



*The Commonwealth of Massachusetts
Executive Office of Public Safety and Security*



PAROLE BOARD

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DECISION

IN THE MATTER OF

TIMOTHY FLUKER

W36275

TYPE OF HEARING: **Review Hearing**

DATE OF HEARING: **March 21, 2019**

DATE OF DECISION: **February 19, 2020**

PARTICIPATING BOARD MEMBERS: Dr. Charlene Bonner, Tonomey Coleman, Sheila Dupre, Tina Hurley, Gloriann Moroney, Colette Santa, Paul Treseler¹

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 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.² Parole is granted to a Long Term Residential Program after 1 year in lower security and subject to special conditions.

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.

¹ Board Member Treseler was not longer a Board Member at the time of the vote.

² One Board Member voted to deny parole with a review in three years.

On February 4, 1977, 17-year-old Timothy Fluker shot to death (during the commission of a robbery) 20-year-old Michael Sanders in the offices of a movie theater. Mr. Sanders was the manager of the theater. Mr. Fluker's accomplice, Danny Rogers, shot another worker at the theater, who was seriously injured. 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 that occurred during a struggle with Mr. Sanders.

II. PAROLE HEARING ON MARCH 21, 2019

Mr. Fluker, now 60-years-old, appeared before the Parole Board for a review hearing on March 21, 2019, and was represented by Attorney Catherine J. Hinton. Mr. Fluker was denied parole after his initial hearing in 1992. 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. After his 2016 review hearing, Mr. Fluker was granted parole, but, in 2018, he received several warnings for parole violations. Mr. Fluker's parole was revoked after testing positive for alcohol and lying to his parole officer. He was put on the next available list (PONAL). In Mr. Fluker's opening statement to the Board, he apologized for his actions and expressed his remorse.

When Board Members discussed the underlying facts of the governing offense, Mr. Fluker spoke of growing up in a climate of racial violence, which made him anxious and led to his abuse of heroin. He was on heroin when he committed the murder. Mr. Fluker also noted that his father raised him to be homophobic. He believes that the combination of youth, anxiety, and drug use, as well as the belief that homosexuality was wrong, influenced his actions on the day of the murder. Mr. Fluker stated that he no longer holds these homophobic views.

The Board questioned Mr. Fluker about his prior parole violations and returns to custody. During his parole from 2009 until 2013, Mr. Fluker said that he worked on and off in carpentry and painting, but that his criminal record made it difficult to find work. During this time, he lost several close family members, including both his parents, and admitted to being overwhelmed with grief and frustrated about his unemployment. He began drinking, which led to cocaine and heroin use that he attempted to hide from his parole officers. Mr. Fluker also admitted to giving a friend a ride to various stores, where she would buy clothes on stolen credit cards and then return the clothes for cash (which she shared with him). After his last re-parole, Mr. Fluker said that he failed to meet his psychiatrist for anxiety and post-traumatic stress disorder because of problems with insurance. Mr. Fluker also admitted to drinking alcohol after the death of his little sister.

The Board noted that Mr. Fluker has not incurred any disciplinary reports since his re-incarceration. When Board Members questioned him as to programs he found helpful, Mr. Fluker said that the Correctional Recovery Academy helped him in dealing with his addiction. Since his return to custody, Mr. Fluker attends Alcoholics Anonymous and Narcotics Anonymous weekly. He also participates in the Youthful Offender Coalition, General Maintenance Program, and the Lifers' Group.

If paroled, Mr. Fluker asked the Board for a release to a Long Term Residential Treatment Program and requested that he be put on Vivitrol. He would continue to attend Alcoholics Anonymous and Narcotics Anonymous and plans to seek one-on-one counseling. He has the support of family members and has been offered help from the Boston Mayor's Office for Returning Citizens. Mr. Fluker also plans to attend Lynn Levy's support group for formerly incarcerated individuals. He has been offered his old job as a delivery driver.

The Board considered testimony in support of parole from Mr. Fluker's cousin and girlfriend. Several of Mr. Fluker's friends and family members submitted letters of support. Gregory Davis, Executive Director of Metro Boston Alive Recovery and Referral, submitted a letter offering to help Mr. Fluker find a treatment program. Kevin Sibly, Executive Director of the Mayor's Office of Returning Citizens, submitted a letter offering re-entry support. Lynn Levy also sent a letter offering to help Mr. Fluker with re-entry. The Board considered a July 2016 forensic mental health evaluation (written by Frank DiCataldo, Ph.D.) that was re-submitted by Mr. Fluker. The Suffolk County District Attorney's Office submitted a letter stating they would not oppose parole, provided that strict conditions on drug and alcohol abstinence were in place.

III. DECISION

The Board is of the opinion that Timothy Fluker has demonstrated a level of rehabilitative progress that would make his release compatible with the welfare of society. Mr. Fluker presented a re-entry plan to a long-term structured drug treatment program with Vivitrol Program, working closely with the Mayor's Office of Re-entry Services, along with counseling for mental health concerns. He has had a positive institutional adjustment since re-incarceration. He was 17-years-old at the time of offense. He has experienced a lot of trauma. He presented a strong re-entry plan. Field staff are willing to continue working with him.

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 appropriately high standard to the circumstances of Mr. Fluker's case, the Board is of the opinion that Timothy Fluker is rehabilitated and, therefore, merits parole at this time. Parole is granted to a Long Term Residential Program after 1 year in lower security and subject to special conditions.

SPECIAL CONDITIONS: Approve home plan before release; Waive work for Long Term Residential Program; Must be at home between 10 pm and 6 am; Electronic monitoring; 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; Must have counseling for anxiety and PTSD; Long Term Residential Treatment program; AA/NA at least three times/week; Mandatory screen for Vivitrol; Mandatory work with Mayor's Office for Re-entry Services.

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

2/19/2020
Date