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Parole Interview Transcript/Decision - FUSL000004 (2008-12-03)

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1 STATE OF NEW YORK : DIVISION OF PAROLE
2 -----X
3 In the Matter
4 of the
5 NEW YORK STATE PAROLE COMMISSIONERS'
6 TELECONFERENCED PAROLE BOARD MEETING RE:
7 [REDACTED]
8 NYSID [REDACTED]
9 DIN [REDACTED]
10 REAPPEARANCE INTERVIEW

11 -----X
12 INSTITUTION: Elmira Correctional Facility
13
14 DATE: December 3, 2008
15 December 2008 Board
16
17 BEFORE: Commissioner Debra Loomis
18 Commissioner Michael A. Hagler

19
20 HEARING REPORTER: Eileen Arrigo
21
22 ALSO PRESENT: FPO II Gary Geiger ELMIRA CORR. FACILITY
23 FPO II Anthony Roblyer
24 FPO I Steven Fieno
25

DIVISION OF PAROLE
RECEIVED

DEC 19 2008

1 EXAMINATION BY COMMISSIONER LOOMIS:

2 Q. Good morning, sir.

3 A. Good morning to you all.

4 Q. Are you [REDACTED]

5 A. Yes, ma'am.

6 Q. I'm Commissioner Loomis. With me today is
7 Commissioner Hagler.

8 COMMISSIONER HAGLER: Good morning.

9 A. Good morning once again to you all.

10 Q. This is a reappearance for you, correct?

11 A. Yes, ma'am.

12 Q. You've been seen four previous times?

13 A. Yes, I have.

14 Q. You got a 24 month hold each time?

15 A. Yes, I have.

16 Q. You're currently serving 25 to life for
17 murder second with a ten year determinate for

18 ~~criminal possession of a weapon second, and it~~
19 appears that both are by verdict; is that right?

20 A. Yes, ma'am.

21 Q. Do you have any appeals pending at all?

22 A. I don't have any criminal appeals, no.

23 Q. You understand everything is being taken
24 down here today and a record is being made, right?

25 A. Yes, I do.

1 Q. Are you aware that any of this could be
2 used in a post-conviction proceeding?

3 A. Yes, I am aware of that too. Pardon me.
4 Could you repeat that once again?

5 Q. Everything we say today is being taken
6 down and made into a record. If you were to have
7 some kind of proceeding regarding your case, anything
8 that's said here today could be used in that
9 proceeding.

10 A. All right. Okay.

11 Q. Due to your conviction, the murder, you're
12 required to have what we call an SPP, right?

13 A. Yes. That was conducted.

14 Q. We have it here. You're not getting any
15 mental health treatment, and you're not on any
16 medication, right?

17 A. No, ma'am.

18 Q. According to the record, it says that back
19 in August of '75 there was some kind of an argument
20 between the victim and your half brother, and you
21 intervened on your half brother's behalf it looks
22 like, and then you pulled out a gun and shot the
23 victim several times.

24 Now, what do you want to tell us about
25 that, sir, if anything?

1 A. Well, as I stated at previous boards, and
2 I will state here too, all right, that those acts
3 were committed in self-defense.

4 Q. What was going on? How were you
5 threatened at that point? You're saying
6 self-defense. How were you threatened?

7 A. First of all, the argument developed into
8 a physical confrontation, and a gun was pulled,
9 drawn. The fact is I'm not going to get into the
10 distortion of the facts, but the evidence show when I
11 went to the police station and was arrested, I made
12 exculpatory statement that was never presented on my
13 behalf by my defense attorney. That statement should
14 be in my file just as well.

15 In any event, a gun was drawn, and I felt
16 that my life was in danger, and I disarmed the
17 individual.

18 Q. So was the argument originally between
19 your half brother and the victim?

20 A. Yes, ma'am.

21 Q. Where did it take place? Was it on the
22 street, in an apartment?

23 A. It was outside. We was in an apartment
24 building. It was outside in the hallway.

25 Q. You didn't think to go call the police or

1 get help at all if you thought somebody was in
2 danger?

3 A. That was a very long time ago, over 30
4 years ago as a matter of fact. At that spur of the
5 moment, spontaneous, if something happened
6 spontaneous, you don't have time to call anyone if
7 your life is in danger.

8 Q. Originally the argument wasn't with you,
9 so it doesn't sound like originally your life was in
10 danger.

11 A. When I stepped into the situation, seeing
12 what was going on, everybody's life was in danger.

13 Q. That's my point. Instead of stepping in
14 the middle of it, why didn't you call for assistance?

15 A. We're in an apartment building, eight
16 stories, it's like three, 4:00 in the morning, how
17 could I call for any assistance? I don't have access
18 to a telephone. It's not like I was in an apartment
19 that was mine.

20 Q. You didn't live in this apartment?

21 A. I didn't live in this building. We was at
22 a party. We wasn't even there that long.

23 Q. Did you go to the party with a gun?

24 A. No, I did not go to the party with a gun.

25 Q. Where did you get the gun?

1 A. I just explained to you.

2 Q. You got it from the victim?

3 A. Yes, ma'am. What I'm saying is that this
4 was never brought out during my trial. It's not like
5 I pled guilty to this case.

6 Q. I understand that, sir. You disarmed the
7 victim, right, and you had the gun?

8 A. Yes.

9 Q. So at that point you were in that much
10 danger you had to shoot him after you got the gun
11 away from him?

12 A. Ma'am, with all due regard and due
13 respect, I was 18 years old, a youth with no
14 direction, with no education. That's over 30
15 something years ago. I'm 52 years old now.

16 I'd like to say respectfully that my
17 recollection of that particular moment is not
18 contemporary to the times that be because I'm trying
19 to move on with my life. I'm trying to move on with
20 my life respectfully. I'm not the same.

21 Q. I'm trying to understand that, sir. I'm
22 trying to understand what happened back then. I know
23 it's a long time ago, but somebody lost their life.
24 If we can't have some kind of an understanding of
25 what went on, it's kind of hard to make a decision

1 and decide if you can go back out onto the street and
2 live a law-abiding life. Let's move on.

3 A. I understand what you're saying.

4 Q. Let's move on.

5 A. Yes.

6 Q. You've been in some trouble before that.

7 Were you on probation at the time that this occurred?

8 A. Yes, I was.

9 Q. Were you living with your family?

10 A. At that particular time I was living with
11 one of my sisters.

12 Q. As you said that was a long time ago.

13 You've been in prison a long time. Let's talk about
14 the last 24 months. How have you used your time?

15 A. Well, I have always used my time in prison
16 productively because time dictates agenda, and I
17 would like to say that my employment ability profile
18 ~~reflects the substance I developed since I have been~~
19 in prison. I'm not a detriment to society or the
20 community or a liability. I'm an asset. Any
21 community I go into at this point in time I am an
22 asset, not a detriment, and I say that respectfully
23 because rehabilitation takes place with the
24 individual.

25 The judge sentenced me to time, but I

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2 live a law-abiding life. Let's move on.

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22 asset, not a detriment, and I say that respectfully
23 because rehabilitation takes place with the
24 individual.

25 The judge sentenced me to time, but I

1 didn't just sit back and do time. I took the time
2 and utilized the time for the betterment of my
3 interest, and as a result of that, I have produced
4 not only in writing but in character because we're
5 not talking about the manifestation of character
6 defects. We're talking about what have I done with
7 my time, and I would like to go into the scriptures
8 on you.

9 Q. No, sir.

10 You've been in a number of vocational
11 programs I see.

12 A. Yes, ma'am.

13 Q. You completed orientation, phase three,
14 ART. Tell me why the Department of Corrections is
15 recommending a sex offender program?

16 A. I am not a sex offender, and when I went
17 to my last board here, there was no such
18 recommendation. This is a bogus recommendation based
19 on some misbehavior reports I received ten years ago.

20 Q. So they recommended it because of some
21 kind of a ticket that happened after you went to
22 prison, not because of something that happened on the
23 street, is that what you're saying?

24 A. Yes. Yes, ma'am. I would like to say I'm
25 not a sex offender.

1 Q. I was just wondering why they are
2 recommending it.

3 A. The same thing will go for the other
4 program.

5 Q. ASAT?

6 A. Yes. I would like to say, with all due
7 respect, you have the transcript from my last parole
8 board in Attica, March 2003, before Commissioner
9 Irene Platt, Commissioner W. William Smith and
10 Commissioner George C. Johnson.

11 During that particular parole hearing my
12 presentation, if you read the transcript, on page
13 seven deals with me being recognized for my
14 therapeutic programming. I used to be the [REDACTED]
15 of the [REDACTED] during that time.
16 Any therapeutic drug program is based on the
17 foundation or the AA principles, the 12 steps.

18 Q. I'm just asking why they are recommending
19 it.

20 A. I understand that. You have a right to
21 ask me. I'm not trying to debate with you. I'm
22 trying to explain this to you.

23 Q. Did you have a drug ticket somewhere?

24 A. No, ma'am. I was going to get to that.

25 Q. Right now can you just tell me did you

1 have a drug ticket somewhere some year?

2 A. No, ma'am. I don't use drugs. I never
3 had a drug ticket. They took urine from me in March
4 of this year two times and I came up clean. I don't
5 use drugs. I never had a ticket for drugs.

6 Q. Why are they recommending that program,
7 due to what ticket?

8 A. I never had a ticket.

9 Q. Why are they recommending that program?

10 A. I don't have an idea. I don't use drugs.

11 Q. I hear you. It's says you refused two
12 programs. I'm just trying to figure out why they
13 think you need them. I have asked you and you
14 explained.

15 A. At my last parole board, again with all
16 due respect, I refer you to the transcript, not my
17 last parole board, the transcript of March 11, 2003.
18 At the conclusion of the decision, I'm not going to

19 read the whole thing to you because you have a copy
20 in my file, it says we recognize, pardon me, we note
21 your vocational therapeutic programming, and we
22 determine that release is not inconsistent with
23 community standard and interest at this time.
24 Further institutionalization is appropriate.

25 If they recognize my therapeutic program

1 and it's in the transcript from that hearing, and I
2 used to be the [REDACTED] I teach the [REDACTED]
3 I facilitate the [REDACTED]

4 Q. What's the point? I don't know what point
5 you're getting to.

6 A. My point is this here. This parole board
7 hearing right here, they recognized my therapeutic
8 program skills.

9 Q. Is that the point you want to make?

10 A. Yes, ma'am, which deals with substance
11 abuse and so forth. So why would I have to take a
12 substance abuse program if it's already recognized?

13 Q. Because sometimes things happen after
14 parole board hearings that cause DOCS to recommend
15 additional programming. I don't know. I asked the
16 question. You've answered it. Now let's move on to
17 one more question regarding the tickets. What
18 happened to cause you to get this Tier III in
19 September?

20 A. This is what transpired. An officer that
21 I thought I had a rapport with, I went to him, and we
22 had a general discussion, right, pertaining to two
23 employees. I was asking about two female employees
24 and that was it. Next thing I know I'm locked up,
25 I'm keep locked, and I'm charged with a Tier III

1 ticket. Then he wrote me up additionally in the same
2 ticket for bribery and extortion.

3 Those charges were dismissed. I was given
4 30 days keep lock and found guilty of interference.
5 I didn't bring the other officer to the hearing who
6 gave me the pass to go over to see the officer. That
7 was the basis of the ticket.

8 Q. What kind of information were you asking
9 about female employees?

10 A. He said I was asking about certain names
11 and so forth. That's not so.

12 Q. I'm asking you not what the officer said.
13 I'm asking you what you asked.

14 A. I just said to him, I said, I seen that
15 there was two employees, you know, they seemed to be
16 very professional and presentable and they carry
17 themselves in a professional manner. That's the
18 basis of the discussion. Then we went on speaking
19 about other things.

20 If I see an individual, when I took ART,
21 they spoke about pleasant imagery. That's one of the
22 tools they use. I'm a human being. I can't voice my
23 opinion about another human being? I never
24 approached them.

25 Q. How about a release plan? Where does that

1 stand? Where are you going to go?

2 A. With all due respect, I'm glad you asked
3 me that question because I have my release plans. I
4 have a network set up. It's a letter from OAR
5 written by the client service worker to the [REDACTED]

6 [REDACTED] That should be in my file.

7 In that letter it says, the second
8 paragraph, yesterday I mailed a letter to [REDACTED]
9 [REDACTED] about our services that would be available
10 to you if you're released on parole and live in
11 [REDACTED] County. I cannot send you a copy of the
12 letter I sent to [REDACTED] It's quite standard
13 to keep referral and reference letters between two
14 parties. However, the letter was basically a copy of
15 the same information on the pamphlet I sent you.

16 Q. We've got that letter here.

17 A. Also, I have a letter from a reverend,
18 she's a pastor of [REDACTED]

19 Q. [REDACTED] We have a copy of
20 that as well.

21 A. My network system is already signed up and
22 put into effect. All I got to do is be released and
23 get there. I had established community ties in a new
24 community. Any community I go into at this point I'm
25 an asset.

1 My employment plan, the Department of
2 Labor here, they have a pledge to assist me. I have
3 letters in my parole file from them just as well.

4 Q. I see that.

5 A. My plan is to work as a paralegal, and I
6 feel that any law firm would be glad to have me as a
7 paralegal because I have developed skills,
8 professional skills in all those areas.

9 Now I would like to say with all due
10 respect the average paralegal in any law firm working
11 for an attorney, they specialize in one field of
12 practice, one field of practice. I'm looking for my
13 resume right now. In my resume I just want to share
14 this with you.

15 In my resume where it says summary of
16 qualifications, I'm not going to read my education
17 background because you have my profile in front of
18 you. In regards to summary of qualifications, it

19 says develop excellent reputation announced by the

20 [REDACTED]
21 [REDACTED] for being a sophisticated

22 [REDACTED]
23 19 years of legal practionary experience.

24 Prepare opposition motion for summary judgment and
25 memorandums of law.

1 Q. You don't need to read the whole thing.
2 We get the point. I don't think you need to read the
3 whole thing. I think we understand what you're
4 saying. That's where you would seek employment, in
5 the legal field.

6 A. Yes, ma'am. I don't have any problem
7 applying myself. I don't have any problem following
8 instructions.

9 Yes, I have a disciplinary record. I'm
10 not trying to present myself as being an angel, all
11 right, because ain't nobody is no angel. The
12 scripture says all have fallen short from the glory
13 of God and all have sinned. I'm not trying to
14 project myself as an angel. What I'm trying to
15 project myself as is somebody that's an access to
16 community. I have dealt with the community of myself
17 and stress management, which I'm a senior facilitator
18 in, we have a term we called feng shui, which means
19 the art of controlling the environment according to
20 the flow and balance of energy. In order to do that,
21 you have to first be a balanced human being. You
22 have to be balanced first.

23 Q. That sounds good, sir.

24 Commissioner Hagler, do you have any
25 questions?

1 COMMISSIONER HAGLER: No. I have
2 listened carefully. I have no questions.

3 Q. How many years have you done now, sir?

4 A. 32 years. I just want to speak to my
5 facility parole officer for a minute.

6 Q. About what, sir?

7 A. About something that me and him
8 discussed. You said you were going to order the
9 certificate of relief. I was inquiring about the
10 certificate of relief.

11 The Department of Labor has also pledged
12 to me that they would federally bond me for any job.
13 The federal bonding program, I'm quite sure you're
14 familiar with that, and if I have a certificate of
15 relief from disabilities, that will put the icing on
16 the cake if I'm released.

17 Q. We have that here, so if you are released,
18 there is one available for us to consider. Okay?

19 A. Yes, ma'am.

20 Q. We'll take it all into consideration here
21 today and give you a written decision in a few days.
22 Okay?

23 A. I will be very thankful for that. I'm
24 always thankful. I don't know. I just want to know
25 one thing. You say you're going to give it to me in

1 a few days. I don't want to get my hopes up high. I
2 don't want to set myself up for any type of
3 disappointment. I hope you consider my presentation.

4 Q. We'll consider everything that we're
5 required to consider, and we'll let you know.

6 A. All right. Thank you very much.

7 (Room cleared.)
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1 (After due deliberation by the parole board panel,
2 the following decision was rendered:)

3

4 D E C I S I O N

5 COMMISSIONER LOOMIS: Parole denied.

6 Hold 24 months. Next appearance 12-2010.

7 After careful review of the record, this
8 interview and due deliberation, parole is denied for
9 the following reasons:

10 You continue to serve a controlling life
11 sentence upon your convictions of murder second and
12 criminal possession of a weapon second whereby
13 records indicate you intervened in an argument with a
14 victim and shot him several times causing his death.

15 You have a larcenist-related criminal
16 history, and you were under probation supervision at
17 the time of the instant offense.

18 Since your last panel appearance, you've
19 continued to behave in a negative manner incurring
20 disciplinary infractions, most notably for
21 interference and stalking.

22 A longer period of positive institutional
23 adjustment and programming is necessary to
24 demonstrate to the panel that you're prepared for
25 release and positive reentry is likely.

PRECISE COURT REPORTING
(516) 747-9393 (718) 343-7227 (212) 581-2570

1 All factors considered, the panel
2 concludes that release at this time is incompatible
3 with the safety and welfare of the community.

4 (Commissioners concur.)
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1 RE: [REDACTED]
2 AT: ELMIRA CORRECTIONAL FACILITY
3 ON: DECEMBER 3, 2008
4

5 CERTIFICATION

6
7
8 I, EILEEN ARRIGO,
9 a Notary Public in and for the State
10 of New York, do hereby certify:

11 THAT the foregoing is a true and
12 accurate transcript of my
13 stenographic notes.

14 IN WITNESS WHEREOF, I have
15 hereunto set my hand this 5th day of
16 December 2008.

17

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19

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EILEEN ARRIGO

Name: [REDACTED]
DIN: [REDACTED]
Nysid: [REDACTED]

Facility: ELMIRA
Interview Date: 12/03/2008
Interview Type: REAPPEAR

Earned Eligibility Certificate : INELIGIBLE
Supervision Fee: ELIGIBLE
Certificate of Relief from Disability: ELIGIBLE

Parole Decision:
DENIED - HOLD FOR 24 MONTHS, NEXT APPEARANCE DATE: 12/2010

Confidential Comments:

Conditions of Release/Staff Instructions/Reasons for Denial:

AFTER A CAREFUL REVIEW OF THE RECORD, THIS INTERVIEW AND DUE
DELIBERATION PAROLE IS DENIED FOR THE FOLLOWING REASONS:
YOU CONTINUE TO SERVE A CONTROLLING LIFE SENTENCE UPON YOUR
CONVICITONS OF MURDER 2ND AND CPW 2ND WHEREBY RECORDS INDICATE YOU
INTERVENED IN AN ARGUMENT WITH THE VICTIM THEN SHOT HIM SEVERAL TIMES
CAUSING HIS DEATH. YOU HAVE A LARCENOUS RELATED CRIMINAL HISTORY AND
YOU WERE UNDER PROBATION SUPERVISION AT THE TIME OF THE INSTANT
OFFENSE. SINCE YO UR LAST PANEL APPEARANCE YOU HAVE CONTINUED TO
BEHAVE IN A NEGATIVE MANNER INCURRING DISCIPLINARY INFRACTIONS, MOST
NOTABLY FOR INTERFERENCE AND STALKING. A LONGER PERIOD OF POSITIVE
INSTITUTIONAL ADJUSTMENT AND PROGRAMMING IS NECESSARY TO DEMONSTRATE
TO THE PANEL THAT YOU ARE PREPARED FOR RELEASE AND POSITIVE REENTRY
IS LIKELY.

ALL FACTORS CONSIDERED THE PANEL CONCLUDES THAT RELEASE AT THIS TIME
IS INCOMPATIBLE WITH THE SAFETY AND WELFARE OF THE COMMUNITY.