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DECISION

IN THE MATTER OF

ROBERT MARKS

W34943

TYPE OF HEARING: **Revocation Review Hearing**

DATE OF HEARING: **March 18, 2014**

DATE OF DECISION: **August 22, 2014**

PARTICIPATING BOARD MEMBERS: Sheila Dupre, 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 views of the public as expressed at the hearing or in written submissions to the board, and the inmate's testimony, we conclude by unanimous vote that the inmate is not a suitable candidate for parole at this time. Parole is denied with a review in five years from the date of the hearing.

I. STATEMENT OF THE CASE

On April 18, 1975 in Suffolk Superior Court, Robert Marks pleaded guilty to murder in the second degree and armed robbery. Marks was sentenced to two concurrent life sentences. Marks, who was released on parole in 2010, seeks re-parole after his parole was revoked in 2012 because he had absconded from supervision when he fled to North Carolina. He is currently serving his sentence at Old Colony Correctional Center.

On September 23, 1974, Boston police received a radio call and responded to an apartment on Beacon Hill. Upon arrival they were met by the renter, Lucille Lebreton, and found the body of the victim, J.E.[1], age 22, lying on the floor in a pool of blood. An autopsy report established J.E. suffered from three stab wounds, one to her back and two to her chest.

[1] This is a Pseudonym. G.L. c. 265 § 124C.

Stab wounds penetrated J.E.'s lungs and aorta, resulting in a massive hemorrhage. Additionally, there was evidence of a sexual assault, and J.E. was 20 weeks pregnant.

Lebreton stated that she and J.E. were prostitutes who worked in Boston's Combat Zone. Lebreton said that she gave J.E. a key to the apartment so that she could use it. According to Lebreton, at approximately 3:15 p.m., she saw J.E. talking to Marks, who started walking toward a parking lot, which was a pre-arranged meeting place. J.E. came over to Lebreton and said, "If I'm not back in a reasonable hour of time, come up and check on me. I might be dead. He doesn't look right." Although Lebreton told J.E. not to go with Marks, J.E. met up with Marks across the parking lot.

At approximately 5:00 p.m., Lebreton returned to the apartment, but she could not get the door open. She and three other residents, including a nurse, gained entry. When they entered the apartment, Lebreton found J.E. lying on the floor, naked from the waist down. The nurse ascertained J.E. had no pulse, and immediately summoned the police.

On September 24, 1974, Marks, who had fled Massachusetts, surrendered to the New York City Police Department at about 12:15 a.m., after drinking at a bar. Marks, then age 19, provided a signed confession in which he told New York police that he had committed a murder in Boston, and gave them the murder weapon, a knife. Marks provided additional details including that he intended to rob J.E.; upon entering the apartment and seeing that she was alone, Marks then decided that he would kill J.E. with the knife.

Marks provided further details of the murder. After he stabbed her in the back, J.E. fell to the floor. J.E. then told Marks where she hid her money, which was in her sock. Marks then stabbed her at least two other times in the chest, and took the money hidden in her sock and her wallet. Marks then admitted to raping J.E. after she died. Marks also admitted to taking several steps to conceal his crimes, including wiping the door, coffee table, and knife blade with a rag. He went immediately to a bus terminal, cleaned his hands in a men's' room, and fled to New York.

II. CRIMINAL & INSTITUTIONAL HISTORY

This is Marks' first incarceration as an adult. His juvenile record began in 1963 which consisted of six court appearances. In 1963, when he was seven years old, Marks spent nine months at the Oakdale Reformatory School, after being adjudicated a "stubborn child." In 1968, Marks as adjudicated delinquent for malicious destruction of property and the case was filed. Marks had previously acknowledged that he set fire to a field. In 1970, Marks received a suspended sentence to the Youth Service Board after he was convicted of being idle and disorderly. In 1971, Marks was adjudicated delinquent for breaking and entering and larceny and received a suspended sentence and a complaint for "drunk," which was dismissed. Later in 1971, Marks was adjudicated for attempted breaking and entering and assault and battery. This conviction resulted in his placement at the Metropolitan Hospital and then at the Deverau School in Pennsylvania. He was discharged from the Deverau School when he was implicated in an attempt to assist another student in stealing $3,000 from the safe. The case was never prosecuted.

Following his murder conviction, Marks was committed to the Department of Correction in September 1974. Since then Marks accrued six disciplinary reports, the last of which he

received in 1997. Those disciplinary infractions included an attempt to sell prescribed medication and fighting with an inmate, occurring in 1980 and 1982, respectively. Although he was assigned to Boston Pre-Release, in 1989 Marks incurred disciplinary reports for providing a urine test positive for alcohol, and most notably, he escaped from the program on December 16, 1989. Marks fled to Florida and returned on his own volition on December 21, 1989.[2] For the next seven and a half years, Marks remained disciplinary report free, entered the Sex Offender Treatment Program, and obtained an Associate's Degree.

In May 1997, Marks was transferred to the Massachusetts Treatment Center. However, following a parole denial in December 1997, Marks received a disciplinary report for making an incendiary remark to two female therapists concerning a sexual assault on a female therapist occurring earlier that year by another inmate. Reports indicate the Marks became an increasingly difficult management problem as he continued to have conflicts with staff as well as encouraged other inmates not to participate in treatment. Accordingly, in August 1998, Marks was removed from the Treatment Center and transferred to MCI Norfolk.

Throughout the course of his incarceration Marks participated in numerous programs, including Sex Offender Treatment; Substance Abuse; 12 Steps; Anger Management; Relapse Prevention; Correctional Recovery Academy (CRA); CRA Maintenance Program; Emotional Awareness; and Jericho Circle. He received his GED while at Bridgewater State Hospital in 1976, obtained his Associates degree from Massasoit Community College in June 1994, and Bachelor of Liberal Studies from Boston University in May 2006.

Prior to his parole, he had been employed in various areas within the institution to include: kitchen; maintenance; industries; and janitorial work. Since his return to custody, he was employed as a loading dock worker at MCI Cedar Junction and most recently gained employment on the maintenance crew.

Since his return to custody Marks has participated in Christian Discussion Group and Christian 12 Step, and recently enrolled in the Motivational Enhancement Program.

III. PAROLE HEARING ON MARCH 18, 2014

On March 4, 2014, Marks appeared before the Massachusetts Parole Board for a Review Hearing after Revocation. Marks seeks a re-parole to a halfway house after a gradual step down through pre-release. This is Marks' seventh appearance before the Board, having been denied parole with setbacks in 1989, 1991, 1994, 1997, and 2002. In its denials, previous Boards cited the extremely brutal and senseless murder of J.E., Marks' apparent limited insight and remorse, and that at various points his institutional adjustment has been deemed problematic.

On November 6, 2007, however, the Board voted to grant Marks a parole to a long term residential program after he completed six months in lower security. That Board was of the opinion Marks was a suitable candidate for parole supervision, citing in support that he had served 33 years of incarceration and had been incarcerated since the age of nineteen. That Board also noted Marks made significant strides in his development and had improved his

[2] Although not noted on his Board of Probation record, Department of Correction Classification Reports indicate an escape charge in Roxbury District Court was filed on June 13, 1990.

institutional behavior. Marks was released as a result of this positive parole vote on October 26, 2010 to the Harmony House, a long term residential treatment program. Marks completed that program and moved to the Harmony Grad House in October of 2011. On June 1, 2012, Marks received a graduated sanction for prior consumption of alcohol on parole. As a consequence, Marks was mandated to attend an Intensive Outpatient at Ad Care and to report as directed for additional alcohol detection testing.

On October 9, 2012, after he resigned from his job amid allegations of theft, Marks absconded from supervision by cutting off his GPS bracelet and going whereabouts unknown. On October 11, 2012, Marks was arrested by police in North Carolina. Marks, who was intoxicated, was arrested after fleeing from police who observed him driving erratically. While fleeing the authorities, Marks crashed his truck. The charges related to this matter were resolved, and on November 6, 2012, Marks was returned to Massachusetts on a parole violation warrant.

At the 2014 hearing, the Board continuously expressed its concern with Marks' demonstrable pattern of flight when in crisis. He informed the Board he first began to run away at the age of seven, followed by numerous placements in various schools and hospitals as a juvenile. In June of 1974, Mark's joined the Army to escape his demons. He subsequently went AWOL, leaving Kentucky and fleeing to Massachusetts where he murdered J.E.. After murdering J.E., Marks fled to New York City, where he eventually turned himself in. In 1988, he escaped from Boston Pre-release and fled to Florida, returning on his own volition five days later.

Regarding his latest flight to North Carolina, Marks informed the Board at the 2014 hearing that he had relapsed approximately nine months prior to receiving a graduated sanction in June 2012, which had mandated he complete an Ad Care Intensive Out-patient Program and additional alcohol detection testing. He also acknowledged that his drinking continued while he was engaged in programming at Ad Care. In addition, Marks had stopped taking his psychiatric medication and acknowledges he was self-medicating with the alcohol. He attributes his deceitful behavior and his continuous consumption of alcohol to his perception of "to having a handle on it."

Marks does consider himself a sexual predator although he was not charged with such an offense. Marks himself perceives his sexually deviant behavior to be bizarre although he can only characterize such behavior as serious mental health issues. He was unable to provide the Board with any additional insight as to his behavior aside from his own observation that, "it's still a gray area." The Medical Examiner's report states J.E. was vaginally and anally raped, and sperm was present in her mouth. Marks indicates his primary intention was to rob the victim, which escalated to murder and ultimately resulting in the sexual assault of a lifeless body lying in a pool of blood. [3]

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[3] Due to the nature of his offense, in which Marks manifested a clear sexual motivation, he would have to be referred to the Suffolk County District Attorney's Office for a Sexually Dangerous Person determination pursuant to G.L. c. 123A prior to any parole release.

Suffolk Assistant District Attorney Charles Bartoloni submitted a letter strongly opposing Marks' petition for parole. No one was present at the hearing to speak in support of his petition for parole.

IV. DECISION

Robert Marks seeks re-parole after a revocation that involved regular alcohol use, repetitive dishonesty, and flight to North Carolina. This is an extraordinarily poor parole performance and indicative of considerable risks to public safety. His years of program participation did not result in meaningful rehabilitation.

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. Marks is not a suitable candidate for parole because he is not rehabilitated. The period of review will be in five years, during which time Mr. Marks should maintain positive institutional behavior and make an active commitment to his rehabilitation and address issues of substance abuse, criminal thinking, sexual deviance, violence, anger, anti-social behavior, lack of empathy, and lack of candor on parole.

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 Smith, General Counsel

3/22/14
Date