



The Commonwealth of Massachusetts
Executive Office of Public Safety



PAROLE BOARD

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DECISION

IN THE MATTER OF

KENNETH PADGETT

W58696

TYPE OF HEARING: Review Hearing
DATE OF HEARING: January 14, 2014
DATE OF DECISION: September 25, 2014

PARTICIPATING BOARD MEMBERS: Dr. Charlene Bonner, Tonomey Coleman, 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, 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 1, 1994, Kenneth Padgett participated in a series of house breaks with Michael Souza and Jamie Richards that culminated in the shooting death of 38-year-old Robert Mortell, Chief of the Paxton Police Department.¹ On May 26, 1995 in Worcester Superior Court, he was convicted of second-degree murder based on a felony murder theory, along with a number of other offenses, including breaking and entering and assault and battery by means of a dangerous weapon.² He was sentenced to serve life in prison for the murder, and concurrent prison terms for the other crimes. He was also convicted of two counts of larceny over \$250. He was sentenced to serve four and a half to five years, from and after his life sentence, on one of the counts, and another four and a half to five years, from and after the first larceny conviction, on the other. With the exception of the armed robbery conviction, the

¹ Souza was convicted of first degree murder, and Richards pleaded guilty to second degree murder.

² A term of 18 to 25 years for armed robbery was vacated because it was duplicative of the felony murder conviction. *Commonwealth v. Padgett*, 44 Mass. App. Ct. 359, 370 (1998).

Massachusetts Appeals Court affirmed the convictions, and the Supreme Judicial Court declined further review. *Commonwealth v. Padgett*, 44 Mass. App. Ct. 359, *rev. denied*, 427 Mass. 1105 (1998). Padgett now seeks parole to the consecutive sentences. This is his second appearance before the Board, which denied parole in 2009, and set a five year period of review.

The following facts are culled from the Appeals Court's opinion. Needing money to pay his rent, Padgett agreed with his friends Souza and Richards to commit a series of house breaks. Padgett knew that Souza had three guns. On the morning of February 1, before they set off on their venture, Souza told Padgett that Richards had his choice of "which piece [gun] he wanted, the .357 or the .22." Thereafter, driven by Souza in a stolen van, the three men broke into a home on Kendall Road in Holden and removed various items. They broke into a second house on Kendall Road and, after stealing some property, left quickly as Richards had spotted a car driving slowly past.

Kendall Road leads into a restricted reservoir area, and, in error, Souza drove in. A Department of Public Works foreman, Richard Polli, seeing the van, and afraid that it would hit another crew working ahead on the narrow, icy road, jumped into his truck and headed toward the other crew. Before Polli could reach the men who were working ahead, the van turned around, and the two vehicles collided, the van ending up in a snowbank. Souza cursed Polli, and after he, Richards, and Padgett tried unsuccessfully to extricate the van, Souza asked Polli for assistance. When Polli refused, Souza pulled out a nine millimeter handgun, waved it at Polli and his three crew men, and ordered them to the ground. He fired a shot in the air and pointed the gun at Polli, whereupon Polli told him to "take the truck and screw."

With Richards and Padgett as passengers, Souza backed down the road and, within 200 feet, the truck became stuck in the snow. The three men fled and ran over an ice-covered reservoir into some woods. After running for about 15 to 20 minutes, they reached Route 31 where they saw a police car coming toward them. They crossed the road and ran into woods on the other side. By this time, the Holden police were alerted to the house breaks and to the shooting in the reservoir area. A Holden police officer investigated the reservoir site and found the stolen van containing items matching the description of the property taken from the Kendall Road homes. The officer radioed Chief Robert Mortell of the Paxton police with the request that he assist with his dog.

After receiving a description of the three men, Chief Mortell radioed his location and indicated that he had seen them. He followed the three into the woods, leaving his car on the road. Shortly after receiving Mortell's radio communication, Officer Ahearn of the Paxton police department arrived at the location described by Mortell and parked behind Mortell's cruiser. Seeing four sets of footprints in the snow leading into the woods, Ahearn followed them in an effort to catch up with Mortell. Within a minute he heard about thirteen gunshots and came upon the Chief seconds later, leaning against a tree. Chief Mortell had been shot, and succumbed to injuries soon after arriving at the hospital.

Police soon discovered Souza's nine millimeter gun -- the gun with which the Chief had been shot. Other officers arrested Souza about a quarter of a mile away. Richards and Padgett spent the night hidden in an abandoned building and were arrested the following day. While Richards and Padgett were together, Richards "ditch[ed]" a gun into the snow.

II. INSTITUTIONAL HISTORY

Padgett has received 19 disciplinary reports since being sentenced for the murder of Chief Mortell. The reports range from possession of Anti-Semitic literature, to possession of contraband (a hypodermic needle cap, razor blade, white supremacy related paraphernalia, a homemade screwdriver), to attempting to forward correspondence to a third party through a civilian volunteer. At one point, he was an admitted member of the World Church of the Creator, a white supremacy group, though Department of Correction records indicate that he has disassociated from the group.

Padgett's institutional programming includes Problem Solving and Thinking, Correctional Recovery Academy, Non-Violent Conflict Resolution, and multiple phases of Alternatives to Violence, for which he is a certified facilitator. He obtained his GED in 2002, and has been employed as Unit Worker for the past three years.

III. PAROLE HEARING ON JANUARY 14, 2014

Kenneth Padgett appeared for his second parole hearing after being denied in 2009. He was represented by student attorney Christian Bracken. Padgett is 42 years old and has served 20 years of his life sentence. He seeks parole to a from and after sentence of three years. Padgett recalled that the Board's decision stated that "I was denied because I didn't participate in programs. I agreed with that. I needed to work on myself a lot more."

A Board Member asked Padgett to describe his program work since the 2009 parole hearing. Padgett said, "I finished two phases of Alternatives to Violence. I did a two step program called Problem Solving; I finished both phases. I continued in Alcoholics Anonymous and with church activities. Problem Solving showed how to deal with problems in prison or on the street. I also did a smaller workshop, Active Listening. My rehabilitation process continued. I'm very comfortable with who I am. I've made a lot of progress."

Padgett provided information on his upbringing. "I had little guidance growing up and that led to a feeling that I had to do things to be accepted. I lived with my mother and two sisters. I only went to school through the eighth grade; I never liked school. I was 15 when my son was born. At 15, I pumped gas. I bounced between jobs and then worked in auto body starting at age 17." Padgett has two adult children; he reported that he has no contact with them. He was asked to describe his early criminal behavior. "Alcohol led to some criminal behavior. I did breaking and enterings as a juvenile. I was drunk a lot of the times. I had an assault with a dangerous weapon in Worcester District Court. I think the victim was a police officer. I was drunk. I argued with my girlfriend and I assaulted her. The police came to the house and I didn't know who it was. I had a two by four. The police told me to put it down. I had an assault and battery at age 18. I was intoxicated. I confronted a gas station clerk because his father was my mom's landlord and they had words. I took off when the police came."

Padgett offered his version of the murder that occurred on February 1, 1994. "We made plans on Super Bowl Sunday to commit some breaking and enterings in Paxton. I needed to get money for my rent. I was between jobs and not working. We had done 15 to 20 breaking and enterings together. There were two guns; Souza and Richards had guns. We were at my

apartment that morning. I voiced my opinion that we didn't need weapons. They were both friends of mine. I knew Mike was on parole. I'd committed crimes with Mike with weapons before. We robbed a Framingham bank three months before and I had a gun; so I knew he carried. Mike possessed three guns, but I only saw two that day. We picked up Jamie and drove to Ware Courthouse to pick up a stolen minivan. We broke into the first house and loaded items into the van. We went to the second house and were collecting items when a UPS truck pulled in front of the house; we loaded the van and left. As we drove, a DPW worker stopped us and said, 'you can't be here, it's a restricted area.' We drove away but sideswiped a DPW truck. Our van ended up stuck in the snow. We took the DPW truck and left, but it got stuck in the snow. I saw a police car. I know a police officer was chasing us. I could hear ... I heard shots behind us as I was climbing over the fence. Richards and I were together; Michael went in another direction. We split up shortly after entering the woods. We heard shots fairly quickly after we entered the woods, after hearing the police chasing for 20 or 30 seconds. I wasn't sure what happened when I heard the shots; I assumed they exchanged fire. I testified at trial. My defense was that I didn't actively participate in the armed taking of the DPW truck."

A Board Member asked Padgett to describe an armed bank robbery he had committed with Souza months before the murder. Padgett stated that he and Souza both had guns and entered a Framingham bank during daytime business hours. He said, "Mike asked me to come on the bank robbery. Mike stole a car from Shopper's World maybe a week before to use in the robbery. My job was to stand at the door. I had a gun that was loaded. Mike spoke to people and got the money." A Board Member followed up with Padgett to ask for more detail on what actions Padgett took during the bank robbery. He acknowledged that while he stood at the door he was "pointing the gun around the bank." The Board Member noted the seriousness of that conduct with the likelihood that bank customers and employees feared being shot.

Board Members asked Padgett about his substance abuse. He acknowledged that he was an "active cocaine addict at the time" of the murder and that "I was strung out but not high that day." He said, "My recovery is very important to me. I've learned to manage my drug and alcohol addictions through discussion groups I attend."

In prison, Padgett was involved with a white supremacy group. He described that the group hated "Spanish, blacks, Chinese, Jewish, Arabs, anyone who wasn't white." He acknowledged that he displayed symbols and read books advocating racial hatred. He said, "We weren't goose-stepping down the hallway. We were trading books back and forth, and we read them and we discussed the contents. We talked about hating other groups. I would agree with the hate that was expressed." Padgett downplayed the significance of his role in the group. "I wanted to be accepted by guys. I don't think I really believed it. I needed someone to hang out with. I wasn't actually participating through the years. I renounced in 2009, shortly after my parole hearing."

In response to Padgett's claim that he "didn't really believe it," a Board Member pointed out that Padgett used racial slurs, displayed racist symbols in his cell, and read racist materials "day after day and repeatedly discussed the ideas with people you admired" and wanted acceptance from. Padgett did not identify his racial hatred as an area of rehabilitative need. A Board Member said, "You are presenting this as though it's not serious but this is a very serious thing. You are seeking to live in the community with groups that you recently professed to

hate. You hated a lot of people you now want to live with. You need to accept the seriousness of this racial hatred and rehabilitate."

Two supporters spoke in support of parole. Padgett's sister said, "He would live with me on parole; I have gotten him two job offers from my friends; he's come a long way." Padgett's uncle testified that "He is getting it. Does he get all of it? I'm starting to see the remorse. For three to four years there was no remorse when I visited. At five to six years he started to show remorse. He was on drugs and he was angry and that's why it took a period of time. I feel he's getting it now and he's on the right road."

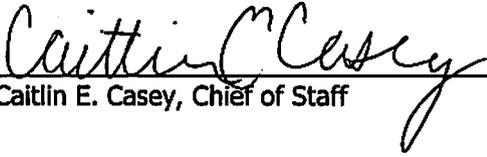
Worcester District Attorney Joseph Early spoke in opposition to parole and told the Board that "the only conformity has been behind bars and even that has been inconsistent." Worcester Assistant District Attorney Michelle King also spoke in opposition and said that "Kenneth Padgett knew exactly what was going to happen; he led the Chief to his death." Paxton Police Chief Robert Desrosiers testified in opposition to parole. He recalled that he "grew up with Bobby" and pointed out that "taking a gun to a housebreak is a whole other level of criminal conduct." Chief Mortell's son and daughter, who are now adults, spoke in opposition to parole. Erin Mortell, who was nine years old when her father was murdered, said that "everywhere I go someone tells me a story about how my father helped them." Officer Phillip Martin of the Northborough Police Department and Massachusetts State Police Trooper Eric Baldwin also testified in opposition to parole. Trooper Baldwin informed the Board that associates of Padgett threatened a family member of Chief Mortell's in an effort to prevent her participation at a parole hearing. The perpetrator was convicted and sentenced to state prison.

IV. DECISION

Kenneth Padgett gave a candid account of his criminal conduct and described his efforts to rehabilitate in recent years. After years of inactive programming and bad conduct, his program participation and his conduct have improved. Board Members identified, however, an area of danger and high risk that Padgett has not addressed. Padgett has harbored racial and religious animosity towards "Spanish, blacks, Chinese, Jews, Arabs, anyone who wasn't white." He said he left the white supremacy group after his 2009 parole hearing. He reported no specific attempts to rehabilitate from the dangerous opinions and attitudes connected to racial hatred. Padgett has not identified racial hatred as a rehabilitative need and therefore has not yet started the process of uncovering the character defects, anger, resentment, violence, lack of empathy, lack of respect, prejudice, and self-esteem issues that may be associated with racial and religious hatred.

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. Padgett does not merit parole at this time because Padgett is not rehabilitated. The review will be in five years, during which time Kenneth Padgett should commit to a fuller rehabilitation that addresses the multiple causes and effects of racial and religious hatred.

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

9/25/14
Date