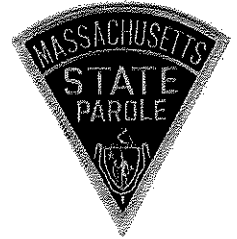


The Commonwealth of Massachusetts
Executive Office of Public Safety and Security



PAROLE BOARD

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Paul M. Treseler
Chairman

AMENDED DECISION

IN THE MATTER OF

**LOUIS COSTA
W44737**

TYPE OF HEARING: Review Hearing

DATE OF HEARING: February 6, 2018

DATE OF DECISION: July 26, 2018

PARTICIPATING BOARD MEMBERS: Sheila Dupre, Tonomey Coleman, Dr. Charlene Bonner, Tina Hurley, Colette Santa, Lucy Soto-Abbe. Chairman Paul Treseler recused.¹

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 that the inmate is a suitable candidate for parole. Parole is reserved to an approved home plan on or after 14 days of this decision, subject to special conditions.

I. STATEMENT OF THE CASE

On February 19, 1986, at around 9:30 p.m., Joseph Bottari and Frank Chiuchiolo were shot and killed by Louis Costa, Frank DiBenedetto, and another man.² Mr. Bottari was shot 16 times, including six shots to the head. Mr. Chiuchiolo was shot seven times, including five shots to the head. Both men were shot at close range. The murder occurred at Slye Park, a neighborhood in Boston's North End. A witness, who resided in an apartment overlooking the park, heard four or five "cracks or pops" that he thought were fireworks. He looked out his window and saw orange-red flashes in the area near Mr. Costa's hand. The sounds continued until the three shooters left the park. Mr. Costa and his co-defendants were arrested on

¹ Chairman Paul Treseler recused.

² Mr. Costa maintains that Richard Storella, a fully immunized witness at Mr. Costa's and Mr. DiBenedetto's second trial, was the third shooter. Mr. Storella testified that Paul Tanso was the third shooter. Mr. Storella gave a number of different and inconsistent accounts of the events that took place on the night of the murder. In one version, Mr. Storella claimed that he had been one of the murderers. Mr. Tanso was acquitted of the murder charges in 1994.

February 23, 1986. On May 21, 1986, the Suffolk County Grand Jury returned two indictments against Mr. Costa that charged him with the murders. Mr. Costa was 16-years-old at the time of the murders and indictments.

On April 11, 1988, in Suffolk Superior Court, Louis Costa was convicted by a jury of the first degree murders of Joseph Bottari and Frank Chiuchiolo. Mr. Costa filed an appeal. In December 1992, the Supreme Judicial Court concluded that Mr. Costa's right to confront a witness against him, under the Sixth Amendment of the United States Constitution, had been violated. The Court vacated the convictions and remanded the case for a new trial. Mr. Costa's second trial took place in 1994. A jury found him guilty on two counts of first degree murder. Mr. Costa was sentenced to two consecutive life sentences, without the possibility of parole, for the murders of Mr. Bottari and Mr. Chiuchiolo.

II. PAROLE HEARING ON FEBRUARY 6, 2018

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. Costa filed a motion for re-sentencing in Suffolk Superior Court. On October 9, 2015, Mr. Costa was re-sentenced to serve two concurrent life sentences, with the possibility of parole, for the first degree murders of Mr. Chiuchiolo and Mr. Bottari. Accordingly, Mr. Costa was granted a hearing before the Parole Board. Mr. Costa's initial parole hearing was held on February 26, 2016. Parole was denied with a two year review.

Mr. Costa, now 48-years-old, appeared before the Parole Board for a review hearing on February 6, 2018, and was represented by Attorney David Apfel. In Attorney Apfel's opening remarks to the Board, he highlighted Mr. Costa's progress over the past two years since his hearing. In Mr. Costa's opening statement to the Board, he recounted how, during his 2016 hearing, he told the Board "what [his] life was like growing up as a kid, what he witnessed and what he experienced, how his thinking used to be, and how his blind loyalty and misguided thinking led him to kill Joseph Bottari and Frank Chiuchiolo." Mr. Costa explained that he "took to heart" the Board's 2016 decision, which encouraged him to continue to work towards his full rehabilitation. He further stated that "a lot has changed" over the course of the past two years. Mr. Costa explained that he completed various programs and was transferred to minimum security, where he has resided for approximately 13 months. Mr. Costa also stated that he is "truly and deeply sorry" for the pain and suffering he caused. He apologized to the family of the victims, as well as his own family.

Currently, Mr. Costa is employed as a prison librarian and works for the Policy Development and Compliance Unit at MCI Norfolk. He is also a primary dog handler for the American Vet Dogs Program. He has completed several programs, including Thinking for a Change, Violence Reduction Program, Anger Management, Countdown to Freedom, and Path of Freedom. Mr. Costa explained that his two year review was an "opportunity to become a better person," an opportunity which he has taken advantage of. Mr. Costa explained that if he were afforded the opportunity for parole, he has "strong family support," employment opportunities, and adjustment counseling offered by Lyn Levy of SPAN.

Since his arrest, Mr. Costa has spent approximately 31 years incarcerated. Mr. Costa was briefly released from prison on bail, in 1992, for approximately 13 months, as he awaited a new trial after the successful appeal of his convictions. During that time, Mr. Costa reported a positive adjustment to living in the community. He was employed and began attending school during that time. Mr. Costa indicated that his return to prison, after his second trial, was "difficult," but he "adjusted." He explained that he managed to remain disciplinary report-free (since 1989) by trying to surround himself with positive people, by not "get[ing] involved with drugs or gambling, and by "try[ing] to live a positive lifestyle." Mr. Costa denied ever having any substance abuse issues. Mr. Costa graduated from Boston University with a degree in history and would like to continue his education by earning a Master's Degree in Business Administration.

After the *Diatchenko* decision in 2013, Mr. Costa publicly apologized to the family of his victims for the first time in court, after abandoning his appeal to the Supreme Judicial Court. Mr. Costa indicated that he regrets not taking responsibility sooner and realized, through the Restorative Justice Program, that his continued appeals were inflicting additional harm to the family of the victims. The Board also noted that materials were reviewed from Mr. Costa's 2016 hearing, including (but not limited to) an evaluation completed by Dr. Robert T. Kinscherff, a forensic psychologist. This evaluation describes Mr. Costa's childhood and the circumstances leading up to the murders, which were committed when Mr. Costa was 16-years old.

The Board considered oral testimony from Mr. Costa's aunt and cousin, Lyn Levi of SPAN, and Conan Harris, Deputy Director of Public Safety for the Mayor's Office and Executive Director of My Brother's Keeper, all of whom expressed support for Mr. Costa's parole. Dr. Robert T. Kinscherff also presented updated findings. Mr. Costa had many supporters in attendance at his hearing. The Board also considered a letter submitted by the family of Mr. Bottari in opposition to parole. The Board considered testimony from Suffolk County Assistant District Attorney Charles Bartoloni, who expressed opposition to parole. A letter in opposition to parole was submitted by Boston Police Commissioner William Evans.

III. DECISION

The Board is of the opinion that Louis Costa has demonstrated a level of rehabilitative progress that would make his release compatible with the welfare of society. Mr. Costa has continued to avail himself of rehabilitation and has been in lower security for approximately 13 months. His release meets the legal standard. The Board also considered Mr. Costa's age and maturity at the time of the offense.

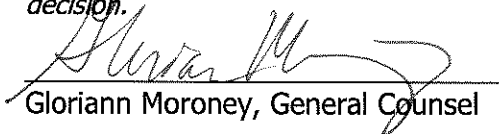
The applicable standard used by the Board to assess a candidate for parole is: "Parole Board Members shall only grant a parole permit if they are of the opinion that there is a reasonable probability that, if such offender is released, the offender will live and remain at liberty without violating the 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. Costa's risk of recidivism. After applying this appropriately high standard to the circumstances of Mr. Costa's case, the Board is of the opinion that Mr. Costa merits parole at this time to an approved home plan on or after 14 days of this decision, subject to special conditions.

SPECIAL CONDITIONS: Approve home plan before release; Waive work for 2 weeks; Must be at home between 10 p.m. and 6:00 a.m. or at Parole Officer's discretion; Electronic monitoring - GPS at Parole Officer's discretion, Supervise for drugs, testing in accordance with agency policy; Supervise for liquor, testing in accordance with agency policy; Report to assigned MA Parole Office on the day of release; Must have substance abuse evaluation and adhere to plan; Must have mental health counseling for adjustment/transition; Mandatory - work with Lyn Levy of SPAN.

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

7/31/18
Date