



The Commonwealth of Massachusetts
Executive Office of Public Safety



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DECISION

**IN THE MATTER OF
MICHAEL MCAFEE
W62772**

TYPE OF HEARING: Initial Hearing
DATE OF HEARING: August 26, 2014
DATE OF DECISION: January 13, 2015

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

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 May 30, 1997, after a jury trial in Suffolk County Superior Court, Michael McAfee was found guilty of first degree murder and was sentenced to life imprisonment without the possibility of parole.¹ McAfee also received concurrent sentences of nine to ten years for assault with intent to kill and four to five years for possession of a firearm. The murder victim was Cassius Love, age 16.

On December 24, 2013, the Massachusetts Supreme Judicial Court issued a decision in *Diatchenko v. District Attorney for the Suffolk District & Others*, 466 Mass. 655 (2013), where the Court determined that the statutory provisions mandating life without the possibility of parole were invalid as applied to those, like Michael McAfee, who were juveniles when they committed first degree murder. The SJC ordered that affected inmates receive a parole hearing

¹ His codefendant, Laron “Ronny” Elliot, was convicted of second degree murder by joint venture.

after serving 15 years. Accordingly, McAfee became eligible for parole and is now before the Board for an initial hearing.

On July 10, 1995, McAfee, Elliott, and three other individuals² were involved in a fight at a McDonald's restaurant in Roxbury with a young man named Steve Clinton. Another man named Alvaro Sanders intervened. Later in the day, the violence escalated as Mr. Sanders and another man, Cassius Love, located Elliott and McAfee on Walnut Avenue in Roxbury. After a brief chase, they stopped in front of Elliott's house. Elliott ran inside his house and emerged with a rifle. He raised the rifle and pointed it at Mr. Sanders and Mr. Love, while McAfee reportedly yelled "lace them." When Elliott did not fire, McAfee grabbed the rifle and shot Mr. Love six times. He fired once at Mr. Sanders as he ran from the scene. Mr. Love collapsed at the scene and was pronounced dead a short time later at Boston City Hospital.

Elliott and McAfee fled the scene. Two days later, after being identified by Mr. Sanders, McAfee was arrested. Elliott had fled the area and stayed in various places evading police. He was arrested two months after the offense.

II. PAROLE HEARING ON AUGUST 26, 2014

Michael McAfee, age 36, appeared for his initial parole hearing represented by Attorneys Michael R. Schneider and Jeffrey G. Harris. McAfee is serving a life sentence for first degree murder. He is eligible for parole due to the Supreme Judicial Court's recent ruling in *Diatchenko*, which granted parole eligibility at 15 years to an inmate who is serving a life sentence for first degree murder committed when the inmate was a juvenile (age 17 or younger). McAfee has served 19 years of the life sentence.

McAfee described his transformation throughout his incarceration. He said that he went from an "ignorant child to the man I have become." He said that when he entered prison as a young man, he was "mad at the world and always in trouble," but through the support of his mother and friends, he realized he needed to change. McAfee described the many programs he engaged in and how they helped him change his thoughts and behaviors. In 2008, McAfee said that he engaged in a program called "Second Thoughts," which enabled him to examine his childhood and set goals for himself. He stated that during this particular program, he began to view his life differently. McAfee said that he never felt that his mother wanted him and through this program, as well as being able to talk with his mother, he was able to view his childhood differently. He described his ability to do a self-analysis of his childhood and the choices he made as being instrumental in his ability to change. He stated that he was shot when he was 11 years old, which contributed to his path of delinquency. In response to this traumatic event, McAfee joined a gang. He was 12 years old when he was fully engaged in crime and loyal to a gang. He sold cocaine from that point on until the day he was incarcerated. McAfee also said that he can now see how his family struggled with their own issues and how he chose to engage with bad influences instead of accepting the positive opportunities he had. McAfee stated that, in 2003, he was incarcerated with his father and brother and said that "it was the first time we ever had Thanksgiving together." At that time, he said they were all able to talk and start the healing process.

² These three individuals have never been identified.

McAfee stated that, over time, he has invested in programs that addressed substance abuse, violence reduction, emotional growth, and anger management. He said that he paid \$45 to take a correspondence class on becoming more responsible. McAfee also invested in education and skill building. He completed the barber program and now volunteers in the barber shop stating, "I do it because it's a positive environment." He described the value of each portion of his rehabilitation, including programs, family meetings, and enhancing his education.

McAfee was asked to explain how he now views his criminal offenses. McAfee again stated that he has been able to reflect on how he was already on a path of destruction when he murdered Mr. Love. McAfee described in detail facts that are consistent with the official record. He admitted that he was the one who grabbed the gun from his co-defendant and fired the shots. He said that things happened so fast and has no acceptable explanation as to why he did it. McAfee correlates his behavior with his youth, the lifestyle he was living, and his rush of emotions in that moment. McAfee stated that while he had access to a gun, he never carried or used one before. The Board questioned McAfee as to why he would carry a gun on that day. He said that it was well known that Sanders carried a gun and stated that "I was afraid of being shot." He said that the first time he really understood the gravity of his crime was when his mother visited him in jail and said "Michael, what have you done?" He said that he was an angry young man and remained so until he finally invested in his own rehabilitation.

McAfee said that he is currently on the waiting list for additional programs. He has held many institutional jobs and currently works as a cleaner in the gym. He also continues to volunteer in the barber shop and attends AA/NA. McAfee addressed his disciplinary issues and described his growth in correlation to his increased positive adjustment. McAfee, however, has continued to incur both minor and more serious disciplinary infractions since his investment in rehabilitation. The more serious infractions include assaultive behavior. McAfee described his behavior in the context of stressors that are unavoidable in the prison environment. McAfee also agreed, however, that he has choices and could have conducted himself differently in each of those incidents.

McAfee's attorneys submitted a closing statement that summarized his history, progression in rehabilitation, and evidence that such rehabilitation has been effective. In addition, his attorneys emphasized that McAfee's investment in his own rehabilitation and efforts to change began before the *Miller v. Alabama* decision.

McAfee had many supporters attend his hearing. Both his parents testified as to how they believed they contributed to their son's early childhood struggles. His parents also discussed their own path of recovery and how they are able to support him in his transition back to the community. Both parents stated that they have witnessed a significant change in their son and believe he is ready and able to be a productive member of society. In addition, McAfee's sister and friend testified as to their belief that McAfee has been rehabilitated and stated that they can assist him with a successful transition to the community.

Speaking in opposition to McAfee's parole was Suffolk County Assistant District Attorney Paul Linn. ADA Linn testified that, while he is impressed by McAfee's self-awareness and investment in his education, he needs more rehabilitation due to the nature of the offense and his serious disciplinary issues in 2005 and 2006. ADA Linn pointed out that his most recent acts

of violence in the prison are well beyond the period of adolescent brain development and, thus, should be viewed accordingly. ADA Linn also commented that the victim's sister had planned to attend the hearing in opposition, but was unable to come to the hearing.

III. DECISION

Michael McAfee was 17 years old when he committed the offenses for which he now serves. He grew up in an environment that exposed him to significant and life changing negative influences, which clearly shaped his growth and development. McAfee joined a gang at age 12 and engaged in a lifestyle of crime and high risk behaviors. He acted immaturely and impetuously at the time of the murder and failed to appreciate the risks and consequences of his heinous actions. McAfee, however, has engaged in programs that have clearly helped him to develop into a more responsible individual who shows true promise that he can one day be a productive member of society. McAfee has invested in education, programs that promote meaningful self-development, and occupational skill building. The Board remains concerned however (as evidenced by some of his more recent disciplinary issues), that McAfee is in need of further rehabilitation to enhance his conflict resolution skills and commitment to non-violent conduct.

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 Michael McAfee does not merit parole at this time because he is not fully rehabilitated. The review will be in two years, during which time Michael McAfee should commit to a more comprehensive rehabilitation as recommended by the Parole Board. It is hoped that McAfee continues on his positive path of 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.



Janis DiLoreto Smith, Executive Director



Date