



The Commonwealth of Massachusetts
Executive Office of Public Safety



PAROLE BOARD

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DECISION

**IN THE MATTER OF
HECTOR SANTIAGO
W63057**

TYPE OF HEARING: Review Hearing
DATE OF HEARING: October 29, 2013
DATE OF DECISION: August 21, 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, institutional record, the testimony of the inmate at the hearing, the views of the public as expressed at the hearing or in written submissions to the Board, we conclude by a 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

Hector Santiago appeared before the Board for a review hearing following his parole denial after an initial hearing in 2010. Santiago is serving a life sentence for the second degree murder of Tyler Kearney, an infant who was three months old at the time of the murder. Santiago pleaded guilty to the murder on July 29, 1997, in Suffolk Superior Court.

On November 27, 1995, Santiago, age 20, was living in a Dorchester apartment with his girlfriend, Sathya Kearney and her two children, Ryan Kearney, age two and the victim, Tyler Kearney, who was almost four months old.¹ Shortly after 8:00 A.M., Sathya Kearney left for work. It was her first day of work at her new job and Santiago was entrusted with the care of

¹ Tyler's date of birth is July 30, 1995.

the two children. She told Santiago that the infant had been fed and his diaper had been changed. Santiago was angry that he had to care for the children.

According to Santiago, Tyler Kearney woke up cranky that morning. Santiago therefore believed that Sathya Kearney lied to him about feeding and changing Tyler, which made him angrier. Santiago attempted to feed and change Tyler, but he was still fussy. When Tyler would not stop crying, Santiago violently shook the infant and punched him three or four times on the side of his head and then slammed the infant's head against the foot board of the bed before throwing him onto the bed. Santiago went to heat the bottle and when he returned he found Tyler to have stopped breathing, was otherwise unresponsive, and then he eventually called 911. Santiago was arrested that day and has been in custody since that time. Tyler died later that day.

When initially questioned, Santiago admitted to shaking Tyler and "accidentally" banging his head on the footboard of the bed. However, an autopsy revealed numerous skull fractures and concluded that the infant died as a result of blunt force trauma to the head through the use of severe force, thereby ruling out an "accidental" banging of Tyler's head. At this parole hearing, Santiago admitted that he previously said he threw Tyler against the footboard, but now says that "was a lie," and he never did that.

Following his conviction, Santiago filed a motion to withdraw his guilty plea. The motion was denied without a hearing. He then filed a second motion to withdraw his guilty plea with the assistance of counsel. On May 19, 2004, the order denying the amended motion for new trial was affirmed. Further appellate review was denied on June 30, 2004. *Commonwealth v. Hector Santiago*, 61 Mass. App. Ct. 1105, 808 N.E. 2d 332 (2004).

II. CRIMINAL & INSTITUTIONAL HISTORY

Hector Santiago has a lengthy juvenile history that began when he was 15 years old. He received a continuation without a finding and periods of probation for larceny from a person, trespassing, and assault and battery. Charges of use without authority, malicious destruction of property, trespassing, possession of burglarious tools, and threatening were continued without a finding. An armed assault with intent to rob charge was Nolle Prossed. Santiago had a delinquent adjudication for disorderly person and received a Department of Youth Services suspended sentence.

His adult record consists of 10 arraignments, two of which are for his current sentence. Santiago was convicted of armed assault with intent to rob following his August 15, 1994 arraignment on the same in Lowell District Court and was sentenced to 19 days and probation for a year. In 1995, Santiago was found guilty of possession of a Class C substance in West Roxbury Court, and had a related charge of drinking alcohol in public that was guilty filed.

Since his murder conviction, Santiago has incurred four disciplinary reports, the last of which occurred on April 8, 2010, or six months before his initial hearing in October 2010. Santiago's four disciplinary reports were for contraband related offenses, including possession of a stinger in 1997; possession of a photograph belonging to another inmate in 1998; possession of pornography in 2006; and possession of a large number of stamps which were

hidden inside of his radio in 2010. Santiago has remained discipline-free since his 2010 parole denial.

Santiago has been program involved during his incarceration. He has focused on education, having earned his G.E.D. and having recently received his Bachelor Liberal Arts from Boston University. Santiago has also been addressing his substance abuse issues and has completed the Correctional Recovery Academy (CRA), and attends the Sunday night 12-Step program meeting. In the past, Santiago has participated in Spanish AA/NA meetings. Santiago has completed the ABLE Minds program, earned his welding license, completed three phases of Alternatives To Violence, was a trainer for the NEADS program² and has earned certificates from Toastmasters. He has held jobs in culinary arts, as a unit runner, in the gymnasium, in the clothing department in industries and is currently employed in upholstery.

III. PAROLE HEARING ON OCTOBER 29, 2013

Hector Santiago appeared for his second parole hearing. He was represented by a Northeastern student attorney. Parole was denied after his initial hearing in 2010, and he was given a review in three years. Santiago said that when he received the decision "at first I didn't understand; I kept reading it over then I realized I caused that." He has created considerable confusion about the facts of the case because of numerous false statements he has made. He testified at this hearing that his 2010 parole hearing testimony about the facts of the murder was accurate.

Early in the hearing it became apparent that several of Santiago's answers were scripted and rehearsed. It was difficult, therefore, for Board Members to accept the answers as insightful or genuine. A Board Member noted that, "It's starting to sound rehearsed what you are telling us," and encouraged Santiago to take a more candid approach to answering questions. Rehearsed answers continued to be an issue at certain points of the hearing.

Santiago described a difficult childhood history, which included physical abuse by his grandmother ("punch, kick, and humiliate") and sexual abuse by two adult males. He acknowledged that he dealt with the trauma through "a lot of violence and drug use," including a crack cocaine addiction. At the time of the crime, he said, "I was smoking weed and drinking and doing drugs daily; I would do it at work and then come home." Board Members asked Santiago to describe his efforts to rehabilitate, including overcoming his own abuse history. He reported that "my main program has been pastoral counseling for the last year and I am dealing with the sexual abuse in that counseling. In the CRA, I had four weeks of one-on-one counseling, but I didn't get to talk about the sexual abuse." A Board Member asked Santiago to consider how his rehabilitative path might be different or more challenging than those of other inmates. He said, "It's not different in any way from others serving time for murder." He repeated that view later in the hearing. He did not recognize that the homicidal beating of an infant and his own abuse history create a difficult and complex set of rehabilitative tasks that are different from what most other inmates face.

At the time of the murder, Santiago said, "I was smoking weed and drinking and doing drugs daily. I would do it at work and then come home. I argued with Mrs. Kearney every day. I wanted out but I didn't know how to express what I was really feeling so there was just a lot of swearing." Santiago claimed that he had "no prior incident of anger with Tyler or Ryan."

² The NEADS program allows selected inmates to train dogs for deaf and disabled persons.

Board Members doubted that statement given all the circumstances. Santiago provided his description of the murder. Sathya Kearney "woke me up at 6:00 a.m. I hadn't slept much. I woke up with a chip on my shoulder. I didn't want to babysit or be there, but I said I would babysit. She asked me to go to the living room so I could hear either child; I fell asleep again on the living room couch. I woke up and Tyler was crying; she was gone. I went into the bedroom and Tyler was on the bed where his mother left him. I picked him up and realized he was soiled and that triggered the thought that she had lied to me. I already thought she was cheating on me. I became really angry and I yelled at him as though he were Mrs. Kearney: 'Your mother lied to me; she told me she fed you and changed you and she didn't do anything.' As he kept crying, I started shaking him. I threw him down on the bed. I struck him three or four times on the side of his head with my fist. I changed him and put him back on the bed. I was still angry and yelling at him. He was still fussy and I yelled at him again and I shook him again and I threw him on the bed again. I left the room and went into the kitchen. When I threw him, it was near the footboard. I don't know if he hit the footboard. In a parole staff interview, I said I used the footboard but that was a lie. I have also said Tyler fell out of bed and that was a lie. Everything I told the police was a lie to make it look like an accident. When the lies weren't believed, I built on the lies." Santiago asserted that Tyler's broken ribs occurred when he administered CPR. Later in the hearing, a Board Member asked Santiago to think about the reality of gripping the baby around the ribs and shaking him angrily with an intent to harm the baby and consider whether that was more likely to have caused the broken ribs. Santiago agreed.

Board Members asked Santiago about his prior violent acts. At age 16, he robbed a man at the request of his girlfriend's mother. Santiago explained that "we did a lot of cocaine together and the girlfriend's mother said that [her roommate] just got paid. I was easily manipulated. I knocked down the door to [the victim's] bedroom while he was asleep. I handcuffed him and I punched him until he told me where his money was." Santiago also said, "Sometimes we robbed drug dealers, and we robbed an addict in Lowell; we beat him up. I got arrested for that."

Several people spoke in support of parole, including Santiago's sisters and daughter, a former inmate who served time with Santiago, and two people who met Santiago through the Partakers prison mentor program.

Tyler Kearney's mother and father both spoke in opposition to parole. Christopher Nugent testified that the loss of his son continues to cause him numerous problems and said that "I will never have a parole" from the pain and loss he continues to feel. Sathya MacNeil testified that her son would now be 18 years old. She said, "for 15 years he denied that he did anything wrong; for me he hasn't served 18 years because he wasn't truthful for the first 15 years; he's served three years because that's when he became truthful." She also stated, "I knew him; there were numerous lies he told today." Jennifer Cresy, Tyler's aunt testified in opposition. She said, "I watched the children often; I was with the children that weekend; he knew he was watching Tyler that day; I was part of the conversation; it was planned the night before." Letters of opposition were read from Tyler's brother and Sathya MacNeil's husband. Suffolk Assistant District Attorney Charles Bartoloni spoke in opposition to parole. He described much of Santiago's hearing testimony as "self-serving statements trying to sway the Board into thinking he is rehabilitated."

IV. DECISION

Hector Santiago beat a three-month-old infant to death in 1995 and told a series of lies in order to avoid detection and punishment. He continued with the lies until his initial parole hearing in 2010, when he described violently shaking, repeatedly punching, and angrily throwing the baby. Santiago had a difficult childhood that included serious victimization. He became a heavy drug user who frequently resorted to violence. He has shown rehabilitative progress since 2010, but he fails to recognize the magnitude of his issues. He beat an infant to death, but does not see that his conduct raises behavioral and character issues that need specific identification and focused rehabilitation. Similarly, he does not recognize that his history of violence, as a victim and a perpetrator, requires more extensive attention and 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. Santiago does not merit parole because he is not rehabilitated. The period of review will be in five years, during which time Mr. Santiago should focus on his rehabilitation with an understanding of the issues involved in blunting a baby to death and in dealing with his long history of violence, both as a perpetrator and a victim. He should also address the issue of manipulation.

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.



Josh Wall, Chairman



Date