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Paul M. Treseler
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DECISION

IN THE MATTER OF

VIENGSAYMAY CHALEUMPHONG

W65665

TYPE OF HEARING: Review Hearing

DATE OF HEARING: August 29, 2017

DATE OF DECISION: July 25, 2018

PARTICIPATING BOARD MEMBERS: Paul M. Treseler, Dr. Charlene Bonner, Tonomey Coleman, Sheila Dupre, Tina Hurley, and 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 a suitable candidate for parole. Parole is granted to an Immigration and Customs Enforcement (ICE) detainer with special conditions.

I. STATEMENT OF THE CASE

On December 3, 1998, after a jury trial in Middlesex Superior Court, Viengsaymay Chaleumphong was found guilty of first degree murder in the beating death of Joshua Molina. He was sentenced to life without the possibility of parole. On that same day, Mr. Chaleumphong was also convicted of assault and battery by means of a dangerous weapon and sentenced to 9 to 10 years concurrent with the life sentence.¹ Mr. Chaleumphong was 17-years-old at the time of the murder.

On November 20, 1997, Viengsaymay Chaleumphong was a member of a gang and, acting with other gang members, beat 17-year-old Joshua Molina to death on Bridge Street in Lowell. That night, at around 9:30 p.m., Mr. Chaleumphong and fellow gang members were

¹ Viengsaymay Chaleumphong filed an appeal which resulted in the first degree murder convictions being affirmed. *Commonwealth v. Viengsaymay Chaleumphong*, 434 Mass. 70 (2001).

traveling in two cars looking for rival gang members. Mr. Chaleumphonng was driving one of the cars and pulled alongside three Hispanic youths walking together on the sidewalk. One of those males was Joshua Molina. 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. Joshua Molina and another individual were viciously beaten by the gang members. Mr. Chaleumphonng's co-defendant used a shovel and struck the first blow to Joshua Molina. Mr. Molina went down after the first blow. Mr. Chaleumphonng used a hammer to beat Mr. Molina, while others pummeled Mr. Molina with fists, boards, and "The Club" (an automobile antitheft device). Mr. Molina died three days later. The cause of death was multiple blunt force trauma to the head.

II. PAROLE HEARING ON AUGUST 29, 2017

On December 24, 2013, the Supreme Judicial Court issued a decision in *Diatchenko v. District Attorney for Suffolk District & Others*, 466 Mass. 655 (2013), in which the Court determined that the statutory provisions mandating life without the possibility of parole are invalid as applied to juveniles convicted of first degree murder. Further, the Court decided that *Diatchenko* (and others similarly situated) must be given a parole hearing. Following the *Diatchenko* decision, Mr. Chaleumphonng became eligible for parole. After his initial hearing on August 20, 2015, he was denied parole with a two year review.

Viengsaymay Chaleumphonng, now 37-years-old, appeared before the Parole Board on August 29, 2017, for a review hearing and was represented by Attorney Jeffrey Richards. In Mr. Chaleumphonng's opening statement to the Board, he apologized to the Molina family, as well as the other families involved in the incident. He took complete responsibility for his actions. Since his initial parole hearing, Mr. Chaleumphonng has continued to take classes through Boston University. Currently, he has 68 school credits. He has been involved with the Graduate Support Program for Correctional Recovery Academy (CRA). He completed the Leadership and Transformation Thinking Program, as well as the Restorative Justice Reading Group. He has not received any disciplinary reports since his last hearing. In addition, he works as a functional coordinator, in which he manages the calendar for groups who wish to schedule events at the facility.

Mr. Chaleumphonng spoke about being in a "bad place in my life at the time" of the murder. He described himself as an angry kid and said he felt powerless. He had no outlet and was more comfortable with gang life. Looking back, he cannot believe that he was the person who committed these acts as a teenager. Mr. Chaleumphonng told the Board that in 2016, he officially renounced his association with the gang. However, he personally renounced gang life long before that time. He wanted to be "far away from being labeled" a gang member. A Board Member noted that Mr. Chaleumphonng's meaningful change started even before he knew that he would ever be eligible for parole. When a Board Member asked him if drugs or alcohol played a role in the murder, Mr. Chaleumphonng stated that on that day of the murder, he was drinking alcohol. He said, however, that he has not had any instances of substance abuse over the last 20 years.

When Board Members mentioned that there is currently an ICE detainer on Mr. Chaleumphong, Mr. Chaleumphong spoke in regards to a possible parole plan. He stated that he was born in a refugee camp in Thailand. If he got deported back to Laos, he could live with an uncle. If he does not get deported, he is looking for a long term residential program and would continue to pursue his barber's license. A Board Member asked Mr. Chaleumphong about his main concern (if he were paroled) in returning to the community after serving 20 years. He stated that he is most concerned about "technology and meeting new people." A Board Member noted that Mr. Chaleumphong has a strong network of support. In closing, Attorney Richards described how the practice of Buddhism has become a core part of Mr. Chaleumphong's life.

The Board considered a letter read in support of parole, which was written by Mr. Chaleumphong's father. The Board also considered oral testimony in support of parole from Mr. Chaleumphong's cousin and two members of the community. The Board considered testimony in opposition to parole from Middlesex Assistant District Attorney Clarence Brown.

III. DECISION

The Board is of the opinion that Mr. Chaleumphong has demonstrated a level of rehabilitative progress that would make his release compatible with the welfare of society. Mr. Chaleumphong has continued to address his causative factors. Programming has included: Leadership and Transformation, Restorative Justice, and Countdown to Freedom. He is currently in the Graduate Maintenance Program (GMP). He appears to be amenable for community supervision. The Board recognized Mr. Chaleumphong's difficult childhood, as well as his age at the time of the offense.


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. Chaleumphong's risk of recidivism. After applying this standard to the circumstances of Mr. Chaleumphong's case, the Board is of the opinion that Mr. Chaleumphong is rehabilitated, and his release is compatible with the welfare

of society. Mr. Chaleumphong, therefore, merits parole at this time. Parole is granted to an Immigration and Customs Enforcement (ICE) detainer with special conditions.

SPECIAL CONDITIONS: Approve home plan before release; Release to Immigration and Customs Enforcement; Waive work for two weeks; Must be at home between 10:00 pm and 6:00 am; Electronic monitoring - GPS; 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 w/victim's family; Must have mental health evaluation for adjustment/transition; Must have substance abuse evaluation and adhere to plan.

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