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DECISION

IN THE MATTER OF

TIMOTHY FLUKER

W36275

TYPE OF HEARING: Review Hearing

DATE OF HEARING: July 26, 2016

DATE OF DECISION: February 2, 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 offenses, the age of the inmate at the time of the offenses, 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 a suitable candidate for parole, with special conditions, and contingent upon his successful completion of the Department of Correction's Correctional Recovery Academy.

I. STATEMENT OF THE CASE

On June 22, 1977, in Suffolk Superior Court, Timothy Fluker was convicted of the second degree murder of Michael Sanders. He was also convicted of larceny and assault with intent to commit murder. Mr. Fluker was sentenced to life in prison with the possibility of parole for the murder of Mr. Sanders. Mr. Fluker was also sentenced to a concurrent term of not more than 20 years and not less than 18 years in prison for his conviction of assault with intent to commit murder. Upon the order of the trial judge, Mr. Fluker's conviction for larceny was placed on file. At the time of the murder, Mr. Fluker was 17-years-old.

On February 4, 1977, Timothy Fluker (during the commission of a robbery) shot Michael Sanders to death in the offices of a movie theater. Mr. Sanders was the manager of the theater. Mr. Fluker's accomplice, Danny Rogers, shot Clarence Brown, who was seriously injured. Mr. Brown was an employee of the theater. Following the shootings, both Mr. Fluker

and Mr. Rogers stole equipment from the theater and fled. Mr. Fluker was arrested in Brigham Hospital's emergency room, where he was being treated for a gunshot wound to the left hand. Mr. Fluker was shot during a struggle with Mr. Sanders.

II. PAROLE HEARING ON JULY 26, 2016

Mr. Fluker, now 57-years-old, appeared before the Parole Board for a review hearing on July 26, 2016, and was represented by Attorney Catherine J. Hinton. Mr. Fluker appeared for an initial hearing in 1992, which resulted in the denial of parole. He was subsequently denied parole after hearings in 1995, 1998, 2002, and 2007, but was released on parole after a review hearing in 2009. In 2012, however, Mr. Fluker was returned to custody for multiple parole violations, including a positive drug test for cocaine, failure to report to his parole officer, and failure to maintain employment. Mr. Fluker was denied parole after his 2012 review hearing.

In Mr. Fluker's opening statement to the Board, he apologized for his actions and expressed his remorse. Mr. Fluker spoke about the night of Mr. Sanders' murder. He and Mr. Rogers had gone to the theater bathroom three or four times in the hours before the shooting to ingest heroin. While in the bathroom, Mr. Fluker and Mr. Rogers discussed shooting Mr. Sanders. Mr. Fluker was angry that Mr. Sanders had propositioned him, explaining to the Board that he could no longer control his rage. During one of their trips to the bathroom, Mr. Fluker asked Mr. Rogers for his gun. When he approached Mr. Sanders, a struggle ensued. During their struggle, Mr. Fluker accidentally shot himself in the hand, before shooting Mr. Sanders twice, killing him. Mr. Fluker and Mr. Rogers then discussed their concerns that Mr. Brown could implicate them both in Mr. Sanders' murder. Mr. Fluker told Mr. Rogers where he had left the gun. He then lured Mr. Brown to another area in the theater, where Mr. Rogers shot him in the back of the head. Mr. Fluker acknowledged his responsibility in the shooting of Mr. Brown. When the Board asked Mr. Fluker if he now saw alternative ways of handling his anger, he said that he should have ignored Mr. Sanders' advances and walked away, rather than allowing his emotions control his behavior.

Mr. Fluker discussed his experiences with racial discrimination as a child and its effect on his decision to drop out of school at 16-years-old. According to Mr. Fluker, he was already addicted to heroin by that time, having started abusing alcohol and marijuana when he was around 13-years-old. Mr. Fluker believes that his use of mind altering substances played a part in Mr. Sanders' murder, as well as the shooting of Mr. Brown. Mr. Fluker also addressed his prior failures on parole. He took full responsibility for his parole violations, readily admitting that he had squandered his opportunity at liberty. Mr. Fluker described a downward spiral of events, after an initial period of positive adjustment. The loss of his marriage, the death of a younger sister, his inability to maintain employment, and the pressure of caring for elderly relatives overwhelmed him and left him unable to cope. Suffering from anxiety and depression, Mr. Fluker turned away from both his support system and his parole officer, relapsing into heroin and cocaine use. Mr. Fluker then engaged in credit card theft to fund his substance abuse habits.

Since his last appearance before the Board, Mr. Fluker has found the motivation to remain disciplinary report free and engage in counseling. He hopes to be a positive influence in the lives of his three grandchildren and does not want to disappoint his daughter again. He has participated in various rehabilitation programs, such as Conflict Resolution and Non-Violent

Communication. Additionally, Mr. Fluker has worked to address his substance abuse issues by attending Alcoholics Anonymous / Narcotics Anonymous meetings on a weekly basis. Presently, Mr. Fluker is enrolled in the Correctional Recovery Academy and works as a barber. Mr. Fluker described his proposed parole plan to the Board, stating that relapse prevention is his first priority. He also recognizes that good communication is critical to his success on parole. He plans to participate in a long term treatment program and enroll in the Askia Academy, which has already accepted him. Mr. Fluker also plans to continue with Alcoholics Anonymous/Narcotics Anonymous meetings on a regular basis, obtain employment, and establish a positive relationship with his parole officer.

The Board considered testimony from Mr. Fluker's sister, daughter, cousin, and a lifelong friend, all of whom spoke in support of parole. The Board also considered a July 2016 forensic mental health evaluation (written by Frank DiCataldo, Ph.D.) that was submitted by Mr. Fluker. The Board considered a letter from Boston Police Commissioner William Evans and a letter from Suffolk County Assistant District Attorney Charles J. Bartoloni, both of which expressed opposition to parole.

III. DECISION

The Board is of the opinion that Mr. Fluker has demonstrated a level of rehabilitative progress that would make his release compatible with the welfare of society. Mr. Fluker has been incarcerated since 2012, and has maintained a positive adjustment and has engaged in program involvement. Incarceration has served its purpose.

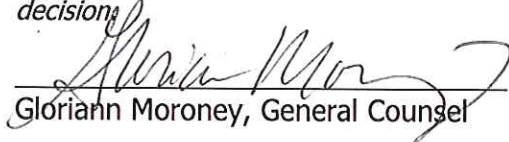
The applicable standard used by the Board to assess a candidate for parole is: "Parole Board Members shall only grant a parole permit if they are of the opinion that there is a reasonable probability that, if such offender is released, the offender will live and remain at liberty without violating the 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 a risk and needs assessment and whether risk reduction programs could effectively minimize Mr. Fluker's risk of recidivism.

After applying this standard to the circumstances of Mr. Fluker's case, the Board is of the unanimous opinion that Mr. Fluker merits parole at this time, with special conditions, and contingent upon his successful completion of the Department of Correction's CRA program.

SPECIAL CONDITIONS: Waive work for Long Term Residential Program; Must be at home between 10 pm and 6 am; GPS at parole officer's 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 officer on day of release; Must have mental health counseling for depression and adjustment; Attend Long Term Residential Treatment; Attend AA/NA meetings at least four times/week.

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


Date