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Parole Interview Transcript/Decision - FUSL000131 (2020-09-08)

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FUSL000131

1 NYS DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION

2 BOARD OF PAROLE

3 *****

4 PAROLE BOARD INTERVIEW

5 In the Matter of

6 [REDACTED]

7 DIN NO. [REDACTED]

8 NYSID NO. [REDACTED]

9 *****

10 TYPE OF INTERVIEW: Initial Release (Or Earlier)

11

12 LOCATION: Collins Correctional Facility

13 (Video-conferenced to Buffalo Area Office,

14 460 Main Street, Buffalo, New York 14202)

15

15 DATE: Tuesday, September 8, 2020

16 DECISION DATE: Tuesday, September 8, 2020

17

18 BEFORE: COMMISSIONER W. WILLIAM SMITH JR.

19 COMMISSIONER JOSEPH P. CRANGLE

20

20 AT FACILITY: T. Sword, ORC

21 T. Tanyi, ORC

22

23 HEARING REPORTER: Carrie A. Fisher

24

25

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1 EXAMINATION BY COMMISSIONER SMITH:

2 Q Good afternoon. Would you tell us your name for the record,
3 please?

4 A Yes, sir. It's [REDACTED].

5 Q Very good. Mr. [REDACTED], I am Commissioner Smith. I am
6 joined today by Commissioner Crangle.

7 COMMISSIONER CRANGLE: How you doing?

8 THE INMATE: All right. And yourself, sir?

9 Q Good, good. You are here having been found guilty at trial
10 of attempted murder second, assault in the first degree, and
11 a criminal possession of a weapon second; is that correct?

12 A Yes, sir.

13 Q Do you have any appeals outstanding in this matter?

14 A No.

15 Q Very good. If you want to leave your mask on, that's fine.
16 If you want to bring it down, whatever is most comfortable
17 for you there. There you go.

18 You had taken this to trial. You say there is no
19 appeals outstanding. I just want to caution you there is a
20 record, a young lady that's taking a transcript of what we
21 talk about which could be used in any postconviction
22 proceeding. We certainly consider the instant offense.
23 It's one of many things that we consider.

24 You have been before a Board of Parole before. I do
25 note that you have had several postponements since your

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1 scheduled initial interview on this matter. Apparently
2 there was some sort of a disciplinary violation that you
3 were appealing?

4 A Yes.

5 Q I believe you were successful in that appeal; is that right?

6 A Yes, sir.

7 Q Okay. Do you know what month that discipline occurred in?

8 A July -- August, right? It's August, yes.

9 Q Okay. I don't have any information so we don't consider it.

10 A Right.

11 Q It's good that you took your time with any type of incident
12 that you wanted to address and so as we appear -- as you
13 appear before us today, our understanding is that matter has
14 been resolved; is that right?

15 A Yes, sir, it is.

16 Q All right. Very good. We have a thing called a COMPAS risk
17 and needs assessment. It gives us areas of strengths. It's
18 a graph among other things and a report that you helped
19 create. It gives us areas that you have strengths. It's a
20 scale of one to ten. One is low risk or low concern. Ten
21 is higher risk, higher concern. You have many areas where
22 your risk is lower including areas of risk of felony
23 violence, arrest risk, abscond risk. Your criminal
24 involvement is scored as low. Although that may -- you
25 know, it's what the score is, we may talk a little bit about

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1 that. Your personality/attitudes scores are low as is your
2 reentry employment expectations. Now you have some areas
3 that are mid range. You have supplied us multiple copies of
4 a -- I would call it sort of a parole packet. Do you know
5 what I am talking about?

6 A Yes, sir.

7 Q You had actually your case was postponed in part so that you
8 could work with some folks on the development of this; is
9 that true?

10 A Yes, sir, it is.

11 Q Okay. And so that in many ways helps us as we -- excuse me,
12 helps us as we develop areas we want to examine during
13 this -- during this appearance. Now I know that you have
14 written and I have read your statement on the instant
15 offense. There was an individual -- according to what we
16 have, generally what we get is from the presentence report
17 and sentencing minutes but you have also discussed it, the
18 instant offense is one that involves a shooting of a victim
19 named [REDACTED] who was shot, was not killed
20 fortunately, and as a result of that you were sentenced in
21 this matter; is that correct?

22 A Yes, sir, it is.

23 Q Do you acknowledge committing the crime?

24 A Yes, sir, I do.

25 Q And I know that you have written about possibly wanting to

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1 in some way wanting to apologize or contact the victim but I
2 think it's also been pointed out to you that as the inmate
3 and as the person who committed the crime versus the victim,
4 we would restrict any access that you have directly with the
5 victim. Do you understand that?

6 A Yes, sir, I do.

7 Q Okay. There is -- I think they talked to you about the
8 apology bank?

9 A Yes, it's an organization. I can send a letter to them and
10 they can forward it to him.

11 Q Right. Did you get a -- did you ever do that?

12 A No, sir, I haven't done it yet.

13 Q Okay. And it actually isn't necessarily an organization.
14 It's part of Department of Corrections.

15 A Okay.

16 Q Which is fine, the Office of Victim Service, and we don't
17 even know if the victim ever reads that as the board but it
18 is an option that you have that if you so desire to write a
19 letter of apology and if the victim wants to have access,
20 they certainly can do that as well.

21 Now having read through your statement which is part
22 of your submission, you do indicate you knew the victim.
23 Why the shooting?

24 A It was a very large mistake on my part that I regret a lot
25 because I thought about it for 22 years. He was a good

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1 friend of mine and it was a he said-she said and his wife
2 told me and another guy that [REDACTED] was going to come down
3 with some friends and they were going to shoot us and me
4 being the idiot, I went to somebody and borrowed a gun
5 because I didn't know if what she said was true or not.

6 Q Now you were on parole at the time, right?

7 A Yes, sir, I was.

8 Q Why didn't you just go to your parole officer and let them
9 know that you had heard about this?

10 A I wasn't thinking at the time, sir. Now I am a different
11 person. Back then, you know, I had a reputation, you know,
12 being in the streets and I always handled my own problems
13 but now I let other people handle them for me.

14 Q How many guns have you had in your lifetime?

15 A Five.

16 Q And were you convicted on the majority of those?

17 A Yes, sir.

18 Q Yeah, I think you started off with a -- was it probation for
19 a robbery, maybe an attempted robbery second?

20 A Yes.

21 Q Way back in 1981 was that arrest. It says convicted
22 attempted robbery second so it started off with an arrest
23 for robbery first so you had a gun there?

24 A No, sir.

25 Q That was -- was there any weapon?

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1 A No, none at all.

2 Q Okay. So you ended up getting probation and violated
3 probation resulting in some local jail time; is that true?

4 A Yes, sir.

5 Q In 1983, your first state sentence involved a criminal sale
6 of controlled substance. You were released on parole. You
7 had an October '86 arrest that led to your first weapon
8 crime, that was an attempted criminal possession of a weapon
9 second so that was -- that was a gun that you had that you
10 went to prison for, right?

11 A Yes, sir.

12 Q Why do you think at that point, I mean, you had -- that was
13 your second time in state prison. Why didn't you stop doing
14 crime then?

15 A I didn't have the skills that I have acquired since I have
16 been in prison so far. Back then I didn't have the
17 knowledge, you know, and I have seen a lot of things happen
18 during that time. I seen a guy get his brain blown out, you
19 know, with a shotgun. I guess I was traumatized by what was
20 going on in the neighborhood.

21 Q But then would you pick a gun up? If you saw all this
22 trauma, why pick a gun up yourself?

23 A To protect myself, sir.

24 Q Who were you living with back then?

25 A I was living with my mother.

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1 Q What gun did she have?

2 A None.

3 Q She was in the same neighborhood, right?

4 A Yes, sir.

5 Q So why would you need a gun and she wouldn't unless you were
6 doing something maybe you shouldn't have been doing?

7 A Well, she never really was in the street, I always was and
8 that's the problem. When I came from Georgia when I was 19
9 years old, everybody that I picked as a friend was the wrong
10 person.

11 Q Now your '91 sentence, that was also weapon related?

12 A Yes, sir.

13 Q Led to a life sentence, true?

14 A Yes, sir.

15 Q And actually that still remains at this point.

16 A Yes, sir.

17 Q What was the weapon that you had in that crime?

18 A It was a .380, sir.

19 Q Okay. So you had a .380 and it looks like also an attempted
20 prison contraband conviction. Those led to a sentence it
21 looks like six to life controlling, correct?

22 A Yes, sir.

23 Q Where did you do that time?

24 A In Bare Hill, sir.

25 Q Bare Hill. And ultimately were you paroled?

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1 A Yes, sir.

2 Q What year was that approximately?

3 A 1997.

4 Q Okay. Yeah, it looks like July 31st, 1997, maybe from Marcy
5 Correctional Facility you were released?

6 A Yes, sir.

7 Q Do you know who released you?

8 A The Board of Parole, sir.

9 Q Yeah, me. I released you.

10 A Oh.

11 Q It looks like myself and maybe Commissioner
12 Gailer [phonetic]. I don't think we would have released you
13 if we ever thought you were ever going to pick another gun
14 up and shoot somebody. How many times did you fire that gun
15 at Mr. [REDACTED]?

16 A Three times, sir.

17 Q Were you trying to kill him?

18 A I ain't want to kill him. I just wanted to hurt him.

19 Q Now as I say, we certainly consider the instant offense and
20 your history but we also look at what you have done now to
21 prepare yourself to go into the community. One of the
22 things is that you have letters from family members in your
23 packet.

24 A Yes, sir.

25 Q And so that's beneficial to you. These individuals have

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1 written. Your sister has written. How many siblings do you
2 have?

3 A I have three sisters and two brothers, sir.

4 Q Okay. And it looks like they're very supportive of you?

5 A Yes, sir.

6 Q It looks like even family members of your sister, I guess
7 nieces have written?

8 A Yes, sir.

9 Q So if released at this point, you have reached out to a
10 number of agencies in the New York City area that help with
11 employment and with places for you to stay. Your packet was
12 compiled with the help of the Office of the Appellate
13 Defender; is that right?

14 A Yes, sir.

15 Q And letters that we have include from I believe the Osborne
16 Association. They help ex-offenders. Who else have you
17 reached out to to receive assistance from?

18 A There is a facility in Virginia where my sister lives
19 because I plan on getting -- have my parole sent out of
20 state. I lived in a lot of other states and New York is the
21 only one I ever went to prison in so I think it's time for a
22 change. Oh, it's called Step Up program, sir, I am sorry.
23 They offer the same services as the Osborne program.

24 Q Right, I saw the Step Up. As a matter of fact, I think they
25 have -- I think I saw it's easy to find the letter. I

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1 thought they could kind of a colored -- there it is. It's
2 sort of a cream-ish with green printing Step Up
3 Incorporated. That's out of Norfolk.

4 A Right.

5 Q And assistance that they have written about, employment
6 training, placement, case managers, offering some skills so
7 those are all very helpful as we look at your possible
8 release.

9 Now we also on the case plan that we have, your
10 counselor sits down, wanted you to increase vocational
11 skills, maintain sobriety, get involved with getting
12 employment. So you have done many of those things including
13 trying to maintain a sober lifestyle. What kind of programs
14 in particular have you found beneficial during this term
15 that you have been able to complete?

16 A Oh, ASAT was great, sir. I haven't used any drugs in five
17 years because of it and it taught me to be sober because
18 before when I was another person I couldn't watch a movie
19 without getting high. I figured it wouldn't be funny. Now
20 today I don't get high anymore and I watch movies and I
21 laugh all day. You know, it shows you you don't need drugs
22 to live life to move forward, you know.

23 And the Alternative to Violence because, you know, I
24 have had a history of that and they taught me different ways
25 instead of showing anger, you know, just take your time out,

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1 you know, if you can get away from the person. If you
2 can't, you know, go to the authorities and that's something
3 that I have done, you know. I have been called bad names
4 because I did it but, you know, I am trying to change. I
5 don't want to be that person no more.

6 And my record shows that I was a TA for nine years and
7 during those nine years a lot of things made me change
8 because people used to come up to me and say, "hey, [REDACTED],
9 I am glad you helped me get my GED." That makes me feel
10 good, you know. I am helping people instead of hurting
11 people and that's what I should have been doing from the
12 beginning in my community, you know, but I was a knucklehead
13 at the time. I don't know why but my life is different now.
14 I'd rather move on.

15 I had a phone call with my nephew in Virginia and he
16 says to me, you know, "Uncle [REDACTED], I look out the window
17 and I see all these guys fishing all the time and I feel
18 said." I said, "why?" He said, "because I don't know how
19 to fish." So my job now is to teach him how to fish so he
20 will be able to do things for himself and he won't feel so
21 bad.

22 Q And I think as we look at your COMPAS, the score for family
23 support is called low family support is a six which I think
24 is a little bit elevated based on the documents that you
25 have submitted. I think you do indeed have some assistance

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1 in the community that they're willing to offer.

2 You mentioned the ASAT. Your reentry substance abuse
3 is kind of mid range.

4 A Right.

5 Q It's a four. It's listed as possible but we look to see
6 what you have done to address that.

7 Criminal involvement is low, it's four and low. I
8 kind of say that might be a little bit of a stretch
9 looking -- I mean, if you have been to prison now four times
10 and you commit crime, you're shooting somebody on parole and
11 you have got a pattern of weapons, I think the facts might
12 belie the computer generation. I mean, you certainly have a
13 history, a lengthy history. I mean, it spans -- this
14 instant offense occurred in 1998. Your first offense that
15 we talked about that led to the probation was arrest in '91
16 so, I mean, you're talking some 17 approximate years, pretty
17 lengthy. It is -- it is -- it causes one to pause.

18 A judge -- there is not much more we can say than what
19 the judge did the last sentence, gave you that life -- that
20 four-letter word life and I am not sure that you can ever
21 pick up another weapon. Inside, as I say, you have had a
22 more recent discipline removed but I am looking through
23 this. You have served at this point about 22 years; is that
24 right?

25 A Yes, sir.

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1 Q And I am looking at a number of disciplinary violations,
2 Tier IIs, Tier IIIs, usually there is about six on a page
3 and I think we have maybe four pages of those including
4 everything from some violent conduct, weapon, drug use. You
5 said five years ago you used drugs. That was in Great
6 Meadow back in 2015, right?

7 A Yes, sir.

8 Q You had alcohol intoxicant, more drug use and violent
9 conduct and weapons. You do have a minimum sentence that
10 this judge imposed of 22 years maximum being life. Now we
11 don't count -- we don't start the count all over again but
12 why such poor behavior that resulted in a COMPAS score of
13 ten, the highest that you can get? Why such poor discipline
14 on this term, sir?

15 A When I first came through, I didn't have any self-control.
16 Coming from the streets, I was still getting high. Drugs
17 really ruined my life and, you know, I was a different
18 person back then. I was the person that was a knucklehead.
19 Instead of someone to come in and help people, I was always
20 the person that was destroying people but that's not me
21 anymore. I am a changed person now. I have learned to help
22 people. It makes me feel good, you know, and I would rather
23 go home if I could and help build my community and not
24 destroy it anymore because the only way my community can get
25 better, if I put my two cents in and help.

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1 Q You know, I am looking at the last appearance that you had
2 back in '97, I think I said I thought it was Commissioner
3 Gailer because the signature for that commissioner is light
4 but then I look back at the documents that supported the
5 release and it was myself along with Commissioner King who I
6 must tell you Commissioner King was one of the parole
7 commissioners in my time who had a terrific ability to
8 discern between individuals who would be successful on
9 parole and not successful. He really had an ability.

10 People say we're not supposed to have a crystal ball,
11 but quite frankly we are charged with making correct choices
12 and, you know, it really is a -- causes pause if you're on
13 parole with a gun to pick another gun up.

14 You were sentenced out of the court of the Honorable
15 W. Leibovitz, L-E-I-B-O-V-I-T-Z. We're looking at the
16 sentencing minutes. Amelia McGovern was your attorney,
17 right?

18 A Yes, sir.

19 Q We also reach out to the judge, district attorney, and
20 defense attorney to see if they have any additional
21 information and what we have is basically what's in the
22 sentencing minutes so we will consider that. I am going to
23 pause at this time and see if Commissioner Crangle has any
24 additional questions.

25 COMMISSIONER SMITH: Commissioner?

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1

2 BY COMMISSIONER CRANGLE:

3 Q I just have one. I was just looking at you at the line of
4 questioning with Commissioner Smith about ten minutes ago
5 about being released at Marcy and you really didn't have
6 much of a reaction to it. I am just curious like how do you
7 forget something like that?

8 A I just forget.

9 Q Well, the individual that released you, I don't know, your
10 freedom is given back to you. You were serving six to life,
11 right?

12 A Yes, sir.

13 Q Do you remember that moment when you got the results that
14 you were able to get back out in the community?

15 A Yes, sir, I do.

16 Q What are your thoughts? I mean, here you are today just at
17 a different facility wearing a different DIN number but at
18 the end of the day, you're fighting for your freedom again.
19 Do you follow me?

20 A Yes, sir. Well right then when I went home, I thought
21 about, you know, what I did but I wasn't deterred because I
22 was still that same person at that time, sir. But since
23 then I have changed my -- you know, the things that have
24 happened to me since I have been incarcerated now. When I
25 went home the last time, as a matter of fact, I forgot I

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1 even did time. I didn't pay no attention to it and that was
2 one of my mistakes that brought me back.

3 Q Okay. Do you see a lot of the young inmates? Do they
4 resemble how you were acting back then? Now that you're
5 older, you see guys that come in and act the way they're
6 acting, do you ever look and say, "geez, I remember how I
7 was like that"?

8 A Yes, exactly.

9 Q A lot of the older inmates will tell me that.

10 A Yes, exactly.

11 Q Well, one thing I just want to give you kudos for of what
12 you have, you know, discussed about helping others get that
13 high school diploma. I give you credit for doing that.

14 A Yes, sir.

15 Q I can tell it puts a smile on your face.

16 A Yeah, it does.

17 Q And I like your analogy of you used to drink or do drugs to
18 be happy, but now you can watch a movie and laugh about it
19 and still have a smile on your face.

20 A Yes, sir.

21 Q All right. I wish more people would look at it that way.
22 That's a good example. Thank you.

23 A Thank you, sir.

24 COMMISSIONER SMITH: Thank you, Commissioner.

25

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1 BY COMMISSIONER SMITH:

2 Q The last word is yours. Is there anything else you want to
3 tell us, Mr. [REDACTED], that we have not discussed?

4 A Yes. We have already discussed it but it's a hard point
5 because it's bothered me for 22 years. I wish that day
6 would have never happened because me and [REDACTED] were
7 friends and, you know, I feel so hurt because he could have
8 had existing conditions from the bullet wounds and that's
9 why I want to apologize to him. I know, you know, I can't
10 see him and stuff. I wouldn't want to because -- you know,
11 not right now but I wish I would have been doing something
12 else that day and that we wouldn't have been getting high
13 and stuff but I live a different life now so I am going to
14 move on. I am going to find better friends and stay out of
15 the mess because I am too old now and then I have a bad
16 heart, you know. I had open heart surgery when I was in
17 Comstock in '15. I have had two heart attacks since then.
18 I got stints put in my veins and I am just trying to live
19 now and I want time to spend with my family and teach my
20 nephew how to finish.

21 Q All right. We certainly will let you know our decision in
22 writing. Thank you for coming in today.

23 A Thank you, sir. You have a nice day both of you.

24 Q You as well.

25 INTERVIEW CONCLUDED

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

3 D E C I S I O N

4
5 Denied 24 months. Next appearance April 2022.

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

10 We have considered your COMPAS risk and needs
11 assessment. Significant weight has been placed on your poor
12 behavior during this term. You have incurred multiple Tier II
13 and Tier III violations. Your high prison misconduct COMPAS
14 score reflects your poor compliance with DOCCS rules. Your
15 instant offenses involve you shooting a known male while you
16 were on parole. You have three previous state sentences
17 including two weapon-related convictions. Your COMPAS history
18 of violence is high.

19 Positive factors include your document submissions,
20 contacts with community organizations, and family support
21 which are reflected in multiple low COMPAS scores. We have
22 likewise considered your sentencing minutes, case plan, and
23 program accomplishments. Most compelling, your poor behavior
24 is an aggravating factor against release. Your poor record on
25 parole and pattern of weapon-related crime is significant.

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1 To grant your release at this time would so
2 deprecate the seriousness of your offense as to undermine
3 respect for the law. Parole is, therefore, denied.

4 (All Commissioners concur.)

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CERTIFICATION

I, Carrie A. Fisher, 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 20 pages, is a true and correct copy of same and the whole thereof.

Dated: Tuesday, September 22, 2020

Carrie Fisher

Carrie A. Fisher, Court Reporter