

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

SUFFOLK COUNTY

NO. SJC-12482

JEFFREY ROBERIO

V.

PAUL TRESELER

REPLY BRIEF FOR THE APPELLANT

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ARGUMENT

I.

**The presumption against retroactivity
requires judgment in favor of Roberio.**

The parties agree that G.L. c.127, §133A, as amended by St. 1996, c.43 (the 1996 amendment), was retroactively applied in this case. PB Br. 17-18. Undersigned counsel confesses that he had heretofore assumed, without considering the matter, that the 1996 amendment was intended to apply retroactively. This assumption was mistaken. "Absent clear language to the contrary it is presumed that legislation is not intended to operate retroactively." Commonwealth v. Fuller, 421 Mass. 400, 407-408 (1995) (emphasis supplied). "The presumption against the retroactive application of new laws is an essential thread in the mantle of protection that the law affords the individual citizen, . . . is deeply rooted in our jurisprudence, and embodies a legal doctrine centuries older than our Republic." Lynce v. Mathis, 519 U.S. 433, 439-440 (1997) (citations omitted). See Landgraf v. USI Film Products, 511 U.S. 244, 272 (1994) ("[P]rospectivity remains the appropriate default rule").

Nothing in the language of the 1996 amendment suggests that it was intended to operate retroactively.

Roberio is not aware of any legislative history that rebuts the presumption. However, when §133A was amended in 1965 to make lifers eligible for parole after serving fifteen years (instead of twenty years), the Legislature explicitly provided that the change was to "apply to prisoners sentenced before as well as after the effective date of this act." St. 1965, c.766, §3 (Supp. Add. 2).^{1/} The Legislature thus obviously knows how to make an amendment to §133A retroactive when it intends to do so.

This Court "tread[s] lightly" before applying a law implicating ex post facto concerns to conduct completed before that law's enactment. Commonwealth v. Davis, 380 Mass. 1, 16 (1980) (Kaplan, J.). See Commonwealth v. Fuller, 421 Mass. at 408 (recognizing Court's "duty to construe statutes so as to avoid . . . constitutional difficulties, if reasonable principles of interpretation permit") (citation omitted). See also Landgraf v. USI Film Products, 511 U.S. at 272-273 ("Requiring clear intent assures that [the Legislature] itself has affirmatively considered the potential unfairness of retroactive application and determined that it is an acceptable price to pay for the

^{1/}The supplemental addendum is cited by page number as "(Supp. Add. __") and is reproduced, post.

countervailing benefits").

In the absence of any clearly expressed intent to the contrary, the 1996 amendment works only prospectively. Therefore, it does not apply to this case, in which the governing offense predates the effective date of the legislation. See and compare Stewart v. Chairman of Massachusetts Parole Bd., 35 Mass. App. Ct. 843, 845-847 (1994) (holding that 1982 amendment to §133A requiring that victims be given notice of parole hearing was "merely procedural" and therefore could be applied retroactively even though enacting legislation did not expressly so provide); Commonwealth v. Barger, 402 Mass. 589, 594 (1988) (rejecting ex post facto challenge to retroactive application of law extending statute of limitations on grounds that such legislation is "remedial and procedural, not substantive").^{2/}

* * *

Counsel for Roberio acknowledges that this claim could and should have been raised below. The Court should nonetheless reach the issue because it is

^{2/}Laws decreasing the frequency of parole hearings are unquestionably "substantive." See California v. Morales, 514 U.S. 499, 508-513 (1995) (resolving whether retroactive application of such a law was constitutional while noting, see id. at 508, that ex post facto prohibition does not extend to "legislative adjustments to parole . . . procedures").

dispositive, involves a pure question of law, implicates fundamental rights, and will doubtless be raised in another case even if deemed waived here. See Hoffer v. Commissioner of Correction, 412 Mass. 450, 457 (1992) ("Where injustice might otherwise result, an appellate court properly may consider questions of law which were neither argued nor passed upon in a court or agency below"), quoting McLeod's Case, 389 Mass. 431, 434 (1983). See also Hormel v. Helvering, 312 U.S. 552, 557 (1941) ("Rules of practice and procedure are devised to promote the ends of justice, not to defeat them").

II.

Consistent with its long-standing practice, the parole board summarily denied Roberio's petition for an early review hearing, even though the petition demonstrated that Roberio was now suitable for release by virtue of having accomplished the tasks mandated by the board when it denied parole. The five-year setback imposed in this case thus creates the requisite risk of increased punishment "as applied."

The parole board argues that Roberio has no viable "as applied" ex post facto claim because he supposedly did not seek an early review hearing by petitioning for reconsideration pursuant to 120 Code Mass. Regs. §304.03. PB Br. 35-39. The premise of the board's argument is incorrect. Roberio in fact submitted a

"Petition for Reconsideration" to the board on March 16, 2018 (Supp. Add. 3-29). The petition reminded the board that it had denied parole based on its conclusion that Roberio had spent his life in prison "working and getting 'comfortable' rather than aggressively pursuing rehabilitative programming to address his issues of substance abuse, anger, and violence" (Supp. Add. 4) (quoting Record of Decision). The petition further noted that the board had made clear to Roberio that, if he hoped to be paroled, he needed to engage in specific programming, including "the Correctional Recovery Academy, Jericho Circle and other restorative justice programming, and violence reduction programming" (Supp. Add. 4). The petition informed the board that, following its decision denying parole, Roberio was transferred to M.C.I. Norfolk so that he could engage in the programming available there (Supp. Add. 4). See Deal v. Commissioner of Correction, 478 Mass. 332, 340 (2017) (Deal II) (noting that Roberio was recommended for transfer to "pursue specific programming").^{3/} In

^{3/}In Deal II, the Court held that the Department of Correction (DOC) denied Roberio's requests for transfer to a minimum security facility by unlawfully utilizing "discretionary overrides" to nullify Roberio's decades of positive institutional adjustment as reflected in his objectively qualifying classification score. 478 Mass. at 341. On November 11, 2018, the DOC finally granted Roberio's transfer request:

(FOOTNOTE CONTINUED ON NEXT PAGE)

his petition, Roberio described in self-reflective detail how the intensive programming he had engaged in

^{3/}(FOOTNOTE CONTINUED FROM PREVIOUS PAGE)

Concur with majority vote for placement at minimum security. Subject is suitable based upon his sustained positive adjustment reflected by the absence of any major discipline over a lengthy period, program participation which includes completion of CRA [Correctional Recovery Academy], Violence Reduction, Criminal Thinking, Jericho Circle, Emotional Awareness, Alternatives to Violence, Path of Freedom, several Cognitive Skills workshops, several Restorative Justice programs, and his strong vocational skills. Inmate Roberio has been responsive to all program recommendations and is currently a mentor in GSP [Graduate Support Personnel] and is actively enrolled in GMP [Graduate Maintenance Program] and Prison Fellowship. The recording [of the classification hearing] indicates that inmate Roberio has gained significant insight into the causal factors of his crime and is actively working to maintain his sobriety. He accepts responsibility for his crime and his past institutional conduct and articulates his future re-entry plans to include an interest in the Automotive Program. Placement in lower security will afford inmate Roberio an additional opportunity to further his rehabilitative progress and utilize his acquired pro-social skills in a less restrictive setting. Appeal reviewed and modified [based on] suitability and availability of requested programs. Inmate is advised to remain engaged in GMP at Pondville Correctional Center (Supp. Add. 37).

As noted, DOC's transfer decision was issued after the Superior Court ruled below. It should nonetheless be considered now insofar as it rebuts the parole board's claim that there can be no ex post facto violation in this case because Roberio cannot show that he might be found suitable for parole in less than five years.

following his transfer to M.C.I. Norfolk (which included but was not limited to the particular programs recommended by the board when it denied parole, see n.3, ante, at 5) had deepened his understanding of the causes and consequences of his offense (Supp. Add. 6-12). Accordingly, the petition requested an early review hearing on the grounds, *inter alia*, that "[t]he tasks mandated by the parole hearing panel have been accomplished" and that the programming Roberio had completed had brought about "a material change in personal or other circumstances" (Supp. Add. 3), quoting 120 Code Mass. Regs. §§304.03(1)(a) and (b).

On April 23, 2018, consistent with its historical practice, the parole board summarily denied Roberio's petition for reconsideration: "Request denied. Subject will be seen at scheduled review hearing" (Supp. Add. 31).

The petition for reconsideration and the board's denial of it demonstrate the requisite risk that the five-year setback applied in this case will extend Roberio's life behind bars.^{4/}

^{4/}Roberio's petition for reconsideration was submitted to and denied by the parole board after the Superior Court ruled below. The Court should nonetheless consider this evidence, where the parole board's argument on appeal is based on the mistaken premise that an early review hearing was not sought.

But Roberio would be entitled to "as applied"
(FOOTNOTE CONTINUED ON NEXT PAGE)

III.

The Kaban and Garin affidavits are properly before the Court and are entitled to be viewed in the light most favorable to Roberio.

The parole board asks the Court to ignore the Kaban and Garin affidavits because they are supposedly "outside the scope of a claim that should have been brought under the certiorari statute, G.L. c.249, §4, not as a petition for declaratory relief." PB Br. 40-41. The argument is without merit.

As an initial matter, an action for declaratory relief G.L. c.231A is the appropriate vehicle to bring a claim that Roberio could not be subjected to the 1996 amendment without violating ex post facto principles. Clay v. Massachusetts Parole Board, 475 Mass. 133, 135 (2016). See Goe v. Commissioner of Probation, 473 Mass.

^{4/}(FOOTNOTE CONTINUED FROM PREVIOUS PAGE)
relief even if he had not sought an early review hearing. Attorney Garin's affidavit states in part: "[I]n my thirty-plus years of experience, I have no knowledge of the board ever allowing a motion for reconsideration . . . [or] act[ing] on its own" to expedite the review hearing of a lifer given a five-year setback (R. 12). This rebutted any presumption that five-year setbacks are not set in stone. See Garner v. Jones, 529 U.S. 244, 257 (2000) (remanding "as applied" claim based on Georgia's representation that early review hearings were available, "[a]bsent any demonstration to the contrary") (emphasis supplied). Compare Commonwealth v. Brown, 466 Mass. 676, 689 n.10 (2013) (mere possibility of retroactive extension of time before prisoner may be considered for parole sufficient to violate ex post facto, whether or not extension actually applied).

815, 828 (2016); Gangi v. Massachusetts Parole Board, 468 Mass. 323, 324 (2014); Doe v. Police Comm'r of Boston, 460 Mass. 342, 343 (2011).^{5/}

The Kaban affidavit was presented to support the claim that, unlike the plaintiffs in Morales, Roberio is a member of a class of prisoners for whom the possibility of parole is not "speculative and attenuated." California v. Morales, 514 U.S. 499, 514 (1995). The Garin affidavit was presented to support the claim that, unlike Georgia's parole board -- which was "presume[d]" by the Supreme Court to have exercised its discretion to hold early review hearings based on changed circumstances in a responsible manner, Garner v. Jones, 529 U.S. 244, 256 (2000) -- the discretion that Massachusetts' parole board has to hold such hearings (either on its own motion or on motion of a prisoner) is meaningless because it is never exercised

^{5/}The parole board relies on Crowell v. Massachusetts Parole Board, 477 Mass. 106 (2017), in support of its position that Roberio's ex post facto claim is cognizable only as a petition in the nature of certiorari under G.L. c.249, §4, and not as an action for declaratory relief under G.L. c.231A. PB Br. 11, 40. The board's reliance on Crowell is misplaced. Unlike the inmate in Crowell, see 477 Mass. at 109, Roberio does not claim that the decision of the parole board to deny parole was unsupported by substantial evidence. Roberio seeks a judicial declaration of his rights, not a new parole hearing.

(R. 12 [Garin Aff. ¶¶15-16]).^{6/} Contrary to the parole board's contention, the matters to which the Kaban and Garin affidavits speak are hardly "outside the scope" of Roberio's claim that this case is distinguishable from Morales and Garner.

Furthermore, the Kaban and Garin affidavits were left "uncontradicted" below, as the Superior Court noted in denying Roberio's motion for summary judgment (R. 22). Given this posture, the Court now "look[s] at the materials available to the judge for summary judgment purposes in the light most favorable to [Roberio] to see whether, as a matter of law, they support [his ex post facto claim]." Yakubowicz v. Paramount Pictures Corp., 404 Mass. 624, 626 (1989). The affidavits plainly do support that claim, for all of the reasons stated in Roberio's brief in chief.

^{6/}Roberio submitted the Garin affidavit after the parole board opposed his discovery request for records showing the likelihood that a lifer given a five-year setback would receive a hearing in less than five years, which information, according to the parole board, was not relevant and either did not exist or would be "extremely burdensome" for the board to put together. Roberio v. Treseler, SJ-2016-0235 (Respondent's Opposition to Petition for Relief Pursuant to G.L. c.231A and G.L. c.249, §4 at 15-16) (paper no. 4) (July 7, 2016). Compare Garner v. Jones, 529 U.S. at 264 (Souter, J., dissenting) (concluding that summary judgment in favor of inmate appropriate where Georgia "resisted discovery" of information as to whether parole board ever exercised its discretion to grant early review hearings).

IV.

The statistics proffered by the parole board confirm that juvenile lifers' chances of parole are not speculative. Such numbers should be given little weight under Article 24 in any event, because they fluctuate with the political winds.

Having left the material submitted in support of summary judgment uncontested below, the parole board instead proffers statistics purporting to show that overall parole rates for lifers are "low." PB Br. 30. The characterization is belied by the following footnote which immediately precedes it:

The Parole Board's 2014 Annual Statistics Report was available online before the redesign of the Commonwealth's website, and it **indicates a 41% parole rate for all lifers** for 2014. However, **that number** is an aberration from the norm, because it **includes 7 cases in which juvenile first-degree murder offenders were granted parole at their initial hearings immediately post-Diatchenko I.**

PB Br. 30 n.9 (emphasis supplied).

The basis for the parole board's assertion that these numbers are "an aberration" is unclear. In any event, the footnote should be taken as tacit recognition that juvenile lifers have better odds of parole than adult lifers, for which reason the cohort of which Roberio is a member should be looked at separately for purposes of assessing the risk that reducing the frequency of parole hearings will result

in more time behind bars.

More fundamentally, the board's statistics underscore the obvious: parole rates -- including rates at which the board hands out setbacks of more than three years -- fluctuate from year to year. They do so not because there is something weirdly mercurial about prisoners' suitability for release but, rather, because parole is "largely a political beast." Laura Cohen, *Freedom's Road: Youth, Parole, and the Promise of Miller v. Alabama and Graham v. Florida*, 35 *Cardozo L. Rev.* 1031, 1038 (2014) (concluding, see *id.* at 1087, that *Miller* "will amount to "little more than a pyrrhic victory in the absence of substantial changes in . . . parole decision-making"). Since parole rates are affected by factors unrelated to suitability for release, legitimizing the retroactive application of a law decreasing the frequency of parole hearings on the theory that the law supposedly burdens only those whose prospects for parole are "speculative" is "not only unpersuasive, but actually perverse." *Morales*, 514 U.S. at 526 (Stevens, J., dissenting). Accordingly, like the South Carolina Supreme Court, this Court should reject the Supreme Court's shapeless and unprincipled approach and rule as a matter of state constitutional law that "any" retroactive application of a law decreasing the frequency of parole review hearings "constitutes an ex post facto violation." *Jernigan v.*

State, 340 S.C. 256, 265 & n.5 (2000) (rejecting Morales and Garner on grounds that South Carolina's constitution provides "more expansive" protection against ex post facto punishment than federal constitution).^{2/}

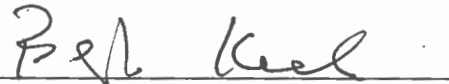
CONCLUSION

For these additional reasons, the Court should grant the requested relief.

Respectfully submitted,

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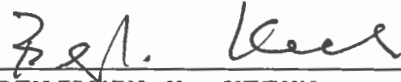
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^{2/}The statute at issue in Jernigan reduced the frequency of parole review hearings from one year to two years, with no provision permitting hearings in less than two years. Id. at 264 n.5. Because Massachusetts' parole board does not exercise its discretion to hold early review hearings, the situation here is functionally identical for any lifer given more than a three-year setback.

CERTIFICATE OF COMPLIANCE

I certify that this reply brief complies with the rules of court that pertain to the filing of such briefs.



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until he shall have served one third of such minimum sentence, but in any event not less than one year, or, if he has two or more sentences to be served otherwise than concurrently, one third of the aggregate of the minimum terms of such several sentences, but in any event not less than one year for each such sentence; (c) that no prisoner held under a sentence containing a minimum sentence for a crime committed while on parole shall receive a parole permit until he shall have served two thirds of such minimum sentence, or, if he has two or more sentences to be served otherwise than concurrently for offenses committed while on parole, two thirds of the aggregate of the minimum terms of such several sentences, but in any event not less than two years for each such sentence; provided, further, that the portion of a minimum sentence or sentences which a prisoner is required to serve before being eligible for a parole permit shall, in each of the above instances, be reduced by the number of days allowed for blood donations as provided in section one hundred and twenty-nine A.

SECTION 2. The provisions of section one hundred and thirty-three of chapter one hundred and twenty-seven of the General Laws, as amended by section one of this act, shall not apply in the case of any person sentenced prior to the effective date of this act if application of the provisions thereof would have the effect of making his punishment more severe.

Approved November 17, 1965.

Chap. 765. AN ACT PROVIDING THAT PAROLE OFFICERS MAY ISSUE WARRANTS FOR THE TEMPORARY CUSTODY OF PAROLEES.

Be it enacted, etc., as follows:

Chapter 127 of the General Laws is hereby amended by inserting after section 149 the following section: —

Section 149A. If a parole officer believes that a parolee has lapsed or is about to lapse into criminal ways or has associated or is about to associate with criminal company or that he has violated the conditions of his parole, the parole officer may, with the consent of a parole supervisor or other superior officer, issue a warrant for the temporary custody of said parolee for a period not longer than five days, during which period he shall notify the director of parole service or a parole supervisor of his action and submit a complete report for final decision by the parole board. The detention of any such parolee may be further regulated by the rules of said board. Such warrant shall constitute sufficient authority to a parole officer and to the master, jailer, or any other person in charge of any jail, house of correction, lockup, or place of detention to whom it is exhibited to hold in temporary custody the parolee retaken pursuant thereto.

Approved November 22, 1965.

Chap. 766. AN ACT PROVIDING THAT CERTAIN PRISONERS SERVING A LIFE SENTENCE SHALL BE ELIGIBLE FOR PAROLE IN FIFTEEN YEARS INSTEAD OF TWENTY.

Be it enacted, etc., as follows:

SECTION 1. Chapter 127 of the General Laws is hereby amended by striking out section 133A, as amended by section 9 of chapter 731 of the

acts of 1956, and inserting in place thereof the following section:—
Section 133A. Every prisoner who is serving a sentence for life in a correctional institution of the commonwealth, except prisoners confined to the hospital at the Massachusetts Correctional Institution, Bridgewater, and except prisoners serving a life sentence for murder in the first degree, shall be eligible for parole, and the parole board shall, within sixty days before the expiration of fifteen years of such sentence, conduct a public hearing before the full membership.

Said board shall at least thirty days before such hearing notify in writing the attorney general, the district attorney in whose district sentence was imposed and the chief of police or head of the organized police department of the municipality in which the crime was committed, and said officials may appear in person or make written recommendations to the board, but failure of any or all of said officials to appear or make recommendations shall not arrest the paroling procedure.

After such hearing the parole board may, by a vote of four-fifths of all its members, grant to such prisoner a parole permit to be at liberty upon such terms and conditions as it may prescribe for the unexpired term of his sentence. If such permit is not granted, the parole board shall, at least once in each ensuing three year period, consider carefully and thoroughly the merits of each such case on the question of releasing such prisoner on parole, and may, by a vote of four-fifths of all its members, grant such parole permit.

Such terms and conditions may be revised, altered and amended, and may be revoked, by the parole board at any time. The violation by the holder of such permit or any of its terms or conditions, or of any law of the commonwealth, may render such permit void, and thereupon, or if such permit has been revoked, the parole board may order his arrest and his return to prison, in accordance with the provisions of section one hundred and forty-nine.

SECTION 2. Section one hundred and fifty-four A of said chapter one hundred and twenty-seven is hereby repealed.

SECTION 3. The provisions of section one hundred and thirty-three A of chapter one hundred and twenty-seven of the General Laws, inserted by section one of this act, shall apply to prisoners sentenced before as well as after the effective date of this act. *Approved November 22, 1965.*

Chap. 767. AN ACT PROVIDING FOR THE TEMPORARY MAINTENANCE OF THE RUTLAND HOSPITAL PROPERTY.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is, in part, to provide forthwith funds for the maintenance of the Rutland Hospital, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

SECTION 1. Funds which from time to time have been or shall be made available to the Rutland Hospital or to the Rutland Heights Hospital are hereby made available for the purposes of the maintenance of the Rutland Hospital until said Rutland Hospital is disposed of; provided, that so much of said funds as are not required for such mainte-

COMMONWEALTH OF MASSACHUSETTS

MASSACHUSETTS PAROLE BOARD

IN THE MATTER OF JEFFREY ROBERIO, W43885

PETITION FOR RECONSIDERATION

Jeffrey Roberio petitions for reconsideration of the Parole Board's decision, dated November 4, 2015, denying his application for parole and setting a five-year review date. Roberio submits that (1) "[t]he tasks mandated by the parole hearing panel have been accomplished," 120 Code Mass. Regs. §304.03(1)(b), (2) "[t]here is a material change in personal or other circumstances which requires a different decision," 120 Code Mass. Regs. §304.03(1)(a), and (3) "[t]here are compelling reasons why a more lenient decision should be rendered." 120 Code Mass. Regs. §304.03(1)(d). Accordingly, Roberio asks the Board for an early review hearing so he may demonstrate his current suitability for release on parole.

Background

Roberio is a juvenile lifer who has been incarcerated since 1986 for first degree murder. He became parole-eligible in 2014 by virtue of Diatchenko v. District Attorney for the Suffolk Dist., 466 Mass. 655

(2013), and had his first parole hearing on June 25, 2015. On November 4, 2015, the Board denied parole, with a review in five years from the date of the hearing.

A. The tasks mandated by the Board have been accomplished.

In denying parole, the Board emphasized that Roberio had spent his years behind bars "working and getting 'comfortable' rather than aggressively pursuing rehabilitative programming to address his issues of substance abuse, anger, and violence." Record of Decision at 6. Accordingly, the Board urged Roberio to engage in rehabilitative programming which addressed these issues. Specifically, Board members stated that Roberio should enroll in and complete the Correctional Recovery Academy, Jericho Circle and other restorative justice programming, and violence reduction programming. Transcript of Hearing at 38, 43, 47, 57-58, 75, 78.

Since his hearing in June 2015, Roberio has moved from Old Colony Correctional Center (OCCC), where he had been incarcerated since 1989, to M.C.I. Norfolk, where he has completed the following programming.

- Correctional Recovery Academy (six month program) (A. 9, 13)
- Correctional Recovery Academy Graduate Support Member of the Month ("For going

above and beyond and helping out the community when no one is looking" (A. 12, 15)

- The Jericho Circle Project Men's Integrity Circle (seven weeks) (A. 7, 14)
- The Jericho Circle Project Intensive Training (two days) (A. 11)
- Restorative Justice Retreat (A. 14)
- Alternatives to Violence Project Basic Course in Nonviolent Conflict Resolution (A. 5, 14)
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- Alternatives to Violence Project Training for Facilitators Course in Nonviolent Conflict Resolution (A. 8, 13)
- Alternatives to Violence Project Apprentice Facilitator in an Alternatives to Violence Project Workshop (A. 10, 13)
- Emotional Awareness/Emotional Healing (twelve sessions) (A. 6, 14)
- Spectrum Health Systems, Violence Reduction (eight weeks) (A. 2, 13)
- Anger Management Treatment Foundations (A. 1, 13)
- Toastmasters International, Speaking Without Fear (Facilitator) (A. 3, 14)
- Toastmasters International, Competent Communicator ("For exceptional

achievements in the Toastmasters International Communication Program") (A. 4, 14).^{1/}

B. There is a material change in personal or other circumstances which requires a different decision.

Roberio submits the following personal statement in support of his petition for an early review hearing:

To the Parole Board,

Countless times, I've re-read the Parole Board's decision denying parole. It took some time to sink in but I realized the Board was right. I had a lot of work to do and needed to get busy.

The Board said I had a lack of programming and a lack of insight into my actions in taking Mr. Jennings' life. At first I didn't want to believe that was true, but it was. I was at OCCC for 25 years knowing I was going to die in prison before I found out I would see parole one day. When I found out, I was excited but scared. When the Board denied parole, they said I was too comfortable at OCCC. I didn't want to believe that was true either. It was suggested I move to another institution where I could get the programming I needed. It was suggested I leave the only place I knew for 25 years, a place where my family was minutes away from me, that I leave my job, give up my single cell, and go someplace that was way out of my comfort zone. I knew it

^{1/}Roberio was transferred from OCCC to M.C.I. Norfolk in November 2016. He completed most of the above-identified programming after his transfer.

-5-

had to be done but it was scary.

On November 29, 2016, I left OCCC and came to M.C.I. Norfolk. I knew a little about the place, but what I was totally not prepared for was living in a fifty-man dorm. The transition from living by yourself for all those years and then in a fifty-man dorm with guys half your age was almost impossible. It challenged everything I thought I knew about prison. The drug use was nothing like I ever saw in prison before. Everyone was smoking something called K2. My first night I had to leave and go for a walk, the smell and smoke was too much for me to take. At OCCC, I had my job in the print shop as a mechanic and I also taught guys about safety on the printing presses. Coming to Norfolk, I had nothing, no job, no responsibilities. I felt lost. No one here knew me to get a job. I thought with the knowledge I have it would be easy getting into industries, and also recovery groups, AA and NA. But coming here, I could not get into a meeting for thirty days, it was one of the hardest tests of my recovery. I had to put the steps of recovery into action on myself and found other guys that are living a clean and sober life. I know what is at risk for me, using is not an option no matter how hard things get.

During those times when I first got to Norfolk, one thought that stayed in my head was when the Board told me I needed to advocate more for myself to get into programming. I walked around Norfolk for weeks meeting guys that run the groups, introducing myself to guys who facilitate the programs, and once I started to talk about what I needed for programming doors started to open.

One of the programs I got into early on was Emotional

Awareness/Emotional Healing, a twelve week program that dealt with the hurt inner child, and identifying the feelings associated with trauma. What I learned from that group is to put words to the feelings that I had carried from my childhood, like low self-esteem and hurt. Learning the emotional language helped me to process my emotional issues. After reading the book, "Houses of Healing" I learned how to deal with anger and resentment, having awareness of my inner self. As a kid, I always struggled to fit in. Going to school every day was hard, being in resource rooms (A.K.A. "retard rooms"). The name calling, the teasing, and as years moved on I started to act out more by hanging with negative influences and looking for attention in negative ways.

I had to reflect on my relationship with my Dad. At home I never felt loved. He always had a pissy attitude, never anything good to say. As I got older we became more distant and argumentative with everything I did or didn't do. I always had a feeling of not being good enough for him, so I learned to push my feelings down so he didn't "give me something I could really cry about."

Emotional Awareness and Houses of Healing has taught me how to deal with and identify fear, sadness, anger, impatience in a prosocial way and that it's alright to show and talk about feelings.

Another program that I've learned so much from is CRA, an addiction treatment and relapse prevention program. As I stated, the drug use here is out of control. I am reminded everyday here what is at risk for me in prison and outside of prison. Since coming to Norfolk, I have been proactive

in engaging in programs and my recovery efforts, and continue to gain insight by staying active in CRA as a Graduate Support Member and as an Alternative to Violence trainer.

Another program that has changed me a lot is Jericho Circle. While in Jericho Circle for 32 weeks I faced a number of issues asking for forgiveness from Mr. Jennings. It was a difficult process and it is something I will always carry with me. I've asked myself countless times, "Do I deserve forgiveness?" I am so sorry for taking Mr. Jennings' life, I will always have to face that fact. How do you ask for forgiveness from someone you hurt beyond repair?

I had to forgive myself first by working on my self-esteem and confidence. I am not that sad lonely kid who acted out of fear and shame. I do take full and total responsibility for my actions the night of July 29, 1986. Yet I am also worthy of forgiveness today. I strive every day to be a better person than I was the day before. I work hard to understand who I am and where I am going. I will always have to live with the reality that I took a man's life, but I don't have to let that define who I am today, or what I am doing towards self-growth.

Jericho Circle helped me face and identify feelings of hurt, shame, sadness, and anger. I learned how these feelings affected me in my daily life. I learned to channel my emotions in a productive way, put words to my feelings, and openly express how I am feeling.

Another part of the Jericho Circle program is learning to trust and learn to sit with vulnerability. As one of

-8-

fifteen men, I had to talk about things my own family didn't know about me. I had to learn to trust another person to help me and not laugh at me, something I have struggled with my whole life. While being active in different programs, I have learned to build on that confidence and trust. I had to stand in as another group member's loved one or victimizer and play that role to the best of my ability. I got a deeper understanding of how fear and shame bottled up have a negative effect on a person that would lead them to withdraw from asking for help. That was something I could personally relate to. Jericho Circle encouraged me to listen to men whose life was altered because they didn't know how to ask for help because of shame, fear, and sadness. I learned my life is no different than any of the other guys who sat in that circle.

I continue to work hard by staying away from all the pitfalls of prison life. I work hard to strive to be a leader by example. Since coming to Norfolk, I have seen how much I have grown. I look around and see myself in the younger kids and I remember acting as they do now. At Norfolk, drugs and alcohol are available every day and gangs still have a strong hold. The younger kids only care about themselves, as I did when I was first incarcerated.

I work hard talking to these young men about living a destructive life. I explain that they are hurting not only themselves, but their loved ones and the community as well. I talk about the losses of loved ones that you will never get to see again and how difficult it is for your family.

I am reminded every day the amount of family members that pass, but it will

never amount to the Jennings family's loss. No one should have to go through the type of pain I caused. I sat in the weekend retreat for restorative justice for two days and listened to victims of murder, sexual crimes, and how they are dealing with the pain and loss of their sons, daughters, mothers, and fathers being gone. They talked about how they go through depression, hurt, anger, and loss of trust. They discussed what it is like to never see a loved one again. After listening to these people, I learned what forgiveness is, look a person in the eyes, and say, I will never forget what you did, but I will not let it destroy me, that is why I forgive you. It was powerful.

I will have to live with my crime for the rest of my life, but now I can have compassion for myself too. I can hold both of these things as true. No matter what life puts in my path, I know there are people who will help me get to where I need to be. From Jericho Circle and facilitated AA recovery meetings, and also the Countdown to Freedom program, I have learned that I am a kind and caring person who likes to help and encourage others, I have integrity and kindness, and whatever I put my mind to I can be successful at. Furthermore, I am determined to work hard and not let my crime define who I can be and who I am.

I don't have any expectations that the Jennings family will forgive me, I still struggle with the guilt and shame for what I did. There are not enough sorrys in the world to ease their pain. If I put myself in the Jennings' shoes, I'm not sure I would be able to forgive.

I am reminded of a quote by Martin Luther King Jr. which says, "He who is devoid of the power to forgive is devoid

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of the power of love." Forgiveness does not mean forgetting or ignoring what has been done. It means that the evil act is no longer a barrier to a relationship with another person and with myself.

I am grateful I get to see parole. Although it is difficult for me to say because I will live with the deep pain I have caused so many people by taking Mr. Jennings' life, what I have learned has helped me understand why I am ready for parole, and that I have the strength and insight to keep working on becoming a better person even when times get tough, so I can live my life as a sober, respectful, kind, and law abiding person.

C. There are compelling reasons why the request for an early review hearing should be granted.

Having received a five-year setback, Roberio is not slated for a parole review hearing until June 2020. Roberio should be granted an early hearing because he has earnestly and actively engaged in and completed the rehabilitative programming recommended by the Board and, as a result, is now suitable for release on parole.

Accordingly, Roberio respectfully petitions for reconsideration and asks that he be provided with a review hearing as soon as practicable, but in any event before June 25, 2018.

-11-

CONCLUSION

For the above-stated reasons, the petition for reconsideration should be granted.

Respectfully submitted

JEFFREY ROBERIO

By his attorneys,

/s/ Dulcinea Goncalves

Dulcinea Goncalves

BBO #072750

/s/ Benjamin H. Keehn

BENJAMIN H. KEEHN

BBO #542006

COMMITTEE FOR PUBLIC COUNSEL SERVICES

Public Defender Division

298 Howard Street, Suite 300

Framingham, MA 01702

(508) 620-0350

bkeehn@publiccounsel.net

Dated: March 16, 2018.

Certificate of Completion

is hereby granted to

Jeffrey Roberto

Old Colony Correctional Center

for completion of the Treatment Foundations

15-15

Date

G. Walker LMHC

Mental Health Professional

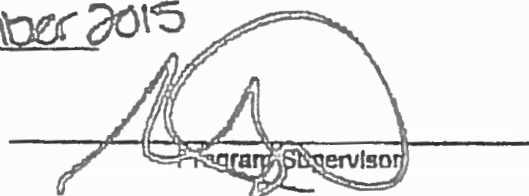
This is to certify that
Jeffrey Roberio

successfully completed the 8-week program

Violence Reduction

On this 24th day of September 2015


Treatment


Program Supervisor

Toastmasters



International

JEFFREY ROBERIO

has completed
the requirements of the Toastmasters
SPEAKING WITHOUT FEAR – FACILITATOR
In recognition thereof
this certificate is awarded

By Second Chances Toastmasters
Club Name

October 31, 2016
Date

Merrill Kelley

Facility Staff

Patricia M. Lima

Program Volunteer

Competent Communicator

recognition is given to

Jeff Roberio

for exceptional achievements in the

Toastmasters International Communication Program

January 18, 2017



A handwritten signature in black ink, appearing to read "Daniel Rex".

Daniel Rex
Chief Executive Officer

Certificate

Workshops for Training in Nonviolence
Alternatives to Violence Project / Massachusetts

Awards this Certificate to

Jeff Roberto

Who has satisfactorily completed the Basic Course in
Nonviolent Conflict Resolution.

Ed Reto

Facilitator

March 12, 2017

Date

Certificate of Achievement

Awarded to

Jeffrey Robert

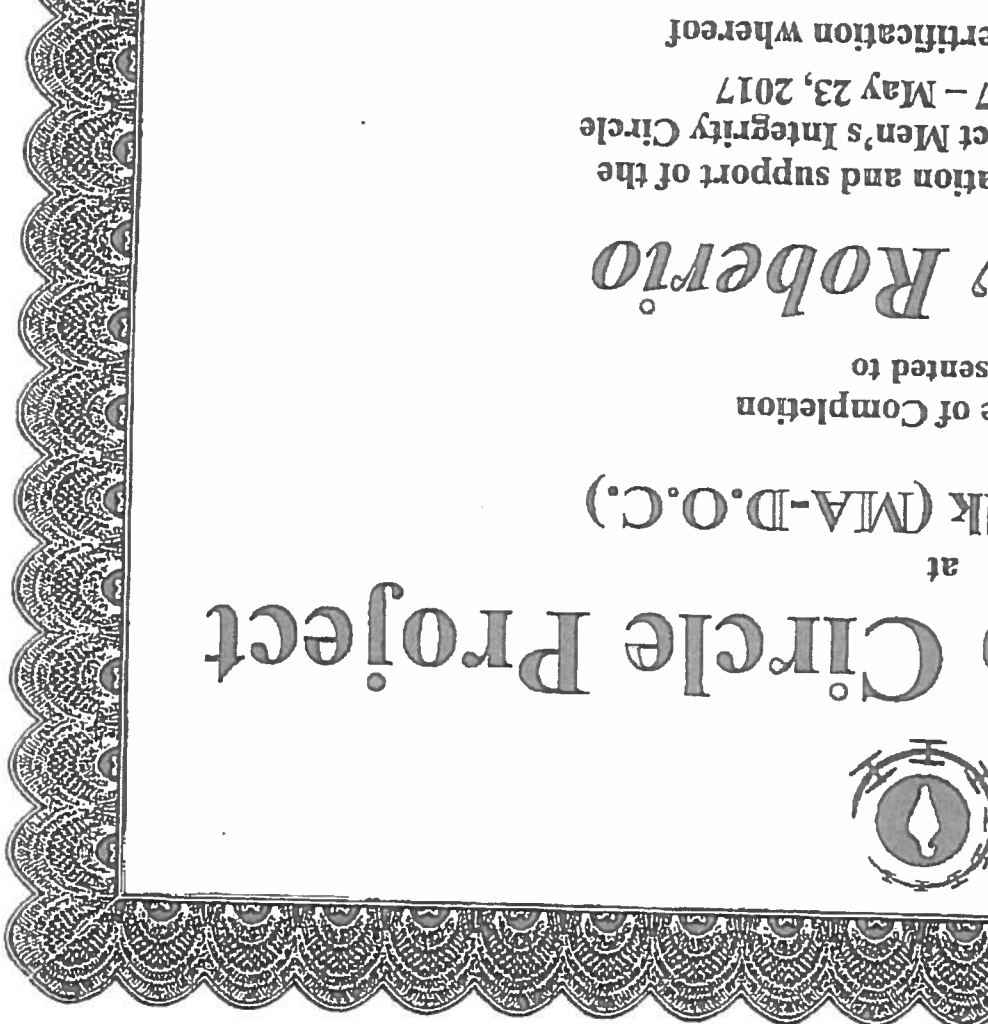
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Emotional Awareness/Emotional Healing

a twelve session program

Patricia Carron Ros Wilms
Facilitator

May 23, 2017
Date



Circle Project

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Certificate

Workshops for Training in Nonviolence
Alternatives to Violence Project / New England

Awards this Certificate to

Jeffrey Aoberio

Who has satisfactorily completed The Training for Facilitators Course in
Nonviolent Conflict Resolution

Mike Kutter Ed Peter

Facilitators.

7/11/17

Date

This certificate is awarded to

Jeffrey Roberio

Successfully completing the *Correctional Recovery Academy*

on Date: 2/21/17 Completion Date: 9/1/17

Our lives matter, that we can be greater than our circumstances, that we can return good for harm, we therefore
commit ourselves to learning. Our graduation is a true commencement - let us begin anew.

[Signature]
Director of Treatment

[Signature]
CRA Supervisor

-Supp. Add. 22-
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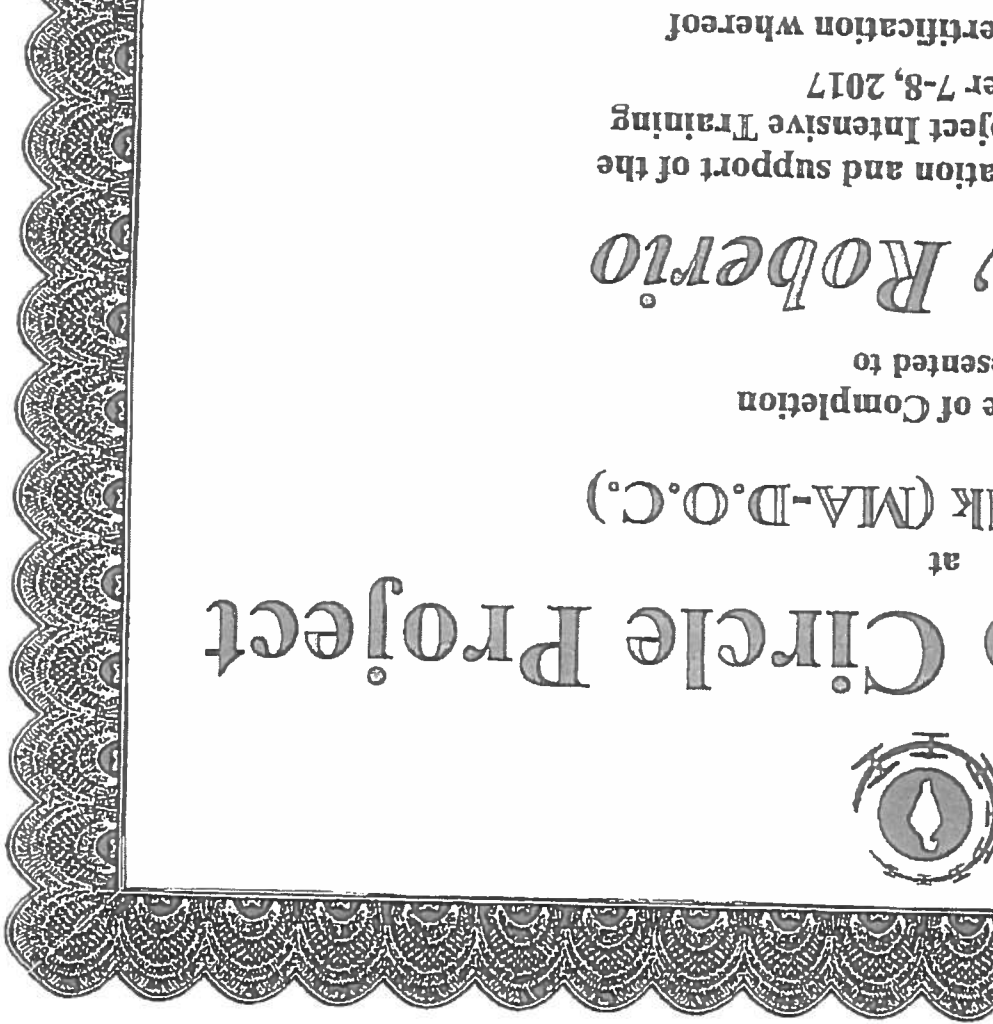
e Project / New England

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Ray Joffe

as a Facilitator in an
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Circle Project



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month of December 2017

Authorized by:

CRA Staff

Assessment Date Substance Abuse Criminal Thinking Anger Cognitive Behavioral Vocational/ Education MA Sex Offender

Program Name	Recommended Date	Outcome	Outcome Date	Transferred Date to Inst
Program Participation	20170320	Completed Program	20150505	
Program Participation	20170322	Completed Program	20100701	
Program Participation	20170322	Completed Program	20090601	
Program Participation	20170322	Completed Program	20090101	
Program Participation	20170322	Completed Program	20080701	
Program Participation	20170322	Completed Program	20080301	
Program Participation	20170322	Completed Program	20071027	
Program Participation	20170322	Completed Program	20071001	
Program Participation	20170322	Completed Program	20070901	
*GED	20111221	*Completed Program with earned GED	20050418	
Violence Reduction-CRA	20170710	Completed Program	20170901	
Violence Reduction-Male	20140616	Completed Program	20150924	
General Population Maintenance Program	20160712	Accepted	20160712	
Criminal Thinking-CRA	20170710	Completed Program	20170901	
Criminal Thinking	20160121	Completed Program	20160525	
Altern to Viol Trainers	20170717	Completed Program	20170716	

Jericho Circle	20170601	Completed Program	20170516
Altern to Viol Advance	20170508	Completed Program	20170508
Program Participation	20170320	Completed Program	20170320
Altern to Viol Basic	20161202	Completed Program	20170312
Cog. Skills- Active Listening	20161202	Accepted	20161205
Countdown to Freedom Program	20161202	Accepted	20161205
Path of Freedom	20161202	Accepted	20161205
Program Participation	20170320	Completed Program	20161031
Altern to Viol Basic	20170320	Completed Program	20160717
Program Participation	20170320	Completed Program	20160530
Toastmasters	20170320	Completed Program	20160307
Health Awareness	20140609	Completed Program	20160114
Anger Management	20170320	Completed Program	20151224
Toastmasters	20170320	Completed Program	20151123
Program Participation	20170320	Completed Program	20150915
Toastmasters	20170320	Completed Program	20150615
Toastmasters	20170320	Completed Program	20150612
Toastmasters	20170320	Completed Program	20150530
Toastmasters	20170320	Completed Program	20150316
Motivational Enhancement Program	20140609	Accepted	20140609
Toastmasters	20170322	Completed Program	20140523
Health Awareness	20111005	Inmate Declined	20120227
Motivational Enhancement Program	20111102	Inmate Declined	20111227

Graduate Maintenance Program	20170831		
CRA	20161202	Completed Program	20170901
Substance Abuse Education	20160517	Accepted	20160613
CRA	20160204	Inmate Declined	20160224
TCUD Assessment	20160225	Completed Program	20150923
CRA	20150519	Program Not Available	20150519
Substance Abuse Education	20140616	Program Not Available	20140717

-Supp. Add. 28-
-A. 15-

ROBERIO JEFFREY S

Date

Date

CERTIFICATE OF SERVICE

I certify that on this date I served the foregoing Petition for Reconsideration, with addendum, by mailing a copy, first class with postage pre-paid, to the offices of:

Gloriann Moroney
General Counsel
Massachusetts Parole Board
12 Mercer Road
Natick, MA 01760

/s/ Benjamin H. Keehn
BENJAMIN H. KEEHN
BBO #542006
COMMITTEE FOR PUBLIC COUNSEL SERVICES
Public Defender Division
298 Howard Street, Suite 300
Framingham, MA 01702
(508) 620-0350
bkeehn@publiccounsel.net

Dated: March 16, 2018.



The Commonwealth of Massachusetts

PAROLE BOARD
Office Vote Request Sheet

PAUL M. TRESELER
Chairman

Michael J. Callahan
Executive Director

TO: Jeffrey S. Roberio Unit 7-2
W43885
MCI-Norfolk

FROM: INSTITUTIONAL PAROLE OFFICE

DATE: 4/11/2018

RE: OFFICE VOTE OUTCOME

TYPE OF REQUEST: Reconsideration Request

ACTION OF THE BOARD:

Date of Vote **04/10/2018**
Final Disposition: **Request Denied**
Reason / Comments: **Request Denied. Subject will be seen at scheduled review hearing.**

cc: Institutional Parole File



The Commonwealth of Massachusetts
Executive Office of Public Safety and Security



PAROLE BOARD

12 Mercer Road
Natick, Massachusetts 01760

Charles D. Baker
Governor

Karyn Polito
Lieutenant Governor

Daniel Bennett
Secretary

Telephone # (508) 650-4500

Facsimile # (508) 650-4599

Paul M. Treseler
Chairman

Michael J. Callahan
Executive Director

RECORD OF DECISION

IN THE MATTER OF

JEFFREY ROBERIO
W43885

TYPE OF HEARING: Reconsideration Request

DATE OF HEARING: Office Vote

DATE OF DECISION: April 10, 2018

PARTICIPATING BOARD MEMBERS: Paul Treseler, Dr. Charlene Bonner, Tonomey Coleman, Sheila Dupre, Tina Hurley, Colette Santa, Lucy Soto-Abbe

DECISION OF THE BOARD: Request denied. Subject will be seen at scheduled review hearing.

- Board Member 1: Concur with Board Member 7.
- Board Member 2: Concur with Board Member 7.
- Board Member 3: Concur with Board Member 7.
- Board Member 4: Request denied. Concur with Board Member 7.
- Board Member 5: Abstain. Not a Board Member at the time of the hearing.
- Board Member 6: Concur with Board Member 7.
- Board Member 7: Request denied. Subject will be seen at scheduled review hearing.

I certify that this is the decision and reasons of the Massachusetts Parole Board regarding the above referenced hearing.

Gloriann Moroney, General Counsel

4/23/18
Date

Classification Report

Name: JEFFREY

Commitment#: W43885

Institution: MCI NORFOLK

Commitment Date: 19870811 DOB: 19681021 Status :ACTIVE

LiitiCell/Bedt 7-2d05,711

Class Type:Re-Classification Sec Level:Medium

PE: 20011729 Release Date :

Objective Classification - Reclassification	Score
1. Severity of Current Offense Highest	
2. Severity of Convictions within the last 4 years None	0
3. History of Escape or Attempts to Escape	0
4. History of Prior Institutional Violence within the last 4 years None	
5. Number of Disciplinary Reports within the last 12 months None or One	
6. Most Severe Disciplinary within the last 18 months Category 3 D-Report Number: 402513 Date of D-Report: 20171222	3
7. Age 49	-2
8. Program Participation or Work Assignment Currently on a program or work wait list or actively involved in a program or work assignment	-1
Total Reclassification Score	6

Classification Report

Name: JEFFREY ROBERIO

Commitment#: W43885

Institution:MCI NORFOLK

Commitment Date:19870811 **DOH:** 19681021

Status:ACTIVE

Unit/Cell/Bed: 7-2,305,A

Class Type:Re-Classification **Sec Level:**Medium

PE: 2001u729 **Release Date :**

Preliminary Custody Level Recommended: Minimum or below

Applicable Restriction(s)/Override(s):

Applicable Restriction(s)/Override(s) Rationale and Final Custody Levels:

Facility Designee Final Custody Level Recommended: Minimum or below

Facility Designee: SMELLIOTT

Commissioner Designee Final Custody Level Recommended: Minimum below

Commissioner Designee: AENELLIGAN

Classification Report

Name: JEFFREY ROBERIO

Commitment#: W43885

Institution: MCI NORFOLK

Commitment Date: I9870811 DOB: 19681021 Status: ACTIVE

Unit/Cell/Bed: 7-2,305,A

Class Type: Re-Classification Sec Level: Medium

PE: 20010729 Release Date :

Hoard Recommendation:

Date: 20180914 Level: Minimum Site of Hearing: MCI NORFOLK
Institution: OLD COLONY CORRECTIONAL CENTER vote2-1
Screen For: Chairperson: Elliott, Sherry
Placement Site: Board Member 1: Curtis, Luke
Security Board Member: Ortiz, Gadiel

Board's Rationale:

Today's panel in a 2-1 vote recommends inmate Roberio for placement at OCCC Minimum Security. The minority vote is to remain medium security at MCI Norfolk. The panel recognizes how senseless, vicious and brutal the murder of an elderly man in his home was. Subject admits it was all in the pursuit by the assailants to get money to buy alcohol. This showed a complete lack of regard for public safety and the safety of the elderly man in his home. Subject acknowledges that drugs and alcohol were motivating factors which he has been addressing in his programming. He spoke to the panel about his understanding of his actions and of the causal factors. When asked about why he waited so long to get into programming, he stated that when he first arrived he thought that everything was over, no motivation. He has been moving productively forward in his rehabilitative efforts. Adjustment history reveals minimal programming earlier interwoven with incidents of disciplinary infractions. Work history overall is very good and he has acquired many skills, however this is also marred at times with loss of job due to disciplinary incidents. The board took this into account as well, but felt that inmate Roberio is a viable candidate for minimum security at this time, not posing a risk to public safety or the orderly running of a minimum security facility at this time. The panel also acknowledged his efforts in planning his reentry. The board sees programming he has completed and recommends he continue programming. The majority felt that he has a much greater understanding of the impact of his actions and the consequences to the victim and his family. The minority vote recommends the 32 week VOEG program if he remains at MCI Norfolk.

Review Date: 20190314 Reviewed By:

Next Case Plan Date: 20190914

User (L,F,M,S): Sherry Elliott M

Advised of Recommendation Yes (X) No [] Early Parole [] Work Crew
Advised of Appeal Process Yes (X) No [] Education Release [] PRA []
48 Hour Notification Yes (X) Waive [] Work Release [] PRA Hours
Public Speaking [] Others

Classification Appeal

Reason for appeal

Dear Ms. Nelligan:

Jeffrye Roberio is a "juvenile homicide offender," see Deal v. Commissioner of Correction, 478 Mass, 332, 322 n.2 (2017) (Deal II), with an objective classification score of six. After a hearing held on September 14, 2018, a classification board recommended by a vote of two-to-one that Roberio be transferred to the minimum security facility at Old Colony Correctional Center

Classification Report

Name: JEFFREY ROBERIO Commitment*: W43885 Institution: MCI NORFOLK
Commitment Date: 19870811 DOB: 19681021 Status: ACTIVE Unit/Cell/Bed: 7-2,305,A
Class Type: Re-Classification Sec Level: Medium PE: 20010729 Release Date :

(OCCC). I urge you to adopt the classification board's recommendation for the following reasons.

Roberio's previous requests to be transferred to minimum **have been denied on** the grounds that he needed to engage more extensively in rehabilitative programming that would give him insight into the **causal** factors of his offence. In November 2016, Roberio was laterally transferred from OCCC-Medium (where he had been since 1989) to MCI-Norfolk so that he could access MCI-Norfolk's programming opportunities. Since arriving at MCI-Norfolk, Roberio has completed a plethora of programming, a partial list of which is set out below. As the classification board recognized, because Roberio's engagement in restorative justice and other intensive rehabilitative programming over hte past two years has been authentic, he now has a "much greater understanding of the impact of his actions and the **consequences to the victim and his family.**" Classification Report (Sept. 14, 2018).

The Commissioner's designee has previously utilized codes R and U to override Roberio objective point based score. Continued use of such overrides would be unwarranted. As to code R, even though the facts of the underlying offense cannot change, Roberio's increased understanding of the causes and consequences of his offense militate against the possibility that **the** seriousness of the offense would itself make him unsuitable for minimum. Furthermore, "because **of** code R would not take into account that, as a juvenile homicide offender, Roberio has "diminished culpability and greater prospects for reform." Deal II, 478 Mass, at 342 n. 12 (citations omitted).

As to code U, Roberio's housing unit officers have for years "identif[ied] him as a quiet inmate who keeps to himself and is not a management concern." Deal II 478 Mass. at 343 n. 114. As a mentor and facilitator in the CRA program, Roberio received highest possible marks for "**integrity, responsibilitym and acountability,**" and for being [**o]pen and honest in the Community.**"

Roberio is ready for minimum. He understands and is ready for the challenges he will face there. The classification board's recommendation reflects and recognizes how hard he has worked to get to this point. The board's recommendation should be adopted as the Commissioner's final decision. Thank you for your consideration.

Resepctfully submitted,

Benjamin H. Keehn
Counsel for Jeffrey Roberio

Superintendent/Designee Recommendation.

Level:	Institution:	Date: 20181009
Screen For:	Placement Site:	Recommendation:
Reason/Condition		

Classification Report

Name: JEFFREY ROBERIO Commitment#: W43885 Institution:MCI NORFOLK
Commitment Date:19870811 DOB: 19681021 Status:ACTIVE Unit/Cell/Bed: 7-2,305,A
Class Type:Re-Classification Sec Level:Medium PE:2:1010729 Release Date :

User(L,F,M,S): Tiana A Bennett

Early Parole] Work Crew [] Education Release [) Work Release []
Public Speaking [] PRA [] PRA Hours Others

Superintendent/Designee Appeal Decision.

Superintendent/Designee: Tiana A Bennett

Date:20181JJ-

Decision: Reviewed

None

-Supp. Add. 37-
Classification Report

Name: JEFFREY ROBERIO Commitment#: W43885 Institution: MCI NORFOLK
Commitment Date: 19870811 DOB: 19581021 Status: ACTIVE Unit/Cell/Bed: 7-2,305,A
Class Type: Re-Classification Sec Level: Medium PE: 20010729 Release Date :

Commissioner/Designee Decision.

Level: Minimum Institution: PONDVILLE CORRECTIONAL CENTER Date: 20181112
Screen For: Placement Site: Recommendation: MODIFIED
Reason/Condition

Concur with majority vote for placement at minimum security. Subject is suitable based upon his sustained positive adjustment reflected by the absence of any major discipline over a lengthy period, program participation which includes completion of CRA, Violence Reduction, Criminal Thinking, Jericho Circle, Emotional Awareness, Alternatives to Violence, Path of Freedom, several Cognitive Skills workshops, several Restorative Justice programs, and his strong vocational skills. Inmate Roberio has been responsive to all program recommendations and is currently a mentor in GSP and is actively enrolled in GMP and Prison Fellowship. The recording indicates that inmate Roberio has gained significant insight into the causal factors of his crime and is actively working to maintain his sobriety. He accepts responsibility for his crime and his past institutional conduct and articulates his future re-entry plans to include an interest in the Automotive Program. Placement in lower security will afford inmate Roberio an additional opportunity to further his rehabilitative progress and utilize his acquired pro-social skills in a less restrictive setting. Appeal reviewed and modified-suitability and availability of requested programs. Inmate is advised to remain engaged in GMP at Pondville Correctional Center.

User(L,F,M,S): Abbe E Nelligan

Early Parole [] Public Speaking [1 Education Release [I Others

Commissioner/Designee Appeal Decision

Commissioner/Designee: Abbe S Nelligan Date: 20181112 Decision: Modified

Juvenile Lifer Placement Request / Appeal Form

*Form specifically for those being considered for minimum custody only

Inmate Name: Jeffrey Robarvo Comm.#: W43885 Date: 10/4/18
Institution: MCI - Norfolk Date of hearing/board: 9/14/18

Check One

- Appeal
- Support/recommendation
- Waive appeal process

Where an inmate is not in agreement with the classification board recommendation or classification status review results, wishes to support a recommendation made or wishes to waive the appeal process, the inmate or a legal representative may submit such within fifteen business days of written notification of the board's recommendation utilizing the Juvenile Lifer Placement Request/Appeal Form. The Juvenile Lifer Placement Request/Appeal Form shall be submitted to the inmate's assigned Correctional Program Officer or classification representative. Upon receipt of the Juvenile Lifer Placement Request/Appeal Form, the Correctional Program Officer shall enter the information into IMS, if available.

I believe I should be placed at: OCC - MINIMUM

for the following reasons: Please see attached letter.

Submitted by: BENJAMIN H. KORNIN, for Jeffrey Robarvo

Appeal is to be no longer than 4000 characters due to IMS limitations.

To be completed by assigned CPO or classification representative:

Assigned CPO: _____

Date of Hearing/Board _____ Date Rec'd by CPO: _____

To be completed by Commissioner / Designee (420.08) where IMS is unavailable:

This request / appeal is:

Approved: _____ Denied: _____ Modified: _____

By: _____ Date _____



The Commonwealth of Massachusetts

Committee for Public Counsel Services

Public Defender Division

298 Howard Street, Suite 300

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October 4, 2018

Ms. Abbe Nelligan
Director, Central Classification Division
Department of Correction
50 Maple Street
Milford, MA 01757

Via e-mail and first-class mail

Re: Jeffrey Roberio, W43885

Dear Ms. Nelligan:

Jeffrey Roberio is a "juvenile homicide offender," see Deal v. Commissioner of Correction, 478 Mass. 332, 322 n.2 (2017) (Deal II), with an objective classification score of six. After a hearing held on September 14, 2018, a classification board recommended by a vote of two-to-one that Roberio be transferred to the minimum security facility at Old Colony Correctional Center (OCCC). I urge you to adopt the classification board's recommendation, for the following reasons.

Roberio's previous requests to be transferred to minimum have been denied on the grounds that he needed to engage more extensively in rehabilitative programming that would give him insight into the causal factors of his offense. In November 2016, Roberio was laterally transferred from OCCC-Medium (where he had been held since 1989) to MCI-Norfolk so that he could access MCI-Norfolk's programming opportunities. Since arriving at MCI-Norfolk, Roberio has completed a plethora of programming, a partial list of

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which is set out below.¹ As the classification board recognized, because Roberio's engagement in restorative justice and other intensive rehabilitative programming over the past two years has been authentic, he now has a "much greater understanding of the impact of his actions and the consequences to the victim and his family." Classification Report (Sept. 14, 2018).

The Commissioner's designee has previously utilized codes R and U to override Roberio objective point based score. Continued use of such overrides would be unwarranted. As to code R, even though the facts of the underlying offense cannot change, Roberio's increased understanding of the causes and consequences of his offense militate against the possibility that the seriousness of the offense would itself make him unsuitable for minimum. Furthermore, "because code R does not distinguish between adult and juvenile offenders," application of code R would not take into account that, as a juvenile homicide offender, Roberio has "diminished culpability and greater prospects for reform." Deal II, 478 Mass. at 342 n.12 (citations omitted).

As to code U, Roberio's housing unit officers have for years "identif[ied] him as a quiet inmate who keeps to himself and is not a management concern." Deal II, 478 Mass. at 343 n.14. As a mentor and facilitator in the CRA program, Roberio received highest possible marks for "integrity, responsibility, and accountability," and for being "[o]pen and honest in the Community."

¹/Correctional Recovery Academy (February 17 to September 1, 2017) (Attachment 6); Correctional Recovery Academy Graduate Support Member of the Month (December 2017) ("For going above and beyond and helping out the community when no one is looking") (Attachment 3); Restorative Justice Responsibility Retreat (June 9-10, 2018) (Attachment 2); Restorative Justice Reading Group (Spring 2018); The Jericho Circle Project Intensive Training (October 7-8, 2017) (Attachment 4); The Jericho Circle Project Men's Integrity Circle (April 4 to May 23, 2017); Alternatives to Violence Project Facilitator (June 15-17, 2018); Alternatives to Violence Project Apprentice Facilitator in an Alternatives to Violence Project Workshop (September 10, 2017) (Attachment 5); Path of Freedom (May 18, 2018); Active Listening Workshop (June 2 and 16, 2018); Cursillo Service Team (May 10-13, 2018); Cognitive Skills Workshop, Using Self Control (April 7 and 21, 2018); Cognitive Skills Workshop, Setting Goals (March 3 and 17, 2018); Toastmasters International, Competent Communicator (January 18, 2017) ("For exceptional achievements in the Toastmasters International Communication Program") (Attachment 7).

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Graduate Support Rating Form (July 18, 2018) (Attachment 1). Under these circumstances, it would be unfair and "pretext[ual]," Deal II, 478 Mass. at 341, to block Roberio from minimum on the grounds that his institutional behavior "threaten[s] security or undermine[s] the exercise of proper control and maintenance of order within the institution."²

Roberio is ready for minimum. He understands and is ready for the challenges he will face there. The classification board's recommendation reflects and recognizes how hard he has worked to get to this point. The board's recommendation should be adopted as the Commissioner's final decision. Thank you for your consideration.

Respectfully submitted,

/s/ Benjamin H. Keehn

Benjamin H. Keehn
Counsel for Jeffrey Roberio

Attachments

²/Roberio received a disciplinary ticket, on December 22, 2017, for taking two green peppers from the kitchen. This incident has already been counted in calculating Roberio's objective point based score. Using it again to invoke code U would thus be especially "suspect." See Deal II, 478 Mass. at 343.

Graduate Support Rating Form

Graduate Support: Roberto Jeffrey Date: 7/9/18 Job Assigned Mentor/Facilitator

DIRECTIONS: Staff - Assess the Community member from 1-10, with 1 as the lowest and 10 as the highest. This is a guideline for each Community member and indicates areas in need of development

A score less than 7 in any area requires a review by the Unit Team and an action plan by the Graduate Support.

	Low					High				
	1	2	3	4	5	6	7	8	9	10
1. Assumes responsibility for keeping the facility clean and is not resistant when asked to help the Environmental Crew									✓	
2. Willing to share and demonstrate courage in using Community tools										✓
3. Open and honest in the Community										✓
4. Demonstrates willingness to look at own behavior and make changes									✓	
5. Supports others and respects differing opinions									✓	
6. Respectful of staff, and Community members									✓	
7. Does not manipulate or take advantage of others									✓	
8. Demonstrates the lifestyle of a recovering person										✓
9. No longer uses the language of the drug and/or criminal subculture									✓	
10. Models integrity, responsibility, and accountability										✓
11. Supports Community values									✓	
12. Serves as a role model in the Community									✓	
13. Accepts responsibility for behavior									✓	
14. Helpful to new members									✓	
15. Addresses self-destructive behavior appropriately									✓	
16. Has the respect of the Community members									✓	
17. Consistently demonstrates TC concepts and components outside of TC									✓	

Comments: Good follow up with your mentees, and supporting community members learn the best way to navigate CRA. Glad you got a "moment" with some good remember when! Good work. Thanks!

Graduate Support Signature [Signature] Roberto Date 7-11-18

Staff Signature [Signature] Date 7/9/18

**Restorative Justice Responsibility Retreat
Saturday, June 9 and Sunday, 10, 2018**

Letter of Completion

Name: Jeffrey Roberio

Comm. # W43885

This letter is to certify that Mr. Jeffrey Roberio successfully completed all of the requirements of the 2018 Restorative Justice Responsibility Retreat at MCI-Norfolk located in Norfolk, Massachusetts.

The Restorative Justice Responsibility Retreat is an intensive two-day workshop. The purpose of this workshop is to help incarcerated people understand the spectrum of consequences that criminal thinking and harmful behavior have on individuals, families, communities, and society as a whole. Equipped with this new insight, these men are now encouraged to make the necessary changes in their lives toward living productively and pro-socially during and post incarceration.

During the Restorative Justice Responsibility Retreat, Mr. Jeffrey Roberio participated in a series of guided dialogues through a circle process alongside surrogate victims/survivors of violent crime, criminal justice professionals, and community leaders. He also listened to Victim Impact Statements and witnessed Public Apology and Responsibility Pledge Ceremonies.

Mr. Jeffrey Roberio successfully met the requirement for full participation in the 2018 Restorative Justice Responsibility Retreat. The members of the Restorative Justice Group, along with his fellow retreat participants, recognize his contribution to helping both victims and offenders heal from the traumatic impact of crime.



Karen Lischinsky, M.S.W., Ph.D.
Volunteer Coordinator, Restorative Justice Group

titles:

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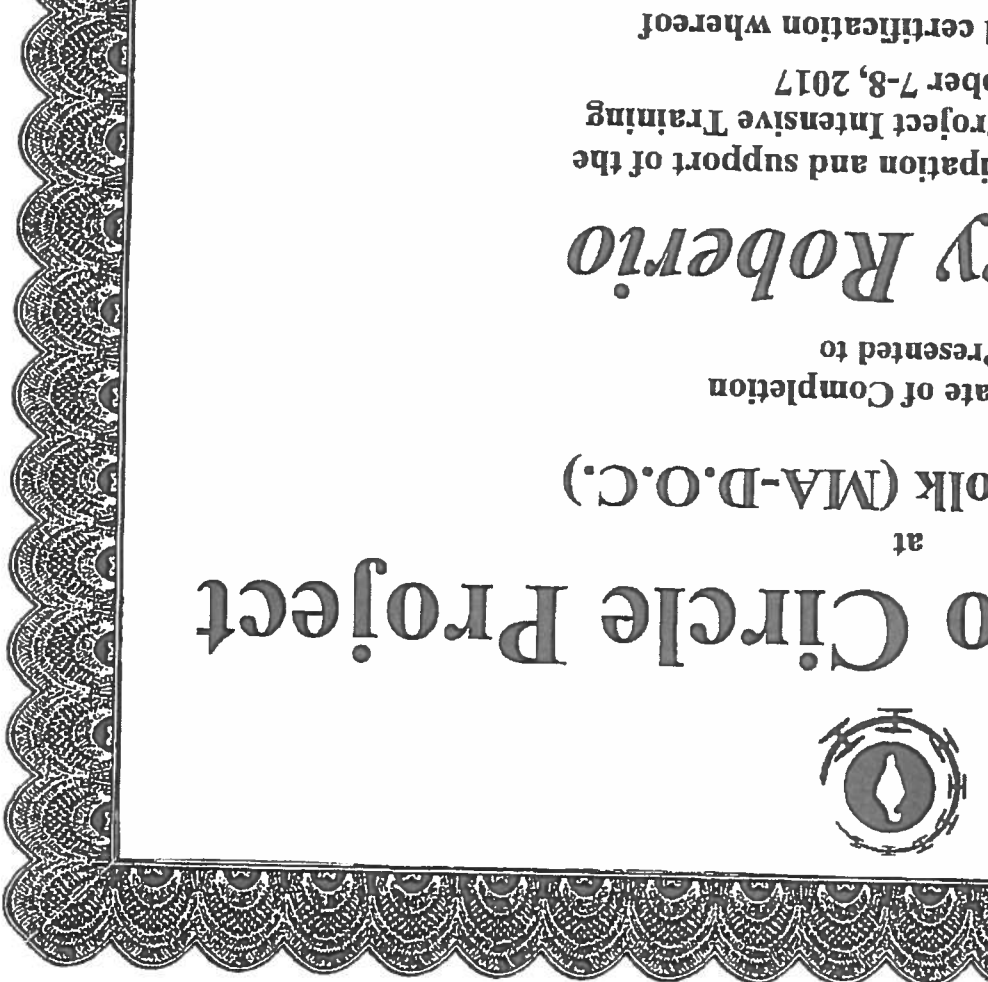
Support Member of the Month

above and beyond and
g out the community
no one is looking.

the month of December 2017

Authorized by:

CRA Staff



o Circle Project

at

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ate of Completion
resented to

y Roberto

ipation and support of the
Project Intensive Training

ber 7-8, 2017

certification whereof

Certificate

Training in Nonviolence

Peace Project / New England

This Certificate is

by Robert

as a Facilitator in an

Peace Project Workshop

This certificate is awarded to

Jeffrey Roberio

successfully completing the **Correctional Recovery Academy**

Enrollment Date: 2/21/17 Completion Date: 9/1/17

That our lives matter, that we can be greater than our circumstances, that we can return good for harm, we therefore humble ourselves to learning. Our graduation is a true commencement - let us begin anew.

[Signature]
Director of Treatment

[Signature]
CRA Supervisor



Competent Communicator

recognition is given to

Jeff Roberio

for exceptional achievements in the

Toastmasters International Communication Program

January 18, 2017



A handwritten signature in black ink, appearing to read "Daniel Rex".

Daniel Rex
Chief Executive Officer

JEFFREY ROBERIO

V.

PAUL TRESELER

REPLY BRIEF FOR THE APPELLANT
