



The Commonwealth of Massachusetts
Executive Office of Public Safety



PAROLE BOARD

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DECISION

IN THE MATTER OF

NELSON RODRIGUEZ

W65587

TYPE OF HEARING: Initial Hearing

DATE OF HEARING: May 20, 2014

DATE OF DECISION: July 9, 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 three years from the date of the hearing.

I. STATEMENT OF THE CASE

On August 9, 1997, witnesses saw Nelson Rodriguez leave his car with what appeared to be a black revolver and approach Felipe Barros, Steven Ramos, and Kevin Medeiros who were standing on the sidewalk. He pointed the weapon and shot Mr. Barros in the head. Mr. Barros went to the ground and was shot again in the chest by Rodriguez. Mr. Ramos was not shot, but also went to the ground. Mr. Medeiros fled the scene, but heard Rodriguez say, "Do you remember the time you jumped me?" Rodriguez walked away and got into his vehicle, but then returned to Mr. Barros on the sidewalk and shot him two more times killing him.

About an hour later, the police received information that Rodriguez was seen running behind a vehicle, going to the area of a sewer. The New Bedford police, with the help of the Department of Public Works, located a black .38 caliber Rossi revolver in the debris they took from the sewer. Ballistics testing showed that the gun retrieved from the sewer was the same gun that was used in the shooting of Mr. Barros.

A witness, who had not seen the shooting but ran towards the shots after hearing them, saw Rodriguez get into his car and drive away. This witness threw two glass bottles at Rodriguez's car, one of which struck the left tail light causing it to break, leaving pieces in the roadway. As part of the investigation, Rodriguez's vehicle was seized and the broken pieces of the lens cover were matched to his vehicle.

On November 18, 1998, after a jury trial in Bristol County Superior Court, Nelson Rodriguez was found guilty of first degree murder and was sentenced to life in prison without the possibility of parole. He was also found guilty of possession of a firearm and was sentenced to a concurrent sentence of 2½ years to 4 years.

In 2010, Rodriguez filed a Rule 30 motion for a new trial on the grounds that it was a violation of his constitutional rights to have the courtroom closed during jury selection. He was granted the new trial and, on February 11, 2014, pleaded guilty in Bristol Superior Court to second degree murder, which resulted in a life sentence with parole eligibility at 15 years. Because he has served over 16 years, he became eligible for parole after sentencing.

II. PAROLE HEARING MAY 20, 2014

The Parole Board initially focused questions on Nelson Rodriguez's lifestyle prior to committing the offenses. Rodriguez provided a detailed history of his upbringing and struggles with addiction. Despite having been born into poverty in Puerto Rico, and moving between family members in the United States due to his father being incarcerated and his mother struggling to care for eight children, Rodriguez described his childhood as positive. He stated that his basic needs were always provided for and "I was always loved. We were poor but we didn't know we were poor. Everyone around us was. If anything, it should have made me better and stronger." Rodriguez detailed his personal decline starting as early as grade five. He reportedly had difficulty both academically and socially in school and he began to experiment with drugs. Rodriguez was a serious drug user by grade eight and he left school by grade ten. Rodriguez described a life of dealing drugs, and committing crimes in order to support his daily addiction. He was addicted to heroin by age 14. He reported that his family remained supportive and tried to help him lead a different life. At around age 16, Rodriguez was involved with a methadone clinic in an attempt to treat his addiction.

Rodriguez described a period of stability, self-worth, and positive productive activity when he was hired to work at the Boys and Girls Club. He stated his brother got him the job after he had been released from Walpole where he was incarcerated at age 17 and released at age 21 for offenses that were directly related to his addiction. Rodriguez stated that his brother was extremely supportive and enabled him to become a hardworking, fully independent person. Rodriguez stated that his employer also believed in him and gave him self-confidence in his role as a counselor at the Boys and Girls Club. He believed he had found his niche in life and was enthusiastic about going to work. He stated that his employer was aware of his addiction and assisted him with remaining vigilant in his sobriety. Rodriguez reported, however, that he did continue to struggle with his addiction at times. He stated that on one night in 1997, he had a real urge to use drugs and he went to a buy heroin. In the process of buying drugs, he was severely beaten and suffered numerous injuries, including numerous broken bones and a significant injury to his eye which required several surgeries. Most damaging were the effects

to his psychological state. Rodriguez stated that when he returned to work months later, he found he could not focus. He stated "things bothered me that never bothered me before, like I was afraid of loud noises." He was eventually diagnosed with post-traumatic stress disorder (PTSD), but did not engage in intensive treatment. Rodriguez stated that as a result of this beating, his positive attitude, enthusiasm for his job, and his ability to function were all seriously compromised.

Rodriguez described this incident as being the precipitant to the murder, and he alleges that Felipe Barros was one of the men who severely injured him. (There is no other evidence to corroborate or refute this allegation.) Rodriguez did not dispute the facts of the case and stated that when he spotted the assailants, all of his feelings came flooding back. He still had stitches in his eye from a recent surgery and he was due to have a follow-up surgery in the next several weeks. Rodriguez reported that he retrieved the gun that he bought after the beating and he shot one of the men out of pure anger and retaliation for what he had done to him. He insisted that meeting the men that night was spontaneous, and he was surprised as he thought Mr. Barros was incarcerated. When asked why he went back to the victim and shot him again, he stated "I said, 'remember me', and shot him again. He was still awake, talking, I wanted to hurt him." Rodriguez stated that following the murder he wanted to immediately numb his feelings. He went to get high, and then he turned himself in the next day.

The Parole Board questioned Rodriguez at length regarding his institutional adjustment and level of rehabilitation. Rodriguez stated that once he was sentenced to first degree, with no opportunity for parole, he decided there was no point in trying to rehabilitate. He stated he had no hope and initially focused on how he was going to survive. Rodriguez stated, however, that he gradually found himself trying to live a better life. In 1999, Rodriguez applied himself toward his education and obtained his GED. He stated that he has always worked throughout his incarceration, and that has also provided him with some productive structure. He also stated that he stopped abusing drugs, despite the availability in prison. Rodriguez stated that he was prescribed pain medication in prison following another surgery, and quickly realized that the drugs "went to my brain, not in my arm," meaning he was not able to use even pain medication appropriately. He said he has been completely sober since 2006. Rodriguez said he has the support of his family and lifelong friends who have continued to motivate him and provide him with hope.

The Parole Board was interested in the positive gains that Rodriguez did make, even when he was sentenced to life in prison without parole, as well as what he now plans to focus on having been given the opportunity for parole. Rodriguez stated that he has worked in the gym and has been able to stay out of trouble and away from drugs, but insisted that he does not qualify for many programs. He stated, "I told them, 'I'm a drug addicted violent offender. I didn't take it sitting down. I tried to get into programs.'" Through his own efforts, Rodriguez stated that he has managed to get himself on the waiting list for programs related to violence reduction, emotional healing and relapse prevention. Rodriguez admitted that he has only recently made the effort to actively pursue his rehabilitation, as he now has hope that he will one day be able to return as a productive member of society. Parole Board Members also encouraged him to associate with people who are taking steps to change their lives, and to actively prepare himself for success. Rodriguez requested and accepted feedback from the Board on how to pursue a positive path to rehabilitation.

Rodriguez opened and concluded the hearing with apologies to the family of Mr. Barros. He provided examples of how his actions have negatively affected the lives of many people. Rodriguez outlined a comprehensive parole plan that includes short and long term goals. Rodriguez has the support of his family, friends, and his former employer at the Boys and Girls Club.

Rodriguez had many people attend the hearing in support of his parole. Speaking in support of his parole was his mother, youngest brother, and a friend who offered to employ him at one of his two businesses. Bristol Assistant District Attorney Dennis Collins spoke in opposition. Assistant District Attorney Collins stated that Rodriguez is not ready for parole and that he has not demonstrated the ability to learn what he needs to do.

III. DECISION

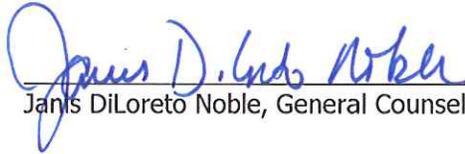
Nelson Rodriguez committed a murder in retaliation for a severe beating that he experienced when he was purchasing drugs. His lifelong addiction has been the primary source of criminal behavior, criminal thinking, and anti-social lifestyle. Rodriguez had periods of stability, pro-social relationships, employment, and sobriety; however, his relapse quickly led him back to criminal behavior. Rodriguez has been sober since 2006, having last abused opiates in prison following a surgery he had.

Rodriguez has been incarcerated since 1998. He was initially sentenced to life without the possibility of parole. Rodriguez described that he was a young man with no hope of ever leaving prison. That fate significantly influenced his mindset, goals, and daily activity. Rodriguez had no incentive to rehabilitate in a way that would prepare him for the possibility of being released to the community. Despite that notion, Rodriguez only incurred four disciplinary reports, he has been consistently employed, he gained his GED, and he made a commitment to sobriety. Rodriguez was granted a new trial and pled guilty on February 11, 2014 to second degree murder, giving him the possibility for parole. Since learning that he may have the opportunity for release, Rodriguez has renewed hope and he recognizes that he must now engage in necessary programming and other opportunities for rehabilitation so that he can realistically prepare himself for the possibility for parole.

Rodriguez presented with insight into his addiction and other precipitants that led him to a criminal lifestyle. He has maintained positive family and other supports throughout his life, including his incarceration. His supports testified that they would assist him positively reintegrating into society, including providing employment, housing, emotional, and other supports. Rodriguez acknowledged that he wasted many years in prison being stagnant and not actively pursuing his rehabilitation. Rodriguez has recently made an effort to invest in programming and other opportunities in hopes that he will be able to present himself as a person who meets the legal standard for parole. The Parole Board acknowledges the positive conduct and work he has engaged in and outlined a path for rehabilitation which he was encouraged to follow. The Parole Board's decision is based on a realistic time frame that should allow sufficient time for the necessary measures of 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, the Board finds that Mr. Rodriguez is not a suitable candidate for parole because he has not actively pursued rehabilitation through program participation. He will have a review hearing in three years, during which time he should be active in rehabilitative programs.

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

7/9/14

Date