Parole Interview Transcript/Decision - FUSL000017 (2017-05-23)

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NYS DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION

Parole Board Interview

In the Matter

-of-

[type redacted]

LOCATION: Otisville Correctional Facility

Video-conferenced to NYS DOCCS

20 Manchester Road

Poughkeepsie, New York

DATE: May 23, 2017

DECISION DATE: May 23, 2017

BEFORE: COMMISSIONER S. THOMPSON

COMMISSIONER J. SMITH

COMMISSIONER O. CRUSE

ALSO PRESENT: SORC Glebocki

ORC Kadanthod

AT FACILITY: ORC Raimondo

REPORTER: Lori Ciofalo, Hearing Reporter

Schmieder & Meister, Inc. (845) 452-1988
COMM. SMITH: Good evening. Would you state your name for the record?

THE INMATE: [Name redacted]

COMM. SMITH: Good evening, [Name redacted]

I am Commissioner Smith, and I am joined today by Commissioner Thompson and Commissioner Cruse.

COMM. THOMPSON: Hello.

COMM. CRUSE: How you doing?

THE INMATE: How you doing, sir? How you doing?

INTERVIEW BY COMMISSIONER SMITH:

Q. Actually, Commissioner Cruse and I were part of your panel in February, at your de novo interview, and I think I might have actually seen you a few years back, but today is a new opportunity for you. Okay, sir?

A. Okay.

Q. The record indicates you continue to serve a sentence of fifteen to life, following a plea, in the Bronx, to Murder Second; is that correct, sir?

A. That's correct.

Q. We do have your Sentencing Minutes. The offense dates back to March of 1981, at a junkyard, when you and your co-defendant shot three victims, during the course of a robbery at that...
junkyard. Two of these people died and one was seriously injured.

Can you explain to us your involvement and what transpired this day? I believe it was a place you previously worked at; is that correct?

A. Yes, yes.

Q. Tell me what happened that day.

A. Well, that day I was just out of my mind, with drugs, first of all. I remember getting up and needing money, so I went and asked _ can I borrow one of his guns. He asked me what for, and I told him what for. I told him to try and get some money. He said he would come with me.

So we rode around for a couple of hours trying to find some place to rob, but we couldn't find one. I said, "Listen, I used to work in this place, so help me rob this place."

So we went there. I got in there, and I said to _ I said I came back to get my clothes and some old property that I had there.

He took me in the back, and then I pulled a gun on him, and I robbed him, and he got killed, he got murdered.

Q. Did you shoot him?

A. Yes, ma'am.
Q. That's what you just missed saying. You said, "He got killed."
Q. Who else got shot that day?
A. [redacted] was a coworker, and [redacted] was a security guard.
Q. And [redacted] was the one that was injured?
A. Yes.
Q. Was he an armed security guard or no?
A. No, he wasn't an armed security guard.
Q. When you said that you went into the back, was there a safe back there, or a cash drawer, or something that you thought you could get money from?
A. There was a safe back there, yes.
Q. How much money was in that safe?
A. I don't know. Believe me, it wasn't enough. No money is enough for someone to lose their life, ma'am. I don't know how much money was in there.
Q. Did you get any money?
A. A little bit, and I don't remember how much it was.
Q. So the gun belonged to [redacted]
A. Yes, [redacted]
Q. What type of gun was it?
A. A handgun.

Q. So why did you have to kill him?
A. I think that when I went to get the money, and I asked him for the money, he threw the money at me, and then the gun just went off, and that's how he actually got shot and died.

Q. Well, maybe that could explain for one person, but how do you explain the two other people getting shot?
A. I wasn't there for the other two. After [ ], got shot, I ran out. I told [ ], "Let's go." There was two exits. I thought he was coming behind me. I wasn't there when the other two gentlemen got shot.

Q. So who shot them?
A. [ ]

Q. So you only admit to shooting [ ].
A. Yes.

Q. Did you give the gun you had to [ ].
A. No. He had a gun, also. I ran out the exit.

Q. So you ran out with the gun he had given you?
A. Yes.

Q. How old were any of these people, especially [ ] If you're taking responsibility for

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shooting him, how old was he?
A. I guess he was my age, twenty-eight,
twenty-seven, maybe twenty-nine.
Q. Did you have any hard feelings with him?
A. No, ma'am, not at all.
Q. It's too bad someone's life was snuffed out,
so senselessly.
A. Yes.
Q. Did his family speak at Sentencing?
A. No.
Q. Did any of the other victims' families speak?
A. No, ma'am, no.
Q. As we look at your legal history, this is your
second time in New York State prison. It looks like
you had been off parole for about five years,
roughly, when this occurred.
A. Yes, roughly.
Q. Your prior bid was for a Class D felony, an
Attempted Robbery, also.
A. Yes, an Attempted Robbery.
Q. Did you have a weapon in that one?
A. I had a toy gun.
Q. The people you were robbing didn't know it was
a toy, though, did they?
A. No, they didn't know that. I can imagine them
being terrorized and traumatized.

Q. What did you rob, was it a home or a business?
A. It was a train booth -- a token booth, at the train station.

Q. You have been incarcerated, and we recognize it is a number of years, you are approaching thirty-six years; is that correct?
A. Yes.

Q. That's a long time. We do note the sentence imposed was fifteen to life.

We note during your period of incarceration you've completed all of your mandatory programs. You have maintained volunteer membership in various program organizations, including YAP. You've held outside clearance for a number of years. What happened in 2015?
A. In 2015 they said I was in that position too long, nine years, so they wanted to put me in the horse barn, and I didn't want to work in the horse barn.

Q. Now you are in the as an administrative clerk; is that correct?
A. Yes.

Q. With respect to your discipline, you are to be commended. You've only had four Tier II tickets, in
nearly thirty-six years of incarceration. You have
had almost fifteen years, since you've had any
tickets at all. You are to be commended for that.
That's not something we often see.

A. Thank you.

Q. We have your COMPAS Case Plan, and we are
going to be taking a look at that, and your COMPAS
Risk Assessment.

Your COMPAS Risk Assessment is largely
favorable for you. It shows you to have a low risk
of violence and arrest.

Despite the nature of the crime, it says you
have a low history of violence. I know you said you
were on drugs or looking for money for drugs when
this occurred, but it says that re-entry substance
abuse is unlikely.

So the drugs are out of your life, sir?

A. Yes, ma'am, completely, forever, thank God.

Q. After you shot [REDACTED] and you left, what
happened after that?

A. We got into a cab, and we went back to the
Bronx, and we split the little bit of money, and
then I left, and he left, and I haven't seen him
since.

Q. How soon thereafter were you arrested?
A. A week, maybe.

Q. How did they tie it to you?

A. I don't know how they tied it to me. Well, I worked there and was the security guard.

Q. I read somewhere that the victims were shot, basically, execution style; is that true?

A. was.

Q. So you shot him in the back of the head?

A. Yes.

Q. We have contacted the Judge, the District Attorney and the defense attorney, that presided over your case. We asked them to comment on your parole eligibility. We did receive a response from the District Attorney, which we will take into consideration.

We also have, on your behalf, a number of letters of support, multiple, too many to read into the record. I think you could probably see from the screen, there, the large volume that we have.

You are fortunate that there are people out there willing to support you after two things; after the length of time you have been in and, also, based on the crime you committed.

There are a lot of people who are putting

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their name on the line to say you are a good person, including Correctional staff, who have written in commendable behavior reports for you.

We also have your parole packets. We have a number of them here, from years in the past, and your most recent one for this appearance in May.

What is your greatest accomplishment, since you have been incarcerated?

A. I guess the greatest would be education; and that's because when I was working at the job with the mentally retarded, they actually offered to pay for my education, and I just walked away from the opportunity. I walked away.

So education, for me, is one of the biggest accomplishments, and then the PACE program. Starting the PACE program was another big one.

Q. We have your personal statement contained within your parole plan, also your release plans. You want to work with [blank] at [blank] You can live with your sister in the Bronx, correct?

A. Yes, ma'am.

Q. You spoke here about that you owe a debt to [blank] and [blank] family.

A. Yes.

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Q. You also said, "I am truly self-stricken for the killing of [redacted] and [redacted] and I ask that you forgive me. I take full responsibility for the senseless murders that I committed." So there it sounds like two.

A. Well, I was responsible for two. If it wasn't for me going to ask [redacted] to give me a gun, and him coming with me, they wouldn't have gotten murdered, so I am responsible for two. Although, I didn't pull the trigger on two, I asked him to come with me.

Q. Again, there are numerous letters of support here.

A. Yes.

COMM. SMITH: Commissioners, any questions?

COMM. CRUSE: No questions, thank you.

BY COMMISSIONER THOMPSON:

Q. How long did you work for the victim?

A. For about a year.

Q. What did you do there?

A. I was a driver.

Q. And you always worked as a driver?

A. That's what I did. I was hired as a driver. Sometimes I stayed inside and helped out.
there was no work to go out, I stayed inside and helped out.

Q. On this day, did you know that the victim would have been in there working alone? Did you know the operation?

A. Yes, but I didn't know if he was still going to be there. We was driving around trying to find a place to rob, so I didn't know. I think it was late at night, in the late evening.

Q. Did you know he would have money at the time?

A. Yes, I knew there was money in there.

Q. And even though you knew that there was money in there, you're looking for a place to rob, you know the ins and outs of this location, you didn't think about robbing this location, first, it wasn't planned?

A. No, not at all. First, we rode around in the cab for at least forty-five minutes to an hour, maybe even longer than that.

Q. What made you think of this location?

A. It was getting late. We had to pay the cabdriver, and we didn't have no money, so I said let's go rob my former place of work.

Q. How much did you get?

A. I don't remember, ma'am, I really don't.
Q. Hundreds, thousands, what?
A. All of it went to drugs. I don't remember how much it was.
Q. Was it a couple of hundred, a couple of thousand? Do you have any idea?
A. Maybe a couple of thousand. It wasn't worth someone's life.
Q. Absolutely not.
A. Even if it was a million dollars, it's not worth someone losing their life.
Q. You said when he threw the money at you, you accidently shot him.
A. It was an impulse, a reflex. It was just boom. He threw it in my face, and I shot.
Q. Did it ever cross your mind that he could identify you, if he was alive?
A. I don't think, me, myself -- when you're using drugs, you're not thinking about that. All you're thinking about is getting the money and getting high. You're not thinking about people identifying you. You don't think about that.
Q. Did he have a family? Was this a family-run business?
A. It was a family-run business, yes.
Q. Did you know his family?
A. I knew his brother.

Q. Anyone else?

A. No, that's the only two people I actually ever seen in the shop. I think his father came through once in a while, but I never really met him. I met his brother, [redacted]

Q. How well did you know him?

A. Probably better than I knew [redacted] because he was always in the shop. He would give me the routes to take, and that's who I reported to in the morning.

Q. Why were you fired?

A. Because of drug use.

Q. Did they know you were using drugs?

A. My work probably showed it. I would take the truck and come back real late at night. My work probably showed that something was wrong.

COMM. THOMPSON: No further questions.

Thank you.

COMM. CRUSE: I have some questions.

BY COMMISSIONER CRUSE:

Q. We have talked to you before, I have interviewed you before, along with Commissioner Smith.

As I was rereading your crime and listing to Schmieder & Meister, Inc. (845) 452-1988
you, today, it started to take me back anew as to how rampant your behavior was.

You said I was just riding around the community, looking for a place to rob. And then, at the top of the interview, even at this late date, you left out yourself, in your response, like, oh, yeah, he got killed. You were the one that shot him.

A. Right.

Q. And then when she asked about the execution style, you said yeah, like it was somebody else.

A. No, no, no, no.

Q. I don't feel that you did that deliberately, within you that's what happened, but you did it right off the cuff. It put me back in a place in time, I'm wondering like, wow, how far have we changed, or have we changed, because those answers seem, after all of this time, to skip some very pertinent information.

A. Listen, Commissioner, I could sit down here and take you from 1974, when I was released from prison, and take you right through the steps. Reliving this thing, every two years, hurts. It eats me up. It just hurts, and I can imagine how the victims' families feel. I can imagine them
hurting. They have to relive this every day.

If I left something out, I didn't mean to leave it out. Everything is important in this case. Everything, everything, everything is important.

I'm not trying to sound like I'm minimizing the crime or my responsibility. I am responsible for it. **[Redacted]** is not responsible for it, I am responsible for it.

If I didn't go to the gentlemen might still be alive. It is my responsibility, me, me, me, and no one else, no one else. I don't want you to feel like that.

COMM. CRUSE: Thank you, sir.

CONTINUED BY COMMISSIONER SMITH:

Q. **[Redacted]** it's a tough case, and we have to ask those tough questions, and I'm sure you have been through that before. You have appeared before numerous panels, in the past.

We have a responsibility for public safety, to make sure we have all the facts we need to make an informed decision, and I hope you can respect that.

A. I mean, I respect it. I respect everything you all do. I know you have a very tough job, and I respect that.

The only thing I'm saying, ma'am, is that I
have changed. I am not the same person. Thirty-six years ago I was impulsive, reckless, selfish and destructive, but that died. This sitting in front of you today, right now, is a totally new person. I reinvented myself. I am a totally new person.

Q. I hope I have acknowledged your program accomplishments, because I do see change. I see a long time in prison. I see a disciplinary history that is very good, a COMPAS score that is very good.

On the other side of that, we have to look at we have two people deceased and one seriously injured. We have to weigh all of that. Nothing gets weighed more than something else. We do acknowledge what you have done and you have changed.

A. I am a totally different person. The support letters you have from the staff, these people know me for like twenty, twenty-five years, and they know how I sleep, what I like to eat, what I like to read, how I act when no one is looking. They know my character. They would not put themselves on the line. They have watched me for twenty-five years.

I just pray that the Panel can see the change. I know it's only a few minutes, and I might not have articulated myself very well.

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Q. You have done very good.

A. I just pray that the Panel can see that this sitting here, today, is not the same

The officer standing right there, he can attest to this. He's standing at the door, looking in. He's looking at me, because he knows I've changed.

Q. We appreciate that you have taken some effort while incarcerated to make those changes, and we will weigh everything and render you a decision, sir.

Is there anything else that we have not discussed, that you feel is important for us to consider, as we close the interview?

A. This is actually for Commissioner Cruse, also, the whole Panel, but he was on the Board last time, and he talked about me losing opportunities, wasting opportunities, letting opportunities slip away.

I never sat before a Panel, before, and wanted to write a Commissioner and thank him. I have to thank him for telling me about the opportunities I missed and letting me see the opportunities I missed. I had an opportunity to go to college, and I missed it.
When the kids come in I use his opportunities, what he was telling me. The first thing when I see them, I ask them if I gave you a million dollars, or an opportunity, which one would you take.

These are fifteen, sixteen and seventeen-year-old children, and they say the million dollars, but they don't understand about the opportunities. The opportunities are to finish school and obey your parents, this is what I tell them.

I thank [Name redacted] because he made me think about that, and I thought about it for a long time, about the opportunities --

Q. All right, sir.
A. -- so I could honor [Name redacted] and [Name redacted]
Q. We have attempted to give you a full, fair and accurate interview. Do you feel that you have had that today, sir?
A. Honestly, I will say this. Going on over thirty-six years, I think if something is agonizing with the Board, then we should discuss it, and that's what I think is a fair hearing is.

I see your face, and if something is agonizing you, then maybe we should discuss it.

Q. You have answered all of my questions. I'm
asking you if you feel like that was fair and accurate, what we have asked you?

A. What you're asking me was fair and accurate, yes.

Q. We've got two files, here. I had to separate them, because they are so big with all of your information.

We have a lot of information to review, and we will get back to you. Thank you for coming in and have a good evening.

A. Please don't take what I said as me trying to minimize this. I'm sitting here and you're nervous and everything might not come out the way you plan it to come out in your head. I do take full responsibility.

Q. And we thank you.

A. I am very, very hurt. If you could see my heart, you would see the remorse and the pain just bleeding out of my heart for the victims' families.

Q. Thank you for that.

A. It hurts me every day.

COMM. SMITH: Very well, have a good evening. We will get back to you, shortly. Thank you, sir.

THE INMATE: All right, thank you. (Interview concluded.)

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(After due deliberation by the Parole Board Panel, the following Decision was rendered:)

DECISION


Parole is denied. This decision is based on the following factors: The Instant Offense of Murder, Second, wherein when acting in concert, during the course of a robbery, three victims were shot, two of whom died.

This is your second New York State term of incarceration. This crime was heinous and left a wake of victims.

After a review of the record and interview, the Panel has determined that if released at this time there is a reasonable probability that you would not live at liberty without, again, violating the law.

Your record dates back to approximately 1973. It includes felonies, as well as prior prison. You have failed to benefit from prior efforts at rehabilitation.

Note is made by this Board of your Sentencing

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Minutes, COMPAS Case Plan, COMPAS Risk Assessment, which indicates a low risk of felony violence, rehabilitative efforts, letters of support and/or reasonable assurance, disciplinary record, and all other required factors; including official opposition to your release.

Additionally, your release at this time would be incompatible with the welfare of society, and would so deprecate the serious nature of the crime as to undermine respect for the law.

The Panel notes your institutional progress and length of time served.

(All Commissioners concur.)
CERTIFICATION

I, Lori Ciofalo, Court Reporter and Notary
Public, in and for the State of New York, do hereby
certify that I attended the foregoing proceedings,
took stenographic notes of the same, and that the
foregoing, consisting of 23 pages, is a true and
correct copy of the same and whole thereof.

Lori Ciofalo
Lori Ciofalo, Court Reporter
Dated: May 23, 2017

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