode off on a bicycle. Mr. Constant died as a result of two gunshot wounds.

Nearby police officers happened to see Mr. Smith drop a bicycle, run, and enter a passing vehicle, while clutching his waistband. Officers stopped the vehicle and located a gun on the floor, where Mr. Smith had been seated. The 10-bullet magazine contained 7 bullets, and the gun was jammed in a way that could only occur if it had been fired. Ballistics testing later matched the gun to the ballistics evidence from the victim and crime scene. Mr. Smith was subsequently arrested. He told police that while he had been present for the murder, another individual was the shooter.

II. PAROLE HEARING ON MAY 3, 2022⁴

Rashidi Smith, now 32-years-old, appeared for his initial parole hearing after serving 15 years of a life sentence. He was represented by Attorney Jeffrey Harris. During the hearing, Mr. Smith apologized to the Constant family for the pain and trauma he caused them. Through his healing efforts, Mr. Smith explained that he developed empathy and is ashamed and embarrassed for what he did. He also acknowledged that he did not take responsibility for his actions in the past. Upon Board Member questioning, Mr. Smith spoke about his life leading up to the governing offense. He grew up in the streets, surrounded by violence and drug dealing, and developed a marijuana habit. He was also exposed to gang life. Mr. Smith was committed to the Department of Youth Services in 2004 and told the Board that the absence of his father played a role in his negative behavior.

Mr. Smith stated that he has completed 14 rehabilitative programs during his incarceration. He reported that the Correctional Recovery Academy (CRA), Violence Reduction, and African American Coalition were the most instrumental to the changes he made. He is now able to recognize the negative factors that aided his criminal thinking in the past. Board Members noted, however, that Mr. Smith has accumulated approximately 82 disciplinary reports throughout his incarceration, 36 of which were sanctioned. In addition, he has had 18 Special Management Unit placements, 2 DCU placements, and 3 transfers to higher custody. When questioned as to his parole plan, if released, Mr. Smith stated that he hopes for a step-down to lower security before release. He then plans to live with his mother and sister and obtain a commercial driver's license for trucking.

The Board considered testimony in support of parole from Mr. Smith's sister, brother, and mother. The Board considered testimony and a letter in opposition to parole from Plymouth County Assistant District Attorney Kathleen Kramer.

III. DECISION

The Board is of the opinion that Rashidi Smith has not demonstrated a level of rehabilitative progress that would make his release compatible with the welfare of society. On June 3, 2007, 17-year-old Mr. Smith shot and killed 14-year-old Marvin Constant over an STG- (Security Threat Group)-related dispute. Mr. Smith accepted responsibility for the offense for the

⁴ The entire video recording of Mr. Smith's May 3, 2022 hearing is fully incorporated by reference into the Board's decision.

first time in 2016. Since that time, he has become program-involved and started working on his rehabilitation. He has had a concerning adjustment, incurring a total of 82 disciplinary reports, 36 of which were sanctioned, most recently in 2021. The Board encourages him to continue pursuing disassociation from STGs, and he should avail himself of occupational training opportunities as well as any programs that will assist him in reentry. He should remain disciplinary report-free. The Board considered the expert evaluation of Dr. Lockwood, as well as the relevant factors pursuant to Miller/Diatchenko. The Board notes that he was on an IEP and the effect [it] had on his development. Mr. Smith was raised by an aunt and was exposed at the age of 11 to STG life through his brother. The Board recognizes the parallels to age and developmental progress, as mentioned in the evaluation, to his criminal and otherwise disruptive behavior. It is the opinion of the Board that although he is on the right path, additional work needs to be done.

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 of the offense, 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. In forming this opinion, the Board has taken into consideration Mr. Smith's institutional behavior, as well as his participation in available work, educational, and treatment programs during the period of his incarceration. The Board has also considered a risk and needs assessment, and whether risk reduction programs could effectively minimize Mr. Smith's risk of recidivism. Applying this standard to the circumstances of Mr. Smith's case, the Board is of the opinion that Rashidi Smith is not yet rehabilitated and, therefore, does not merit parole at this time.

Mr. Smith'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. Smith 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.


Pamela Murphy, General Counsel

9/28/22
Date