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NYS DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION

Parole Board Interview

In the Matter

-of-



TYPE OF INTERVIEW: Reappearance

LOCATION: Green Haven Correctional Facility
Videoconference to NYS DOCCS
20 Manchester Road
Poughkeesie, New York

DATE: November 28, 2018
DECISION DATE: November 28, 2018

BEFORE: COMMISSIONER W. SMITH
COMMISSIONER E. BERLINER
COMMISSIONER E. ALEXANDER

ALSO PRESENT: SORC C. Griffin & ORC J. Ramos

AT FACILITY: ORC S. Yildez & ORA M. Holland

REPORTER: Lori Ciofalo, Hearing Reporter

[REDACTED]

1 COMM. SMITH: Good afternoon. What's your
2 name, sir?

3 THE INMATE: [REDACTED].

4 COMM. SMITH: [REDACTED], you can hear us
5 fine?

6 THE INMATE: Yes, sir.

7 COMM. SMITH: They just had to adjust the
8 volume. [REDACTED], I am Commissioner Smith. I am
9 joined today by Commissioner Berliner and
10 Commissioner Shapiro.

11 COMM. BERLINER: Good afternoon, sir.

12 COMM. SHAPIRO: Good afternoon.

13 THE INMATE: Good afternoon, ma'am. Good
14 afternoon, sir.

15 INTERVIEW BY COMMISSIONER SMITH:

16 Q. You are here for a reappearance interview,
17 having been seen a number of times. Your first
18 appearance was in 2007.

19 You have a controlling sentence of twenty-five
20 to life for Murder in the Second Degree; is that
21 correct?

22 A. Yes, sir.

23 Q. We note that you have been seen since that
24 time, and there were a couple of postponements, but,
25 generally, when you were seen up to this point,

[REDACTED]

1 you've been given twenty-four-month holds and you are
2 approaching about thirty-seven years in State service
3 for this matter; is that correct?

4 A. Yes, sir.

5 Q. You have been cautioned in the past that there
6 is a record, there is a transcript being made, that
7 could be used at any post-conviction proceeding. I
8 know you have talked about the instant offense. Are
9 you under any appeal of your verdict at this time?

10 A. No, sir.

11 Q. Okay. Any hesitation talking about the instant
12 offense?

13 A. No, sir. Before we start, I would like to ask
14 for my forgiveness for the nature of this crime. I
15 would like to ask the Panel, and [REDACTED]
16 [REDACTED], and her daughter, and her family, to please
17 forgive me.

18 Q. All right. The instant offense is one of many
19 things we look at, as we determine whether now is an
20 appropriate time for you to go into the community.

21 As we look to that, you have some documents
22 that you have submitted. In addition, there is an
23 indication that you have some family members, a
24 cousin named [REDACTED], there is also [REDACTED]
25 [REDACTED], those two are listed as being potential

[REDACTED]

1 residences.

2 What is your desire on where you would live, if
3 released, at this time, [REDACTED]?

4 A. With [REDACTED].

5 Q. Is there anyone else in that household?

6 A. No, sir.

7 Q. And why don't you tell me about your
8 relationship with [REDACTED]?

9 A. That's my niece, sir.

10 Q. It's one of your sibling's children; is that
11 right?

12 A. Yes.

13 Q. How old is she, approximately?

14 A. She is about forty-four, forty-five.

15 Q. So she has a stable environment that you could
16 go to?

17 A. Yes, sir.

18 Q. Your COMPAS is a risk and needs assessment,
19 it's a tool, and it basically gives us some ideas of
20 areas of strengths and other areas where there may be
21 some concerns. It's a scale of 1 to 10. 1 is low
22 risk. You can go higher and higher, until 10 is the
23 highest risk.

24 Actually, under family support, they call it
25 low family support, but your score is a 1, and that's

[REDACTED]

1 what you want it to be, low numbers, low risk. Even
2 though some of the verbiage might be a little bit
3 confusing, that's kind of the way that it works.

4 Now, as you served your time, you have
5 submitted some documents, including commendable work
6 reports. We have one from Green Haven, where you
7 have been a porter. I think it's [REDACTED], is that
8 right?

9 A. It's [REDACTED] (ph), sir.

10 Q. Do you know how he spells his last name?

11 A. No.

12 Q. Okay, I think it might be as I said. It's a
13 signature, so it's not as easy, but he has written a
14 couple of times, giving you some good evaluations.

15 You have also submitted in the past -- I don't
16 believe this is recent. It this looks like it is
17 2016. The most current there is a listing, sort of a
18 community petition, that you submitted of individuals
19 who are writing on your behalf. You have done
20 similar things in the past. In 2012, there is a
21 similar document.

22 The letters that we have include an older
23 letter from a family member named [REDACTED].
24 What's the relation with [REDACTED]? She's a family
25 member, right?

[REDACTED]

1 A. Yes.

2 Q. We have other petitions that you have done in
3 terms of priors, 2010, for example. Do you have any
4 more recent correspondence from [REDACTED]?

5 A. She comes to see me all the time, sir, that's
6 my niece.

7 Q. I was wondering if there was any new
8 information. We certainly have a listing of
9 individuals that call you and also come and see you.
10 What does she actually do for income?

11 A. It's a community thing. LBG, some kind of
12 community thing. She works for somebody in public
13 office.

14 Q. You had submitted a letter in 2016. Among
15 other things you had described, briefly, the crime,
16 itself. You described some of the things you had
17 sought to accomplish on the inside. Your folder
18 includes that and the documents from your prior
19 submissions.

20 I think you were twenty-one, when the crime
21 occurred, and you are about fifty-eight, at this
22 point; is that right?

23 A. Yes, sir. I'll be fifty-nine.

24 Q. Do you have any letters from an employer, that
25 would be willing to give you job, at this point, any

[REDACTED]

1 specific letters?

2 A. Well, my intention was, when I go to my parole
3 officer, I would like to deal with the youth. I
4 would like to be a speaker, to explain my situation,
5 what happened to me, and how I messed up in life.

6 Q. How far have you gotten in school?

7 A. Not that far, sir.

8 Q. What grade did you accomplish on the outside?

9 A. Seventh to eighth.

10 Q. What about on the inside, have you gotten into
11 a high school equivalency program?

12 A. Yes. I was in GED, but I have a special ed
13 issue, so I'm working and trying to do the best I
14 can. I missed school.

15 Q. Have you reached out to any agencies and gotten
16 any letters from agencies, where you could possibly
17 work with them, on a situation as you talked about?

18 A. Yes, the [REDACTED].

19 Q. Do you have any letters from them?

20 A. If I'm not mistaken, they wrote you all the
21 last Parole Board hearing, they wrote letters for me.

22 Q. I don't see anything recent. Again, I know you
23 have been seen since 2007.

24 A. Yes.

25 Q. So nothing more recent. We look, overall, at

[REDACTED]

1 what you've done during this time. You have in your
2 COMPAS, probably the highest COMPAS score you have is
3 under prison misconduct, you have a 10.

4 Your history of violence, certainly the instant
5 offense is violent, and you spoke a little bit about
6 that before, you have a score of 4.

7 A. Yes.

8 Q. During the instant offense there were
9 co-defendants of yours, as well as yourself.

10 A. Yes.

11 Q. It looks like you were engaging in some
12 robberies. Had you done robberies before, with these
13 individuals?

14 A. No, sir.

15 Q. The night of this crime the victim was walking
16 into the house, when you came upon him; is that
17 right?

18 A. Yes.

19 Q. Had you followed him to the house?

20 A. Yes, sir.

21 Q. And where did you originally see him?

22 A. We just picked the car random, sir. We were
23 driving behind the car.

24 Q. Why would you pick that car?

25 A. It was just a car, sir. There was no specific

[REDACTED]

1 reason.

2 Q. What was your intentions?

3 A. To do a robbery, sir.

4 Q. What were you going to use the proceeds of the
5 robbery for?

6 A. To buy clothes.

7 Q. Were you working then or not employed?

8 A. I wasn't employed.

9 Q. What about your co-defendants?

10 A. Neither one of them, if I can recall.

11 Q. You concealed your identities with masks; is
12 that right?

13 A. Yes, sir.

14 Q. And each of you had a gun, correct?

15 A. Yes, sir.

16 Q. How did you get the money to buy the guns?

17 A. I borrowed the gun from a female.

18 Q. She actually testified in the trial; is that
19 right

20 A. Yes, she did.

21 Q. You didn't have a valid license, did you?

22 A. No.

23 Q. Who drove the car there?

24 A. [REDACTED].

25 Q. Did you get the other two, [REDACTED] and [REDACTED]

1 [REDACTED], did you get their guns from the same woman?

2 A. No, sir.

3 Q. Where did they get their guns from?

4 A. I don't recall, sir. I don't know. They came
5 and picked me up.

6 Q. You had three men, so why didn't you just do
7 strong-arm robberies; not that that is acceptable,
8 but versus introducing the firearms? Why would you
9 do that?

10 A. First of all, sir, let me explain it to you. I
11 never really knew anything about this here. This is
12 something I did at the spur of the moment. I didn't
13 know no better. This is not my history. I don't
14 abuse guns and rob people. I got into this
15 situation, and I just played a part.

16 Now, I know much better then I did back then.
17 I was young, and I didn't know no better, and I just
18 got caught up with some individuals.

19 Q. The individual that was shot and killed, this
20 man was right in his own driveway, and he was shot
21 pointblank in his chest; was he?

22 A. Yes.

23 Q. How many other people were there, that were
24 shot at?

25 A. Two.

[REDACTED]

1 Q. Two others?

2 A. Yes, sir, the father-in-law and the
3 mother-in-law.

4 Q. It looks like the individual that was shot
5 basically came out, and it says he identified himself
6 as a police officer and said "Don't move," and I
7 think it was one of your co-defendants that then shot
8 him, right?

9 A. Yes, sir

10 Q. And you all fled. How many days after that
11 were you arrested, or how many months after that were
12 you arrested?

13 A. Approximately, a year later, sir.

14 Q. If you didn't know what was going on, why
15 didn't you go to the police, before, during that
16 time, and let them know what happened?

17 A. All right, sir, not knowing no better, sir, it
18 was bad judgment, being young in the streets and not
19 thinking.

20 Q. Now, you were actually sentenced out of the
21 court of the Honorable [REDACTED] is that right?

22 A. Yes, sir.

23 Q. It looks like your attorney was [REDACTED]
24 is that true?

25 A. Yes.

[REDACTED]

1 Q. By law, we have several individuals that we
2 have to reach out to and ask for comments. We do
3 have a letter, and have had letters, from the
4 district attorney's office, as it relates to your
5 matter.

6 Also, of course, we have the Sentencing
7 Minutes, where your attorney had spoken, and where
8 the district attorney and the judge, of course, as
9 well, had spoken. You spoke a little bit during that
10 sentencing, as well. Do you recall that?

11 A. Yes, sir.

12 Q. One of the things the Court was saying, during
13 this sentencing, is there have been absolutely no
14 mitigating facts or circumstances surrounding the
15 vicious acts, the wanton acts, these defendants stand
16 convicted of before the court.

17 He goes on, the Judge said: "The Court wishes
18 it was within its power to order their death by
19 execution, but, unfortunately, the people in charge
20 of the state, for many, many, years, have decided" --
21 and it goes on to just talk about that there was no
22 capital punishment.

23 You know, be that as it may, it's this forum,
24 the three of us, Commissioner Berliner, Commissioner
25 Shapiro and myself, that determine whether or not

[REDACTED]

1 your freedom is issued, so we recognize that is the
2 law of the state, and we certainly take this
3 seriously.

4 As far as your information in the folder, there
5 are scores of low risk for felony violence, it's a 4
6 out of 10, so it's not the lowest, and you also have
7 low risk of arrest, absconding and criminal
8 involvement.

9 Your history of violence is a 4, it's low,
10 although, certainly, the acts that occurred here were
11 certainly violent.

12 Once the victim was shot, why would other
13 individuals be shot at? I think there was a wife
14 there, the wife of the deceased, maybe children of
15 the deceased were there, as well, a couple of little
16 kids came out; is that right?

17 A. No, no, there were no kids.

18 Q. Just the adults?

19 A. Yes.

20 Q. So why continue to fire?

21 A. Well, I ran, sir. I never fired no gun. The
22 gun I had was never fired. I had a .25 automatic.
23 When I heard the first shot, I ran.

24 If you look in the record it states that [REDACTED]
25 [REDACTED], when I gave her back her gun, it

[REDACTED]

1 wasn't fired.

2 Q. [REDACTED], that's who you got the gun
3 from?

4 A. Yes. When I returned her gun to her, the gun
5 was never fired.

6 Q. I think I mentioned before, your prison
7 misconduct is a score of 10. I have not counted them
8 up, in total, but you have a number of disciplinary
9 violations, I think it was maybe twenty-three. It
10 was certainly more than twenty, during this
11 twenty-five-year minimum and the records we have only
12 go back to '90. Prior to that I think you were
13 sentenced and came upstate in '83, and those are not
14 on the computer.

15 You had some alcohol intoxicant, some drug use,
16 you had fighting and some violent conduct in the
17 past.

18 First of all, what drugs would you have used in
19 state prison?

20 A. I smoked marijuana, sir.

21 Q. Again, you had some fighting. More recently,
22 your last discipline was in May of 2015, creating a
23 disturbance, flammable matter at Green Haven. What
24 did you do there?

25 A. My hot pot burned out, sir.

[REDACTED]

1 Q. What did you do?

2 A. I kept it plugged in and the pot melted a
3 little bit.

4 Q. I looked at the years, it's kind of sporadic.
5 Out of the last twenty-five years, which is what your
6 minimum is, obviously you served longer than that, I
7 think I counted about eleven or twelve of those
8 years, you had discipline. So you go a year or two,
9 and then you have two or three years that you're on.

10 Why do you think you have struggled throughout
11 the time with the behavior?

12 A. Sometimes, in an environment like this, things
13 happen. I learned, now, to walk away from things,
14 and I've grown now. I know how to pay things no
15 mind, now. Growing up in here, you know, things
16 happen in here, when you're in an environment like
17 this.

18 Q. You have been doing food service work for the
19 last year or so; is that right?

20 A. Yes, sir.

21 Q. How is that going?

22 A. Good, sir.

23 Q. You did some porter work. It says they wanted
24 you to get involved in some educational programs at
25 Green Haven and you refused that. It says you

1 refused vocational porter in building 2. Why would
2 you do that?

3 A. I never refused it, that's where I used to work
4 at, sir.

5 Q. I am looking at a note, that's a computer
6 printout. I know I have some actual forms the
7 facility provided. This is 2014, this is academic
8 programming, a refusal for that in '14 and '13.

9 You say you have some educational difficulties.
10 Why not try to go through it, though?

11 A. I have, sir. I have a sleeping disorder. I
12 fall asleep a lot. If I'm sitting down too long, I
13 have a problem, I fall asleep.

14 I'm not justifying me not being in school,
15 there is no justification for that, but I have a
16 learning disability.

17 Q. Right, you said that. It looks like most of
18 the refusals that you have are for the educational
19 programs. Did you ever refuse the ART program?

20 A. No, I completed all that, sir.

21 Q. ART is an aggression program. What other
22 programs have you done, that you found particularly
23 beneficial, sir?

24 A. ART, RSAT.

25 Q. RSAT is a substance abuse program. Again, we

[REDACTED]

1 talked about using drugs in prison.

2 A. Yes.

3 Q. It looks to me like you completed ART, in
4 Clinton, in 2012; is that correct?

5 A. Yes, sir.

6 Q. Very good. Your Case Plan is developed with
7 your counselor, wanting you to do some things to
8 prepare yourself, and one of them is to be involved
9 in the YAP program; have you done that?

10 A. Yes.

11 Q. That's a good way for you to help others to
12 maybe not get into the difficulties that you have,
13 and you've talked about that, right?

14 A. Yes, sir.

15 Q. It says attend AA, on a weekly basis. What's
16 the status for that?

17 A. It's a program where we all sit together and
18 talk about drinking and staying away from stuff.

19 Q. I know what AA is. What's the status of you
20 participating in that?

21 A. I completed that, sir.

22 Q. For you to maintain good family relationships,
23 which is one of the things we talked about, first,
24 going in here.

25 There is a lot to look at, certainly not just

[REDACTED]

1 the instant offense. We take into account your
2 comments, as well.

3 As you mentioned, this is the first time that
4 you have been in state prison. Your Presentence
5 Investigation Report says the only prior juvenile
6 history, is you were placed on six months probation
7 from Family Court and administratively discharged; is
8 that right?

9 A. Yes, sir.

10 Q. I see the listing. What was that for? What
11 activity were you getting involved in?

12 A. School, school.

13 COMM. SMITH: I have asked you a lot of
14 questions. I don't know if Commissioner Berliner has
15 any questions.

16 COMM. BERLINER: I do not have any
17 questions. Thank you.

18 COMM. SMITH: Is there any questions from
19 Commissioner Shapiro?

20 COMM. SHAPIRO: No. I have listened
21 carefully. Thank you.

22 CONTINUED BY COMMISSIONER SMITH:

23 Q. Is there anything else you want to add today,
24 [REDACTED]? The last word is yours.

25 A. Just to say that I'm sorry. Please, I ask for

[REDACTED]

1 my forgiveness from the victim's family. To [REDACTED]
2 [REDACTED], her daughter, to [REDACTED]
3 I'm sorry. I can't undo what I've gotten myself
4 into, but I'm asking for forgiveness.

5 Q. Have you ever written to the Apology Bank? Do
6 you know what that is?

7 A. I had some paperwork I sent, I think it was in
8 Clinton, I had Commissioner Ferguson, and they sent
9 records pertaining to that situation.

10 Q. All right, sir. Anything else?

11 A. No, sir.

12 COMM. SMITH: Have a good day. We will
13 let you know in writing.

14 THE INMATE: Thank you, sir. I appreciate
15 it.

16 COMM. SMITH: You're welcome.

17 (Interview concluded.)

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

DECISION

[REDACTED], parole denied. Hold 24 months.
Next appearance, November 2020.

Following a personal interview, record review and
deliberation, this Panel finds that your release to
supervision is incompatible with the public safety and
welfare. Therefore, parole at this time is denied.

We have considered your COMPAS Risk and Needs
Assessment. Significant weight has been placed on your
poor behavior during this term. You have incurred more
than twenty disciplinary reports.

Your high COMPAS prison misconduct score reflects
your poor compliance with DOCCS rules. You are serving
a sentence with a twenty-five-year minimum. Records
show that your most recent report occurred in May of
2015.

We have reviewed your programming, Case Plan, and
discussed your learning difficulties. Also discussed
were the Sentencing Minutes, and include comments made
in later letters from the district attorney.

[REDACTED]

1 Your family support and limited criminal record are
2 reflective in low COMPAS scores, which are positive.
3 Documents you submitted are generally from past parole
4 interviews, but were considered.

5 Most compelling this Panel finds you need to
6 maintain a clean disciplinary record, over a significant
7 period of time. We also encourage you to develop and
8 document appropriate release plans.

9 To grant your release at this time would so
10 deprecate the seriousness of your offense as to
11 undermine respect for the law. Parole is therefore
12 denied.

13 (Commissioner Smith and Commissioner Berliner
14 concur.)

15 (Commissioner Shapiro dissents.)
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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
22 pages, is a true and correct copy of the same and
whole thereof.

Lori Ciofalo

Lori Ciofalo, Court Reporter

Dated: November 28, 2018