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Tina M. Hurley
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IN THE MATTER OF

JOHN AUSTIN

PETITION FOR PARDON

REPORT AND RECOMMENDATION

YOUR EXCELLENCY:

The Advisory Board of Pardons (hereinafter “the Board”) respectfully submits this report and recommendation concerning the pardon petition of John Austin, III. Mr. Austin was convicted of Operating Under the Influence of Alcohol, Second Offense, on July 1, 1996 in Natick District Court, and sentenced to one year of probation.

On or about January 31, 2018, Mr. Austin submitted a petition for a pardon. (*Attachment A*). On July 29, 2022, the Board conducted a public hearing regarding Mr. Austin’s petition. In his petition and at the public hearing, Mr. Austin requested a pardon for his conviction for Operating Under the Influence of Alcohol, Second Offense, so that he may obtain a license to possess a firearm and so that he may continue to advance in his career. After due consideration, the Board voted unanimously to recommend favorable consideration of Mr. Austin’s request for a pardon. The reasons for the Board’s recommendations are set forth in the body of this opinion.

PROCEDURAL HISTORY

On February 8, 1996, Mr. Austin was arrested by the Natick Police Department, and arraigned in Natick District Court, Docket Number 9687CR0160. He plead guilty to one count of Operating Under the Influence of Alcohol, Second Offense, on July 1, 1996. He was sentenced to one year of probation. His probation was terminated on July 1, 1997.

STATEMENT OF THE CASE

Shortly after midnight on February 8, 1996, a member of the Natick Police Department observed a vehicle speeding while committing several traffic infractions, including crossing the center dividing line on a public way in Natick, Massachusetts. The officer conducted a motor vehicle stop, and made contact with the operator of the vehicle, John Austin. An odor of an alcoholic beverage emanated from Mr. Austin's person, and the officer noticed that Mr. Austin's speech appeared to be slurred. After Mr. Austin admitted to consuming several beers that evening, the officer requested that he step from the vehicle. Mr. Austin failed several field sobriety tests, and was placed under arrest. (*Attachment B* – Natick Police Department Report).

PRIOR CRIMINAL RECORD

According to the Massachusetts Board of Probation record and the National Crime Information Center (NCIC) record, both dated February 22, 2022, Mr. Austin has a limited criminal history. (*Attachment C* – Criminal History). Apart from the instant offense, Mr. Austin received a continuance without a finding for a First Offense of Operating Under the Influence of Alcohol in 1988. He received a short term of probation, which was successfully completed.

PARDON PETITION OF JOHN AUSTIN

As previously indicated, John Austin submitted a petition for executive clemency, in the form of a pardon, for a 1996 conviction Operating Under the Influence of Alcohol, Second Offense. Through his petition, Mr. Austin sought a pardon in order to obtain a license to carry firearms. He explained that he petitioned the Massachusetts Firearm License Review Board to obtain a license, in light of his conviction. The Firearm License Review Board granted his petition, and he was granted a license by the Natick Police Department Chief of Police. However, in 2018,

Mr. Austin received correspondence from the Federal Bureau of Investigation, stating that, “the restoration by the Massachusetts Commonwealth Firearms Licensing Board is not a valid restoration for NICS purposes.” The correspondence encouraged Mr. Austin to apply for a pardon for his felony conviction, which is the basis for his disqualification from possessing a firearm.

2022 INTERVIEW OF JOHN AUSTIN, III

At the request of the Advisory Board of Pardons, Mr. Austin was interviewed on July 26, 2022. A copy of his interview report is included as *Attachment D*.

PROCEEDINGS BEFORE THE ADVISORY BOARD

On July 29, 2022, the Advisory Board of Pardons held a public hearing on John Austin’s pardon petition. The hearing was chaired by Gloriann Moroney¹. Advisory Board of Pardons Members Tonomey Coleman, James Kelcourse, and Colette Santa were present at the hearing. Board Members Charlene Bonner and Tina Hurley were not present for the hearing, but reviewed the record and participated in deliberations. Mr. Austin was not represented by counsel.

THE BOARD’S INQUIRY

SOCIAL & PROFESSIONAL HISTORY

Upon inquiry by the Board, Mr. Austin provided information concerning his social and professional history. Mr. Austin grew up in Watertown, Massachusetts. He served in the United States Marine Corps on active duty from 1990 through 1994, and subsequently served an additional two years in the Marine Corps Reserves. Mr. Austin reported that he was recruited into a scout sniper unit, where he received extensive firearm training. He received an Honorable Discharge in 1997.

After his conviction for a second offense of Operating Under the Influence of Alcohol, Mr. Austin stated that he came to the realization that he is a “person who should not drink.” He has remained sober since his 1996 offense.

¹ Chair Moroney participated in this hearing prior to her appointment to the judiciary.

Mr. Austin obtained an Associate's Degree from Mass Bay Community College in Science with High Honors in 1997. He was the president of his radiology class, and began to work in radiology at Tufts Medical Center upon graduation. He eventually obtained an advanced license for interventional radiology, and continues to work as a radiology technician at Mount Auburn Hospital several days per week.

Mr. Austin also attended the Fire Academy in 2001, and has served as a member of the Natick Fire Department since 2001. He obtained a second Associate's Degree in Fire Science from Quinsigamond University in 2003. Over the course of his career in the Natick Fire Department, he has received several promotions, first to the rank of Lieutenant, then Captain, and, finally, to his current position as a Deputy Chief. He is currently working towards his Bachelor's Degree in Emergency Management at Waldorf University.

Mr. Austin is married, and has three children. In his free time, he devotes time to organizing teams for various charitable events, many of which support first responders. He estimated that he had organized teams and participants for approximately fifty charity events to support various organizations, including the Run to Remember, the Navy Seal Foundation, and the Stephen Siller Foundation.

GOVERNING OFFENSE

The Board inquired about the offense for which Mr. Austin seeks a pardon. Mr. Austin accepts responsibility for the offense. He informed the Board that he grew up in an environment in which drinking was both accepted and normalized, and that he began to participate in that culture in his teenage years. With respect to the governing offense, Mr. Austin reported that he consumed six to seven beers at a bar in Framingham. After leaving the bar, he offered another man a ride in his vehicle. The other man exited his vehicle, and Mr. Austin performed an illegal U-turn. He was stopped by police, and admitted that he did not perform field sobriety tests to the officer's satisfaction. He was arrested and charged in Natick District Court with Operating Under the Influence, Second Offense.

Mr. Austin plead guilty, and was sentenced to one year of probation. As one of the conditions of his probation, he was ordered to complete an alcohol education class. Mr. Austin explained to the Board that the class resonated with him, and he made the decision to make a lifestyle change with a commitment to sobriety. He completed his probation without incident.

VICTIM IMPACT

No victim impact statements were provided to the Board.

PRIOR CRIMINAL HISTORY

Board Members inquired about Mr. Austin's prior continuance without a finding for Operating Under the Influence. Mr. Austin explained that he was arrested for that offense after leaving a work Christmas party in 1988. Mr. Austin has had no further involvement with the criminal justice system.

COMPELLING NEED FOR A PARDON

The Board made inquiries concerning Mr. Austin's compelling need for a pardon. Mr. Austin stated that he has two reasons for his request: first, he wishes to advance in his career, and second, he wishes to possess a firearm.

First, Mr. Austin expressed concern that his conviction may be a barrier to further advancement in his field. He explained that he received several civil service promotions throughout his career, and is now considering a future as a fire chief. He explained to the Board that an application for such a position is a separate process governed by a special selection committee, and expressed worry that his conviction could negatively impact his chance of earning such a position.

Second, Mr. Austin is seeking authorization to possess a firearm. He reported that he appealed to the Firearm Licensing Review Board to obtain a license to carry in 2015. The Firearm Licensing Review Board determined that he was an appropriate candidate, and Mr. Austin was able to acquire a firearm. In 2018, however, he received correspondence from the Federal Bureau of Investigation informing him that federal authorities did not consider the Massachusetts Firearm

Licensing Review Board determination to be a valid restoration of firearm rights. He relinquished his firearm after receiving that correspondence, and seeks a pardon in order to have his firearm possession rights properly restored.

SUPPORT

TESTIMONY

No individuals testified in support of Mr. Austin's petition.

LETTERS

The Board reviewed three letters of recommendation submitted in support of his pardon petition. *Attachment A*, pages 8-9; *Attachment E*.

Natick Fire Department Deputy Chief Victor Lipoma

Deputy Chief Lipoma, a work supervisor, wrote, "[Mr. Austin] has always demonstrated the highest level of competence and trustworthiness . . . I believe John to be a level headed individual who makes good decisions under pressure."

Natick Fire Department Deputy Chief Daniel Tardiff

Deputy Chief Tardiff characterized Mr. Austin as "a law abiding person."

Dr. Jeremy Schiller, Assistant Professor of Radiology

Dr. Schiller praised Mr. Austin's work ethic and dedication, stating, "[O]ur entire Interventional Radiology Department stands in great admiration and gratitude for John's work, commitment, and compassion for the patients we treat."

OPPOSITION

TESTIMONY

No individuals testified in opposition to Mr. Austin's petition.

LETTERS

No letters were submitted in opposition to Mr. Austin's petition.

OPINION OF THE ADVISORY BOARD

FAVORABLE RECOMMENDATION

After careful review and consideration, it is the opinion of 6 of the 6 voting members of the Advisory Board of Pardons that a favorable recommendation for a pardon be sent to the Governor on behalf of John Austin.

Governor Charles D. Baker's Executive Clemency Guidelines, issued on February 21, 2020 ("Guidelines"), establish the grounds upon which a pardon may be granted and provide assistance to the Advisory Board of Pardons in making recommendations to the Governor on clemency petitions. The Guidelines state that a pardon is "an extraordinary remedy which has the effect of treating the petitioner as if the offense had never been committed." The Guidelines further provide that "[pardons are] intended to remove the barriers that are sometimes associated with a criminal record, thereby facilitating the reintegration of the petitioner into his or her community." The Guidelines state that the nature and circumstances of the offense and the character and behavior of the petitioner are the two "paramount considerations in deciding whether to grant clemency."

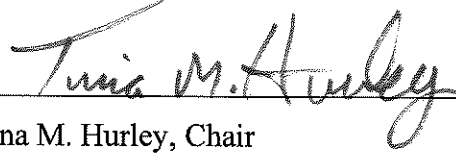
Under the Governor's Guidelines, a person who petitions for a pardon bears the responsibility of demonstrating, by clear and convincing evidence, that:

- (a) The petitioner has clearly demonstrated an acceptance of responsibility for the offense for which the petitioner is seeking clemency;
- (b) the petitioner does not have any pending appeals or challenges to a conviction or sentence;
- (c) the petitioner has made full restitution to his or her victims, in the event of economic injury;

- (d) the petitioner has made exceptional strides in self-development and self-improvement and would be a law-abiding citizen;
- (e) the petitioner has provided substantial assistance to law enforcement in the investigation or prosecution of other more culpable offenders;
- (f) the petitioner has contributed to society through the military or public service, or through charitable work;
- (g) the petitioner has demonstrated a period of good citizenship by “leading a responsible and productive life and contributing to [his or her] community in a positive manner” for more than ten years following a felony conviction, “without the structure provided by government supervision,” such as probation or parole;
- (h) there is no alternative remedy available to the petitioner.

Mr. Austin was convicted out of Natick District Court for a 1996 OUI Liquor. He successfully completed probation. He accepts full responsibility for the offense and indicated he has been sober since this offense. The Board notes Mr. Austin has been employed as a firefighter for approximately 21 years. Mr. Austin has significant family and community support and is engaged in numerous volunteer projects within his community, and is a part-time radiology technician at Mt. Auburn Hospital. He is a USMC [United States Marine Corps] veteran and remains engaged in the military community. Mr. Austin is currently employed as Deputy Chief of the Natick FD after numerous promotions. He is seeking a pardon both for career advancement in civil service and to obtain a firearms license. He sufficiently demonstrated a compelling need.

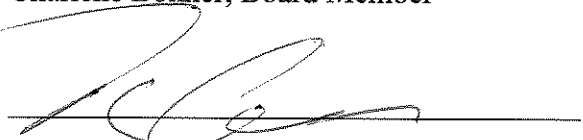
For the five members of the Advisory Board of Pardons respectfully recommending favorable consideration, signed on this the _____ of November, 2022:



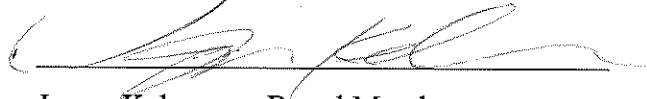
Tina M. Hurley, Chair



Charlene Bonner, Board Member



Tonomey Coleman, Board Member



James Kelcourse, Board Member



Colette Santa, Board Member