



The Commonwealth of Massachusetts
Executive Office of Public Safety and Security

PAROLE BOARD

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Charlene Bonner
Chairperson

DECISION

IN THE MATTER OF

WILLIAM BERRY

W31887

TYPE OF HEARING: **Review Hearing**

DATE OF HEARING: **March 31, 2015**

DATE OF DECISION: **May 20, 2015**

PARTICIPATING BOARD MEMBERS: Dr. Charlene Bonner, Tonomey Coleman, Sheila Dupre, Lee Gartenberg, Ina Howard-Hogan, Tina Hurley, Lucy Soto-Abbe

DECISION OF THE BOARD: After careful consideration of all relevant facts, including the nature of the underlying 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 five years from the date of the hearing.

I. STATEMENT OF THE CASE

On October 5, 1968, after three days of a jury trial in Suffolk County Superior Court, William Berry pleaded guilty to the second degree murder of Linda Marshall and was sentenced to life in prison.

On November 13, 1968, in Middlesex Superior Court, Berry pleaded guilty to armed burglary and received a 12 to 15 year sentence to be served from and after the life sentence. On that same date, Berry pleaded guilty to assault and battery with a dangerous weapon and assault with intent to rape and received a 7 to 10 year sentence and a 4 to 5 year sentence, respectively. These sentences were ordered to run concurrently with the 12 to 15 year from and after sentence. On January 17, 1969, in Middlesex Superior Court, Berry pleaded guilty to two counts of armed burglary, rape, and breaking and entering with intent to commit a felony

and received three concurrent 10 to 15 year sentences. On that same date, Berry also pleaded guilty to unnatural acts and was given a 2½ to 5 year concurrent sentence.

According to the official version, on March 25, 1968, William Berry entered the home of Linda Marshall through a bedroom window while she was out. Berry looked through her home and hid in her bedroom closet, awaiting her return. When Ms. Marshall returned, Berry attacked her by stabbing her once in the thigh, which punctured her femoral artery, and once in the left side of her chest, which punctured the pericardial sack. After stabbing the victim, Berry fled the apartment and threw the knife in a nearby tree. The victim died shortly after the attack.

On January 31, 1968, Berry entered the home of Jane Doe.¹ He went to her bedroom and was pulling the covers over her head when she awoke. She was asked to remove her clothes, but was able to persuade Mr. Berry to leave. Also, on February 26, 1968, Berry entered the home of Mary Moe and went to her bedroom. When she arose to turn on the light, Berry put a knife to the back of her neck, ordered her to remove her clothes, and raped her. Weeks later, William Berry's picture appeared in the newspaper regarding the death of Linda Marshall. Ms. Moe, recognizing Berry's picture, informed the police that he had raped her. Ms. Doe also positively identified Berry as her attacker.

The Board notes that in 1961, prior to the governing offense, Berry (age 16) was convicted of assault with intent to rape and breaking and entering. He was sentenced to 5 years and 1 day committed.

II. PAROLE HEARING ON MARCH 31, 2015

Berry appeared before the Parole Board for his sixth hearing. He was represented by two student attorneys, Stanford Fraser and Donna Harati, from the Harvard Prison Legal Assistance Project. Berry has served almost 47 years for the murder of Linda Marshall. Both Berry and his student attorneys provided opening statements that highlighted his level of remorse and the reasons why he now deserves an opportunity for parole.

Berry was last denied by the Board in 2010 for the maximum term of five years. Berry's previous denials from the Board have outlined a pattern of concerns that have persisted over time. Berry was asked to discuss his understanding of why he has consistently been denied parole. Berry stated that he understood his denial of committing multiple sexual offenses has been the primary obstacle for him receiving a positive vote. Berry stated that he "takes full responsibility for stabbing Ms. Marshall." However, he denies that he is guilty of assault with intent to rape and rape and unnatural acts on his two other victims. The Board also noted that Berry does not accept the version of the offense that says he was allegedly lying in wait for Ms. Marshall. Rather, he describes the offense as breaking and entering and being surprised by Ms. Marshall. The Board noted that the discrepancies in the two versions are significant, as it depicts a differing level of intent and criminal behavior. Berry denied that he was lying in wait; rather, he was only intent on stealing. Berry stated repeatedly that while he takes responsibility for stabbing the victim, the act was impulsive and, in fact, he did not intend that day to murder anyone.

¹ A pseudonym will be used to identify the victims of crimes involving sexual assault pursuant to G.L. c. 265 § 24C. Portions of a parole record of decision may be withheld to preserve its confidentiality. See G.L. c. 127, s. 130.

Berry was then asked about his history of convictions for multiple sexual offenses. Berry acknowledged that the Parole Board has consistently recommended that he engage in, and complete, the Sex Offender Treatment Program (SOTP). This topic became the source of some dispute as to whether he has actually completed SOTP. Berry insisted that he has completed SOTP. However, the Board noted that there is no evidence of completion and further, the Board questions the value that such treatment would have had. He re-engaged in SOTP in 2014 and was recommended by his provider to transition back to the Massachusetts Treatment Center (MTC) to complete the program. However, Berry told the Board that he has "issues with the philosophy at MTC. If I committed these crimes, then I'm in denial. I didn't commit these crimes."

The Board spent a significant amount of time discussing Berry's history. Berry described a childhood replete with both physical and sexual abuse, as well as a prolonged period of neglect. Berry stated that he began breaking into homes and stealing at a very young age and was committed to the Lyman School, a state-run reform school, at age 10. His experience there only exacerbated his feelings of rejection and thus, his criminal behavior was not deterred. After being discharged from the Lyman School, Berry continued to break into homes. In 1961, at the age of 16, he was convicted of breaking and entering with the intent to rape. Berry admits to this offense. He was declared a Sexually Dangerous Person in 1962, served five years in prison, and was committed to the Treatment Center to participate in the SOTP program. He was released on parole in 1967. In 1968, Berry committed two counts of rape with two separate victims, for which he was found guilty of one and pled nolo contendere to the other. When asked why he pled nolo contendere to one offense, Berry stated that he pled on the advice of counsel, but in hindsight he realizes it was a mistake. When asked why he thinks he was convicted of the additional offense, he stated "it was a bench trial. The judge believed her because she [the victim] was a college student. She was educated." When pressed regarding the similar pattern of all offenses and victim statements, which included breaking into a residence, using a knife, preying on strangers, as well as being identified by one victim, Berry presented as defensive and somewhat aggravated. He stated, "You're talking almost 50 years ago. If you believe that because the police said I committed these crimes there is nothing I can do to change that. No matter what I say, I cannot change your belief system."

Berry was informed by several of the Board Members that it is difficult to evaluate the rehabilitation of an offender who denies the commission of very serious sexual offenses, thus disputing the need for specialized treatment. While Berry insists that he is incarcerated for murder, the Board reiterated to Berry that his entire criminal history is subject to concern and that when applying the legal standard, the Board assesses his risk to re-offend in any manner. His history of sexually offending is certainly relevant to the Board's decision. In fact, the Board notes that Berry has been declared to be a Sexually Dangerous Person twice, in 1962 and 1980, and that he was on parole for a sexual offense when he was convicted of murdering Ms. Marshall and committing two additional sexual offenses.

Members of the Parole Board stated that they often rely on the expertise of risk assessments and opinions, provided by those who administer SOTP treatment, when considering release decisions. Berry was asked whether he would comply if his case worker in Norfolk recommended again that he transition to MTC to complete the program. Berry stated, "If Norfolk recommends I go to MTC, I'm not going. I already did that. They recommended it because they need people to go to the program." He was advised that the program has

changed a great deal, and that he would not have to make admissions to his crimes in order to participate in the program. Berry cited the numerous programs he has participated in, including SOTP, and insisted that he is no longer the person he was 50 years ago. He said he has benefitted from his years of incarceration and the programming he has engaged in. Berry also stated that he was found not to be sexually dangerous in 2009, thus bolstering his argument that he is no longer at risk to commit a sexual offense. The Parole Board quoted information from the 2009 Community Access Board (CAB) Review Form, including that of the dissenting member of the panel. While the majority of the CAB found Berry was no longer sexually dangerous, there are many concerns that were highlighted in the CAB report, including his continued denial of the sexual offenses and the fact that the discrepancies in accounts will continue to interfere with future progress in treatment. The Parole Board noted that there were many recommendations in the CAB report that are contrary to Berry's assertions. The Parole Board also explained that the legal process of no longer being declared sexually dangerous carries a very different standard in comparison to the legal standard for parole.

In addition, the Parole Board has concern regarding the time Berry took to accept responsibility for the murder of Ms. Marshall. The Board questions whether he would eventually admit to the sexual offenses for which he currently denies. Berry stated that he could not remember various details of the crime until he was hypnotized, which then triggered more detailed memories. Throughout the hearing, Berry re-iterated his level of remorse for murdering Ms. Marshall. He insists that he has been incarcerated for the murder and has done his time, that he is rehabilitated, and that he wants to be judged for the person he is today. Berry stated that he is no longer the troubled youth that he was and, at the age of 70, he no longer poses a risk to society.

One of Berry's student attorneys provided a strong, detailed closing of his accomplishments in prison and how he has been rehabilitated. His student attorney also highlighted research that supports Berry's low risk to re-offend and provided a re-entry plan that will further address his needs. Speaking in support of Berry's parole was Carol Ball, Ph.D., who provided her curriculum vitae which includes a lengthy history of treatment with sexual offenders. Dr. Ball was critical of the Parole Board's years of insistence that Berry re-engage in SOTP and complete the recommended program at MTC. Dr. Ball cited research that indicates Berry poses no risk to re-offend sexually and indicated that she is willing to accept him as a client if he were to be paroled. Dr. Ball cited Berry's current age as being the most prominent factor in his low risk for recidivism and provided some research to support this notion. She also stated that Berry's failure to admit that he committed two additional sexual offenses is not an indicator of a risk to re-offend. Finally, Dr. Ball stated that to mandate that he return to MTC would be "cruel and unusual punishment." Dr. Ball cited her experience in working at MTC and explained to the Board the issues she sees with their treatment program.

Also speaking in support of Berry's parole was his brother, Alfred Berry, who substantiated Berry's traumatic childhood. Alfred Berry believes that his brother would be successful in the community given his years of incarceration and the support he now has.

Speaking in opposition to Berry's parole was Middlesex Assistant District Attorney Beth Dunigan. ADA Dunigan reviewed Berry's lengthy criminal history. She expressed her concerns with his version of the murder in which he denies culpability for deliberately hiding and waiting for the victim, as well as his denial of additional sexual offenses. ADA Dunigan stated that

Berry victimized four females (all strangers), three of whom he either attempted to, or did, sexually assault. She highlighted the fact that after engaging in sex offender treatment, Berry was convicted of two counts of rape and a murder. ADA Dunigan also provided details of the sexual assaults, indicating a similar pattern. ADA Dunigan cited one victim's identification of Berry and insisted that women would not be safe if he were released. ADA Dunigan concluded that Berry does not meet the legal standard for parole and that he needs further specialized treatment.

III. DECISION

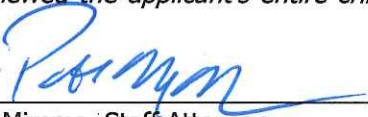
Berry is 70-years-old and has been incarcerated for nearly 47 years. Since his re-incarceration 47 years ago, Berry has consistently been denied parole with the maximum setback of five years. Berry was declared to be a Sexually Dangerous Person for the second time in 1980 and he remained civilly committed until May 20, 2009, at which time the Court no longer found him to be sexually dangerous. Berry stated that he has completed SOTP and, despite recommendations from his most recent provider and recommendations by the Parole Board, he will not transition to the treatment center to complete what has been recommended. The current Parole Board reiterated the concerns of prior Boards by encouraging Berry to engage in treatment that will enhance his rehabilitation. This will provide the Board with expert opinions and risk assessments that are of value to the decision making process. However, Berry has remained steadfast in his denials of multiple sexual offenses, despite significant evidence that he committed such crimes. He has also remained steadfast in his version of the murder, which contains pertinent discrepancies regarding his intent and level of criminality.

While Berry presented an expert who cites his current age as being the most prominent factor in his low risk for recidivism, the Parole Board questions whether Berry's current age is actually the most significant factor. In determining an offender's risk to re-offend, there are numerous relevant factors to consider in addition to current age. In Berry's instance, those factors include: the conviction of multiple sexual offenses; being deemed a Sexually Dangerous Person on two occasions; the victims all being strangers; the use of a knife in each offense; other criminal behavior associated with each offense; a pattern of early and diverse antisocial behavior; denial of committing the sexual offenses; lack of motivation to engage in sex offender treatment; and the lack of demonstrated successful completion of SOTP. There are countless peer reviewed journal articles for both primary studies by known experts and meta-analyses that place such relevant clinical dimensions in risk determination. Such literature indicates the predictive validity of criminogenic factors, which contextualizes case information and informs the Parole Board how to consider and weigh the above mentioned concerns. That said, given all relevant factors, the Parole Board finds by a unanimous decision that Berry does not meet the legal standard for parole.

The standard we apply in assessing candidates for parole is set out in 120 C.M.R. 300.04, which provides that "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." Applying that appropriately high standard here, it is the unanimous opinion of the Board that Berry does not merit parole at this time because he is not rehabilitated. The review will be in five years, during which time Berry should commit to a more comprehensive rehabilitation that can best be addressed in completing SOTP as outlined

at the Massachusetts Treatment Center. The Board also recommends that Berry invest in the recommendations as outlined by the CAB to assist with the direction of his treatment.

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.


Peter M. Mimmo, Staff Attorney


Date