



The Commonwealth of Massachusetts
Executive Office of Public Safety



PAROLE BOARD

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DECISION

IN THE MATTER OF

FRANCISCO MERCADO

W36119

TYPE OF HEARING: Review Hearing

DATE OF HEARING: May 20, 2014

DATE OF DECISION: October 7, 2014

PARTICIPATING BOARD MEMBERS: Dr. Charlene Bonner, Tonomey Coleman, Sheila Dupre, Ina Howard-Hogan, Tina Hurley, 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 writing, 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 February 25, 1977, in Suffolk Superior Court, Francisco Mercado was found guilty of second degree murder and sentenced to life imprisonment. Mercado murdered Luz Cintron, age 32. The facts of the murder are derived from *Commonwealth vs. Francisco Mercado*, 383 Mass. 520 (1981), a decision on direct appellate review affirming Mercado's conviction and denying his motion for a new trial.

On the evening of May 1, 1976, Mercado, then 29 years old, went to the apartment of Luz Cintron, with whom he had lived for at least six to eight months. When he entered the apartment, Mercado grabbed Cintron by the hair, dragged her into the bedroom and locked the door. Mayda Cintron, the victim's 11-year-old daughter, heard the sounds of a struggle and called police when her mother called out to her to do so.

When police arrived, Cintron told them that Mercado had been hitting her, and that she wanted him to leave the apartment. The police ordered him from the apartment, told him not to return that evening, and that if he did, he would be arrested.

After the police left, Mercado returned and attempted to enter the locked apartment by using his key. Cintron and her daughter Mayda held the door against him, but he forced his way into the apartment. Once inside, Mercado went immediately into the kitchen, picked up a knife, and ran out to Cintron.

Cintron pushed Mayda out of the first floor window, and then jumped out after her daughter. Mercado ran out the front door, caught up to Cintron, and grabbed her by the hair again. Mercado then repeatedly banged Cintron's head against the sidewalk, and stabbed her. Screaming and crying, Mayda watched the assault on her mother from a distance of approximately six feet. Knife in hand, Mercado then chased Mayda, but she eluded him.

A second eyewitness, fifteen-year-old Tanya Turner, was baby-sitting at an apartment across the courtyard from Cintron's apartment. When she heard Mayda screaming, she went to the window. She observed Mercado kneeling over Cintron, making up and down motions. Turner observed that Mercado had something "long and silver" in his hands, and then chase Mayda, who ran off.

Cintron was brought to an area hospital and, while she was conscious, Cintron was obtunded, or "out of it," having suffered apparent head trauma. Cintron died seven days later of an injury to the brain consistent with having received a blunt force applied to the head. Cintron also suffered stab wounds and bruises.

II. INSTITUTIONAL HISTORY

Francisco Mercado has been incarcerated for the past 37 years and has accrued fourteen disciplinary infractions. Mercado's last disciplinary report was issued in 2009 for receipt or possession of contraband. He has been incarcerated at MCI Norfolk for the past fifteen years.

Mercado has been uninvolved in any significant institutional programming. His only reported program participation is occasional attendance at Spanish Alcoholics and Narcotics Anonymous. He also attended *Nuestra Familia* on two occasions. In 1994, Mercado completed a Substance Abuse Education Group.

Mercado stated that the only formal education he had was in Puerto Rico and the second grade was the last grade he completed. He does not know how to read or write. Mercado has continuously declined to participate in Basic Education classes. Mercado remains employed in the Laundry Department, a position he has held for the last twelve years.

III. PAROLE HEARING ON MAY 20, 2014

Francisco Mercado appeared before the Massachusetts Parole Board for a review hearing on May 20, 2014. This is Mercado's seventh appearance before the Parole Board, having been denied parole in 1991, 1993, 1996, 1999, 2004 and 2009. In the last decision, the Board noted

that Mercado had made little progress in all of his years of incarceration, took no responsibility for his criminal behavior, and continued to blame Cintron for his plight.

Indeed, the Board in 2009 noted that Mercado "continues to deny killing Ms. Cintron," which is the position Mercado maintained at his hearing in 2004 when he "denie[d] [the] charges." Mercado has either denied or minimized his role in the killing at his previous six parole hearings, each of which resulted in admonishment by the Board followed by a denial.

Even in 2014, Mercado continues to minimize and misrepresent his role in killing Cintron, describing his crime as one where there was a mutual fight and that Cintron "fell" into his knife. This description is entirely at odds with the findings of a jury, and the observations of two people, and the physical causes of Cintron's death, which were not the stab wounds that he inflicted, but rather the traumatic brain injuries he caused when he slammed Cintron's head on a sidewalk in the presence of her 11 year old daughter.

Mercado seeks a parole to reside with his sister, Lydia Mercado in Roxbury until he is financially able to live on his own. He indicates he would seek employment as a janitor. Francisco Mercado has no criminal history prior to the murder.

Suffolk County Assistant District Attorney Charles Bartoloni submitted a letter strongly opposing Mercado's petition for parole. Several members of Ms. Cintron's family spoke in strong opposition to Mercado's petition for parole. Two family members present at the hearing spoke in support of Mercado's release on parole supervision.

IV. DECISION

Francisco Mercado has yet to comprehend the violence he exhibited in the brutal murder of Luz Cintron. He continues to minimize his culpability, as his testimony remains inconsistent with that given by two eyewitnesses, and the physical evidence of the severe injuries to Ms. Cintron. He concedes that he had a knife in his possession; he denies intentionally stabbing the victim. At this hearing, he described mutual combat resulting in an accidental stabbing. He stated he pushed Ms. Cintron against the wall to get her off of him and she fell on the knife. Remarkably, he has almost no program participation during his 37 years. He has not made a concerted effort to rehabilitate. His lack of rehabilitative work is apparent in his poor presentations at his parole hearings.

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. Mercado 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. Mercado should make an active commitment to his rehabilitation in order to address issues of anger, violence, criminal thinking, lack of empathy, and lack of candor.

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
Caitlin E. Casey, Chief of Staff

10/7/14
Date