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### Parole Interview Transcript/Decision - FUSL000069 (2006-08-15)

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1 STATE OF NEW YORK  
2 EXECUTIVE DEPARTMENT  
3 DIVISION OF PAROLE

DIVISION OF PAROLE  
RECEIVED  
SEP 11 2006  
APPEALS UNIT

4  
5 In the Matter

6 - of -

7 [REDACTED]

8 DIN # [REDACTED]  
9 NYSID # [REDACTED]

\*\*\*\*\*

10 Woodbourne C.F.  
11 Woodbourne, New York  
12 August 15, 2006

13  
14  
15 BEFORE: COMMISSIONER W. WILLIAM SMITH, JR.  
16 COMMISSIONER MARIETTA S. GAILOR  
17 COMMISSIONER GEORGE C. JOHNSON

18 PRESENT: MICHAEL KELLY, FPO I  
19 PAT JOHNSON, FPO II  
20 RENEE SOMERS, APA

21  
22  
23 REPORTED BY: ROBYN D. HARRELL, Court Reporter  
24  
25

ORIGINAL

[REDACTED] - Smith)

1 BY COMMISSIONER SMITH:

2 Q. Come in. Have a seat. Are you [REDACTED] [REDACTED]

3 A. Yes, sir.

4 Q. My name is Commissioner Smith. To my left is  
5 Commissioner Gailor.

6 COMMISSIONER GAILOR: Hello.

7 COMMISSIONER SMITH: To her left is Commissioner  
8 Johnson.

9 COMMISSIONER JOHNSON: Hello.

10 THE INMATE: How are you?

11 Q. I see you are reappearing before the Parole  
12 Board. Your first parole hearing was back in 2000; is  
13 that correct?

14 A. Yes, sir.

15 Q. Can you hear me?

16 A. Yes.

17 Q. You have been held each time for 24 months; is  
18 that correct?

19 A. Yes, sir.

20 Q. As we look at the possible release, my first  
21 question is what have you been doing in the period of time  
22 since the Board saw you last? Actually it was in July  
23 2005.

24 What have you been doing to prepare yourself to go  
25 into the community?

[REDACTED] - Smith)

1 A. I maintain contact with [REDACTED]  
2 Community.

3 Q. We have letters from them.

4 A. Yes. I was going to ask you if you received them  
5 most recent ones.

6 Q. And I have letters. I'm assuming there was a  
7 most recent, August 1st, this year. So couple of weeks  
8 ago.

9 A. Yes.

10 Q. Very good. You do have that. What else have you  
11 been doing? I don't mean to cut you off.

12 A. My regular job is -- not many programs here.

13 Q. Where are you assigned right now?

14 A. I work in the gym as a Special Ed clerk.

15 Q. How is your health?

16 A. I have some medical conditions. I have prostate  
17 surgery, gall bladder surgery, gall stones, bladder  
18 stones. I have torn cartilage, torn ligaments, shoulder  
19 problems.

20 Q. Would you have to go on disability if we released  
21 you then?

22 A. I doubt it. I'm 60 years old. It's not much  
23 work as far as -- I can do office work, clerical work,  
24 anything like that.

25 Q. So you plan on working then in addition?

[REDACTED] - Smith)

1 A. Well, the [REDACTED], I have a commitment for a  
2 year. I have a structured environment. I have to work  
3 with them at least a year. I have another employment  
4 [REDACTED] up in [REDACTED].

5 Q. What is that called?

6 A. [REDACTED].

7 Q. What would you do there?

8 A. Probably office work.

9 Q. We have prior letters from [REDACTED] as  
10 well. Certainly we consider those. You have been in  
11 contact with them for a number of years, probably 20 plus  
12 years; right?

13 A. Yes.

14 Q. And so they have a lot of contact with you. Also  
15 others have written and some of these have received  
16 contact, gotten to know you through your association  
17 through the [REDACTED]?

18 A. Yes.

19 Q. I know for example there is a Professor [REDACTED]  
20 [REDACTED], [REDACTED], and also [REDACTED]; is that  
21 right?

22 A. Yes.

23 Q. And others. You also had other letters that were  
24 written. I think I saw a detective, retired detective  
25 written some information and others. It's important that

[REDACTED] - Smith)

1 you have people support in the community. Record tells us  
2 370 months controlling sentence is 25 to life for murder  
3 second; right?

4 A. Yes.

5 Q. So you spent --

6 A. Thirty years, ten months.

7 Q. Thirty plus ten years?

8 A. Yes.

9 Q. So that's a significant period of time.

10 A. Yes.

11 Q. Do you think entry into the community -- what do  
12 you think, if anything, would be difficult for you, you  
13 know, looking at the changes that have been made out there  
14 just the life as progressed, things aren't the same as  
15 they were 30 years ago. Do you have any concerns or --

16 A. I never gave it much thought because I thought --  
17 I more or less stayed current with everything that was  
18 happening. I, through the course of most of the college  
19 programs I was in, I was in college programs almost 20  
20 years, stayed current with everything that is happening.

21 Q. What is your education level you achieved?

22 A. Bachelor's in business administration, [REDACTED]  
23 University.

24 Q. That's part of the consortium?

25 A. Yes.

[REDACTED] - Smith)

1 Q. Nice university?

2 A. It was.

3 Q. Still is.

4 A. They don't have the programs up there anymore.

5 Q. Terms of state corrections; right? Still is a  
6 fine university, and there are some limited educational  
7 opportunities. It's good you were involved in that  
8 before, you know, before it was more restrictive. I guess  
9 because of the nature of your instant offense, you are  
10 known as an SPP, special psychiatric case. You have to  
11 see a psychiatrist before being considered for release.  
12 You cooperated with that. We don't have any indication  
13 you are receiving -- there is no mental health services,  
14 no ongoing treatment or medicine; is that correct?

15 A. That is correct.

16 Q. So we certainly will consider that as well.

17 Overall, I know terms of programs. There are lots of  
18 certificates.

19 What programs do you feel was helpful to you in this  
20 prison?

21 A. Mostly education programs, college program. By  
22 that I was able to get support, starting a victim program  
23 in Green Haven. Took me about 13 years. I finally got it  
24 started. I tried to get it started here when I got here  
25 but bureaucracy is stopping that from happening.

[REDACTED] - Smith)

1 Q. Now you maintain a good disciplinary record. You  
2 haven't had any misbehavior reports in over 26 years. I  
3 was going to say you have a continuing positive in that  
4 regards. You should be commended for that. That takes  
5 some effort. We'll consider that as well.

6 A. Thank you.

7 Q. Your instant offense is certainly serious.  
8 Involved a -- looks like it actually began as a burglary  
9 and escalated from there. I know you indicate an  
10 appearance, recent correspondence that you sent that by  
11 and large you don't recall the events of that, I guess the  
12 shooting. Although you acknowledge that -- you  
13 acknowledge that you did that, I guess is the way to state  
14 it, am I correct? I don't want to appear to put words in  
15 your mouth.

16 A. I accept full responsibility for my actions. I  
17 always have. I expressed my remorse as much as I possibly  
18 can do. I can't do any more than that.

19 Q. Now you had -- this wasn't your only crime of  
20 conviction. It wasn't your only contact with the law.  
21 You were real young when you first were in trouble with  
22 the law; right?

23 A. Basically.

24 Q. How old were you when you first got in trouble  
25 with the law?



[REDACTED] - Smith)

1 A. Probably 14 -- 12, earlier.

2 Q. What did you do to have police contact?

3 A. Criminal trespassing, unauthorized use of a motor  
4 vehicle.

5 Q. You did have also -- I think I saw from your  
6 presentence report you had a youthful offender  
7 adjudication. You received probation generally?

8 A. Yes, I did.

9 Q. When the judge gave you probation and imposed a  
10 youthful offender sentence, that is just an incredibly  
11 fortunate disposition. It gives you a lot of  
12 opportunities to straighten your life out. Why do you  
13 think despite the system giving you leniency there you  
14 continue to commit acts of criminal activity?

15 A. Good question. Never gave it much thought, but I  
16 spoke to Ms. [REDACTED] before. I gave her a complete rundown  
17 before of my childhood. And I had no father --

18 Q. That YO was in '62. So you are talking a dozen  
19 plus years prior to the instant offense. The crime  
20 occurred '75; is that correct?

21 A. Yes.

22 Q. So I mean, you got the YO adjudication. You got  
23 probation.

24 A. Yes.

25 Q. Did you get a violence program?

[REDACTED] - Smith)

1 A. I had -- no. I had no role models. No  
2 direction. I was hanging out.

3 Q. Why were you stealing?

4 A. Why?

5 Q. Uh-huh.

6 A. Looking back, I'm pretty sure that when I was  
7 growing up, most of the kids I hung out with they had  
8 money. Mom and dad always bought them something. My  
9 mother had nothing, in and out of foster homes, Catholic  
10 Charities centers, you name it, up until I was 14. If I  
11 wanted a bike, I went and stole one because my mother  
12 couldn't buy one.

13 Q. It's like some sort of stealing that -- were you  
14 clear-minded with the -- you did most of that, were you on  
15 drugs or alcohol?

16 A. No. Not when I was young.

17 Q. It was stealing pretty much?

18 A. Yes.

19 Q. Different ways, it may be the same. I know it  
20 was an arrest, petit larceny, some sort of offense and  
21 unauthorized use of a motor vehicle. That's the theft of  
22 the car, an unlawful entry you got and a couple of  
23 instances and petit larceny, that was basically the arrest  
24 for burglaries. Where would you generally try to break  
25 into?

[REDACTED] - Smith)

1 A. Actually the one you are speaking about  
2 burglaries, petit larceny, I was working at [REDACTED] [REDACTED]  
3 in [REDACTED].

4 Q. What is that?

5 A. [REDACTED], I worked there when I left. I  
6 didn't break in. When I left, I took their radio. So  
7 mine was in another part of the building. He said that is  
8 not burglary, that's petit larceny. Want to plead to  
9 that? I took it. Unauthorized use of a motor vehicle was  
10 my mother's friend's car. When she found out, you know.

11 Q. So it was generally theft. The instant offense,  
12 I know you had a co-defendant. It was female and I know  
13 you talked about her before.

14 A. Okay.

15 Q. And from what the presentence report indicates,  
16 basically, it looks like this began as a burglary, a theft  
17 from a -- it was a --

18 A. A boutique, women's boutique.

19 Q. Had you been there before or just --

20 A. The record says I was, although I don't  
21 remember. Says I was there a couple of days before.

22 Q. Tried to check it out or you weren't in the habit  
23 of shopping in women's boutiques; right?

24 A. No.

25 Q. If you were there, one would assume, maybe

[REDACTED] - Smith)

1 whether to case the joint or I know that's what it's  
2 described as.

3 A. According to the record, which he had, I had read  
4 a thousand times, we gone shopping. I brought my  
5 co-defendant some stuff and then returned it a few days  
6 later.

7 Q. You were -- this didn't happen at the time of the  
8 instant offense. I'm talking about it in the past. I  
9 don't know if you were in the habit of, but you had a gun  
10 that you carried. As matter of what course or whatever,  
11 you carried this gun. Where did you get that?

12 A. In [REDACTED].

13 Q. You carried that over state line and everything?

14 A. I had an apartment in [REDACTED] and an apartment  
15 in [REDACTED]. Actually, had a house in [REDACTED]. I was  
16 driving back and forth and in [REDACTED] you can buy that,  
17 just go into a store and buy it.

18 Q. Did you have a valid [REDACTED] State driver's  
19 license?

20 A. Excuse me?

21 Q. Did you ever have a valid [REDACTED] [REDACTED] State driver's  
22 license?

23 A. Yes. I had [REDACTED] State and [REDACTED] licenses.

24 Q. You brought the handgun up. Why carry it up  
25 here?

[REDACTED] - Smith)

1 A. Just carried it with me all the time back and  
2 forth.

3 Q. Why?

4 A. Actually, probably at the time I thought it was  
5 probably a big deal to have one. I was -- because I  
6 was -- the offense I was dealing with in stolen property,  
7 I guess I felt safer with it.

8 Q. You were dealing with some unsavory character or  
9 anything like that?

10 A. I would say so.

11 Q. Had you ever been threatened or anything that  
12 caused you to --

13 A. Not really. I think I just used it as a means of  
14 feeling more secure.

15 Q. Why not have you just unload it?

16 A. I couldn't. It will, you know what, I was  
17 thinking 30 years ago.

18 Q. And then, you know, according to the record  
19 again, basically it looked like this burglary was  
20 interrupted and when you fled, you were confronted by  
21 Officer [REDACTED] at close range, shot and killed him. Is  
22 there anything else you want to add about the instant  
23 offense?

24 A. No.

25 Q. There is certainly a lot to consider. And have

( [REDACTED] - Smith)

1 you had any other programming. You mentioned I think  
2 ART. Was there other violence programming or that you  
3 had -- that you took that you feel may have given you some  
4 understanding or for, you know, why you would have carried  
5 the gun? Anything of that nature?

6 A. I don't understand the question.

7 Q. Have you taken any program that just carrying the  
8 gun is, certainly pretty straightforward question, series  
9 of choices; every moment you walk out of the door, it's in  
10 your pocket, whatever? You have to -- have you taken any  
11 programs, I understand, where you felt you needed to have  
12 the --

13 A. I taken a number of programs but I don't remember  
14 specifically dealing with the choice. I taken ART, taken  
15 aggression replacement, substance abuse program,  
16 alternative to violence program, alternative to victim  
17 program. It allows me to reflect what I done in my life,  
18 choices. I made lots of bad choices. I affected -- I  
19 made, tragically, other people's lives at the time.

20 Q. I believe you didn't stop and think that you were  
21 going to be put in a position to hurt another person.

22 COMMISSIONER SMITH: I don't know if Commission  
23 Gailor or Commissioner Johnson has any questions?

24 COMMISSIONER GAILOR: No questions.

25 COMMISSIONER JOHNSON: No further questions.

[REDACTED] - Smith)

1 Q. Thank you for coming in. We'll consider not just  
2 the record but also what you told us today. We are going  
3 to look at it, discuss that and make a determination. Is  
4 there anything else we haven't discussed that you need to  
5 say?

6 A. I just want to know if you received the statement  
7 from August 5th?

8 Q. The statement that --

9 A. The statement that I sent.

10 Q. I have a couple of things. We have a -- I think  
11 the most recent information that I got was on August 5th,  
12 letter to Chairman Dennison.

13 A. Right.

14 Q. I had a chance to take a look at that.

15 A. You have or haven't?

16 Q. I have.

17 A. You have the statements from May 16, 2005?

18 Q. That is attached to it.

19 A. Right. My question is, is there anything in  
20 there that you want to ask me about or clarify or qualify,  
21 I'm assuming, if you read it?

22 Q. Sure. There is a whole lot of things that we  
23 read. Some of it is your opinion. And take a look at  
24 the -- I will give you an example. I think you talked  
25 about -- something about -- look and see here, about any

( [REDACTED] - Smith)

1 Commissioner who makes a choice in terms of releasing  
2 you.

3 A. Right.

4 Q. I'm not sure of which of the two is, but I read  
5 it in there, but it talks about more or less said the  
6 governor said he would get rid of us probably will be the  
7 three people sitting in front of you, wouldn't make any  
8 difference any way because he'll probably retire and he  
9 won't have anything to say about that. That's just an  
10 example.

11 A. That you remember?

12 Q. It's an example of something that I read that,  
13 you know, is -- I think that you probably don't have a  
14 clear understanding of what we look at. I mean there  
15 certainly is a great deal of thought that is given to  
16 this, you know, as should be to this matter. There are  
17 lots of factors that come into play with that, you know,  
18 and you discussed that, but you are, you know, what you  
19 said is part of what we look at and we certainly will  
20 consider what you said. We don't take everything that you  
21 say as what, the way that it is, but we certainly know and  
22 understand things that may appear to you to be different  
23 than what they really are. So, yes, we know, we read it.

24 A. Put yourself in my position. This is my fourth  
25 appearance aside from the fact\* the only way I'm going to

\* I was told



[REDACTED] - Smith)

1 make parole is through the courts. To me, the only reason  
2 I'm here, aside from what another parole officer is  
3 telling me, that it is the law. That's the only reason  
4 I'm here. The purpose of being here is to show and  
5 demonstrate to me this is an exercise utility. I don't  
6 believe in this one minute that you will easily consider  
7 that 31 years or 50 years would make a difference. That  
8 is what I feel in my heart. I sat and looked at you last  
9 time, gave you my heart. Even if I came in here -- come  
10 in with an oxygen mask on and intravenous. That's the way  
11 I feel. Sitting on this side. Maybe you feel different  
12 about this. I believe in your heart you have a job to do  
13 and it doesn't include releasing me.

14 Q. Our job is to consider the release of everyone  
15 that comes in front of us. Also we have the job to weigh  
16 all of the factors.

17 A. Let me ask you something. I don't follow  
18 parole. I read every single case out there. I used to  
19 work with parole 15 years, Green Haven. I was director  
20 for pre-release center. This entire system is a lot  
21 different than when it was before Mario Cuomo. I see the  
22 finality of this thing now.

23 Q. For a number of reasons there are factors that  
24 are different, you know, but in terms of factors that we  
25 consider, for example, under Mario Cuomo, we had

[REDACTED] - Smith)

1 individuals that may have spent eight years on work  
2 release and now you are not, eight years before you come  
3 in. There are a lot of factors that we look at, but, yes,  
4 real criminal, whether you are appropriate at this time,  
5 whether we feel that you present a reasonable probability  
6 of living a law abiding life and we look at all factors,  
7 not just including the instant offense. In your case just  
8 on the case of prior criminal history, there are  
9 opportunities that you had in the past to stop doing  
10 crime. Those are things when you come in, you offer your  
11 insight. Certainly you are not the same person in terms  
12 of your education, maturity. Those are things that change  
13 in the positive. You know, you mentioned --

14 A. Rehabilitation.

15 Q. -- rules, you mentioned even if you came in with  
16 oxygen and, you know there is a difference between someone  
17 who comes in and presents as a violent person and someone  
18 who comes in much more mature and has control of himself.  
19 There are lots of issues. That's why we look at this,  
20 lots of factors. We'll give you a fair shake. Okay?

21 A. I would hope so.

22 Q. All right.

23 A. I have a different feeling.

24 Q. Thank you for coming in.

25 A. Thank you.

[REDACTED] - Smith)

1 Q. Have a good day.

2 (The inmate left the room.)

3 (After due deliberation by the Parole Board  
4 panel, the following Decision was rendered:)

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[REDACTED] - Smith)

D E C I S I O N

1  
2  
3 COMMISSIONER SMITH: Hold, 24 months.

4 MS. SAUNDERS: 8/08.

5 COMMISSIONER SMITH: 8/08. This panel has  
6 concluded that your release to supervision at this time  
7 would deprecate the serious nature of your instant offense  
8 and undermine respect for the law and therefore, parole is  
9 denied.

10 This finding is made following a personal  
11 interview, record interview and deliberation of  
12 significant concern is the extreme violence you display  
13 during the instant offense where you shot a uniform police  
14 officer.

15 You admit that you obtained a loaded handgun  
16 which you carried and the record indicates that eventually  
17 was used to kill an officer responding to a burglary.

18 Your pattern of theft related crime over a number  
19 of years has not deterred you despite a prior youthful  
20 offender adjudication and additional misdemeanor  
21 convictions.

22 This panel concludes your release would represent  
23 a serious risk to public safety and therefore is  
24 inappropriate at this time.

25 While your positive educational and therapeutic

( [REDACTED] - Smith)

1 programs as well as positive behavior are noted, your  
2 brutal and senseless shooting of a police officer  
3 indicates little regard for the value of life.

4 Guidelines are unspecified.

5 (The commissioners concurred.)

6 (Whereupon, the proceedings were concluded.)

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