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STATE OF NEW YORK EXECUTIVE DEPARTMENT

DIVISION OF PAROLE

NYS Division of Parole
ORIGINAL

Parole Board Hearing

In the Matter

-of-

[REDACTED]

DIN # [REDACTED]
NYSID # [REDACTED]

HELD AT: FISHKILL C.F.,

HELD ON: DECEMBER 18, 2007

BEFORE: COMMISSIONER LUDLOW
COMMISSIONER FERGUSON

DIVISION OF PAROLE
RECEIVED

JAN 14 2008

APPEALS UNIT

VERBATIM REPORTER: SUSAN FISCHLER

EXAMINATION BY COMMISSIONER LUDLOW:

Q. You are [REDACTED]

A. Yes.

Q. I am Commissioner Ludlow and with me is Commissioner Ferguson.

COMMISSIONER FERGUSON: Good evening.

Q. This is your initial appearance, sir?

A. Yes.

Q. You have been in a long time, 25 years?

A. Yes.

Q. We recognize that. You are 44 years old, right?

A. Yes.

Q. You were found guilty by verdict to murder 2nd, sentenced 25 to life; to robbery 2nd, two counts, sentenced eight and a third to 25, correct?

A. Yes.

Q. Do you have any appeals pending or do you anticipate filing any appeals?

A. No.

Q. Nonetheless, I call your attention to the fact we are taking a stenographic record of the interview. That means that every word we discuss is being reduced to a written transcript. It's possible that transcript could find its way to other public forums. We caution you about what you might say regarding these crimes so as to

1 not to limit or jeopardize any future opportunity for an
2 appeal. You may decline to discuss the terms and
3 circumstances of these crimes if you wish. We will not
4 hold that against you. Do you understand?

5 A. Yes.

6 Q. Are you maintaining your innocence?

7 A. No.

8 Q. Were you offered a plea-bargain prior to trial?

9 A. Yes.

10 Q. What was it?

11 A. Fifteen to life.

12 Q. These are your only felonies of record, correct?

13 A. Yes.

14 Q. We have your sentencing minutes on file from state
15 Supreme Court, [REDACTED] county, [REDACTED], 1984, before
16 Judge [REDACTED]. You were represented by Mr. [REDACTED].

17 Was anything said back then that you might recall that
18 we should be aware of, at your sentencing appearance?

19 A. In regards to what?

20 Q. Anything that might be relevant to parole.

21 A. The Judge said he's directing the Parole Board to not
22 release until at least 25 years.

23 Q. Not release you?

24 A. Yes.

25 Q. Why is that? Did he give a reason?

1 A. I don't know if he did at the sentencing. That how
2 it goes. That's what he said, he's directing them not
3 to let me go until at least 25 years.

4 Q. I am reading from a comment in the presentence
5 transcript from page six, wherein the Judge [REDACTED]
6 states as follows, "We learned from a trial the true
7 facts of the case. Up to that point I had the opinion
8 he was not the person responsible for this death. I am
9 satisfied after the trial, he was the one, he's the
10 killer."

11 He's talking about you, correct?

12 A. Yes.

13 Q. And I continue to quote, "He's the one who strangled
14 that old gentleman. That man was entitled to live a
15 peaceful life. At his age, to be disturbed, I have no
16 sympathy. After it was over they take his pictures and
17 they joke about it. They even kicked him when he was
18 down. I have no sympathy at all."

19 Judge goes on to stay and I quote from page
20 seven, "It is the sentence of this court for murder in
21 the 2nd degree the defendant be confined to a facility
22 in the Department of Corrections to a period not less
23 than 25 years and the term of his natural life; and for
24 robbery in the 1st degree, two counts, eight and a third
25 to 25 years on each count, both sentences, however, to

1 run concurrent."

2 That's rather strong language, wouldn't you say,
3 sir?

4 A. Yes.

5 Q. Was the judge speaking the truth, did you strangle
6 the old man at the clothing store?

7 A. Yes.

8 Q. Back on [REDACTED], 1983 in [REDACTED] at the [REDACTED]
9 [REDACTED] clothing store, you and the [REDACTED] went in
10 to rob the place, and the owner of the store ended up on
11 the floor with injuries to his head inflicted by hammer.
12 Signs of struggle were in evidence. The medical
13 examiner ruled the cause of death was asphyxia, by
14 strangulation. Is that what you did?

15 A. Yes, I participated with the [REDACTED], put him
16 in a choke hold.

17 Q. You were 19, going on 20 years of age?

18 A. Yes.

19 Q. Do you believe you killed the guy?

20 A. Yes, I am responsible.

21 Q. What do you think as you look back now, 25 years?

22 A. I am definitely responsible. I did choke [REDACTED]
23 [REDACTED], I put him in a headlock.

24 Q. Why was that necessary, to put the man in the
25 headlock?

1 A. I actually got involved -- in the beginning, the [REDACTED]
2 [REDACTED] picked me up from my house. I was going
3 shopping, they were going shopping. We went to the
4 train and they were talking about a robbery. I learned
5 [REDACTED] had a gun, they were smoking angle dust. We
6 got off the train, went our separate ways, and where I
7 last saw him last where the incident occurred, I
8 approached the store. I looked in the window and me,
9 like the fool I was, I entered the store. I put [REDACTED]
10 [REDACTED] in a choke hold and then we both fell at that
11 time. And then [REDACTED] hit him with a hammer and we
12 both fell to the floor.

13 Q. Were you on drugs?

14 A. No.

15 Q. You did this with a clear mind?

16 A. Yes. When I grabbed him I definitely did not mean to
17 kill [REDACTED]

18 Q. What did you intend to do?

19 A. Hold him, restrain him, I guess, like on TV. When
20 [REDACTED] hit him and we fell to the floor, I walked out of
21 the store.

22 Q. It's very tragic.

23 A. That's when [REDACTED] produced the wallet of the victim.

24 Q. Very tragic, sir.

25 A. Yes.

Q. These are your only felonies of record. Back in 1982 you had a criminal trespass 4th, misdemeanor.

A. Yes.

Q. Over 25 years you have done a lot of programs. You have probably done everything that was recommended, right?

A. Yes.

Q. The file is replete with accomplishments, we acknowledge them for the record. Notably, you've completed the physical education classes, you have the G.E.D., you worked in the machine shop, automotive, program, food training, ART, ASAT. You have been a student in G.E.D. You did obtain a G.E.D.?

A. Yes.

Q. You have been a porter, industries worker, student in independent study, maintenance laborer, administrative clerk, grounds keeper, group leader, teachers aide in ABE. These are all good things.

A. Yes.

Q. Any other programs over 25 years I did not mention that is important to you, sir

A. You mentioned the maintenance, electrical. Vocational trades has been important.

Q. Over 25 years you have had ten tier-2s and five tier-3s. Tier-threes involving assault on staff,

[REDACTED]

1 unhygienic act, interference, harassment, drug use,
2 smuggling, false information, facility correspondence,
3 explosives, alter item, contraband, flammable matter.

4 Your last ticket, though was more than two years ago?

5 A. Yes.

6 Q. Otherwise stated, you have not had a ticket in what,
7 about February 2005 was your last ticket?

8 A. That was -- I had a hot plate in the cell.

9 Q. You have been in a long time. If paroled where do
10 you think you can live?

11 A. [REDACTED] I plan to go to them eventually.

12 Q. The world has changed considerably in 25 years. You
13 are aware of that, sir?

14 A. Yes.

15 Q. [REDACTED] could help you, certainly.

16 A. I reached out to them and [REDACTED] [REDACTED]

17 Q. [REDACTED] or [REDACTED] would help you find a job,
18 certainly.

19 We have a submission from you, we have a package
20 of material. Did you put this together yourself?

21 A. I had [REDACTED] help me, we both put it together.

22 Q. There's a wealth of information in here, sir.

23 A. It's my own words.

24 Q. Categories such as remorse and responsibility,
25 institutional record, release plan, character reference,

community support and exhibits attached.

A. Yes.

Q. We acknowledge this and accept it as part of the record. Is there anything in here in particular you wish to highlight for Commissioner Ferguson and myself?

A. To highlight?

Q. Anything you want to focus on in particular?

A. I would like to talk about [REDACTED]. Through the years I have come to realize that I know -- in the beginning, when I first got arrested and came upstate I was in denial of the crime and this actually -- I was denying this when I went to trial. In the beginning I was offered a plea and I was willing to take it. I told the DA I was guilty. When I had to go to trial I was in denial. But I know I was the one that caused [REDACTED] his death from me putting him in the choke hold. Whatever else happened, other incidents, I am still responsible.

Q. We have a nice letter of support from your [REDACTED], [REDACTED]

[REDACTED] I assume she's elderly?

A. Yes.

Q. A nice letter of support from [REDACTED], received by the Division of Parole December 6, 2007. We have your G.E.D. certificate on file from December '85. We have certificates from prison fellowship, industries program, auto body, unibody, Walking Straight certificate. Those

are all part of the record.

Now, because of the nature of the crime you were seen by the [REDACTED]

A. Yes.

Q. [REDACTED]

[REDACTED]

[REDACTED]

A. Yes.

Q. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Do you agree with all of this?

A. Yes.

COMMISSIONER LUDLOW: Commissioner?

COMMISSIONER FERGUSON: No questions.

Thank you.

Q. Anything additional for us today, Mr. [REDACTED]

A. Yes. I would like you to know that I have caused the [REDACTED] much pain. I know I ruined their life s, I devastated their lives and it really had a real impact on me. All since my incarceration I always think of [REDACTED] He's always in my mind and I know it was wrong. I never wanted this to happen. I regret all this. It was awful what happened, I feel ashamed about

1 it and I want to do something positive out of this. I
2 know I owe a debt to society. All through my
3 incarceration a lot of staff workers helped me. Seeing
4 this all through the years, I visualize in my mind, I
5 would like to be like them sometime, you know?

6 Working, I see what it's about, it's accountability and
7 responsibility, is the big picture. I see and I say
8 this is what I want, to be like them. That's when I got
9 more involved in the vocationals and therapeutic
10 programs so I could be a productive citizen to be like
11 them. This is something I never got to see when I was
12 in the street. I been in here more than half my life.
13 I see the civilians: We are going on vacation, we be
14 back such and such. And I was like, this is what it's
15 about.

16 Q. That's well stated. We appreciate your thoughts in
17 that regard.

18 We have attempted to give you a full, fair and
19 accurate interview tonight. In your opinion, have you
20 received that?

21 A. Yes.

22 COMMISSIONER LUDLOW: We will consider
23 the file and the interview. We will advise you in
24 writing. Mr. [REDACTED] at 44 there is a better life
25 out there. We hope you can achieve it and we wish

1 you good luck in that regard.

2 A. Could I say one more thing?

3 Q. Yes.

4 A. I would like to reflect. Since all my incarceration
5 I have not been an angle through all my time. I smoked
6 a little marijuana, maybe I drunk, had a dirty urine and
7 I had an incident with the police, an assault which I
8 was in keep lock which I am sure you have it on record.
9 At the time I was in keep lock, that charge was a
10 smuggling charge when I was locked up at that time.
11 What happened, someone put a letter in -- put my name
12 and number on the envelope. And at the hearing I tried
13 to get witnesses, write in material to compare it. And
14 the Sergeant I was working for at the time, Sergeant
15 [REDACTED] at that time, got me all the materials to show
16 this wasn't me, the handwriting. I don't know if you
17 still got the letter there. They said the facility
18 keeps it. The hearing officer never believed me. The
19 guy that signed it signed it with a dash, [REDACTED], do or
20 die. This is a place in [REDACTED]. I lived on [REDACTED]
21 [REDACTED] at the time. The hearing officer said: I used
22 to live in on [REDACTED] years ago. My point is, at
23 that time when I was keep lock I was feeling real bad
24 and one time the police was coming by, doing his rounds.
25 I been trying to get him the whole day. I stuck my hand

[REDACTED]

1 out to grab his attention, and when I put my hand out to
2 the grab him he grabbed my hand, and I did spit him in
3 the face because I thought he was going to break my arm.
4 He was new. I figured that's how he will let go of me.

5 Next day I saw him, went to the hearing, I spoke
6 to him, I apologized. We started talking, I landed on
7 his gallery and I was with him for a while. And since
8 that time I was working with staff and I just wanted you
9 to know that.

10 COMMISSIONER LUDLOW: We appreciate
11 the clarification. We wish you good luck, Mr.

12 [REDACTED]

13 THE INMATE: Okay. Enjoy the holidays
14 everyone.

15 (Inmate was excused.)

16 (After due deliberation by the Parole
17 Board panel, the following decision has been
18 rendered:)

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DECISION:

Parole is denied. Hold 24 months, next appearance December 2009. Following careful review and deliberation of your record and interview, this panel concludes that discretionary release is not presently warranted due to concern for the public safety and welfare. The following factors were properly weighed and considered: Your instant offense in [REDACTED] in [REDACTED] 1983, involved you and co-defendants robbing a clothing store owner wherein the victim was killed. Your criminal history includes a criminal trespass related offense. Your institutional programming demonstrates progress and achievement, which is to your credit. Your disciplinary record reflects ten tier-2 and five tier-3 reports. The extreme violence and resulting death of the victim as indicated in the instant offense and your disciplinary record are of serious concern to this panel as it relates to the public safety. Your discretionary release at this time would thus, not be compatible with the welfare of society at large and would tend to deprecate the seriousness of the instant offenses and undermine respect for the law.

(All commissioners concur.)

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.

Juan Fischer

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