



The Commonwealth of Massachusetts
Executive Office of Public Safety



PAROLE BOARD

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DECISION

IN THE MATTER OF

ARISTIDES DUARTE

W53829

TYPE OF HEARING: Initial Hearing

DATE OF HEARING: April 15, 2014

DATE OF DECISION: November 21, 2014

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, 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 a suitable candidate for parole. Parole is granted to his Immigration and Customs Enforcement (ICE) detainer, with the expectation that Mr. Duarte will be deported to reside in Cape Verde.

I. STATEMENT OF THE CASE

Aristides Duarte appeared before the Massachusetts Parole Board for an initial hearing on the life sentence he is currently serving at MCI-Norfolk.

On January 14, 1993, in Suffolk Superior Court, Duarte was convicted by a jury of murder in the first degree on the theory of extreme atrocity or cruelty. Duarte was among a group of ten to twelve assailants who murdered Charleston Sarjeant, age 25, who was a patron in a Dorchester restaurant. Duarte was also convicted of assault and battery by means of a dangerous weapon (shod foot)¹ for which he received a concurrent sentence of three to five years.

¹ Charges of possession Class B with intent to distribute and distribution Class B were filed on June 21, 1993.

Duarte was tried with his co-defendants, Adriano Barros, James Villaroel, and Lamar Johnson, and all were convicted of first degree murder and assault and battery by means of a dangerous weapon.² Other identified assailants were later tried.³ On June 25, 2013, after hearing argument on Duarte's motion for verdict reduction,⁴ Justice Robert A. Mulligan ordered Duarte's sentence reduced to murder in the second degree.⁵ In reducing the sentence, Justice Mulligan relied on a variety of factors, including Duarte's lack of a prior criminal record; his young age at the time of the murder; that Villaroel, rather than Duarte, was the instigator and principal aggressor; and that Duarte's participation in the assault was fairly attributable to his association with influential peers. Accordingly, on January 31, 2014, Duarte was resentenced creating an effective date of April 23, 1992, making him parole eligible.⁶

The facts of the murder are derived from *Commonwealth vs. Adriano Barros*, 425 Mass. 572, 574 (1997). On the night of April 22, 1992, Charleston Sarjeant, age 25, with his wife and a friend, Eddy Toomer, entered the Tasty Chicken restaurant in the Dorchester section of Boston and ordered food. While Toomer, Sarjeant, Sarjeant's wife, and a customer named Terrance Hudson waited for their orders, a group of young men that included the defendants gathered on a traffic island in front of the restaurant. Without provocation, Villaroel threw a beer bottle against the front of the restaurant and shouted, "Let's shut this place down," or words to that effect, and moved toward the restaurant. The group, including Duarte, then age 17, followed.

Villaroel, carrying a large portable radio, sometimes described as a "boom box," entered the restaurant ahead of the others and struck Sarjeant on the head with the radio, using enough force to draw blood. Within seconds, ten to twelve assailants, including Duarte, encircled Sarjeant and began beating, punching, and kicking him. Duarte held, punched, and kicked Sarjeant. Villaroel pulled out a knife and began stabbing Sarjeant.⁷ During the repeated stabbing, the other attackers continued to punch, kick, and stomp Sarjeant about his head and face until he eventually lost consciousness. Police and medical personnel arrived promptly but were unable to save Sarjeant's life.

An autopsy revealed that Sarjeant suffered from seven or more areas of blunt trauma to the head and face, nine stab wounds to the neck, back, and thighs, and one cutting wound.

² Additionally, Villaroel was convicted of assault and battery by means of a radio and knife; Johnson by means of a knife; and Barros by means of a shod foot.

³ At a subsequent trial, a jury convicted Dirceu Semedo of murder in the first degree and assault and battery by means of a dangerous weapon (shod foot). Additional defendants, Virgilio Barbosa and Carlos Rezende, were acquitted of all charges.

⁴ Duarte also motioned for a new trial which was denied.

⁵ Following their convictions, Duarte and his co-defendants appealed. As a group, the defendants argued that the jury was prejudiced by the prosecutor's improper assertion of, and reliance on, facts for which there was no evidentiary support and that the prosecutor impermissibly appealed to the jury's sympathy by both his words and conduct and unfairly attacked Villaroel's credibility. The subject and Barros also argued that their motions in the Superior Court to suppress evidence of eyewitness identifications of them should have been allowed. The judgments were affirmed and the Court declined to exercise their extraordinary power to order a new trial or direct the entry of a verdict of a lesser degree of guilt (*Commonwealth vs. Adriano Barros (and five companion cases)*, 425 Mass. 572, (1997)). Duarte also petitioned for habeas corpus relief in Federal District Court. The state's motion to dismiss was granted on March 5, 1999 (40 F.Supp.2d 40).

⁶ However, on September 16, 1999, Immigration and Customs Enforcement ordered Duarte deported to Cape Verde and a detainer was lodged. Any parole release would be to this detainer.

⁷ There was no credible evidence establishing that Duarte was aware that Villaroel was armed with the knife.

The medical examiner who conducted the autopsy concluded that Sarjeant died as a result of multiple stab wounds with blunt head trauma.

II. INSTITUTIONAL HISTORY

During his 22 years of incarceration, Aristides Duarte has accumulated twelve disciplinary reports, including one in 1994 for his involvement in a group assault of another inmate that resulted in hospital treatment. This assault reportedly spurred racially motivated attacks. In 2002, Duarte was disciplined as an active participant in a physical altercation, and in 2012, Duarte was disciplined for possession of two homemade weapons. Department of Correction records identify Duarte as a suspected member of a security threat group.

In addition to receiving institutional discipline, Duarte's misconduct resulted in his being placed in the Special Management Unit in 2010, after receiving disciplinary reports for tattooing and in 2012, when he was found in possession of two homemade weapons. In addition, Duarte was returned to higher custody in 1999 following his inability to provide a urine sample and in 2002 for his participation in the aforementioned altercation.

On December 30, 2002, Duarte was admitted to the Interdiction Unit at Souza Baranowski Correctional Center. During his time in the Unit, Duarte completed Orientation, Anger Management, Substance Abuse, Decision Making, Doing Good Time, and Example for Living. He was discharged following completion on March 11, 2003. In addition, Duarte completed two phases of Alternatives To Violence (ATV) and, in 2010, he served as a Facilitator for ATV. Duarte received certificates in English for Speakers of Other Languages and Toastmasters in 2010. Duarte also received a certificate in 2009 which noted his membership in the St. Basil Salvadorian Center's 400 Club.

Classification reports note that Duarte participated in the Fathers' Group and Lifers' Group, the Cape Verdean Cultural Program, and the African American Coalition Committee. Classification reports further note Duarte's prior employment in laundry, kitchen, sewing shop and barber shop and also as a records department runner, unit runner and janitor. Duarte, who has not graduated from high school, is currently enrolled in GED programming.

III. PAROLE HEARING ON APRIL 15, 2014

Aristides Duarte appeared for his initial parole hearing after serving 22 years of his life sentence for second degree murder. He has not previously seen the Parole Board because he was convicted of first degree murder and was serving a life sentence without parole eligibility until earlier this year when he was resentenced after the verdict was reduced to second degree murder. Duarte gave an opening statement in which he apologized to the victim's family and said, "I was a stupid, ignorant kid and I didn't have the courage to do the right thing."

A Board Member asked Duarte to provide information on his childhood and earlier criminal conduct. "I was born in Cape Verde. I came to the United States with my mother and four siblings in 1980 when I was five or six. English was my second language and I got held back a couple times in school because of the language difference. I was skipping school a lot in ninth grade and dropped out. At around age nine, I started a job cleaning up at an auto body shop and I learned the trade working there. The kids from the murder are kids I started hanging out with when I was 12. We were selling crack cocaine at age 13. I was selling and making a couple of hundred dollars a week. I bought clothes and marijuana and was working less at the auto body shop. We were not a gang, but we all hung out in the neighborhood selling drugs. I was arrested for assault and battery at age 16. We were at a restaurant and

there was a fight over pizza. An older guy I was with had a knife and pulled it out. Jimmy Villaroel was the oldest guy in the group and he was considered the leader. I was the youngest. I was a follower. We weren't a gang; we were just out there selling drugs. I was young, stupid and I followed people."

The inmate provided his version of the murder. "That day I was hanging out selling. I had just started hanging in that area to sell drugs. Later on in the afternoon we were smoking marijuana and drinking. At night we went to the liquor store on Hancock Street and we were walking back. I was mostly high on marijuana; I wasn't a big drinker. I stayed behind with Adriano Barros when he called his girlfriend on a pay phone. I heard a glass bottle break. Tasty Chicken was just around the corner. I went around the corner and looked in the restaurant and saw Jimmy Villaroel on the floor fighting with the victim. Jimmy was the only one of us in the restaurant. I went with the group into the restaurant. I punched Mr. Sarjeant 10 or 15 times and I kicked him several times. Nobody in our group was in fear. The goal at first was to help Jimmy because it looked like he was losing the fight. I started out punching the victim but when he fell to the floor there was kicking. I didn't see him get stabbed. I don't know who threw the bottle through the window because I didn't see it. I was told it was Jimmy. I was told later that Jimmy thought the victim was a guy who shot him. I didn't see Jimmy hit the victim with the boom box; maybe it happened before I got there." Duarte denied that he said, "Let's shut this place down."

A Board Member asked Duarte to discuss his conduct in prison. "I got involved in a fight among inmates in my first year. I threw a punch. I've tried to stay away from incidents like that. I had one fight of my own in 2002. I left the chow hall and I was punched; I defended myself. In 2012, there were two knives in my cell hidden in the light fixture. I said they were mine because my cellmate didn't know they were there. My previous cellmate had put them up there and I had seen them; that cellmate went home." After reviewing the DOC records of this incident, listening to Duarte's explanation, and considering Duarte's disciplinary history (which shows no violence since 2002), the Parole Board accepted this explanation as likely to be accurate.

Board Members asked Duarte to discuss his participation in rehabilitative programs with the understanding that he has been an inmate without parole eligibility until 2014. Duarte said that his first participation was a six week interdiction program in 2002 at Souza Baranowski. Duarte said, "The program helped with anger issues and with drugs and alcohol." The phases of the program included Anger Management, Substance Abuse, Decision Making, Doing Good Time, and Example for Living. He had a committed participation in ATV, completing two phases and becoming a trainer. He reported that ATV "put me around a lot of positive people." Those associations increased his interest in programs and he was "on four waiting lists for programs before my verdict changed." When describing his impetus for reforming his behavior and character, Duarte said, "My family is hard on me wanting me to change and I'm hard on myself to change." In evaluating his progress with substance abuse, he said that he drank homebrew only for a short time and smoked marijuana when he first came to prison but stopped in 1997. When asked about anger, Duarte said, "I was not angry that day, I just followed what others were doing; I don't believe anger is a problem for me."

Duarte reported that, if paroled, "I do not want to live in the United States; I plan to stay in Cape Verde. My father, grandmother, aunts, uncles, sister, and brother are in Cape Verde. My mother has homes in Cape Verde and Dorchester; she is in Cape Verde two months every year."

Five people spoke in support of parole. His former third grade teacher testified that "he was one of the nicest boys I had; I stayed in touch with him now for twenty years with letters and some visits; he is sincere, polite, and caring." Samuel Depina, Chief Operating Officer of the Boston Public School system and co-founder of a mentoring program, described himself as a close friend of Duarte's. He said that "we all grew up very poor," and described Duarte as a good person who had made terrible mistakes as a young person when he hung out with the wrong group of people. He described Duarte's reform during his incarceration. Linda Monteiro, Duarte's cousin, recently received an M.B.A. degree from Babson. She gave emotional testimony about Duarte's rehabilitation and how he has given her support that helped her succeed in life. Duarte's mother and niece also testified in support.

The victim's wife and three siblings testified in opposition to parole.

IV. DECISION

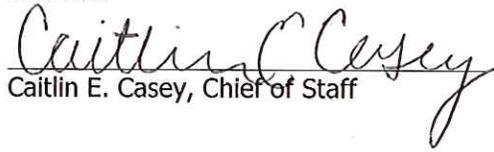
In 1992, Aristides Duarte, at age 17, participated in a violent group assault that resulted in the murder of Charleston Sarjeant. Mr. Sarjeant was an innocent victim. James Villaroel, who was 23 years old, was the instigator and principal aggressor. He was convicted of first degree murder and is serving life without parole. Three other co-defendants were also convicted of first degree murder. A jury convicted Duarte of first degree murder in 1993 and he was serving a sentence of life without parole until recent months when the trial judge granted a motion to reduce the verdict to second degree murder and resentenced Duarte to life with parole eligibility at 15 years. Duarte has now served 22 years.

The Parole Board evaluated Duarte's conduct with the understanding that he was 17 years old at the time of the murder and that his aggression was propelled by influential older group members. He did not use a weapon and was not the stabber. He does not have a history of other violent conduct. Unlike many other inmates convicted of murder, Duarte does not have a complicated history of substance abuse, repeated violent criminal conduct, or an antisocial behavior pattern. Other than his first year in state prison, his conduct in prison has been above average and, since 2002, has been good. His good conduct in prison the past twelve years is evidence of rehabilitation. Duarte's prison record includes completing a number of programs, most importantly, three phases of Alternatives To Violence while he was still serving a life sentence without parole eligibility. After consideration of all these factors, the Parole Board concludes that Duarte is rehabilitated and presents no current risk for violence.

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 Mr. Duarte does merit parole to his ICE detainer for deportation to reside in Cape Verde.

SPECIAL CONDITIONS: Parole to ICE detainer for deportation to Cape Verde; no drug use; no alcohol use; counseling for adjustment issues; no contact with victim's family.

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.


Caitlin E. Casey, Chief of Staff

11/21/14
Date _____