

4 July 2013

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Joshua I. Wall, Chairman
Massachusetts Parole Board
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Chairman Wall:

Pursuant to 120 CMR 304:03 please accept this petition for reconsideration of my 2010 parole denial. A number of new realities boost an argument in support of parole and I believe that the April 2015 for my next review was entered incorrectly. I became initially eligible for a review in April 2008. However, the Board granted me leave for cause shown to postpone that review on March 4, 2008: "Postponement granted at inmate's request. Mr. LaGuer has requested more time to obtain evidence that he believes will support his parole petition."

To support this request for a postponement, I submitted letters purporting that Governor Deval Patrick had asked the Executive Office of Public Safety to audit a disputed DNA test result. It's still alleged that the March 2002 DNA test result is invalid because the samples used in the comparison originate from my apartment, not male microbial evidence extracted from the victim's body. Worcester DA Joseph Early publicly opposed that forensic audit. I submitted the Executive Office of Public Safety's letters to this Board. I sincerely and genuinely believe that a forensic audit had been undertaken to uncover the falsity of that March 2002 DNA analysis. After two years, I decided that other reports from independent forensic scientists supported the claim that the test result earlier announced was flawed. After a parole review in 2010, I received a five year setback and scheduled for another review in 2015.

But, with time tolling from 2008, which is when if requested a postponement owing to Governor Patrick's request of a forensic audit and this Board granted me leave to postpone a review for cause, the next review from a five year falls in April 2013. I think fair and sensible minds can agree on the soundness of this arithmetic.

On Friday July 15, 1983, I disappeared from my family's life. All hope I had for myself upon my returned home from the US Army faded to blackness. This July 15 will mark the 30 year of that event. Coincidentally, the Appeals Court has requested a status report on a pending appeal also on that 30th anniversary. In 1983 I rejected a pretrial plea offer where I could have served one year and five months, with credit days for awaiting trial and probably less for good behavior credits. In 2010, trial attorney Peter L. Ettenberg signed an affidavit based on his trial notes confirming this plea bargain. The disparity between what length of time I have served to what I could have served if I had plead guilty, I think, began to weigh quite heavily on the conscience of some members at the 2010 parole hearing. Even the victim's family's only wish is for me to admit guilt and attend counseling. But, as you have indicated, "Given the fact of wrongful convictions in our criminal justice system, the Parole Board does not have a policy that admission of guilt is an absolute requirement for parole and nowhere does the-law impose such a requirement." Moreover, I will discuss later in this petition how I have accepted counseling.

"[H]is refusal to concede guilt and express remorse has become a major impediment in his bid for release. He was just denied parole for the fourth time, and won't be eligible to reapply for five years...At a certain point, a failure to acknowledge guilt shouldn't be insuperable hurdle to parole."¹

Chairman Wall, the trial judge in 1984 noted that I had no history of violence or crime. In three decades, I have provided specimens for thousands of drug tests. And never once did I fail one. The Northpointe fact based risk assessment tools, as well as the Personalized Program Plan, ranks me among the lowest trace metrics for recidivism and violence. Substance abuse, criminal thinking, anger, educational, cognitive behavior are, according to the Personalized Program Plan, are "not considered a need area for this offender."

I am a person who takes responsibility for his actions. I have accrued 30 disciplinary reports and very seldom if ever have I not taken responsibility. It is noteworthy I think that I have never been cited for improper behavior toward the female staff. I do not believe that a single person can stand before this Board and accuse me of deliberately offending either their body or spirit. As my father taught me, I treat every life as I would like to be treated. I am constantly vigilant against falling in the pit of prison trappings, mindful that a great number of fine individuals have entrusted me with their faith and good names. I am not saying that I have reached

¹ Editorial, Boston Sunday Globe, "Confession isn't the only factor" June 27, 2010.

http://www.boston.com/bostonglobe/editorial_opinion/editorials/articles/2010/06/27/confession_isnt_the_only_factor/

no mountaintop, overseen any shiny Reaganesque city on a hill. I do want to recognize that I owe a debt of gratitude to many past and present. I wish there were enough time for me to relate this enormous sentiment.

Chairman Wall, I have always been purposeful in my life. I work seven days a week plus twice as long and hard on religious and secular holidays. I am a natural networker and pull bright people together to solve problems. But I am not beyond cleaning toilets. I am equally at ease sitting at a university cosmology class as I might be with a group of old timers in a prison Domino's game. And I have no qualms about acknowledging that I owe all these talents to honoring my father's God. With these talents, and optimistic determination, I know I can do a lot better than many who left through the front gate and returned with defeated eyes. I would like to live an enjoyable and meaningful life. My biography relates many examples of such a life. But I am not delusional. I know some people are not going to wake up one day with a change of heart. All I can do is do right every hour and every day of my life. I know the hour is still early enough for me to establish myself, build a family, works of beauty and excellence. Right now, I have a group of friends willing to support me in this window of opportunity. I do not want to wake up one day only to find that those links have been severed owing to the passage of time and passing of old friends and family. I have seen men grow old and die in prison wards alone. At some point, the scale must tilt from vengeance to fairness.

If prosecutors became aware that I telephoned the victim in this case one summer day in 1989 disguised as a priest to solicit information that might support a case for factual innocence or that I had refused to provide a saliva samples prior for fear of a setup, I am fully responsible for these public disclosures. I had hoped these fact might be fairly examined; what happened is that prosecutors weaponized what I had offered and twisted all of these facts to appear ugly. I had faith that prosecutors, better than most, know that innocent persons act in desperate ways. In another context, when I am exonerated, these actions will be viewed more sympathetically. The innocent acts in ways that appear courageous when viewed through the prism of innocence, but totally distorted when his or her actions are observed through the viewfinder of a defiant criminal. I would like to respectfully submit that outsiders and onlookers have been mistaken about me owing to these misalignments in the mirrors of my life and actions.

There are probably not more than a handful of individuals who know that I am writing this petition from a building that was converted from a state mental hospital. I am probably sitting in the same exact room where Lenice Plante spent months, when she was civilly committed when she suffered psychotic breakdowns. The state hospital was closed in 1979. How could anyone fairly ask if I ever feel remorse or empathy over what happened to this fine woman, given the presence of her spirit. Over the years, she has been a stronger presence than some distant kinfolk. I swear that I could feel no greater pain over what happened to Ms. Plante than if it had happened to my own mother, aunts, sisters or nieces. In some way, which I can't always relate in words, I feel as if part of what drives me is a need to stand up for the voiceless. I grow up in a church and denomination that believes in missionary work, in social justice. I am informed by three older sisters who made careers in the field of Human Services. My brother Frank is a retired veteran, youth mentor and community organizer in New York City. I had been employed in one capacity or other since I reached age.

For aid in sentencing, the trial judge assigned Dr. Lawrence Hipshman to undertake a thorough psychological and medical evaluation. He found nothing psychologically or pathologically abnormal that would inform me committing the alleged crime. Dr. Daniel M. Weiss of the Bridgewater Treatment Evaluative Center, in 1985, found me "Not Sexually Dangerous." In 1998, my high school councilor Lee Alves testified before a parole public hearing that I was not antisocial, but quite to the contrary. Chief prison psychologist Marcelino DeLeon submitted a letter confirming that I worked as his office clerk for many years. He had never previously recommended an inmate for parole. All this evidence is consistent with the Northpointe Institutional fact—based risk assessments, as well as three decades of other observational and evaluative reports.

Over the next weeks and months, I will be participating in a revised version of the Sex Offender Treatment Program, a new curriculum that does not require participants to admit guilt as a precondition. Should this petition be granted, I would have completed the program in time for the next available review. I believe that Dr. John R. Silber left instructions with the director of the Danielson Institute of Boston University for me to receive whatever counseling might satisfy this Board. Moreover, I have open opportunities for meaningful employment as well as any number of offers for housing and other domestic arrangements. The details may be better left for parole staff.

As for a final factor, I may soon be facing a new set of medical realities that should be greatly mitigated if release from the anxieties and stresses of prison confinement. I will soon require a liver transplant, owing to a hepatitis infection that I contracted through the unsanitary practices at the prison dentistry. I had no intention of releasing this medical data, but my medical records were somehow compromised and many details were placed in a publicly available report to the governor.

For all these reasons and for any this Board might consider in the interest of justice, I would respectfully request a review as soon as may be convenient for all parties concerned. Be well.

Sincerely,

Ben LaGuer

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