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1 NYS DEPARTMENT OF CORRECTIONS and COMMUNITY SUPERVISION -
2 BOARD OF PAROLE

3 *****

4
5 Parole Board Hearing
6 In the Matter
7 -of-

8 [REDACTED]

9 DIN # [REDACTED]
10 NYSID # [REDACTED]

11 *****

12 TYPE OF INTERVIEW: SPECIAL CONSIDERATION

13 HELD AT: FISHKILL C.F.

14 HELD ON: DECEMBER 15, 2015

15
16
17 BEFORE: COMMISSIONER W. SMITH
18 COMMISSIONER THOMPSON
19 COMMISSIONER HALLERDIN

20
21
22 AT FISHKILL: H. SCOTT, APA; K. CHAUVIN, SORC

23
24
25 VERBATIM REPORTER: SUSAN FISCHLER

1 BY COMMISSIONER THOMPSON:

2 Q. Good afternoon. [REDACTED] [REDACTED]

3 A. Yes, ma'am.

4 Q. I am Commissioner Thompson. Also on the panel with
5 me today are Commissioners William Smith and
6 Commissioner Hallerdin.

7 COMMISSIONER SMITH: Good afternoon.

8 COMMISSIONER HALLERDIN: Good

9 afternoon.

10 A. Good afternoon.

11 Q. You are here for special consideration - you are here
12 for a de novo hearing?

13 A. Yes.

14 Q. Okay. The court upheld this based on the fact that,
15 while the Board did look at all the statutory factors,
16 nevertheless, it ignored your outstanding institutional
17 record and employed a penal philosophy, and there was
18 concern about the weight the Board placed on the
19 opposition that came from all quadrants of society.

20 All right. So you were granted a de novo
21 hearing from the courts. Are you ready to proceed with,

22 uh --

23 A. -- before we proceed, I would like to make a record.
24 I have met you a number of times already. If you
25 recall, the first time, you were with Ferguson, Casey

1 and yourself.

2 Q. Yes.

3 A. A postponement. Ex-police officer, ex-police
4 officer, prosecutor whose father was a detective; and
5 you, former detective, 20 years with the force in the
6 Bronx. My question is this -- and your name is in also
7 in my federal habe along with Ferguson's, that was in
8 Federal court with. My question is an honest question,
9 a fair question, I think: How can you possibly sit and
10 give me a fair hearing being that you are a police
11 officer, former police officer and you are --

12 Q. -- well, sir, I'm not here in that perspective today.
13 Right now I'm here as a parole commissioner and I think
14 I am able to give you a full, fair and accurate
15 interview. I mean, do you not feel that I can?

16 A. That's what I am asking.

17 Q. I'm here to honestly tell you, I'm here as a parole
18 commissioner; I'm not here as a police officer. That's
19 not what I am here for. We are not going to go back and
20 forth like this.

21 A. I really want to have a hearing, believe me I do.

22 But my point is simply this: Do you believe that you
23 can give me a fair hearing?

24 Q. I believe I can. I mean, I am not here as a police
25 officer, right? I am sure, you know, you have done well

1 while you are here; you don't want me to see you as what
2 you did 20 years ago. You saying what I did 20 years
3 ago, that I was a police officer, so...

4 A. Your loyalty --

5 COMMISSIONER HALLERDIN: -- sir, I
6 think it's been answered, I think it's been
7 answered. I heard the Commissioner say she's not
8 here as a police officer and that she can give you a
9 full, fair interview. Because -- it's not a
10 hearing, it's an interview. That's what she was
11 saying, that's what I heard.

12 A. I just wanted to make a record. With all due
13 respect. Believe me, my best friend is a former police
14 officer.

15 COMMISSIONER THOMPSON: Step out a
16 minute, sir.

17 COMMISSIONER HALLERDIN: They are
18 going to let you step out for one moment. The
19 Commissioners would like to talk. Thank you.
20 (Inmate was excused, after which a discussion was
21 held, and then inmate re-entered the interview room
22 and the following took place:)

23 BY COMMISSIONER THOMPSON:

24 Q. Mr. [REDACTED] are you ready to go forward today with
25 this interview?

1 A. I have been ready. I just wanted to clarify
2 something for the record.

3 Q. For the record, as well, you know it's three of us on
4 this panel, not just me. I can't make a decision by
5 myself.

6 COMMISSIONER SMITH: And the other
7 thing, sir, we're here because the three of us are
8 qualified based on our background and education to
9 hear cases. If I didn't hear a case because the
10 victim is a male, there would be an awful lot of
11 cases I couldn't sit on. We bring our background,
12 but we also bring the experience we have and
13 education. So, we are able to go forward.

14 A. I have had them twice already.

15 COMMISSIONER SMITH: I believe you.
16 To give you an example, to be honest with you, I
17 pretty much delete from my memory cases. I have
18 seen so many cases that one folds into other. What
19 we do is we take an independent look each time a
20 case is before us, because, quite frankly, cases
21 change, people change over a period of time. So I
22 am sure there will be questions you have been asked
23 before. Quite frankly, we are here for a decision
24 of hold and release and whether it's appropriate at
25 this time or not. So....

1 A. Can I ask a few things before we go?

2 COMMISSIONER SMITH: This is our
3 interview but....

4 A. Do you have my present packets? Because I have three
5 copies, if you want.

6 COMMISSIONER SMITH: You can hand it
7 to the...

8 COMMISSIONER HALLERDIN: Thank you
9 very much, thank you.

10 Q. We have it.

11 COMMISSIONER SMITH: It's good when
12 you submit things for us to take a look at. Gives
13 us a better idea, a little bit better of a summary.

14 A. A couple times they didn't have this when I did
15 submit it. That's why I have three copies.

16 Also, I wanted to ask -- this is recent -- I
17 don't know whether you have them or not, that my
18 daughter just sent, Danielle --

19 COMMISSIONER SMITH: -- the
20 Commissioner will go over those things with you. We
21 are not going to sit here and say: Do you have
22 this, do you not have this? When we go through it,
23 you will be able to tell us whatever you want. If
24 you want to submit that, you can. Because a lot of
25 times, some things even cross in the mail. So I'm

1 sure we are going to ask. If Commissioner Thompson
2 doesn't, I'm going to look and see...

3 Q. If you want to submit it, you can, but I do have a
4 lot of --

5 COMMISSIONER SMITH: Why don't you
6 hand a copy of that?

7 A. I got this one this morning from the Correction
8 Association.

9 Q. All right.

10 Mr. [REDACTED] I am Commissioner Thompson, also
11 on the panel with me today are Commissioner William
12 Smith and Commissioner Hallerdin.

13 COMMISSIONER SMITH: Hello.

14 Q. You are here for a de novo hearing, as I explained
15 already. We will be going over some of the same
16 information and also some current information, so bear
17 with us. Today is a new day, a new opportunity. Okay,
18 sir?

19 All right. The instant offense involve you --
20 was this in the course of a burglary, or robbery, that
21 you shot the police officer?

22 A. A burglary.

23 Q. I will cross off a *robbery*. But it was a burglary,
24 so I will correct it. And that's why we have these
25 face-to-face interviews, so if there's any inaccuracies,

1 we can have 'um.

2 And, in that course of that crime, you shot and
3 killed a police officer; is that correct?

4 A. Yes, ma'am.

5 Q. What was going on at the time, sir?

6 A. Meaning...

7 Q. I mean what type of lifestyle were you living? Prior
8 to this I see you were on probation for larceny related
9 offenses. Were you committing burglaries back then as
10 well?

11 A. No. I had a few Y.O.s, I had unlawful use of a motor
12 vehicle, I had criminal trespass.

13 Q. And you had a larceny in '71?

14 A. I was employed in the position. When I left, I took
15 a radio from there because I couldn't get money. So
16 they called that a larceny.

17 Q. All right. So what happened here? How did it
18 escalate that you took a life?

19 A. First of all, I'll give you a fast summary. I spent
20 my whole 14 years first in child protection, foster
21 homes, children centers, Catholic Charities, until I was

22 14 I finally came home with my mother. And fourteen, I
23 was a regular kid. Seventeen, 18, I became a drummer
24 for a rock band, I worked as a electrician, worked at
25 the airport.

1 Q. But what happened on this date that you committed
2 this crime?

3 A. I was doing relatively good in business, had a
4 contracting company. I came up from doing a project in
5 [REDACTED]. In '74, when I went down there, I was starting
6 to get headaches, and a girl down there that was a nurse
7 gave me some Valium. I told her I don't take drugs, I'm
8 not into any of that stuff. She told me: Listen, you
9 are making all these trips back and forth to [REDACTED],
10 you got to slow down, you are stressed out. After
11 awhile she told me: I can't give them to you anymore,
12 but I work with doctors in a hospital and I told them
13 about you and they are in private practice.

14 So, I went to see them.

15 And then I came up to [REDACTED] about two weeks
16 later, hit my head on the bed, started getting migraines
17 after that. I went back to the doctor they wanted to
18 put me in the hospital, I didn't want to go. So they
19 gave me another prescription Norgestic Forte, I think it
20 was. So in 1974 I started using prescription
21 medications - Norgestic Forte, Valium, Darvon and

22 Melhoral I think it was, so four different medications.

23 That was 1974. I was doing that. I came up in October
24 to see my mother, she worked in [REDACTED] and I was
25 sitting, started to get migraines, I opened the pill jar

1 up and I started taking pills. My mother said: How
2 long have you been doing that? My co-defendant said:
3 He's been getting bad migraines.

4 So every time I got a migraine, I kept on taking
5 pills. What happened was I took 21 pills out of that
6 jar in less than 24 hours. I wound up out in [REDACTED]
7 [REDACTED], I don't remember even that. I got out there at
8 a motel, I wound up at a [REDACTED], and broke into it to
9 get something for her, I guess, because, it was a
10 [REDACTED]. And police showed up. And three days
11 later they told me I shot a police officer. I said: It
12 can't be.

13 Q. Where did you get the gun?

14 A. From [REDACTED]. Living in [REDACTED] you could buy a gun.
15 Well, I didn't buy it myself, but the girl bought it,
16 but everyone in [REDACTED] had one.

17 Q. But you weren't in [REDACTED]. Why did you have it in
18 [REDACTED]?

19 A. I was going back from [REDACTED] to [REDACTED] and I was
20 carrying it with me.

21 COMMISSIONER SMITH: It wasn't yours

22 in Florida, either, though, right?

23 A. Yeah. But it was legal, though. The girl was living
24 with me. I didn't buy it.

25 COMMISSIONER SMITH: Are you sure it

1 was legal? At that point you had problems -- you
2 talked about the youthful offender adjudication,
3 that was in '62-ish, right?

4 A. Yeah.

5 COMMISSIONER SMITH: And then you had
6 what, a couple probation sentences for unauthorized
7 use of motor vehicle and petty larcenies, is that
8 right?

9 Q. And unlawful entry.

10 COMMISSIONER SMITH: So, if it wasn't
11 your gun, did [REDACTED] know?

12 A. No.

13 COMMISSIONER SMITH: When you buy a
14 gun, even in a state like [REDACTED], you have to have
15 ID like a driver's license and then they would check
16 your criminal, right? And of course, moving it
17 across state lines. It wasn't your gun, it wasn't
18 your gun.

19 A. No, it wasn't.

20 COMMISSIONER SMITH: What caliber was
21 it?

22 A. .38.

23 COMMISSIONER SMITH: Why would you
24 bring that from [REDACTED] up here if you were coming
25 to visit?

1 A. You asked me what kinda lifestyle I was in. I was a
2 fence. I am being honest.

3 COMMISSIONER SMITH: I didn't catch on
4 to that, with what you were just saying.

5 A. If you stole something, you came to me and I bought
6 it, and I gave it you and I was like a middleman, stuff
7 like that. That's what I was. So I was dealing with
8 that.

9 Q. That was a lot of stolen goods would you say?

10 A. Yeah.

11 COMMISSIONER SMITH: All of that is
12 illegal, though.

13 A. I know that.

14 COMMISSIONER SMITH: So every single
15 stolen watch, Joe stole a watch, stole somebody's
16 purse, and you know, every bit of that is stolen.

17 A. You are a hundred percent right.

18 COMMISSIONER SMITH: After a youthful
19 offender, one is supposed to say that's it. I am
20 trying to get an understanding, which you are
21 helping with.

22 A. I am being honest.

23 Q. You say you had a co-defendant. Was she driving?

24 A. [REDACTED] [REDACTED]. She must have been, because I don't
25 remember.

1 Q. I mean, you had all those drugs in your system.

2 Where were you going? Were you in [REDACTED] already?

3 A. I have no idea why I was out in [REDACTED].

4 Q. Where does your mom live?

5 A. [REDACTED].

6 Q. Wow. Was she also using drugs at the time?

7 A. [REDACTED]?

8 Q. Well, she was your co-defendant.

9 A. I think she was on [REDACTED].

10 Q. So what do you remember of the incident?

11 A. Nothing. The third day, they told me that I shot a
12 police officer and I said: It can't be, no way that can
13 be me.

14 I didn't believe it. In fact, there's a letter
15 in there from someone who knows me very well, an ex-
16 detective, his name is [REDACTED]. He went out to
17 see me because he knew it wasn't me. He went to see his
18 boss at the time, [REDACTED], the DA, he went to see
19 him because he knew it wasn't me.

20 COMMISSIONER SMITH: This was when you
21 were arrested, he went out and told him this can't
22 be right?

23 A. He knew me because we grew up together.

24 COMMISSIONER SMITH: And he was wrong,
25 right?

1 A. And he took a lot of heat for it. But he's still my
2 friend and he still supports me.

3 COMMISSIONER SMITH: That's what you
4 are going to need if we send you out there.

5 A. The proverbial if.

6 Q. How long were you on these prescription drugs?

7 A. About a year. But I tell you what, it's my fault, a
8 hundred percent my fault. Because prior to that, on my
9 birthday in July, I was taking the same medication. It
10 was my birthday and I didn't even know they had a
11 birthday party because I forgot it, I couldn't remember
12 it. So I already new that medication was doing
13 something to me. And I shouldn't of allowed myself to
14 take medication knowing that I wouldn't remember or know
15 what I was doing. So it's my fault, my responsibility
16 today. Believe me, I did not wake up that morning
17 thinking I would do a crime, let alone shoot anyone, let
18 alone a police officer. Half my friends I grew up with
19 were all police officers.

20 Q. Were you bringing fenced property back and forth as
21 well?

22 A. My cousin was a diamond cutter on [REDACTED], so it
23 came from the jewelry store, wasn't stolen, but they had
24 always someone in [REDACTED] -- the bad stuff from [REDACTED]
25 they would give to [REDACTED], believe it or not.

1 Q. You have not incurred any disciplinary infractions?

2 A. Since 1980. That's 35 years.

3 Q. 1980.

4 A. Even Ludlow commended me on that, for whatever
5 reason. Commissioner Ludlow said it was remarkable. I
6 guess in the prison setting, that's also an indication
7 of my sincerity.

8 Q. And you program appropriately, as well.

9 We do have the packet that you submitted. We
10 have one from [REDACTED].

11 A. That's my lawyer.

12 Q. [REDACTED]?

13 A. That's my lawyer.

14 Q. We also have your personal statement that you
15 submitted for this interview.

16 A. Have you read that, that statement?

17 Q. Yes, I did. You have numerous letters of support.
18 From your daughter, [REDACTED].

19 A. Yeah. Brutally honest letter, she said, before she
20 wrote it, and when I read it -- she was brutally honest.
21 I haven't seen her for 20 years. And my other daughter
22 I haven't seen in 30 years. They both wrote letters.

23 Q. I'm sure it was devastating to her considering she
24 was very young when it occurred.

25 A. Yeah, both of them were. I got two grandsons and a

1 granddaughter. Believe me when I tell you, all my
2 thoughts went with [REDACTED], because -- I followed
3 his kids since they are little kids growing up. And
4 everything I did since 1983 was in memory of [REDACTED].
5 It took me 13 years to get a Victims' Awareness Program
6 started, 13 years. It wasn't an eleventh hour decision
7 to say I am going to do something to show the Parole
8 Board I am honest about changing my life. I did that in
9 memory of [REDACTED], to show his family that this is the
10 best I can do to make up for it, although I can't
11 possibly make up for them losing their father.

12 Recently, with my daughters -- I lost six people
13 in two years; I lost my nephew, my niece, my first
14 cousin; my brother-in-law, sister-in-law 36 hours apart.
15 Death hit me close. Now I realize what [REDACTED]'s family
16 went through. Until it happened to me, I didn't realize
17 how deep that is.

18 The point is, everything I did, I did in memory
19 of [REDACTED], and that's the truth. Because people who
20 helped me out in this victim program, [REDACTED], [REDACTED]
21 [REDACTED], [REDACTED], knew how sincere and honest I was.

22 In fact, it was [REDACTED] was the director
23 of Crime Victims Board that I met in '83 in Attica that
24 told me I was representing merit time for inmates. He
25 said: If inmates had a guy like you on their side, they

1 would have a strong advocate.

2 And that was day I changed my life around, 1983,
3 and everything I worked towards was to help other people
4 realize the impact their actions have on people. So,
5 many lives were tragically destroyed and it's my fault.

6 COMMISSIONER SMITH: He pronounces the
7 e at the end of his name: [REDACTED].

8 A. [REDACTED], you know him?

9 COMMISSIONER SMITH: Well, I won the
10 [REDACTED] Memorial Award for service to victims
11 in probably 1980-something.

12 A. If he's around --

13 COMMISSIONER SMITH: -- no, he's
14 passed away.

15 A. I said to him and the group, I said: We talk about
16 victims all the time, I got 25-to-life.

17 And he got red. And I asked deputy sheriff of
18 [REDACTED] county why is he so upset? He said: Because
19 he's the crime victim chairman. I said that I am going
20 to apologize to him. He said: You don't owe me an
21 apology. He said: If victims had someone like you on
22 their side, they would have a strong advocate.

23 And that's when I decided to look into and, I
24 did.

25 COMMISSIONER SMITH: And I have seen

1 you talk about that in your submissions here, among
2 other places, so... I can know him and appreciate
3 him. He actually hired me to the state, as well.
4 So I don't have to recuse myself.

5 A. Do you know [REDACTED], director of [REDACTED]
6 [REDACTED] for the state of [REDACTED]?

7 COMMISSIONER SMITH: No, I don't
8 recognize him.

9 It's good you did some work on that.
10 One of the things, just as a comment, going through
11 your letters you have submitted and a listing,
12 there's a fair number of individuals who have
13 written, and we have some of the letters that I
14 recall from before, before this submission. In
15 other words, I looked through your record. There
16 are the general individuals who may speak on your
17 behalf who may say okay, you have done well, they
18 support your release. They talked about some
19 evaluations, accommodations. And then there are
20 others that say not just you are a good person or
21 you have done well or I have seen or heard you have
22 done well; there are those willing to take specific
23 steps. All I am saying, with these, volume is good,
24 but also the specifics. If someone says you can
25 watch my grandchild, that's a lot different than

1 saying, hey, I have seen you and you do good with --
2 I will just say Puppies Behind Bars. That's
3 hypothetical, it's not part of this.

4 Where I am going with this, in terms
5 of what you would do on the outside, who do you
6 think would be most beneficial, one or two people
7 who would be most helpful to you, where you would
8 go? I know you mentioned family, but who are you
9 looking to be of assistance to you if you are
10 released, particularly?

11 A. First of all, I have Fortune Society, Castle, [REDACTED]
12 [REDACTED]. She was supposed to fax one, I don't know if you
13 got it or not.

14 Q. We are familiar with that program as well.

15 COMMISSIONER SMITH: Anyone else
16 besides there that you -- because I'm trying to
17 focus kinda really where the rubber is meeting the
18 road.

19 A. Can I ask you a question before we go into that?

20 COMMISSIONER SMITH: Sure.

21 A. Did you read page 10 on the commendable behavior?

22 COMMISSIONER SMITH: I don't know, I

23 have read a lot.

24 A. Just page 10 under "Commendable Behavior." From
25 Officer [REDACTED]. The last paragraph, "about a year ago,

1 while working in the gym office," did you read that?

2 COMMISSIONER SMITH: Uh-huh. I

3 believe this is where the officer became sick and
4 you came to his rescue.

5 A. Yeah. And I took a lot of heat from inmates for that
6 and I tried to explain it's the human thing to do, not
7 because he's in blue. If he was you in green, I would
8 do the same thing.

9 Years ago I wasn't thinking like that, I was
10 thinking about myself. Even now, my daughters are -- I
11 blame myself for their relationship with their family.

12 To get back to where I would go to, I have two
13 offers, guaranteed offers, one is from [REDACTED]
14 (phonetic) - [REDACTED] up in [REDACTED]. He
15 offered me guaranteed employment, I know him 50 years.
16 He's always been there for me. He has housing in [REDACTED]
17 [REDACTED], a five-bedroom house, he said I could stay
18 there.

19 Castle says they will give me residential and
20 help me. [REDACTED], [REDACTED], he's written a nice
21 letter, it's in there.

22 A lot of people gave me support out there. [REDACTED]
23 [REDACTED], he used to be up in Albany, Corrections, he was
24 some kind of Correction Officer before. Plus, I have a
25 lot to offer. I wanted to stay in helping people. I

1 want to do something in Corrections to get this victims'
2 program established statewide. That was my initial
3 goal.

4 COMMISSIONER SMITH: Thank you. Thank
5 you, Commissioner.

6 BY COMMISSIONER THOMPSON:

7 Q. All right. We have your COMPAS Risk Assessment, you
8 score low across the board. We also have your case
9 plan. You talk about Barriers to Success; you've taken
10 Puppies Behind Bars program; return to Woodbourn
11 Correctional Facility following attorney's advice.

12 A. I was put in a transfer to go back there because of
13 religious.

14 Q. For what reason?

15 A. Religious reasons. They had no accommodations for my
16 religion down here.

17 Q. As you stated, you plan to reside either Fortune
18 Society, or you also have support out in the community
19 as well.

20 A. My daughter works in [REDACTED]. My youngest daughter
21 works with autistic kids in [REDACTED]. My
22 other daughter is in [REDACTED] and works with kids also.

23 I will be 70 years old, I got 40 years in. I
24 can't change what happened. I can change who I am, I
25 can't what I did. And I don't think I have that much

1 time left to be able to do something constructive and
2 make some notable contributions to society. And I think
3 I can do that; in fact, I know I can do that.

4 COMMISSIONER THOMPSON: Commissioners,
5 any other questions?

6 COMMISSIONER SMITH: I have no other
7 questions. Thank you, though.

8 COMMISSIONER HALLERDIN: I have no
9 questions.

10 Q. Is there anything else, sir, you would like us to
11 consider that we have not discussed?

12 A. No. Anyway, I know it's a hard decision.

13 Q. It's very hard. You have a lot of support. There's
14 also opposition, as you are aware of. It's a lot to
15 consider. And a life was lost, could be anybody, you
16 know. But you have done well, you have done a lot of
17 work.

18 We will consider everything and get back to you.
19 Thank you, sir.

20 A. Thank you.

21 (Inmate was excused.)

22 (After due deliberation by the Parole Board
23 panel, the following decision has been rendered:)

24

25

DECISION:

1
2 Parole denied. Hold 24 months. Next appearance 6/2016.
3 The panel commends your personal growth and productive
4 use of time. However, discretionary release shall not be
5 granted merely as a reward for good conduct or program
6 completion while incarcerated.
7 After a careful review of your record and personal
8 interview, parole is denied. Your release would be
9 incompatible with the welfare of society and would so
10 deprecate the serious nature of the offense as to
11 undermine respect for the law. You appear before this
12 panel for the serious instant offense of Murder 2nd,
13 Manslaughter 2nd, Grand Larceny 2nd, Burglary 2nd and
14 Criminal Possession of a Weapon 3rd. The instant offense
15 involve you during the course of a burglary, you shot and
16 killed a police officer. Your behavior during the
17 instant offense demonstrates a serious disregard for the
18 law and disregard of law enforcement and the sanctity of
19 human life. This is clearly an escalation of your
20 negative behavior. Due consideration has been given to
21 your COMPAS Risk Assessment, rehabilitative efforts, case
22 plan, parole packet, risk, needs, letters of support and
23 sentencing minutes.
24 However, despite these accomplishments, when considering
25 all relevant factors, discretionary release is not

1 appropriate.

2 (All commissioners concur.)

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C E R T I F I C A T I O N

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the above cause and that this is a correct transcript of the same to the best of my ability.

Susan Fischler

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