



The Commonwealth of Massachusetts  
Executive Office of Public Safety and Security



PAROLE BOARD

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**DECISION**

**IN THE MATTER OF**

**JOSE RODRIGUEZ**

**W44821**

**TYPE OF HEARING:** Review Hearing

**DATE OF HEARING:** March 26, 2019

**DATE OF DECISION:** January 29, 2020

**PARTICIPATING BOARD MEMBERS:** Dr. Charlene Bonner, Tonomey Coleman, Sheila Dupre, Tina Hurley, Gloriann Moroney, Colette Santa, Paul Treseler<sup>1</sup>

**DECISION OF THE BOARD:** After careful consideration of all relevant facts, including the nature of the underlying offense, the age of the inmate at the time of offense, criminal record, institutional record, the inmate's testimony at the hearing, and the views of the public as expressed at the hearing or in written submissions to the Board, we conclude by unanimous vote that the inmate is not a suitable candidate for parole. Parole is denied with a review scheduled in five years from the date of the hearing.

**I. STATEMENT OF THE CASE**

On July 20, 1977, in Norfolk Superior Court, Jose Rodriguez was convicted of rape and assault and battery by means of a dangerous weapon. The Supreme Judicial Court reversed the conviction and ordered a new trial in 1979. *Commonwealth v. Rodriguez*, 378 Mass. 296 (1979). Mr. Rodriguez was released on bail following the issuance of the opinion, but did not appear on the date of his scheduled re-trial. He remained a fugitive at large for seven years, when he was arrested in California and extradited to Massachusetts. In 1987, he was convicted of the same charges. He was sentenced to life in prison with the possibility of parole for rape and a concurrent term of 8 to 10 years in prison for assault and battery by means of a dangerous weapon. His subsequent appeal and motions for post-conviction relief were unsuccessful. *Commonwealth v. Rodriguez*, 50 Mass. App. Ct. 405 (2000), *rev. denied*, 433

<sup>1</sup> Board Member Treseler was present at the hearing, but was no longer a Board Member at the time of vote.

Mass. 1102 (2001). He was similarly denied federal *habeas corpus* relief. *Rodriguez v. Spencer*, 412 F.3d 29 (1st 2005), *cert. denied* 546 U.S. 1142 (2006).

On September 27, 1976, 16-year-old Jose Rodriguez raped and assaulted a Boston University student in Brookline. As the woman walked from the train station, she soon realized that she was being followed. A few minutes later, Mr. Rodriguez called out to her and, when she turned around, he pretended to ask for directions and walked toward her. When he arrived within a few feet of the woman, Mr. Rodriguez thrust a broken bottle under her throat, spun her around, and pushed her up a driveway and into a backyard. He threw her to the ground, covered her head with his jacket, and raped her. When Mr. Rodriguez left, the victim ran home and called police. She provided them with a description of her assailant.

## **II. PAROLE HEARING ON MARCH 26, 2019**

Jose Rodriguez, now 59-years-old, appeared before the Parole Board on March 26, 2019, for a review hearing. He was represented by Attorney Brian Murphy. Mr. Rodriguez was denied parole after his initial hearing in 2000, and after his review hearings in 2006 and 2013. In Mr. Rodriguez's opening statement to the Board, he apologized to the victim for his crime and for the trauma associated with his offense. He added that, as a juvenile, he lived his life with little regard for the consequences of his actions. He explained that he began using drugs and alcohol in 1972 to escape his problems, but, at the time, he "didn't see it that way." He said that as a child, he had an inability to cope with feelings of rejection and abandonment. Further, he spoke of his own victimization when he was bullied.

The Board noted that although Mr. Rodriguez completed the Sex Offender Treatment Program, he had some difficulties during the process. When Board Members questioned him about the governing offense, Mr. Rodriguez stated that he was drinking and "sought to offend." When he saw the woman, he followed her. After the sexual assault, he admitted that he smoked a cigarette and took her pants so that he could buy some time. Mr. Rodriguez acknowledged that the victim was injured from the broken bottle he used during the attack. When Board Members questioned Mr. Rodriguez as to his convictions for sexual offenses in California, he described his victims as adult females. Having served 33 years of his sentence, Mr. Rodriguez claims that he can recognize what happens to him in the moment leading to an offense.

Mr. Rodriguez admitted that while on parole in California, he used a different name. As well, he never disclosed that he was on the run for a rape charge in Massachusetts. Mr. Rodriguez stated that his parole officer discovered the Massachusetts charges through fingerprints. He explained that at the time, he was "addicted to some type of a high." Mr. Rodriguez told the Board that he did not offend every time that he was under the influence of drugs or alcohol. Each time that he committed an offense, however, he admitted to being under the influence. Mr. Rodriguez denied obtaining any citations for drug or alcohol use during his incarceration, stating that he attends Alcoholics Anonymous/Narcotics Anonymous. Currently, he works in the clothing shop and practices Buddhism.

The Board considered oral testimony in support of parole from Mr. Rodriguez's sister-in-law and brother. The Board also considered testimony and an evaluation from Dr. Joseph

Plaud. The Board considered oral testimony in opposition to parole from Norfolk County Assistant District Attorney Marguerite Grant.

### III. DECISION

Mr. Rodriguez has a history of sexual assault cases. Most notably, he committed this brutal rape of a stranger and then committed two serious sexual assaults while on bail. He has completed SOTP (Sex Offender Treatment Program), but only after several failures over the decades. He has made progress in his rehabilitation, but has yet to demonstrate a level of rehabilitative progress that would make his release compatible with the welfare of society.

The applicable standard used by the Board to assess a candidate for parole is: "Parole Board Members shall only grant a parole permit if they are of the opinion that there is a reasonable probability that, if such offender is released, the offender will live and remain at liberty without violating the law and that release is not incompatible with the welfare of society." 120 C.M.R. 300.04. In the context of an offender convicted of first or second degree murder, who was a juvenile at the time the offense was committed, the Board takes into consideration the attributes of youth that distinguish juvenile homicide offenders from similarly situated adult offenders. Consideration of these factors ensures that the parole candidate, who was a juvenile at the time they committed murder, has "a real chance to demonstrate maturity and rehabilitation." *Diatchenko v. District Attorney for the Suffolk District*, 471 Mass. 12, 30 (2015); See also *Commonwealth v. Okoro*, 471 Mass. 51 (2015).

The factors considered by the Board include the offender's "lack of maturity and an underdeveloped sense of responsibility, leading to recklessness, impulsivity, and heedless risk-taking; vulnerability to negative influences and outside pressures, including from their family and peers; limited control over their own environment; lack of the ability to extricate themselves from horrific, crime-producing settings; and unique capacity to change as they grow older." *Id.* As noted in this matter, Mr. Rodriguez is a juvenile offender serving a life sentence for rape. The Board has considered a risk and needs assessment, and whether risk reduction programs could effectively minimize Mr. Rodriguez's risk of recidivism. After applying this standard to the circumstances of Mr. Rodriguez's case, the Board is of the opinion that Jose Rodriguez is not yet rehabilitated, and his release is not compatible with the welfare of society. Mr. Rodriguez, therefore, does not merit parole at this time.

Mr. Rodriguez's next appearance before the Board will take place in five years from the date of this hearing. During the interim, the Board encourages Mr. Rodriguez to continue working towards his full rehabilitation.

*I certify that this is the decision and reasons of the Massachusetts Parole Board regarding the above referenced hearing. Pursuant to G.L. c. 127, § 130, I further certify that all voting Board Members have reviewed the applicant's entire criminal record. This signature does not indicate authorship of the decision.*

  
Pamela Murphy, General Counsel

  
Date