

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT  
INDICTMENT NOS. 83-103391 to -94

COMMONWEALTH OF MASSACHUSETTS )

v. )

BENJAMIN LAGUER, )

RECEIVED

JAN 12 2012

DEFENDANT  
CLERK OF COURTS  
WORCESTER COUNTY

COMMONWEALTH'S OPPOSITION  
TO "DEFENSE MOTION TO STAY  
EXECUTION OF SENTENCE"

The Commonwealth hereby opposes defendant's "Defense Motion to Stay Execution of Sentence Pending Final Judicial Adjudication" of his **ninth** Motion for New Trial (Docket #188), on the following grounds:

- 1) On procedural grounds alone, while pursuing his **ninth** Motion for New Trial, defendant is **not** entitled pursuant to "Massachusetts Rules of Criminal Procedure 31(a)" (Defense Motion at 1) to stay the execution of the life sentence imposed in 1984 after his conviction for aggravated rape -- a crime that the trial judge described at sentencing after trial as "one of the most vicious sexual assaults on a particularly fragile person that I have ever seen." (TR 617-18).
- 2) The claims in defendant's **ninth** Motion for new Trial have no substantive merit and fail to show "that justice may not have been done." Mass. R. Crim. P. 30 (b). As to his DNA claims, none of defendant's far-fetched DNA contamination theories have any foundation in fact, and even if his DNA test results were contaminated, the DNA results still fail to exonerate him, because no other male DNA was identified in the pooled sperm from the victim's rape kit. And defendant's claims regarding the victim's mental state are barred by waiver, are not supported by any sworn testimony, and do not qualify as "newly discovered." *Commonwealth v. Grace*, 397 Mass. 303, 306 (1986).
- 3) Defendant also has failed to show that he would not present a danger to the community if released from his life sentence pending adjudication of his **ninth** Motion for New Trial. To the contrary, as the Parole Board found in a unanimous decision issued after a lengthy

hearing in 2010, “[a]fter careful consideration and following an extensive review of the large body of documentary evidence supplied by all the interested parties, “Mr. Laguer’s release is not consistent with the demands of public safety.” (See attached EXHIBIT A, the Parole Board’s May 20, 2010 “Record of Decision in the Matter of Benjamin Laguer” at 2) (emphasis added).<sup>1</sup>

Respectfully submitted,

COMMONWEALTH OF MASSACHUSETTS

Sandra L. Hautanen

Sandra L. Hautanen  
Assistant District Attorney  
Worcester Trial Court  
225 Main Street, Room G301  
Worcester, MA 01608  
(508) 755-8601  
BBO # 225965

Dated: 4/12/12

**CERTIFICATE OF SERVICE**

I, Sandra L. Hautanen, Assistant District Attorney, do hereby certify that on January 12, 2011, I caused to be served via First Class mail a copy of the “Commonwealth’s Opposition to “Defense Motion to Stay Execution of Sentence” with this “Certificate of Service” to the following counsel of record for defendant Benjamin Laguer:

Robert E. Terk, Esq.  
5 Almount Terrace  
Fitchburg, MA 01420

Sandra L. Hautanen

Sandra L. Hautanen

<sup>1</sup> In addition, despite the sworn affidavits before the Court from both the trial prosecutor and defendant’s trial counsel affirming that no pretrial plea offer was made to defendant (see “Commonwealth’s Motion to Dismiss Laguer’s Ninth New Trial Motion due to ‘Fraud on the Court’” (Docket # 177)), defendant, through Attorney Terk, persists in arguing that “[h]e could have been released long ago upon his admission of guilt, if not years sooner upon acceptance of a pretrial plea offer.” (Defense Motion at 3).

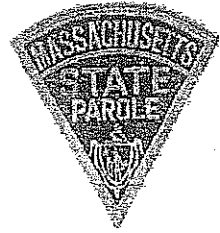
# EXHIBIT "A"

## *The Commonwealth of Massachusetts Executive Office of Public Safety*

### *Parole Board*

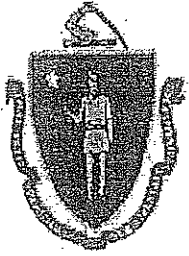
*12 Mercer Road  
Natick, Massachusetts 01760*

*Telephone # (508) 650-4500  
Facsimile # (508) 650-4599*



Mark A. Conrad  
Chairman

Donald V. Giancioppo  
Executive Director



Deval L. Patrick  
Governor

Timothy P. Murray  
Lieutenant Governor

Mary Elizabeth Heffernan  
Secretary

### RECORD OF DECISION

In The Matter of

**BENJAMIN LAGUER**  
W-40280

**TYPE OF HEARING:** Review Hearing

**DATE OF HEARING:** April 22, 2010

**DATE OF DECISION:** May 20, 2010

**PARTICIPATING BOARD MEMBERS:** Mark Conrad, Candace Kochin, Pamela Lombardini, Thomas F. Merigan, Jr., Leticia Muñoz, Roger Michel, Cesar Archilla

**DECISION OF THE BOARD:** Denied. 5 y[ea]r Review.

Benjamin Laguer appeared before the Massachusetts Parole Board for a review hearing on April 22, 2010. This was Mr. Laguer's fourth appearance before the Board.

On February 17, 1984, Mr. Laguer was sentenced to life in prison with the possibility of parole for aggravated rape, G.L. c.265, section 22. At the same time, he received concurrent sentences (now expired) of twelve to fifteen years for breaking and entering with the intent to commit a felony, G.L. c.266, section 16 and unarmed robbery, G.L. c.266, section 19. Mr. Laguer timely filed a direct appeal which was later consolidated with a motion for new trial. Both were resolved in *Commonwealth v. Laguer*, 20 Mass. App. Ct. 965 (1985). Thereafter, Mr. Laguer filed seven additional motions for new trial and a federal habeas corpus petition. All were either denied or dismissed (citations omitted). At his hearing before the Board, Mr. Laguer stated his intention to file a ninth motion for new trial. He is currently incarcerated at MCI Gardner (NCCI).

The facts underlying Mr. Laguer's convictions are as follows: On the evening of July 12, 1983, the defendant entered the apartment of his neighbor, 59 year-old Lennice Plante, and beat, robbed and brutally raped her – vaginally, anally and orally – over a period of several hours. He then threatened to kill her if she told anyone about the attack, tied her up and left.

Eventually, Ms. Plante was able to summon assistance. Ms. Plante was taken to the hospital for treatment. A physical examination revealed numerous injuries consistent with the type of violent rapes described by Ms. Plante. During the examination semen was recovered from both her throat and vagina. Subsequently, Ms. Plante identified Mr. Laguer as her assailant, and he was taken into custody on July 15, 1983.

Significant evidence linked Mr. Laguer to the attack, including: (1) Ms. Plante's eyewitness identification (which must be accorded significant weight in view of her ample opportunity to observe her attacker and her prior familiarity with Mr. Laguer); (2) DNA evidence linking Mr. Laguer to biological material recovered from the crime scene; (3) testimony regarding scratches on the defendant's back at the time of his arrest; (4) the fact that the clothing worn by Mr. Laguer at the time of his arrest matched Ms. Plante's description of the clothing worn by her attacker; and (5) consciousness of guilt evidence in the form of Mr. Laguer's admission that he had submitted the saliva of another man when asked to provide a saliva sample for laboratory testing. Notwithstanding the foregoing, Mr. Laguer has always maintained that he did not attack Ms. Plante, blaming his conviction on a combination of poor police investigative work, trial errors, and a racially biased jury. However, all of these claims were reviewed in the aforementioned appeal and motions for new trial and rejected.

Unfortunately, in large part due to Mr. Laguer's insistence that he is innocent, he has not engaged in any significant sex offender treatment. Indeed, since his last parole hearing in 2003, Mr. Laguer admittedly has not been involved in any significant rehabilitative programming of any kind; rather, he has focused all of his energy on his appellate efforts. While this may be a reasonable strategy in view of Mr. Laguer's manifest strong belief in his innocence, it also precludes the Parole Board from undertaking any meaningful inquiry into the question of Mr. Laguer's suitability for community supervision.

Another impediment to parole is Mr. Laguer's troubling disciplinary history, including four serious disciplinary reports in the past fifteen months, six since his last hearing before the Board, and approximately thirty during his time in prison. Many of these are for serious offenses such as fighting or possession of contraband. Especially troubling is his most recent disciplinary report, less than a year ago, for possession of a large number of pornographic images. This is the second time since his last hearing that Mr. Laguer has been charged with possession of pornography. In view of his governing offense, such violations are especially concerning for the Board.

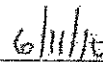
Finally, the Board was troubled by Mr. Laguer's conduct during the hearing. In the Board's opinion he was both combative and evasive during his appearance, particularly when he was subjected to questioning. The Board also observed that, in a number of instances, Mr. Laguer was manifestly deceptive in his responses. In the Board's view, these negative personality traits would make community supervision of Mr. Laguer difficult if not impossible.

After careful consideration and following an exhaustive review of the large body of documentary evidence supplied by all interested parties in this case, the Board has determined that, at this time, Mr. Laguer's release on parole is not consistent with the demands of public safety. His failure to take responsibility for his actions in spite of significant inculpatory evidence was but one factor informing our decision. As important were Mr. Laguer's willful failure to make productive use of the wide range of rehabilitative programming opportunities available to him in prison, his overall poor disciplinary record, the combative demeanor and dishonesty he evinced at his hearing, and his prior record, including his military record. Parole is denied.

- Board Member 1: Concur.
- Board Member 2: Concur with final vote.
- Board Member 3: Concur with final vote.
- Board Member 4: Concur with above vote.
- Board Member 5: Concur.
- Board Member 6: Concur.
- Board Member 7: Concur.

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

  
Executive Director

  
Date