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District Attorney Recommendation - FUSL000045 (2019-09-19)

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September 19, 2019

NYS Department of Corrections & Community Supervision
Otisville Correctional Facility
57 Sanitorium Avenue
Otisville, New York 10963
Attention: Coordinator Brooks
Sent via email: D.Brooks@doccs.ny.gov

Re: [REDACTED]
DIN: [REDACTED]
NYSID: [REDACTED]
Indictment: [REDACTED]

Dear Coordinator Brooks:

I am writing in anticipation of an upcoming parole release consideration hearing for [REDACTED]. He is scheduled to appear before the Parole Board on September 24, 2019, for a reconsideration of his parole application in light of his age at the time of his offense. After a careful review of our records and Mr. [REDACTED] parole application materials, I am writing to inform you that my Office supports Mr. [REDACTED] release to parole supervision, and to rescind the position this Office took in our April 16, 1999 letter opposing parole.

Mr. [REDACTED] was convicted of Murder in the Second Degree, Attempted Robbery in the First Degree, and Criminal Possession of a Weapon in the Second Degree under indictment 13912/95, and sentenced to a term of imprisonment of twenty-three years to life.

Twenty-four years ago, at the age of sixteen, Mr. [REDACTED] committed a senseless crime of violence, taking the life of an innocent man. At the time of sentencing, this Office requested the maximum sentence of twenty-five years to life, a term calculated to serve many of the important functions of our criminal justice system: protecting society from future violent conduct by Mr. [REDACTED] sending a message of deterrence to others, punishing Mr. [REDACTED] for his choices and actions, and allowing for the family of his victim to feel a sense of retribution and justice.

But a criminal sentence serves other functions as well, and one of those is to rehabilitate individuals like Mr. [REDACTED] so that they may one day rejoin society. My position is that justice includes mercy and the possibility of redemption, and that our parole system should be a meaningful one that focuses on not only the circumstances of the crime itself, forever unchangeable, but on the

individual seeking parole today and the efforts he or she has undertaken since the crime to reflect, grow, contribute, and atone. A thorough inquiry is especially important for individuals like Mr. [REDACTED] whose young age at the time of his offense and lengthy subsequent period of incarceration provide an especial opportunity for maturation and transformation into an appropriate candidate for release.

To that end, I am writing to provide information relevant to the recently instituted regulations requiring the Parole Board to consider Mr. [REDACTED] age at the time of the offense and diminished culpability consistent with Matter of Hawkins, 140 A.D.3d 34 (3d Dep't 2016) and the United States Supreme Court cases on which Matter of Hawkins is based.

Lack of maturity, underdeveloped sense of responsibility, recklessness, impulsivity and risk-taking: Mr. [REDACTED] was sixteen years old at the time of the offense, and the homicide itself is consistent with the impulsivity and recklessness of Mr. [REDACTED] then youth. Although our 1991 letter cited Mr. [REDACTED] courtroom demeanor as a reason to oppose parole, under our current understanding of juvenile brains, his behavior in court was consistent with the underdeveloped sense of responsibility attendant to his youth. Moreover, we recognize that pursuant to Hawkins, his failure to immediately confess or take responsibility while still young and immature is not an appropriate factor to consider when opposing parole.

Vulnerability to negative influences and outside pressures: Mr. [REDACTED] life circumstances leading to the instant offense contain many of the hallmarks of diminished culpability. Mr. [REDACTED] lost his mother at a young age and, at the time of the offense, his father was in prison for murder. In addition, defendant committed the instant offense while with a group of peers. Although his actions were tragically misguided, his decision to take a life to garner the respect of those peers, combined with his traumatic past and unstable home life, reflect his vulnerability to negative influences and outside pressure.

Fixed character and evidence of irretrievable depravity: Although defendant has a record of prior criminal conduct before the instant offense, Mr. [REDACTED] post-conviction conduct demonstrates his capacity for growth and maturation and the substantial steps he has taken to better himself and atone for his crimes. To the extent that the Parole Board's prior decision focused on Mr. [REDACTED] decades old contacts with Family Court, it is my Office's position that the most accurate measure of Mr. [REDACTED] capacity for change and rehabilitation is evidenced by his conduct post-conviction.

After a careful assessment of the facts of this case, my Office believes that Mr. [REDACTED] crime reflects the senseless and reckless behavior of an unreflective and immature sixteen-year-old and not irretrievable depravity. Moreover, it is apparent from Mr. [REDACTED] parole packet and many letters of support that he has meaningfully reflected on the crime he committed, accepted responsibility and expressed remorse for the lives he destroyed, and matured beyond the sixteen-year-old who committed this senseless act of violence. We therefore believe that Mr. [REDACTED] would not pose a significant threat to the [REDACTED] community if released. Moreover, to the extent that a significant period of incarceration was required to reflect the serious and senseless nature of this

murder, we believe that the punitive and retributive aims of justice have been satisfied by the twenty-four years Mr. [REDACTED] has already served for an offense he committed at the age of sixteen. Finally, I understand that Mr. [REDACTED] has the support of caring family members and a standing offer of employment in New York City. My Office's Re-Entry Bureau also stands ready to assist Mr. [REDACTED] in his transition back into the community.

Based upon our careful review of all the above considerations, my Office supports Mr. [REDACTED] release to parole supervision.

Sincerely,

A handwritten signature in cursive script that reads "Eric Gonzalez".

Eric Gonzalez
Kings County District Attorney

CC: Jose.Kadanthod@doocs.ny.gov
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