



The Commonwealth of Massachusetts
Executive Office of Public Safety



PAROLE BOARD

12 Mercer Road
Natick, Massachusetts 01760

Deval L. Patrick
Governor

Josh Wall
Chairman

Andrea J. Cabral
Secretary

Telephone # (508) 650-4500
Facsimile # (508) 650-4599

DECISION

IN THE MATTER OF

DAVID SIBINICH

W38839

TYPE OF HEARING: Revocation Review Hearing

DATE OF HEARING: February 5, 2013

DATE OF DECISION: October 7, 2013

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

DECISION OF THE BOARD: After careful consideration of all relevant facts, including the nature of the underlying offense, institutional record, the inmate's testimony at the hearing, the views of the public as expressed at the hearing or in written submissions to the Board, we conclude by a unanimous vote that the inmate is not a suitable candidate for parole at this time. Parole is denied with a review in five years.

I.STATEMENT OF THE CASE

At 10:50 p.m. on December 15, 1980, two Pittsfield Police officers were sent to 168 Linden Street in response to a telephone call reporting screaming at that address. When they arrived, they found David Sibinich in the house and the owner of the house, Esther Berenholc, tied tightly with wire and lying on the floor in her bedroom. Ms. Berenholc was 80 years old. She had been beaten and badly bruised about the face and had a great deal of blood on her face and head. Her fingers were also cut in several places, and she suffered multiple cut wounds on the head. She told the two officers that "he," meaning Mr. Sibinich, had tried to smother her with a pillow and choke her before tying her up. The officers observed pillow stuffing scattered around the room, and also saw stuffing and blood on Mr. Sibinich's clothing and body.

Several other police officers arrived shortly after that and Mr. Sibinich was arrested and searched. The police found a diamond ring, later identified as belonging to Ms. Berenholc, in one of the Mr. Sibinich's pockets. They also confiscated a bloodstained knife from him, along with a six-inch piece of wire identical to that used to bind Ms. Berenholc. Mr. Sibinich stated to the officers that Ms. Berenholc had given him the ring that night.

The two officers who originally responded to the residence of Ms. Berenholc, who ran a boarding house, had also investigated a vandalism complaint at a store across the street from her home an hour earlier. They said at that time they saw her standing in a lighted area inside her front door talking with a young man later identified as Mr. Sibinich. Mr. Sibinich was a resident of Troy, New York, and did not live at the boarding house.

Mr. Sibinich testified in his own defense and said a co-defendant, John Ryan, also of New York State, actually committed the beating. He said Ryan had ridden with him to Pittsfield and had left him alone in their car while Ryan went into Ms. Berenholc's house for a long period of time. Mr. Sibinich said he went into the house later to try to find Ryan and found Ms. Berenholc beaten and tied just before the police arrived. Ryan previously pled guilty to being an accessory before the fact of the armed robbery.

Ms. Berenholc died on February 7, 1987, nearly two months later. An autopsy showed her death to have been from natural causes, apparently not directly from the injuries inflicted in the December 15th beating.

On March 17, 1982 in Berkshire Superior Court, Mr. Sibinich was found guilty by a jury of armed robbery, assault in a dwelling with a dangerous weapon, assault with intent to murder, and assault and battery with a dangerous weapon. On March 19, 1982 he received concurrent life sentences for the first two charges, and concurrent 8 to 10 year terms for the other charges.

II. PAROLE HISTORY

David Sibinich first appeared before the Parole Board in June 1996 after being granted a six month postponement. Parole was denied in August 1996 with the Board noting minimal drug treatment for a long history of substance abuse. The Board set a three-year review.

Mr. Sibinich was denied parole in 1999 with a three-year review, and again in 2002 with a two-year review. The Board noted improved institutional conduct but indicated his release was incompatible with the welfare of society.

In November 2004, Mr. Sibinich appeared before the Parole Board for the fourth time. Following that hearing, he was denied with a five-year review. The Board noted his 30 disciplinary reports, 5 returns to higher custody, and his lack of insight into the severity of his offense. Mr. Sibinich appealed this decision, specifically the increased setback. In March 2005 the Board granted the appeal and voted to change the review period to one year.

Following his appearance before the Parole Board in November 2005, the Board issued a split vote. Three members voted to parole Mr. Sibinich, and three voted to deny his parole. In accordance with Board policy, Mr. Sibinich was granted a one-year review. He was seen again

by the full Board on November 14, 2006. On February 7, 2007, the Board voted to grant Mr. Sibinich a parole to the Interstate Compact after completion of the Correctional Recovery Academy program. He was paroled to New York on December 12, 2007.

In August 2011, the Massachusetts Parole Board was informed that Mr. Sibinich had been unemployed since May 2011, his driving privileges were suspended, and he refused to submit to a drug test and to participate in a drug treatment program. Mr. Sibinich did regain his license upon entering an outpatient treatment program. Parole was not revoked, but a letter of reprimand was forwarded to Mr. Sibinich via the New York Parole Board.

On February 3, 2012, Mr. Sibinich's parole was revoked for his use of controlled substances, being in the company of his brother, Timothy Sibinich, who was known to have a criminal record, failure to complete a drug treatment program, and failure to notify parole of his contact with law enforcement. Mr. Sibinich was charged in New York for drug related offences for his alleged involvement in a drug conspiracy ring. He was indicted on 10 counts of cocaine sales. Eventually, he pleaded guilty to one count of attempt to possess cocaine and received a two-year sentence concurrent with his life sentence.

III. PAROLE HEARING ON FEBRUARY 5, 2013

David Sibinich was asked to describe his state of mind and provide details of the murder of Ms. Berenholc. Mr. Sibinich has always maintained that his co-defendant knew Ms. Berenholc because he had rented an apartment from her and robbed her in the past. Mr. Sibinich agreed to try and gain access to her residence under the false pretense that he wanted to rent an apartment from her. He testified that he asked her to use the phone, she let him in, and he informed her "this is a robbery." He denied using a weapon but recalls hitting her in the face, tying her up, and hitting her over the head with a vase. He put a pillow over her face when she continued to scream, then took the stuffing out of the pillow and put it in her mouth. Mr. Sibinich stated he moved the body into the bedroom when he heard a knock on the door. Mr. Sibinich said his memory is impaired because he was drinking heavily throughout the day and he had also used cocaine.

The Parole Board was particularly concerned with the level of violence he inflicted on an 80-year-old woman, as well as the bizarre and defamatory statements he made to police when initially questioned. Among many false statements, Mr. Sibinich initially stated to police that he was there with the sole intention of renting an apartment from Ms. Berenholc and that Ms. Berenholc attempted to seduce him and made numerous sexual advances toward him. He stated she requested to be tied up for sexual gratification and that is why he tied her up. Mr. Sibinich now admits the obvious, that none of the statements he made when questioned by police were true. When Board Members asked him about the false sexual statements accusing the innocent victim and whether he was remorseful for the statements, he would only state "I may have said some things to antagonize the police; I was a cocky young man then." The Board questioned Mr. Sibinich further as to whether he really viewed such false statements as another way he devalued and insulted Ms. Berenholc. Mr. Sibinich agreed, but clarified that he was heavily intoxicated.

Mr. Sibinich does not dispute the level of violence and the injuries he inflicted; however, he again insisted that he was intoxicated and cannot recall all that he did that evening. Mr. Sibinich stated that his intoxicated state played a significant role in his violent behavior that evening.

In terms of his parole history and violations, Mr. Sibinich described a period of decline after injuring his back at work, and being prescribed pain medication, which he became addicted to. He did report, however, that he regained his sobriety with treatment. Mr. Sibinich also stated that he was consistently working (with the exception of his time in inpatient treatment), was invested in work, and at no time did he avoid working. The Parole Board was most concerned with gaining an accurate representation of his substance use and involvement in what appeared to be a large trafficking conspiracy. The details concerning these questions became increasingly confusing as the hearing progressed.

In a written statement authored by Mr. Sibinich to his New York parole officer's supervisor, Mr. Sibinich sought to rectify what he saw to be unfair allegations associated with his revocation. In his letter, his statements regarding when, how often, and how many different substances he used while on parole were different from his written statement provided through counsel, and different from his testimony at the parole hearing. He insisted that his New York parole officer was not truthful in her reports regarding his performance. Mr. Sibinich stated that his parole officer in New York, treated him "unprofessionally," and blames her conduct as a contributing factor in his parole failure. However, Mr. Sibinich provided inconsistencies regarding his own actions on parole. For example, Mr. Sibinich stated in his letter that the first time he had used any non-prescribed drugs was on 1/12/12, which was marijuana, cocaine, and hydrocodone, (the hydrocodone he then stated was prescribed for back pain months prior.) In his statement via his attorney, he reported that in 2009 he was addicted to Lortab (prescribed for back pain), and that he required a detox and outpatient treatment to stabilize. He then stated that he used marijuana when his anti-anxiety "medication ran out." This medication was a prescribed benzodiazepine. He consistently denied abusing the medication "while on parole," but admits that he had a history of abusing benzodiazepines in the past. He also admitted to using marijuana "more than ten times," and attended an outpatient treatment program for his marijuana addiction. Finally, he stated in his legal brief that he was abusing cocaine from November 2011 until his arrest for drug related offenses on January 2012.

Upon seeking clarification of his use, Mr. Sibinich provided vague and inconsistent responses, which created considerable confusion. This compromised the Board's ability to accurately assess his issues with substances. The Board also questioned why he was accepting an addictive medication such as a benzodiazepine, and then would "run out." He consistently denied abusing the medication, but again, admitted to substituting with marijuana. Mr. Sibinich agrees that if his anxiety requires medication to treat, that he wished he had worked more closely with an addiction specialist to monitor and treat his anxiety with other medications if possible. His regression to abusing cocaine also appears to be unclear. Mr. Sibinich again attributed his difficulty managing his anxiety, and his re-association with his brother, who is an addict, as being major factors in his decline and further relapse. Due to Mr. Sibinich's confusing responses, the Board was not able to determine how often and over what period of time he was abusing cocaine.

The Board also questioned Mr. Sibinich regarding prior psychological assessments that described him as having certain symptoms including impulsive behaviors, a tendency to minimize or reject social norms as a basis for appropriate behaviors, disorganized life and chronic maladaptive behaviors, as well as other anti-social behaviors that were gleaned from personality tests and psychological evaluations. Such evaluations were conducted in the 1980s; however, the Board pointed out that the evaluations appeared consistent with his behavior on parole.

Although the Board acknowledged periods of sobriety and employment as accomplishments, the Board stated that his overall decline on parole was replete with dishonesty and criminal thinking. Mr. Sibinich did not think that the psychological evaluations or the current depiction of his performance were an accurate representation of his overall conduct. The Board questioned other behaviors that were uncooperative or dishonest. Mr. Sibinich again maintained that his parole officer was not accurate in reporting his behavior. For example, Mr. Sibinich denied deliberately missing or avoiding urine screens with parole, and insisted that he cannot provide a supervised urine due to a medical condition causing a "shy bladder." He stated that he initially had a good relationship with his parole officer in New York, but was switched to another parole officer, who he feels, was not honest or respectful to him. Mr. Sibinich re-iterated that he was not accused of or viewed as manipulative during his initial period of parole.

Mr. Sibinich described his role in his drug-related criminal offenses in New York as a result of his relapse on cocaine, and denied that he was involved in a major drug conspiracy ring. Mr. Sibinich stated he was "just using" and did not know any of the individuals he bought cocaine from. He denied any involvement in selling cocaine. Mr. Sibinich reported to the Board that he actively requested to return to New York to face his New York charges and on November 16, 2012, he pleaded guilty to attempted possession of cocaine, and was sentenced to two years to run concurrently with his Massachusetts sentence.

Since his return to custody, Mr. Sibinich has not engaged in any significant programming, but has generally been cooperative within the institution. He stated he is on the waiting list for programs and employment. Mr. Sibinich is requesting to be paroled back to New York, where his support system is. He stated he would seek parole initially to an inpatient Veterans program to deal with mental health and substance abuse issues. Mr. Sibinich provided numerous letters of support, including from his fiancée, Philomena Anderson, whom he has known since his adolescent years. Mr. Sibinich also provided a work plan with his brother, Andy Sibinich, who would employ him at his contacting business. When asked why he did not have any of his supporters in attendance to speak directly to the Board, he stated that he asked them not to come.

Berkshire Assistant District Attorney Joseph Pieropan spoke in opposition to Mr. Sibinich's parole. He referred to Mr. Sibinich's long history of minimizing his criminal conduct, and his continued poor conduct on parole as clear indications of his lack of rehabilitation. ADA Pieropan stressed to the Board that Mr. Sibinich continues to blame others for his conduct and remains a risk to public safety.

IV. DECISION

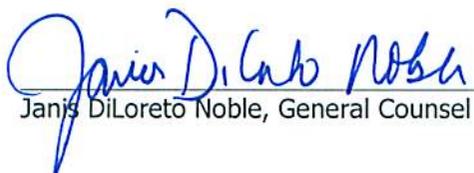
David Sibinich was released on parole supervision on December 12, 2007. He appeared to be adjusting well during the initial stages of his parole; however, what continues to remain unclear is when and how significant was Mr. Sibinich's decline on parole. The confusion includes which drugs and prescription medications he was abusing, and the extent of his involvement in a drug dealing operation. Mr. Sibinich made many inconsistent statements on these matters and some of his claims are refuted by other information and evidence. The very fact that the Parole Board still does not have a clear understanding of Mr. Sibinich's overall conduct is of significant concern. Mr. Sibinich was provided opportunities to resolve such apparent misrepresentations; however, his lack of candor further diminished the Parole Board's confidence in his past and future conduct. At the very least, Mr. Sibinich admits to abusing marijuana, and cocaine, and to purchasing cocaine. His overall conduct and regression into addiction and criminal behavior appears much more involved than what Mr. Sibinich has represented to his parole officer and to the Parole Board.

What also appears clear is that Mr. Sibinich was given opportunities to engage in treatment which he did not take advantage of. He reports compliance with such treatment opportunities, but it appears that only his arrest on serious drug charges interrupted his abuse of cocaine and other substances. Mr. Sibinich committed an extraordinarily violent act under similar circumstances, thus the Parole Board has grave concerns that despite treatment interventions and despite having access to and accountability to his parole officer, his addiction and conduct increasingly declined. The concerns outlined and remaining questions regarding Mr. Sibinich's conduct on parole are incompatible with parole supervision.

Although Mr. Sibinich's institutional adjustment since being returned to Massachusetts has been without incident, the Parole Board strongly recommends that he invest in all available opportunities that will help him with his addiction and provide insight into how his conduct placed him in violation of his parole and failed to meet the expectations of good citizenship. Without additional rehabilitation, Mr. Sibinich is not currently capable of abiding by parole conditions and maintaining a trusting relationship with his parole officer.

The standard 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 an 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, the Parole Board concludes that David Sibinich is not currently suitable for parole due to insufficient rehabilitation as evidenced by his poor conduct and criminal behavior on parole. It is the unanimous decision of the Parole Board to deny Mr. Sibinich's parole with a review in five years.

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 Noble, General Counsel

10/7/13
Date