



The Commonwealth of Massachusetts
Executive Office of Public Safety



PAROLE BOARD

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DECISION

IN THE MATTER OF

LUIS BERRIOS

W59917

TYPE OF HEARING: Initial Hearing

DATE OF HEARING: November 1, 2011

DATE OF DECISION: October 19, 2012

PARTICIPATING BOARD MEMBERS: Cesar Archilla, Dr. Charlene Bonner, Sheila Dupre, Ina Howard-Hogan, Roger Michel, Lucy Soto-Abbe, Josh Wall

DECISION OF THE BOARD: Parole is denied with a review in five years. The decision is unanimous.

I. INTRODUCTION

Luis Berrios appeared before the Massachusetts Parole Board on November 1, 2011 for an initial hearing after serving 15 years of his life sentence. After careful consideration of all relevant facts, including the nature of the underlying offense, the views of the public as expressed at the hearing or in written submissions to the Board, the inmate's criminal history, institutional record and program involvement while incarcerated, we conclude that the inmate is not a suitable candidate for parole at this time.

II. STATEMENT OF FACTS

On February 28, 1995, victim Carlos Falcon was shot and killed outside the Kentucky Fried Chicken on State Street in Springfield. Along with Mr. Falcon there were three individuals who were shot and wounded. Those three individuals are Raul Sanchez, Eddie Santiago and Marcelino Vazquez.

Mr. Berrios and others were at the apartment of Sharleen Alvarez on February 28, 1995. All of them were either members of the gang known as Los Solidos or members of a related organization known as the Original Family Organization (OFO). Among those present were Mr. Berrios, Robert Francis, Victor Figueroa, Johnny Sanchez, Daniel Rodriguez, Michael Borden, Jason Jiles and Ms. Alvarez. At some point two more people, Luis Concepcion and David Jiles, came in and reported that a car full of members of a rival gang, the Latin Kings, were in the parking lot of the Kentucky Fried Chicken restaurant across the street. According to Concepcion and D. Jiles, the Latin Kings were flashing hand signals showing disrespect to Los Solidos. Mr. Berrios and other members of Los Solidos held a meeting in the bathroom of Alvarez's apartment where the decision to order a mission against the Latin Kings was made. Borden and J. Jiles, were sent out to deal with the situation. J. Jiles shot Carlos Falcon in the head at point blank range, killing him. Borden fired into a car and wounded three of Falcon's companions.

On January 17, 1996, Mr. Berrios pleaded guilty to one count of accessory before the fact of second degree murder, three counts of accessory before the fact to armed assault with intent to murder and one count of possession of a firearm. He was sentenced to Life with the possibility of parole and 3-5 years concurrent on each of the remaining charges. Subsequently, Mr. Berrios filed a motion for a new trial seeking to withdraw his guilty plea alleging that his plea of guilty was coerced. During the evidentiary hearing, he testified that he did not want to plead guilty because he was innocent and denied playing any role in the decision to order the mission. On September 29, 2005, a Hampden County Superior Court Judge granted him a new trial and he was released from custody on bail. The Appeals Court affirmed the Superior Court's decision. The Commonwealth further appealed to the Supreme Judicial Court. On November 20, 2006 the SJC concluded that Mr. Berrios was not credible when he testified at the evidentiary hearing, and the SJC documented testimony and evidence presented at the hearing by Mr. Berrios that was suspicious and unreliable. The SJC vacated the Appeals Court decision and reinstated the original convictions. Mr. Berrios remained on bail in the community without incident until November 21, 2006.

The co-defendants in this case are Michael Borden (convicted of second-degree murder), Jason Jiles (convicted of first-degree murder) and Robert Francis (convicted of first-degree murder).

Mr. Berrios' criminal history commenced as a juvenile in 1980 with two delinquencies for assault with intent to kill. He has an adult conviction for possessing cocaine with intent to distribute for which he received a six-month commitment.

III. INSTITUTIONAL CONDUCT

Mr. Berrios was 20 years old at the time of the offense. He is currently 37 years old and serving his second adult incarceration. While incarcerated, Mr. Berrios' institutional conduct has been excellent as he has incurred only one disciplinary report which he received two days after being sentenced. He was found guilty for his role in an assault on his cellmate where he acted as the lookout man.

Mr. Berrios is currently incarcerated at Bridgewater State Hospital where he works in a cadre position. Mr. Berrios has engaged in a large number and wide range of institutional programming, including those recommended by the Department of Correction in his risk reduction plan. He achieved his GED in 1999, gained his welders license in 2010, and his apprentice barber's license in 2002.

Mr. Berrios underwent the Spectrum Program to renounce his gang affiliation.

IV. PAROLE HEARING ON NOVEMBER 1, 2011

At the hearing Mr. Berrios made an opening statement. He was represented by Attorney Joseph Krowski, who also presented an opening statement where he focused on Mr. Berrios' 2002 motion to withdraw his guilty plea, the allegedly coerced plea, his lawyer being disbarred for similar conduct, a four-day evidentiary hearing on the motion, thirteen months on bail pending an appeal, and his steady employment while out on bail. Attorney Krowski went on to state that he didn't believe these kids were a gang but in fact were "knuckleheads."

Mr. Berrios made similarly odd comments about one of the most destructive criminal street gangs in Springfield's history. Although Mr. Berrios was a member of Los Solidos gang and has a history of criminal activity related to that gang involvement, he minimized both by denying ever encouraging anyone to commit crimes and stated that Los Solidos was "doing social good for Springfield." Furthermore, he claimed to have been a "peacemaker" and when he was appointed president, he hoped there would be "some positive change in this negative lifestyle."

During the hearing, Mr. Berrios stated that although he was president of Los Solidos, he had been suspended a few months prior to the incident because of his views; therefore, he was not in good standing. He denied playing any role in the decision to order the murder or mission and claims that he was excluded from the discussions, which is inconsistent with his statement to police and his admission at his plea and multiple statements by co-defendants. Mr. Berrios stated that he "didn't do anything" and "was pretty much just there." He described "a party," not a gang event to plan a mission and presented a version of events in which he does nothing wrong.

Under questioning he admitted that "it was acceptable to take a life when they are in our territory or flash signals or say disrespectful things." He maintained that as president he had no authority to order missions or attacks, however the "warlord" and "chief enforcer" did and he was neither. When asked directly by a Board Member if he had any authority to overrule the order, Mr. Berrios admitted that "I could have overruled Francis who ordered the hit."

Mr. Berrios pleaded guilty in 1996, but then sought to withdraw his plea in 2002. He blames everyone for what he claims is an erroneous conviction: his mother and other family members, his friends, the Springfield Police Department, his trial lawyer, the witnesses, his co-defendants, the Assistant District Attorney, the trial judge, and the Massachusetts Supreme Judicial Court. He asserts that his co-defendants lied and committed perjury "to get him." Mr. Berrios is trying to convince the Board to disregard the conviction and disagree with the Massachusetts Supreme Judicial Court.

The Hampden County District Attorney's Office and the Springfield Police Department oppose parole. Mr. Berrios had several supporters of parole in attendance.

V. DECISION

The Board notes Mr. Berrios' excellent institutional behavior, program involvement, educational accomplishments, family support and the thirteen months he remained on bail in the community without incident. Rather than building on these strengths, Mr. Berrios used his parole hearing testimony as an opportunity to display his lack of rehabilitation by denying his culpability for the murder and making foolish claims that Los Solidos was a force for good in the city of Springfield. He offered similar testimony in 2002 at the hearing on his motion to withdraw his guilty plea. The Supreme Judicial Court decision stated that Mr. Berrios, due to his testimony "that the gang was an organization committed to doing only good (they were everything but negative, everything they did was positive) and serving the community, also would have faced serious character and credibility issues of his own. His testimony about the social beneficence of Los Solidos lacks any credibility in view of the gang's criminal activities and the defendant's position of authority in the gang as it engaged in its illegal and violent enterprises."

Mr. Berrios denied that he ordered or encouraged the killing. His position is contrary to his conviction and abundant credible evidence. The Supreme Judicial Court decision described Mr. Berrios' plea admissions. At his plea, Mr. Berrios admitted that he "was in a 'position of authority' as a former president of Los Solidos" and that in the bathroom meeting he "made several statements, including statements that 'everything is ready to go,' and telling Jason Giles to 'go and do them.'" Berrios further "admitted that he had 'counseled [Jason Giles and Borden] to go shoot and kill the people in that car.'" Mr. Berrios also made a written confession to Springfield Police on May 15, 1995. The testimony presented at the trials of Robert Francis and Jason Giles is substantially consistent with Mr. Berrios' admissions.

Luis Berrios urges the Parole Board to ignore his conviction, his prior admissions, and the Supreme Judicial Court decision. We decline to ignore the conviction, the evidence, and the Supreme Judicial Court. He further urges the Board to adopt his positions that he is innocent and that Los Solidos was a charitable organization devoted to keeping the peace and doing good works for the citizens of Springfield. We decline to adopt these positions.

The inmate's false statements made at his parole hearing did not assist the Parole Board in understanding the facts of the crime but these false statements do assist the Board in evaluating the inmate's suitability for parole. By lying about his involvement in the murder and other gang activity, Mr. Berrios made it clear that he is not remorseful or rehabilitated. The manipulation he used the night of the crime to cause a murder was on display at his parole hearing as he used lies in an attempt to manipulate the parole decision.

Mr. Berrios needs to put aside his stubborn manipulations and approach his rehabilitation with more honesty and objectivity. The inmate's delusional views have prevented him from accepting the harm he has caused through extensive criminal conduct and from working honestly to reform. The Board encourages Mr. Berrios to continue participating in any available programming and thus gain further insight into the causal factors of his criminal conduct. It is the unanimous opinion of the Board that Mr. Berrios' release on parole is not

compatible with the welfare of society and that it is not reasonably probable that Mr. Berrios would not re-offend if paroled. Accordingly, parole is denied. The review will be in five years.

I certify that this is the decision and reasons of the Massachusetts Parole Board regarding the above referenced hearing.



Timothy V. Dooling, General Counsel



Date