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NYS DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION

BOARD OF PAROLE

Parole Board Hearing

In the Matter of

[REDACTED]

DIN# [REDACTED]

NYSID# [REDACTED]

TYPE OF INTERVIEW: Reappearance
LOCATION: Cayuga Correctional Facility

Video-conferenced to
Syracuse Parole Office
333 East Washington Street
Syracuse, NY 13202

DATE: May 20, 2015

BEFORE: COMMISSIONER LUDLOW
COMMISSIONER SHARKEY

ALSO PRESENT: Michael Pettigrass, Supervising Offender Rehabilitation
Coordinator
Karen Mahunik, Assistant Parole Aide

PRESENT AT CAYUGA: James Frangione, Offender Rehabilitation Coordinator
[REDACTED] Inmate

HEARING REPORTER: AnnMarie Testa

1 BY COMMISSIONER LUDLOW:

2 Q Good morning, sir.

3 A Good morning.

4 Q Sir, you are [REDACTED] [REDACTED]

5 A Yes, sir.

6 Q Mr. [REDACTED] I am Commissioner Ludlow. With me is Commissioner Sharkey.

7 COMMISSIONER SHARKEY: Good morning. Thank you for seeing me.

8 BY COMMISSIONER LUDLOW:

9 Q Mr. [REDACTED] is this your fifth appearance? I know you have had a De Novo in the past
10 that replaced an appearance, with the De Novo factored in is this your fifth appearance,
11 sir?

12 A I think it comes down to my seventh, but the De Novo was an additional hearing after my
13 fifth one.

14 Q Okay.

15 A I guess technically it is my seventh. I am not really sure.

16 Q Okay. You are sixty-two years old now, sir, correct?

17 A Yes, sir.

18 Q Still a young man, okay?

19 A Yes, sir.

20 Q All right. You were found guilty by verdict to murder second two counts, you pled to
21 hindering prosecution first, controlling sentence twenty-five-to-life. You apparently have
22 been in about thirty-four-and-a-half years, is that correct?

23 A Yes, sir.

24 Q That is a long period of time, we certainly recognize that fact, we are sensitive to that
25 fact. With regard to the verdict murder second, do you have any appeals pending or do

1 you anticipate filing any appeals as to the verdict?

2 A No, I do not, sir.

3 Q Nonetheless, I call your attention to the fact that we have a Certified Stenographic
4 Reporter in the room, every word that we discuss is being reduced to a verbatim
5 transcript and it is possible that that transcript could find its way into public forums and
6 we caution you about what you say regarding the terms and circumstances of these crimes
7 so as not to impede, limit, or jeopardize any future opportunities that you may have for an
8 appeal. You may decline to discuss the terms and circumstances of the crime if you wish
9 and we'll not hold that against you. Do you understand that, sir?

10 A Yes, I understand that.

11 Q Are you maintaining your innocence as to the verdict?

12 A Yes, sir.

13 Q We respect your right to do so. Prior to the case --

14 A That is not to say, but that is not to say I downplay my responsibility, sir.

15 Q Okay, sir. Prior to the case going to verdict, did the district attorney in [REDACTED] County
16 extend any kind of plea offer to you at all, if you recall?

17 A No, sir.

18 Q Okay, sir. You were on parole at the time of the instant offense about eighteen months
19 from a 1978 criminal sale of a controlled substance conviction, is that correct?

20 A Yes, that is, sir.

21 Q Now, as I understand you are claiming innocence, we respect that, but for the benefit of
22 the record the facts, essentially as the file presents them, [REDACTED], 1980, [REDACTED],
23 [REDACTED] County, you and Mr. [REDACTED] apparently had been drinking. According to the
24 facts, the file further states that you and [REDACTED] followed a sixteen-year old female by
25 the name of [REDACTED], and after a period reportedly hit her with a rock and then

1 stabbed her and the injuries caused her death. Any comments you wish to say about that
2 at all, sir?

3 A Well, what I would like to do is, I would like to -- I made several submissions to the
4 Division of Parole through my counselor, Ms. [REDACTED], which indicates that the
5 codefendant admits to specifically inflicting those injuries and that I submitted the
6 decision from the Appellate Division on his appeal, as well as stenographic statement of
7 him describing his actions in committing the stabbing. And, I mean, I don't mean to point
8 fingers at anybody, that is not my intention whatsoever, I am just trying to make the
9 Board aware of information that they may not otherwise be aware of, that is absolutely all
10 I am trying to do. I am not trying to downplay any responsibility or that I don't have any
11 kind of remorse, I am not trying to DO anything of that sort whatsoever, whatsoever.

12 Q All right. So, is it your position that you were present at the time that the young lady was
13 attacked but that the attack was committed by Mr. [REDACTED] and not you, is that your
14 position?

15 A Basically, yes. What I observed I observed from a distance and after I observed what I
16 did I ran to the police booth, which was approximately two, three blocks away, and that is
17 when I reported the crime to the force. The problem was that I had been so drunk the
18 officers, they had reason not to believe me and they basically just told me to go home.

19 Q Okay. Is it your position then that you had no physical contact with the victim?

20 A No, absolutely not. You know, the COMPAS Report and the statements surrounding the
21 crime has gone through some significant changes, changes through my counselor here IN
22 the facility to edit --

23 Q Revise?

24 A I am sorry, right, to revise the statements to indicate things that I clearly were not
25 responsible for, as well as revising and deleting the acting in concert theory, which I very

1 much appreciate.

2 Q We'll take a look at that in a moment. We do have the sentencing minutes on file from
3 [REDACTED] County Court [REDACTED], 1981, before Judge [REDACTED]. You at the time were
4 represented by Mr. [REDACTED], correct, sir?

5 A Yes, sir.

6 Q The minutes are on file and part of the record. We also have minutes on file from
7 [REDACTED] County Court [REDACTED], 1982, before Judge [REDACTED]. You at that time were
8 likewise represented by Mr. [REDACTED]?

9 A Yes, I was.

10 Q We have those minutes on file, as well. We do have the COMPAS Risk Assessment
11 instrument on file. You were screened for that purpose on April 10th, 2015, by
12 Mr. [REDACTED]. Is that the case?

13 A It is Ms. [REDACTED].

14 Q There is no first name here, Ms. [REDACTED]. We draw upon the COMPAS as a tool as a
15 resource in an advisory way to assist us in complying with Executive Law 259 C4, which
16 requires the Board of Parole to conduct a risk and needs assessment as a measure of your
17 rehabilitation for reentry into the community. In your case the computer assessment has
18 you low risk across the board for felony violence, arrest, and absconding. If on parole
19 would you present as a low risk or something else, what are your thoughts in that regard?

20 A I do believe that I am a low risk. When I was a kid, when I was growing up I had very
21 little way in the focus and guidance and I was making some very bad judgements, to say
22 the least. Throughout my incarceration I have addressed those issues that I have had. I
23 received a lot of help from a lot of different people, whether it was programming or just
24 counseling from various individuals, and I really worked very hard to build a foundation
25 for change and I believe that I have made serious headway in changing the way that I was

1 living previously to the way that I think and conduct myself today.

2 Q Okay. If paroled you are looking for a residential program, sir, is that the case, for a
3 residence?

4 A Yes, sir, I am. I have several organizations that are willing to help me. I have Mr. [REDACTED],
5 he is one of the directors of a program in [REDACTED] called Help End Violence Now. He
6 is basically the driving force of guiding my reentry back into the community in [REDACTED]
7 [REDACTED], [REDACTED]. And I also have the assistance of Mr. [REDACTED], who is the former head
8 of probation in [REDACTED] and also professor in criminal justice, he wrote a letter, as
9 well as Mr. [REDACTED], to the Division of Parole, acknowledging that he accepts very few
10 individuals in his program and that from several hours of conversations with me and his
11 review of the COMPAS, that he wants me to send to him, which obviously I did, that he
12 is very willing to accept me in the program and that with his help he strongly believes
13 that I will be successful. I really appreciate it because, excuse me, Mr. [REDACTED] and
14 Mr. [REDACTED] from the Help End Violence Now, both of those men are very respected
15 professionals and I am extremely appreciative of all the help that they are willing to
16 provide me.

17 Q We do have correspondence on file, in particular from [REDACTED], attorney, in
18 support. He has represented you in your appeal in the past?

19 A Yes, sir.

20 Q And Mr. [REDACTED] is from [REDACTED], [REDACTED]. We do have the correspondence from
21 Justice Strategies [REDACTED], letter of support relative to his program. He
22 references Mr. [REDACTED] in here, as well.

23 A Yes, sir.

24 Q We have a beautiful letter from your mother all the way from [REDACTED], [REDACTED], we
25 appreciate that.

- 1 A Yes, sir.
- 2 Q We have prior correspondence from your mother as well, which we additionally received.
3 We have a personal statement from you. We have the Decision and Order in the
4 Article 78 proceeding that you had completed previously, we have that.
- 5 A Thank you.
- 6 Q [REDACTED] Church, [REDACTED] Township in [REDACTED], letter of support from
7 Decon [REDACTED]?
- 8 A Yeah. Mr. [REDACTED], he was very helpful to me, Mr. [REDACTED].
- 9 Q We appreciate all of that.
- 10 A He gave me some very good counseling and guidance while I was in the Arthurkill
11 Correctional Facility. Since that facility closed, we were permitted that -- he was no
12 longer able to come into a New York State facility, so we correspond on a personal level.
- 13 Q In terms of work experience, you do have experience with computers and machine
14 mechanic as well?
- 15 A Yes.
- 16 Q You had also done paralegal work, you have done some work in that regard. As
17 indicated earlier, you are still a young man at sixty-two and ready to go to work, is that
18 the case?
- 19 A Absolutely. Absolutely.
- 20 Q The Office of Mental Health has you Level 6, that suggests that you are not in need of
21 mental health services currently, is that accurate?
- 22 A Yes, that is accurate, yes.
- 23 Q Discipline wise, no tickets since May of 2010. That is certainly to your credit as well and
24 noted by the Board. In terms of programs, the file advises us that you completed all
25 recommended programs, that would be ART, AVP, ASAT. Is that the case, sir?

- 1 A Yes, sir.
- 2 Q And did you have a high school diploma or have you acquired a GED over the years?
- 3 A I have acquired a GED soon after entering the Department of Corrections, yes.
- 4 Q Okay. This is your second State bid, as referenced. You were on parole from a drug
5 felony conviction in 1978 at the time of the instant offense, correct?
- 6 A Yes, that is true.
- 7 Q And I did not mention, but for completion of the record, you do have a second felony on
8 this bid, which is hindering prosecution out of [REDACTED] County. You pled to that?
- 9 A Yes, sir, I did.
- 10 Q Now, we do note, Mr. [REDACTED] that there is significant community opposition to your
11 release on file, okay, we do want to advise you of that.
- 12 A Yes, sir.
- 13 Q We are required by law to consider the total breath of the record here, okay?
- 14 A Yes, sir. If I could just comment on the opposition, sir?
- 15 Q Yes, sir, go ahead.
- 16 A A lot of that opposition has to do with the underlying crimes which have since been
17 determined, you know, I am not responsible for and the public is not aware of what took
18 place, as far as ascertaining what I am not responsible for. The only thing is that I can
19 hope and pray that the Division of Parole, that they realize that, you know, why some of
20 that opposition is in place and that, you know, the public is, that they are basing a lot of
21 their opposition on factors that, you know, are not necessarily what they believe.
- 22 Q Have you attempted correspondence with organization such as Project Innocence over the
23 years?
- 24 A No, sir, I have not. I really didn't know what to do.

25 COMMISSIONER LUDLOW: Commissioner Sharkey?

1 COMMISSIONER SHARKEY: I don't have any questions. Thank you.

2 BY COMMISSIONER LUDLOW:

3 Q Okay. Mr. [REDACTED] anything additional, sir, that is important to you that we should
4 cover that perhaps we have not covered before we close the interview today?

5 A Despite what I am claiming, that I am not responsible for Ms. [REDACTED]'s death, that is
6 not to say that I am a victim in this situation, I am absolutely not. A young lady lost her
7 life many, many decades prior to when it should have taken place. I was in a position to
8 help [REDACTED] and I failed to do so because I was on parole, like you acknowledge in
9 the record, and I was trying to avoid coming back to jail. I was drunk, I was in a bar, it
10 was a clear violation of restrictions that I had when I was on parole and I was just, I
11 mean, I was not really thinking clearly. I should have immediately alerted authorities, I
12 should have done that and I certainly believe that I done that immediately alert the
13 authorities and into the waited until sometime thereafter that Ms. [REDACTED] definitely
14 would not have lost her life and I would not be here today and Ms. [REDACTED] would be
15 with her family.

16 Q Did you testify at your trial, sir?

17 A No, sir, I did not.

18 Q Looking back, do you think you should have?

19 A Yes, yes, I should have and I certainly wish that I had done so.

20 Q Were there any eyewitnesses produced at trial?

21 A No, sir. No, sir.

22 Q Had Mr. [REDACTED] testified against you?

23 A No, sir, he did not. Mr. [REDACTED] never implicated me in any way, in none of his
24 confessions does he state my responsibility for what he says his actions are, he does not
25 implicate me at all. I understand the family --

- 1 Q Excuse me, what was the evidence that linked you with the crime?
- 2 A I was in the same bar with Mr. [REDACTED]. We had been in there for several hours
3 throughout the early evening leading up to later on in mid-to-late evening and there was
4 conflicting testimony as to whether we left the bar together or not. One individual said he
5 believed that we left the bar together, another individual said he saw me leave by myself,
6 and apparently the jury chose to believe that we left together. I am not really sure,
7 Mr. Ludlow -- or, Commissioner Ludlow.
- 8 Q If you left together, what caused the jury to make the jump to convicting you of the death
9 of the victim?
- 10 A I am honestly not sure, Commissioner Ludlow. I am just not sure. I am just not sure.
- 11 Q Who testified on behalf of the prosecution, just individuals at the bar who saw you leave,
12 is that it?
- 13 A Those individuals and, you know, rest of the individuals were primarily law enforcement
14 people, people that took photographs and things of that nature.
- 15 Q Excuse me, in the 1980s DNA was not utilized back then, was it?
- 16 A No, it was not, sir.
- 17 Q So, DNA was not in evidence at the time?
- 18 A No. There was no blood evidence, there was nothing like that. Like you said, DNA was
19 not available at the time.
- 20 Q Did you call the police officer whom you reported the crime to as a witnesses in your
21 behalf?
- 22 A Yes.
- 23 Q As a witness in your behalf?
- 24 A Yes, we did, and he acknowledged that when I ran down to the police booth, which was
25 right across the street from the bar, said that I grabbed him by the front of the shirt, that I

1 was white as a ghost, I was having trouble mouthing my words, but it was obvious that I
2 wanted him to follow me.

3 Q Was it testified that you had any blood on your clothing or person?

4 A I don't recall, but I know I did not have any blood on me or clothing.

5 Q That would have been an important question to ask him at that time, right?

6 A Yes, it would have been. Not to speak bad of Mr. [REDACTED], I really liked Mr. [REDACTED],
7 he was an inexperienced attorney. He never handled a major felony, let alone a murder
8 defense. He fought for me and tried. Unfortunately, unfortunately Mr. [REDACTED] is no
9 longer alive, which is unfortunate because I really liked Mr. [REDACTED]. It was just that
10 Mr. [REDACTED] was inexperienced but he tried.

11 Q All right, sir. Mr. [REDACTED] we attempted to give you a full, fair, and accurate interview,
12 in your opinion have you received that?

13 A Yes, I believe I did. I appreciate the way you spoke to me, giving me the opportunity to
14 speak to you. I just plead with the Division of Parole, I have an excellent opportunity
15 through Mr. [REDACTED] and Mr. [REDACTED] to reentry the community. I am smart, now I realize
16 that I definitely need the help that they are going to provide in order for me to reenter
17 society and become a law-abiding citizen and productive and I am pleading with the
18 Division of Parole to please give me the opportunity to prove to them that I definitely will
19 be a law-abiding citizen and that I will be productive in society.

20 Q Go ahead, sir, go ahead and finish, sir.

21 A The granting of parole will not be misplaced, please allow me to prove it to you, please.

22 Q We appreciate that statement. As stated earlier, you are still a young man at sixty-two,
23 we wish you good luck in getting your life turned around in getting your life, we wish you
24 good luck in that.

25 A Thank you, Commissioner Ludlow.

[REDACTED], [REDACTED]

DIN# [REDACTED]

NYSID# [REDACTED]

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THE INMATE: And, Commissioner Sharkey, thank you.
(Whereupon the inmate was excused.)

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

2 DECISION

3 DENIED 24 months. Next appearance May 2017.

4 Following careful review and deliberation of your record and interview, this
5 Panel concludes that discretionary release is not presently warranted due to concern for
6 the public safety and welfare. The following factors were properly weighed and
7 considered:

8 Your instant offenses in County in involved murder
9 second and hindering prosecution first. Your criminal history indicates you were on
10 parole at the time from a 1978 criminal sale of a controlled substance. Your institutional
11 programming indicates progress and achievement, which is noted to your credit. Your
12 disciplinary record appears clean and is likewise noted. The Panel notes significant
13 community opposition on file to your release.

14 Required statutory factors have been considered, including your risk to the
15 community, rehabilitation efforts, and your needs for successful community reentry.
16 Your discretionary release at this time would thus not be compatible with the welfare of
17 society at large and would tend to deprecate the seriousness of the instant offense and
18 undermine respect for the law.

19 (Commissioner Sharkey concurred.)

CERTIFICATION

I, ANN MARIE TESTA, 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, that the foregoing, consisting of 14 pages, is a true and correct copy of same and whole the thereof.

Dated: June 2, 2015

AnnMarie Testa

AnnMarie Testa