

No. SJC-13495

Commonwealth of Massachusetts
Supreme Judicial Court

COMMONWEALTH,
Appellee,

vs.

QUASIM L. HASTINGS,
Appellant.

ON A REPORTED QUESTION OF LAW FROM THE
BERKSHIRE COUNTY SUPERIOR COURT

**BRIEF FOR THE COMMITTEE FOR PUBLIC COUNSEL SERVICES AS
AMICUS CURIAE IN SUPPORT OF MR. HASTINGS AND INTERVENOR
MASSACHUSETTS PAROLE BOARD**

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

December 20, 2023

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INTRODUCTION
AND
STATEMENT OF INTEREST OF AMICUS CURIAE

Six years ago, this Court held that Article 114 of the Amendments to the Massachusetts Constitution ensures that prisoners in Massachusetts will not be “denied the benefits of” parole due to a disability. *Crowell v. Massachusetts Parole Board*, 477 Mass. 106, 110-114 (2017). See *id.* at 111 n.8 (quoting art. 114).^[1] Following *Crowell*, where a disability “may affect” the ability of a parole-eligible prisoner to be found suitable for parole, art. 114 requires the Massachusetts Parole Board (Parole Board or Board) to seek “reasonable modifications” to the parole process that could enable the prisoner to qualify for release on parole. *Id.* at 112. “[F]or example,” if a prisoner has a mental disability affecting the prisoner’s “ability to prepare an appropriate release plan in advance of a parole hearing,” the Board must determine if the prisoner could be paroled if provided with “expert or other assistance to help the prisoner identify appropriate postrelease programming.” *Id.*

Although *Crowell* made clear that the Parole Board is required “to take some measures to accommodate prisoners with disabilities,” *id.*, the Court in *Crowell* was not presented with any issue with respect to the Board’s capacity to directly provide such prisoners with the expert assistance needed to safeguard their art. 114 rights. In this case, however, the Superior Court (Wilkins, J.) found that “[t]he Parole Board

^[1] Article 114 provides: “No otherwise qualified handicapped individual shall, solely by reason of his handicap, be excluded from the participation in, denied the benefits of, or be subject to discrimination under any program or activity within the [C]ommonwealth.”

has no funding for expert evaluations” and “lacks the structure to pay a third-party vendor for such an evaluation” (Add. 15; RA I:65).^[2]

Since *Crowell* was decided, the Parole Board has referred over 150 mentally disabled prisoners to the Committee for Public Counsel Services (CPCS) for the assignment of parole counsel, with the understanding and expectation that counsel will move for funds under G.L. c.261, §§27A-G (the Indigent Court Costs Law) to secure such expert services as are reasonably needed to ensure that the prisoner is not denied the benefits of parole due to a disability (Add. 33 [Affidavit of Attorney Mara Voukydis, ¶13]).^[3] “Sometimes the Parole Board’s referral [to CPCS] states explicitly that the members are seeking an expert evaluation of the individual. Other times CPCS receives a referral for counsel after a hearing has occurred and the Board has noted in its decision denying parole that a disabled prisoner did not have an expert evaluation prior to their parole hearing” (Add. 40; RA I:53 [Affidavit of Attorney Mara Voukydis, ¶9]).

The Parole Board acknowledges that “it is not feasible for [it] to assess how a mentally disabled prisoner’s condition impacts his opportunity for release without an expert’s evaluation” (PBr31-32). Indeed, given the governing legal standard,^[4] it is difficult to see how a

^[2] The Parole Board “does not challenge” the findings of fact below (PBr13). Mr. Hastings “adopts” them (DBr10).

^[3] Attorney Voukydis is the Director of CPCS’s Parole Advocacy Unit (Add. 32 [Voukydis Aff. at ¶1]).

^[4] See *Crowell*, 477 Mass. at 112 (underscoring that Board may grant parole “only . . . where it finds, ‘after consideration of a risk and needs

mentally disabled prisoner can have a realistic chance of receiving a positive parole vote without a current mental health evaluation and an individualized postrelease plan. Judge Wilkins concluded as much in finding that, without a “comprehensive parole release plan[,] . . . the Parole Board may well lack the information needed to make a decision about [Mr. Hastings’] readiness to be in the community in light of his mental disability and psychological status, as well as to conclude that he has presented a postrelease plan that minimizes the probability of reoffence and shows a reasonable probability that he will live without violating the law” (Add. 15; RA I:65).^{15]}

For these reasons, CPCS assigned attorneys representing prisoners whom the Board has identified as requiring the assistance of counsel due to a mental disability are expected, “in almost all

assessment, that there is a reasonable probability that, if the prisoner is released with appropriate conditions and community supervision, the prisoner will live and remain at liberty without violating the law and that release is not incompatible with the welfare of society”), quoting G.L. c.127, §130.

^{15]} Judge Wilkins did not have occasion to address Mr. Hastings’ need for an evaluation by a forensic psychologist or psychiatrist because motions for funds for such expert assistance had previously been allowed (DBr25; RA I:6-7; 16-23). But this Court has before it James Boone’s appeal from the denial of a *Crowell* motion for funds for the assistance of a forensic psychologist. *Commonwealth vs. Boone*, SJC-13511. The record in *Boone* includes the affidavits of Robert T. Kinscherff, Ph.D., JD (RA128-135), and Frank DiCataldo, Ph.D. (RA136-143), which explain why a forensic evaluation of a mentally disabled prisoner’s mental, cognitive, and psychological functioning is “vital” to the prisoner’s “ability to make a meaningful presentation about their readiness for release to the Parole Board and to the Board’s ability to make a reliable decision” (RA142 [Affidavit of Frank DiCataldo, Ph.D., ¶18]).

circumstances” (Add. 39; RA I:52 [Voukydis Aff. at ¶6]), to seek funds for expert assistance—typically, a forensic psychologist, psychiatrist, or neurologist to evaluate the client, and a social services expert to prepare a reentry plan that identifies and seeks to meet the often “complex support needs” of a mentally disabled prisoner seeking to transition back into the community (RA I:62 [Affidavit of Kristin Dame, LMHC, ¶18]).^[6]

The process that the Parole Board and CPCS have put together in an effort to give meaning to *Crowell* is, as the Board states, “workable” (PBr39)—but only if the lawyers who take on these difficult cases are able to procure expert evaluations and reentry plans, which are “crucial” to ensure that a parole hearing for a mentally disabled prisoner is not an exercise in futility (Add. 24-25 [Affidavit of Attorney Deirdre Thurber, ¶¶16-17]).^[7] Aside from the Indigent Court Costs Law, CPCS

^[6] Ms. Dame is the Director of Social Work Services for CPCS’s Private Counsel Division (RA I:59 [Dame Aff. at ¶2]). After 2020, as some judges began denying motions for expert assistance in *Crowell* cases, CPCS’ Parole Advocacy Unit tried to fill the gap by seeking help from staff social services experts, including Ms. Dame (Add. 35-36 [Voukydis Aff. at ¶¶25-26]). A reentry plan that Ms. Dame recently prepared for a mentally disabled lifer is submitted with this brief as an example of the role that such expert assistance can play in the parole process (Add. 27-31). See also [Massachusetts Parole Board, In the Matter of Joseph Weinstein \(Aug. 15, 2023\)](#) (noting Board’s consideration of Ms. Dame’s reentry plan for 84-year old lifer incarcerated since 1983 with “a history of mental health issues” who had been denied parole six times before the instant decision paroling him to an approved residential care facility).

^[7] Attorney Thurber’s affidavit was submitted in support of a motion to reconsider the denial of a motion for funds in *Commonwealth vs.*

is not aware of any mechanism by which such expert assistance can be procured. It is therefore safe to say that, if the right to expert fees afforded to juvenile lifers in the parole context by *Diatchenko v. District Attorney for the Suffolk Dist.*, 471 Mass. 12 (2015) (*Diatchenko II*), does not extend to disabled prisoners whom the Parole Board seeks to accommodate by referral to CPCS for the assignment of parole counsel, the above described efforts to safeguard such prisoners' art. 114 rights will come to an end.^[8]

ISSUE PRESENTED

The Court has solicited amicus briefs addressing the following question:

Whether the Superior Court erred in denying the defendant's postconviction motion for funds to pay for a social services advocate to assist him with his upcoming parole hearing, where the defendant is indigent and mentally disabled; including, whether the court erred in concluding that it lacked authority to order such funds pursuant to G.L. c.261, §§27B-27C, on the basis that a parole hearing does not constitute "any civil, criminal or juvenile proceeding or appeal in any court," within the meaning of §27B.

Baskin, Suffolk Superior Court No. 0684CR10612, which the Superior Court (Ullmann, J.) allowed on February 21, 2023, "pursuant to *Crowell v. Mass. Parole Bd.*, 477 Mass. 106 (2017)."

^[8] It is worth noting that the right to expert funds recognized in *Diatchenko II* was subsequently codified by the Legislature. See G.L. c.127, §133A, as amended by St.2018, c.69, §98.

ARGUMENT

A Superior Court judge has the authority under the plain terms of the Indigent Court Costs Law to allow a motion for funds to pay for expert assistance in connection with a parole proceeding; in the alternative, consistent with the canon of constitutional avoidance, any ambiguity as to the postconviction reach of the statute must be resolved in favor of a construction that provides an indigent prisoner seeking parole access to such funds for expert assistance as are reasonably necessary to safeguard the prisoner's rights under Article 114 of the Amendments to the Massachusetts Constitution not to be denied the benefits of parole due to a disability.

For the reasons set forth by the Parole Board (PBr18-22), CPCS agrees that the plain language of Section 27B of the Indigent Court Costs Law authorized the Superior Court to allow the motion for funds at issue in this case; and that, for the reasons set forth by both the Board (PBr22-27) and Mr. Hastings (DBr17-19), any ambiguity with respect to the reach of the statute should be resolved in accord with this Court's precedent in *Diatchenko II* and with the central purpose of the statute, which "exists to . . . safeguard[] every Massachusetts litigant's ability to 'obtain right and justice freely, and without being obliged to purchase it.'" *Adjarthey v. Central Division of Housing Court Department*, 481 Mass. 830, 840 (2019), quoting Article 11 of the Massachusetts Declaration of Rights. See *Edwards, petitioner*, 464 Mass. 454, 461 (2013) ("The principle embodied in the [Indigent Court Costs Law] is equal justice under the law: an indigent party should have the financial resources necessary to mount as effective a case as a party who is not indigent").

For the reasons set forth by the Parole Board (PBr27-40) and Mr. Hastings (DBr12-17, 20-28), CPCS also agrees that, in safeguarding the rights of a disabled prisoner seeking parole, Article 114 of the

Amendments to the Massachusetts Constitution adds a “constitutional dimension,” *Diatchenko II*, 471 Mass. at 19, to the parole process that is analogous to the process to which a juvenile homicide offender is entitled by virtue of Article 26 of the Massachusetts Declaration of Rights.

To be sure, Quasim Hastings does not have an art. 26 right to a “meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation,” *Diatchenko II*, 471 Mass. at 13, quoting *Graham v. Florida*, 560 U.S. 48, 75 (2010), because he was over the age of eighteen on the date of the offense for which he was sentenced to life with the possibility of parole. But the fact that a prisoner does not have a constitutionally based right to be considered for release prior to the expiration of a sentence does not mean that a parole hearing to which the prisoner is entitled by statute is a constitutional dead zone. To the contrary, Mr. Hastings’ right to be considered for parole is baked into his sentence, which he “receive[d] from a judge” and was “fixed at the time of sentencing.” *Diatchenko II*, 471 Mass. at 19 n.12. That right, therefore, may not lawfully be extinguished, either de jure (for example, by a statute that retroactively abolished parole) or functionally (for example, by a process that failed to provide a disabled prisoner with a reasonable accommodation necessary to afford the prisoner a meaningful opportunity to enjoy the benefits of parole).

In *Shedlock v. Department of Correction*, 442 Mass. 844 (2004), the Court stated that art. 114 is violated if a disabled individual is “deliberately require[ed] . . . to endure unnecessary hardship in order to access a program or service, when that hardship could easily be eliminated by a reasonable accommodation.” *Id.* at 855. Here, Judge

Wilkins found that Mr. Hastings is mentally disabled, indigent, and requires the assistance of counsel in his parole proceedings due to his disability; that he needs a reentry plan prepared by a social services expert in order for the Parole Board to properly assess whether he is suitable for parole; that the Board does not have the funding or structure to provide such assistance; and that a reasonable person in Mr. Hastings' position who had the means would hire an expert to prepare a reentry plan for the Board's consideration (Add. 15; RA I:65). These findings make clear that Mr. Hastings could readily be accommodated by construing the Indigent Court Costs Law, as this Court did in *Diatchenko II*, to authorize the expenditure of such expert funds as are reasonably required to safeguard the constitutional rights at stake. A contrary construction, on the other hand, would run "counter to the canon of constitutional avoidance," *Oracle USA, Inc. v. Commissioner of Revenue*, 487 Mass. 518, 525 (2021), by raising "grave doubts," *United States v. Jin Fuey Moy*, 241 U.S. 394, 401 (1916) (Holmes, J.), as to whether the statute violates art. 114 as applied to indigent prisoners like Quasim Hastings. See *Chapman, petitioner*, 482 Mass. 293, 306 (2019) ("The fact that one among alternative constructions involves serious constitutional difficulties is reason to reject that interpretation in favor of a reasonable, constitutional alternative, if available"), quoting 2A N.J. Singer, *Statutes and Statutory Construction* §45:11 (7th ed. 2014).

CONCLUSION

For the above-stated reasons, and for the reasons set forth by the Massachusetts Parole Board and Mr. Hastings, CPCS urges the Court to rule that the Superior Court erred in denying Mr. Hastings' motion for funds.

Respectfully submitted,

/s/ Benjamin H. Keehn

Benjamin H. Keehn

BBO #542006

COMMITTEE FOR PUBLIC COUNSEL SERVICES

298 Howard Street, Suite 300

Framingham, MA 01702

(508) 620-0350

bkeehn@publiccounsel.net

December 20, 2023

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(44)

*** IMPOUNDED PER G.L. c. 261, §§ 27A-27G ***

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, ss.

SUPERIOR COURT
CRIMINAL NO. 0376CR00106

COMMONWEALTH

V.

QUASIM HASTINGS

MEMORANDUM OF DECISION AND REPORT TO THE APPEALS COURT
ON DEFENDANT’S MOTION FOR RECONSIDERATION
OF THE DENIAL OF THE DEFENDANT’S MOTION FOR FUNDS

The defendant, Quasim Hastings (“Hastings”) pled guilty to second degree Murder on March 12, 2004. He was sentenced to life in the state prison. G.L. c. 127, § 133A. On August 12, 2022, Hastings filed an ex parte motion for funds for an expert in his upcoming parole hearing. After requesting and receiving a memorandum addressing the court’s legal authority under G.L. c. 261, § 27B to grant funds for a parole hearing, the court endorsed that motion on September 22, 2022:

Endorsement on Memorandum of Law in Support of Quasim Hastings' Ex Parte Motion, (#39.0): Other action taken After review, denied. The Court's authority under G.L. c. 261, sec. 27B is limited to "any civil, criminal or juvenile proceeding or . . . appeal in any court." A parole hearing is not "in any court." While the defendant may have a constitutional right to funds, the obligation to provide those funds resides in the Parole Board or the executive agency or with the legislature. (Wilkins, J.)

On October 24, 2022, Hastings’ counsel filed “Defendant’s Ex-Parte Motion for Reconsideration of the Denial of the Defendant’s Motion for Funds,” (“Motion”) requesting a hearing. The court held an ex parte hearing by zoom on November 4, 2022. After hearing, the Motion is DENIED. Because the legal issue recurs frequently and requires appellate resolution, the court REPORTS

MSA

ITS DENIAL TO THE APPEALS COURT UNDER MASS. R. CIV. P. and also, if the defendant consents, under Mass. R. Crim. P. 35.

FINDINGS OF FACT

Mr. Hastings is indigent. He is eligible for parole consideration. He has received appointment of counsel in the parole proceeding because he requires the assistance of counsel due to mental illness or self-injurious behavior affecting his ability to communicate or participate in his parole proceedings. He is mentally disabled and has requested funds to ensure that he is not denied the opportunity for parole because of his disabilities. To support his request for parole he needs a comprehensive parole release plan that addresses his specific needs, including the need for intra-agency referrals, completion of psychosocial assessments and coordination of specialized residential care. A Social Services expert is necessary to prepare such a plan. Otherwise, the Parole Board may well lack the information needed to make a decision about his readiness to be in the community in light of his mental disability and psychological status, as well as to conclude that he has presented a post-release plan that minimizes the probability of reoffense and shows a reasonable probability that he will live without violating the law. A person with sufficient funds would spend his or her own money for such a purpose when seeking release on parole.

The Parole Board has no funding for expert evaluations. It lacks the administrative structure to pay a third-party vendor for such evaluations.

DISCUSSION

Section 27B of G.L. c. 261 provides in relevant part:

Upon or after commencing or answering to any civil, criminal or juvenile proceeding or appeal **in any court**, including but not limited to civil actions, proceedings for divorce or separate support, summary and supplementary processes, and proceedings upon petitions to vacate, for review or, upon appeal in a criminal case, any party may file with the clerk

an affidavit of indigency and request for waiver, substitution or payment by the commonwealth of fees and costs upon a form prescribed by the chief justice of the supreme judicial court and in accordance with the standards set forth in sections twenty-seven C to twenty-seven F, inclusive, and sworn to under oath by the affiant. [Emphasis added].

The phrase “in any court” limits the authority to authorize payment by the Commonwealth. The Supreme Judicial Court “has held that G. L. c. 261, § 27C (4), provides ‘extra fees and costs,’ including funds for expert witnesses, [Note Omitted] only in the context of a ‘prosecution, defense or appeal.’” Diatchenko v. District Attorney for the Suffolk District, 471 Mass. 12, 26 (2015), citing Commonwealth v. Davis, 410 Mass. 680, 684 (1991). See also Commonwealth v. Arriaga, 438 Mass. 556, 569 (2003). In another administrative proceeding governed by due process requirements and addressing post-conviction consequences, the Supreme Judicial Court has also stated that G.L. c. 261, § 27A “refers solely to fees and costs connected to court proceedings.” Doe, Sex Offender Registry Bd. No. 89230 v. Sex Offender Registry Bd., 452 Mass. 764, 778-780 (2008). As the court noted in Diatchenko, 471 Mass. at 27, “these cases have generally addressed the availability of costs for indigent defendants pursuing nonconstitutionally mandated procedures.” The Defendant cites no general constitutional right to parole for adult offenders sentenced to life imprisonment, and the right to seek parole is statutory. G.L. c. 127, § 133A. Whatever the wisdom of the policy advocated by the Defendant in this case, this court is bound by the clear statutory language of G.L. c. 261, § 27B, as interpreted authoritatively by the Supreme Judicial Court.

The Supreme Judicial Court has recognized a constitutionally-based exception to this rule:

Because the postconviction proceeding at issue here, **a parole hearing for a juvenile homicide offender, is required in order to ensure that an offender's life sentence conforms to the proportionality requirements of art. 26**, the proceeding is not available solely at the discretion of the State. Rather, it is constitutionally mandated, and

as such, it requires certain protections not guaranteed in all postconviction procedures. It is appropriate, therefore, to construe G. L. c. 261, §§ 27A-27G, to authorize a Superior Court judge, upon motion of a parole-eligible, indigent juvenile homicide offender, to allow for the payment of fees to an expert witness to assist the offender in connection with his or her initial parole proceeding in certain limited contexts -- specifically, where it is shown that the juvenile offender requires an expert's assistance in order effectively to explain the effects of the individual's neurobiological immaturity and other personal circumstances at the time of the crime, and how this information relates to the individual's present capacity and future risk of reoffending. The judge may exercise discretion to do so when the judge concludes that the assistance of the expert is reasonably necessary to protect the juvenile homicide offender's meaningful opportunity for release.

Diatchenko, 471 Mass. at 27. The key rationale underlying this exception is the juvenile's right to a parole hearing arising out of a constitutional limitation on the court's authority to order a life sentence.

That is not the case here (assuming that the Supreme Judicial Court does not extend Diatchenko to defendants who just barely qualified as adults). In this case, the court imposed a life sentence for murder in the second degree. The defendant's right to parole consideration therefore arises by statute. G.L. c. 127, § 133A. That statute specifically delegates the authority over that parole proceeding and subsequent decision to "[t]he parole board." As the entity conducting the parole hearing, the Parole Board has the duty to accommodate the Defendant's disability. Crowell, 477 Mass. at 113 ("once the board became aware that the plaintiff's disability could potentially affect his ability to qualify for parole, it had the responsibility to determine whether reasonable modifications could enable the plaintiff to qualify, without changing the fundamental nature of parole."). This duty has nothing to do with the court's sentence or constitutional constraints upon sentencing. It affects the Parole Board at the time of exercising the purely executive function of considering whether to grant parole.

The fact that the Legislature and Parole Board had provided no statutory avenue for relief against the Executive does not require disregarding the plain language of G.L. s. 261, § 27B or

the controlling authority under that statute. Even if there is no statutory means of redress for violation of his state constitutional rights under Art. Amend. 114, Defendant may still have rights against the Parole Board and the Executive branch to access the funds he needs. See Layne v. Superintendent, Massachusetts Correctional Institution, Cedar Junction, 406 Mass. 156, 159-160 (1989). The court, however, has no authority to misread § 27B to accomplish that result.

Solely as a matter of statutory constraint, therefore, the court denies the request for funds under G.L. c. 261, § 27A-H. Without that statutory limitation, it would grant the Motion.

REPORT TO THE APPEALS COURT

Mass. R. Civ. P. 64(a) appears to govern a report of the court's ruling on the Motion in this case. This conclusion is not entirely clear, however.

Though captioned as a motion in a criminal case, the Motion does not address any proceeding in, or relief available, from the criminal court. The leading authority, Diatchenko, arose in a civil action commenced in the Supreme Judicial Court for Suffolk County. See also Crowell v. Mass. Parole Board, 477 Mass. 106, 112 (2017). That case followed a long line of cases holding that the grant of parole "lies exclusively within the province of the executive branch" and that denial of parole is reviewable in a civil action in the nature of certiorari. Id., 471 Mass. at 28-30. If parole were denied improperly, due to the failure to accommodate the Defendant's disabilities, review would be by certiorari. See Crowell, 477 Mass. at 112. Accordingly, the court reports the Denial of the Motion pursuant to Mass. R. Civ. P. 64(a) based upon the above findings of fact and, in the alternative finds that the order on the Motion so affects the merits of the controversy that the matter ought to be determined by the appeals court before any proceedings in this court.

Of course, the defendant could also consent to the report, in the event that Mass. R. Crim. P. 34 governs, or could appeal the denial pursuant to G.L. c. 261 § 27D. In either case, the question of the criminal or civil nature of the court's ruling would become moot.

The court believes that appellate resolution of this court's authority to authorize fees for experts in parole proceedings for adult defendants is highly desirable. It appears from Exhibit B to the Memorandum of Law in Support of the Defendant's Ex Parte Motion for Reconsideration (at ¶ 16) that at least 37 similar motions have been allowed, including an earlier motion in this very case. The Motion does not set forth the number of motions that have been denied, but, to the best of the court's recollection, the undersigned has denied one such motion in Middlesex County, which does not appear in the affidavit.¹ It is not surprising that there is no report of denials, because only allowances would result in paper trails of payments to experts.

REQUEST FOR RELIEF PENDING APPEAL

If the Defendant files a motion for relief pending appeal (Mass. R. App. 6(a), (b); G.L. c. 261, § 27D), the Court would seriously entertain a request to authorize the requested funds to be expended during the pendency of appeal. The Defendant's efforts for release on parole are highly time-sensitive, the loss of time in pursuit of parole is irreparable, and there is little burden on the Commonwealth, because the Treasury would almost certainly incur no net impact, where some agency of the Commonwealth likely has a duty to expend funds to accommodate the Defendant's disability during pursuit of his parole application.

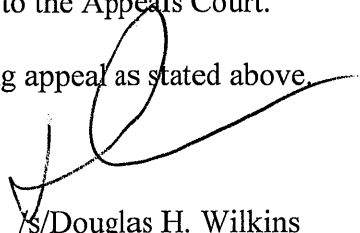
CONCLUSION

For the above reasons:

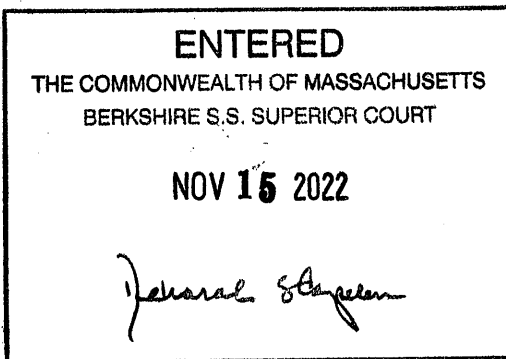
1. The court **DENIES** Defendant's Ex-Parte Motion for Reconsideration of the Denial of the Defendant's Motion for Funds.

¹ It is not clear whether a different judge subsequently granted that motion in Middlesex.

2. The Court **REPORTS** the correctness of its ruling to the Appeals Court.
3. The Court will entertain a motion for relief pending appeal as stated above.


/s/Douglas H. Wilkins
Douglas H. Wilkins,
Justice of the Superior Court

Dated: November 15, 2022



COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
0684CR10612

COMMONWEALTH

v.

WHITNEY BASKIN

AFFIDAVIT OF ATTORNEY DEIRDRE THURBER

I, Deirdre Thurber, do hereby depose and state as follows:

1. I have been an attorney since 1977 and was admitted to the Massachusetts bar in 1992.

2. Since 2018, I have represented approximately 25 non-juvenile lifers and one non-juvenile serving a term-of-years sentence before the Massachusetts Parole Board, all of whom suffered from a disability within the meaning of Article 114 of the Amendments to the Massachusetts Constitution, G.L. c. 93, § 103, and the Americans with Disabilities Act (ADA).

3. I have filed motions for funds to hire an expert or experts—including forensic psychologists, forensic psychiatrists, and social workers—in each of these cases, and motions for supplemental funds in five of them.

4. Until relatively recently, the motions for funds that I have filed on behalf of my disabled parole clients were routinely allowed on the papers.

5. Whitney Baskin is serving a life sentence in this case following his conviction, on December 21, 2007, for second degree murder.

6. On December 1, 2020, the Parole Board issued a referral notice to the Parole Advocacy Unit of the Committee for Public Counsel Services (CPCS) requesting that counsel be assigned to represent Mr. Baskin in his parole proceedings.

7. The notice (a copy of which is attached to these pleadings as Exhibit A) requests that counsel be provided for Mr. Baskin due to his mental illness.

8. Upon receiving this notice, CPCS's Parole Advocacy Unit assigned me to represent Mr. Baskin.

9. I have reviewed mental health records generated by the Department of Correction (DOC) pertaining to Mr. Baskin and have summarized pertinent aspects of those records in these pleadings as they relate to the mental illnesses with which Mr. Baskin has been diagnosed.

10. The docket entries in this case indicate that, prior to trial, Mr. Baskin's attorney filed motions for funds to hire a forensic psychologist and a notice of intent to rely on a defense of mental disease or defect.

11. On January 3, 2023, I filed the motions for funds now in issue by mailing them, first class and postage prepaid, to Maura Hennigan, Clerk Magistrate for Suffolk Superior Court. On January 18, 2023, when there was still no indication on MassCourts that the motions had been docketed, I checked with the clerk's office and was informed that the motions had not been received. I therefore re-mailed the motions, which were docketed on January 19, 2023. The motions that I mailed on January 3, 2023, have not come back to me as undelivered.

12. On February 1, 2023, I received a mailing from the clerk's office, postmarked January 30, 2023, containing copies of the orders of the Court (Ullmann, J.), dated January 26, 2023, denying both motions. The Court did not hold a hearing before denying the motions.

13. On or about February 1, 2023, I became aware of an email sent by Judge Ullmann to CPCS administration on January 26, 2023, stating in part that he would "no longer" be allowing motions for funds for expert assistance in connection with parole proceedings filed on behalf of parole-eligible prisoners who were not under 18 at the time of the offense.

14. A complete forensic psychological evaluation is imperative in order for me, as counsel, to represent Mr. Baskin effectively before the Parole Board.

15. Among other things, such an evaluation is necessary to provide insight into the genesis of the crime for which Mr. Baskin was convicted, Mr. Baskin's adjustment to institutional life, and his difficulties in completing programming during his incarceration. An evaluation by a forensic psychologist regarding Mr. Baskin's current mental status will also help me to communicate with Mr. Baskin, identify any intellectual disabilities that will need to be addressed in order to properly prepare him for his appearance before the Parole Board, and identify any accommodations that may be necessary in order for him to have a fair and reliable parole hearing.

16. An evaluation by a forensic psychologist also involves a risk and need assessment that identifies what services will be a necessary component of Mr. Baskin's parole release plan to insure a successful transition back into the community. Such an assessment is a crucial factor in the Parole Board's determination of Mr. Baskin's suitability for parole.

17. Likewise, a parole release plan created by a social services expert is crucial in order for me, as counsel, to represent Mr. Baskin effectively before the Parole Board. As a practical matter, Mr. Baskin will not be granted parole without a detailed release plan that provides the Board with a basis for concluding that, if he is released with appropriate conditions and

supervision, he will live and remain at liberty without violating the law. As an individual who has been diagnosed with serious mental illnesses, who is of an age that requires medical care, and whose criminal conduct involves a sexual component, identifying and securing an appropriate residential treatment program will be a complex undertaking beyond the knowledge and experience of counsel. The social worker will also apply for, if appropriate, DMH services, SSI and/or Social Security benefits, MassHealth insurance, identify an appropriate therapist and doctor, if warranted, and coordinate with DOC, the community parole officer, and the administration of the residential program about the details of Mr. Baskin's release.

18. Based on my experience handling parole cases, my review of Mr. Baskin's records, and the Parole Board's request that CPCS assign counsel for Mr. Baskin due to his mental disabilities, I believe that the current status of those disabilities and the presentation of an appropriate release plan tailored to address them will be dispositive factors in the Board's determination of whether Mr. Baskin is suitable for parole.

19. I do not have the training, education, or experience necessary to evaluate Mr. Baskin's mental health issues and tailor an appropriate post-release treatment plan.

20. Accordingly, in order to properly address these issues and fulfill my ethical obligations in representing Mr. Baskin before the Parole Board, I require the services of a forensic psychologist and a social services expert.

21. Mr. Baskin lacks the means to hire such experts, which are reasonably necessary to ensure that he is not disadvantaged in his parole proceedings because of his poverty and disabilities.

22. If this motion for reconsideration is allowed, the experts hired will be paid by CPCS at its established rates from funds appropriated by the Legislature for such expenditures pursuant to G.L. c. 261, §§ 27A-27G, which, for FY2023, may be found at St. 2022, c. 126, § 2 (line item 0321-1520).

SWORN TO UNDER THE PAINS AND PENALTIES OF PERJURY
on this 12th day of February 2023.

/s/ Deirdre Thurber
Deirdre Thurber



**Committee for Public Counsel Services
Private Counsel Division**

75 Federal Street, 5th Floor, Boston, MA 02110
Tel: (617) 482-6212 – Fax: (617) 988-8495

ANTHONY J. BENEDETTI
CHIEF COUNSEL

VANESSA VÉLEZ
DEPUTY CHIEF COUNSEL

KRISTIN DAME
DIRECTOR OF PRIVATE SOCIAL WORK
SERVICES

May 23, 2023

Parole Release Plan
For
Joseph Weinstein (DOB 7/21/1939)

Sources of Information

- In-person Interviews on 3/20/2023, 5/18/2023, and 5/21/2023
- Consultation notes and calls with Attorney Nicole Ouellette, 9/29/2022-5/21/2023
- Consultation Note, Robert Kinscherff, Ph.D., Esq., dated 9/1/2013
- Autobiography of Joseph Weinstein, dated 03/18/2013
- Bridgewater State Hospital Discharge Summary, dated 08/09/1990
- Bridgewater State Hospital Commitment Petitions and Reevaluation Reports, dated 12/16/1985; 07/30/1987
- Parole Board Decision Reports, dated 12/26/2019, 5/20/2015, and 7/17/2014
- Parole Review Hearing, dated 3/25/2008
- Medical Records, Heywood Hospital, dated 4/15-4/28/2023
- Lemuel Shattuck Hospital, Medical Consultation Report, dated 2/24/2023
- Medical Records, Wellpath, dated 7/2022-5/2023
- Mental Health Records, Wellpath, 4/2021-10/2022

Identifying Information

Joseph Weinstein is an 83yo, divorced gentleman with no known children and a deep commitment to his Jewish faith. As is known to the Parole Board, he was arrested for the April 15, 1983 shooting death of Beatrice “Bunny” Burns. Per the reports, after the incident, Mr. Weinstein attempted suicide by overdose and cutting both wrists. He then called the police. At the time of his arrest, he was admitted to Bridgewater State Hospital, found Incompetent to Stand Trial, and involuntarily committed until he was deemed Competent to Stand Trial on July 28, 1987. Mr. Weinstein pleaded guilty to second-degree murder on September 8, 1988 and was sentenced to Life with the possibility of parole. This is Mr. Weinstein’s seventh parole hearing. His most recent risk assessment indicated that he was at medium risk for recidivism, according to the LS/CMI.

Brief Psychosocial Summary

Mr. Weinstein grew up in Roxbury, the second youngest of six children. His mother was a housewife, his father a foreman for the city of Lowell. Records indicate that Mr. Weinstein suffered from Rheumatic Fever at age 5, an illness that would affect him until his twenties. He was hospitalized and away from his family for six months. Once he was well enough to return, he had to take penicillin three times a day for the next sixteen years.

Mr. Weinstein indicates he was retained in both first and second grade. He does not know why; possibly due to his medical health at the time and/or untreated learning disability. At some point, he was on track to pursue vocational training in wood working at Dorchester High School. Instead, he transferred to another high school, where he eventually dropped out in the 10th grade at the age of 16. He later earned his GED while at Bridgewater State Hospital. Prior to incarceration, Mr. Weinstein held many jobs, including as a baker, a machinist, cab driver; he was employed at a silver company in the shipping department, and as the manager of a gas station. Records also indicate he enlisted in the Army but was medically discharged within the first year due to a back injury. While incarcerated, he worked as a “ward worker” and shined shoes for officers. In October 2001, he started in the Optical Lab, holding different positions, including in the Shipping Department. He now helps to “supervise” the garden. His work evaluations were positive, and he was viewed as a reliable worker.

Records indicate that Mr. Weinstein has a history of depression starting in childhood. He received some services at the Multi Service Crisis Center in Brockton, MA. In adulthood, he would “see visions of people in windows and doors”. In 1969, at the age of 29, he married. In 1976, eight years later, the marriage ended in divorce when his wife left him. Mr. Weinstein states he struggled with alcohol abuse during periods of his life. His alcohol use intensified after his divorce, as did the use of marijuana, black beauties (PCP), and valium. He reportedly was under the influence of alcohol at the time of the offense resulting in his incarceration. While incarcerated, Mr. Weinstein has been actively engaged with mental health services and in October 1988, he graduated from Spectrum Correctional Recovery Academy. For many years, he was active in AA/NA, serving as a chairman or co-chairman at various times.

Prior records indicate a near life-long tremor in his hand. A neurological exam resulted in an “action type tremor” diagnosis and was treated with Myroline. In 2013, he was found to have mild cognitive and memory impairments, most notable in short-term memory retrieval. More recently, Mr. Weinstein contracted covid and fell into a coma. After recovering, he fell and broke his hip, requiring a hip replacement. He was given a walker initially; he now ambulates short distances without assistive devices, and with a cane for longer distances or uneven terrain. He was diagnosed with cataracts requiring surgery; he was given bilateral hearing aids for hearing loss. There is a diagnosis of Parkinson’s Disease. He continues to have pronounced tremors that can affect his ability to grip and hold items. In life skills, this is seen in his ability to write and adjust his hearing aids. He can shower, dress, groom, and feed himself.

Parole Release Plan

The below parole release plan takes into consideration Mr. Weinstein's physical, medical, and mental health needs, in addition to his social and financial circumstances.

Residential Care Home:

Due to Mr. Weinstein's lengthy incarceration and institutionalization, it is recommended that Mr. Weinstein be paroled to a residential care home, more commonly referred to as rest home. Similar to skilled nursing facilities, rest homes offer 24-hour staff supervision; however, they do not offer 24-hour nursing. To be eligible, residents need assistance in at least one Activity of Daily Living (ADL) but be relatively independent with mobility and transfers, showering, toileting, and feeding themselves. They may require supervision or light hands-on assistance. More than direct staff support for physical care, Mr. Weinstein will most benefit from the medication management and prepared meals provided by the rest home. This is due in large part to his institutionalization, but also because of his involuntary tremors. Administering his own medications and preparing his own meals would be difficult.

While many residential care homes are only private pay, there are homes that accept Medicare/Medicaid. They use a DTA/EAEDC program to compensate for the gap that public health care coverage leaves. Based on Mr. Weinstein's work history and reported lack of assets, he would qualify for this program.

Alcohol Use Disorder (AUD) Treatment:

Per Mr. Weinstein's report, despite having opportunity within the prison, he has remained alcohol and drug free. For many years, he was active with the prison AA/NA groups, holding the chair and co-chairs positions. His reasoning for stepping down and becoming inactive had to do with the lack of commitment and participation by other group members. He remains in recovery to this day. When asked about participating in AA/NA groups in the community, Mr. Weinstein expressed interest. The recovery community has started to recognize an aging population needing recovery support. Mr. Weinstein can be connected to a recovery coach and/or recovery community in the area where he resides.

Medical Care:

Based on Mr. Weinstein's medical needs, it is recommended that he be followed by a medical center attached to a hospital with multiple discipline. Aside from his medical health issues, he has cataracts that require surgery and a hearing loss that could be resolved with hearing aids that take into consideration his tremors. The hearing aids provided by the institution, unfortunately, are too difficult for him to operate without assistance. If he is in the Boston area, he has expressed a preference for Boston Medical Center. If he is in Worcester, he would be referred to UMass Memorial Hospital. If he is in Springfield, he would be referred to Bay State Medical Center.

Mr. Weinstein would apply for PT1 for door-to-door transportation services to and from medical appointments.

Behavioral Health Care:

As has been noted in his records, and past reports and parole board decisions, Mr. Weinstein has a history of mental health needs that pre-dated his incarceration. Since his incarceration, he has received mental health services for most of his time. Records indicate a period of stopping due to the revolving door of clinicians and having to retell his story over and over. It appears that he followed the recommendation of Parole Board after his 2003 and 2008 denials and resumed mental health support. During his most recent interviews, Mr. Weinstein indicates that he is active with his mental health treatment and will use them to address concerns or problems. He not only expects but wants to continue mental health care in the community.

Referral for mental health care will be dependent on where he lives and his insurance plan. While there are not many geropsychiatrists, attempts to refer him to one that accepts his insurance will be made. This may be at the medical health center when he receives care but could also be an independent practice. If one cannot be found, a referral to a psychiatrist will still be made. His outpatient therapy will likely have to be in person due to lack of tech skills, anticipated difficulty operating a computer or phone, and his hearing. PT1 transportation can be used for mental health and psychiatry appointments.

Income and Employment:

Mr. Weinstein may have some Social Security retirement benefits from his pre-incarceration work history. At the least, he will qualify for Supplemental Security Income (SSI). Whatever his income and/or assets, they will be given to the rest home towards his patient paid amount. He will receive \$72.80/month towards personal incidentals. This can be used towards haircuts, monthly cell phone bills, snacks, etc.

Throughout his interviews, Mr. Weinstein has identified being employed as being very important to him. Being a productive, diligent, and reliable employee is a source of pride. While he has expressed an interest in “working”, Mr. Weinstein may get a sense of employment through informal opportunities, like helping in the garden or baking. This is also a way to structure “down time”.

Behavioral Health Supports for Justice-Involved Individuals (BH-JI):

Once a rest home has accepted Mr. Weinstein, and a release date is identified, it is highly recommended that referral be made to the **Behavioral Health Supports for Justice-Involved Individuals (BH-JI)** program that covers the county of the rest home. While BH JI cannot be a condition of parole, Mr. Weinstein and the rest home will benefit from a clinical case manager who is knowledgeable of the re-entry needs of someone with a lengthy period of incarceration. In addition, they have access to client-specific resources, like cell phones, hygiene products, and can help with clothing. They also can assist with setting up medical, mental health, and recovery providers and, on a limited basis, provide transportation to these services.

Hobbies and Interests:

As has been mentioned before, Mr. Weinstein has a deep faith and is as active as he can be in his religion. He would like to attend synagogue and participate in services as much as he is allowed. If there isn't one within close walking distance, transportation assistance separate from the rest home would be required. In addition to his faith, he is an avid Celtics fan, loves to garden, and would welcome the chance to bake again. He enjoys reading and puzzles when his eyesight and tremors allow. When given some time, he shares stories about his experiences finding great pizza spots in the Boston area. He recalls meeting the Celtics players at a bowling venue. He used to enjoy Western movies and old country music like Willie Nelson and Dolly Parton.

Conclusion

It has been noted in prior Parole Board decisions that Mr. Weinstein's lack of insight, in addition to inconsistent reporting, was partial cause for being denied parole. Records indicate a cognitive impairment, memory loss, and, per Dr. Kinscherff's report, "concrete" thought process. It's possible that Mr. Weinstein does not possess the cognitive wherewithal to show the level of insight the Board is seeking, which is not the same as feeling deep remorse and pain for his actions. During his interviews, he becomes tearful and unable to speak when asked about his crime. While he needs additional time to find the right words to express himself, when he does, he is articulate and emotional. Mr. Weinstein has had two disciplinary reports in forty years of incarceration; by the DOC reports, he is considered low risk for recidivism. Assessing Mr. Weinstein's ability to maintain himself in the community may be better based on his actions more than on his words.

If the parole board votes in favor of his release, Mr. Weinstein's medical and physical health needs can be supported in a residential care home where he will have access to staff as needed. While in a residential care setting, his meals and medication will also be provided for him. From there, he can access medical, recovery and mental health care, and participate in religious activities if allowed by this board. It is unlikely that his health needs will improve; however, if they worsen, he can easily be assessed for a higher level of care.

Please do not hesitate to contact me with any questions or if further information is needed.

Sincerely,

Kristin Dame, MA, LMHC
Phone: (857) 338-6365
Email: kdame@publiccounsel.net

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

COMMONWEALTH

VS.

QUASIM HASTINGS

SJC-13495

AFFIDAVIT OF ATTORNEY MARA VOUKYDIS

I, Mara Voukydis, do hereby depose and state that the following is true to the best of my knowledge and belief:

1. I am the Director of the Parole Advocacy Unit of the Committee for Public Counsel Services (CPCS).

2. I provided Attorney Sharon Dehmand with an affidavit in support of the motion for reconsideration that she filed in the trial court on behalf of Mr. Hastings in this case. That affidavit is in the record (RA I:51-57), and a copy is attached hereto as Exhibit A.

3. The instant affidavit is submitted to provide the Court with current information regarding the status of CPCS's efforts to work with the Massachusetts Parole Board (Parole Board or Board) to ensure access to counsel and experts for indigent disabled prisoners whose sentences include the possibility of parole.

4. I have been involved in the assignment of parole counsel by CPCS for people with disabilities since 2018. CPCS established the Parole Advocacy Unit in 2020 to address the growth of the practice area in light of developments that increased access to counsel for parole matters.

5. The case of *Crowell v. Massachusetts Parole Board* was initiated in 2014, reached this Court in 2016, and was decided on May 15, 2017.

6. Even before *Crowell*, however, CPCS and other stakeholders asked that the Parole Board take measures to accommodate mentally disabled prisoners.

7. Current Parole Board policy seeks to refer indigent parole eligible prisoners to CPCS for the assignment of parole counsel when the Board is aware that a prisoner has been diagnosed with an impairment that renders the prisoner not competent to offer testimony, understand the proceedings, or otherwise meaningfully participate in the hearing.

8. When CPCS receives such a referral, the Parole Advocacy Unit seeks to find a member of the parole panel willing to accept the assignment.

9. In 2016, CPCS received 42 referrals from the Board for the assignment of parole counsel, almost twice the number of any previous year for which the Parole Advocacy Unit has data.

10. Over 60 per cent of these referrals (26) indicated that counsel was needed due to the individual's mental or cognitive disability.

11. From the beginning of 2015 through November 21, 2023, CPCS has received a total of 242 referrals for the assignment of parole counsel.

12. Over 80 per cent of these referrals (194) indicate that counsel was needed due to the prisoner's mental or cognitive disability.

13. Since this Court's decision in *Crowell* was released in May 2017, CPCS has received 158 referrals from the Parole Board, 96 per cent of which (151) indicate that counsel was needed due to the prisoner's mental or cognitive disability.

14. Before 2015, referrals requesting the assignment of counsel were limited almost exclusively to people serving life sentences who were facing a revocation of their parole, pursuant to the practice of a former Chair of the Parole Board.

15. Aside from the increase in referrals during and shortly following the *Crowell* case, the flow and pace of referrals for reasons of disability have been variable and generally dependent upon Parole Board leadership.

16. In my role as Director, I continually emphasize to panel attorneys the importance of procuring expert assistance as a central component of the expected legal representation for people with disabilities seeking parole.

17. In my experience, the attorney assigned to represent a disabled individual at a parole hearing will have a unique ability to focus the work of the expert on the client's specific situation, minimizing the possibility of the disability unfairly serving as an obstacle to release.

18. Most of the referrals that the Parole Advocacy Unit has received from the Parole Board in recent years began as requests for assistance from or on behalf of parole eligible individuals. Once we have secured proper permission from the individual, the Parole Advocacy Unit gathers information to supply to the Parole Board with a request that the Board screen the individual for a referral due to disability.

19. In those contacts, we frequently discuss with Board staff the utility of experts as a significant reason for requesting a screening.

20. The Parole Board has recently issued decisions in some cases involving disabled lifers that in my view reflect an evolving awareness

of disability related issues and an appreciation for the importance of expert assistance and the assistance of counsel for mentally disabled prisoners.

21. For example, in granting parole to Starleen Rutkowski, the Board noted that Ms. Rutkowski, who “suffers from major mental issues and has a traumatic brain injury[,] presented a thorough, thoughtful parole plan, complete with a forensic consultation report prepared by a social worker.” Massachusetts Parole Board, Matter of Rutkowski (Aug. 14, 2023).

22. To the best of my knowledge, before late 2020, motions for funds to retain expert assistance for non-juvenile disabled prisoners seeking parole were universally granted.

23. Around that time, some judges began denying such motions on the grounds that the Superior Court lacked authority under the Indigent Court Costs Law to allow parole related motions for funds unless the applicant for funds was under the age of eighteen at the time of the offense and was serving a life sentence for murder.

24. Since then, some judges have continued to allow expert funds motions, some have allowed them upon submission of a motion for reconsideration, and some have denied them.

25. After some judges began denying parole related motions for funds not filed on behalf of a juvenile homicide offender, I reached out to CPCS staff Social Services Advocates to inquire if they had time to work on postrelease plans for the Parole Advocacy Unit’s disabled clients. Although some staff obtained permission from their supervisors to take on a particular case, capacity in this regard is extremely limited.

26. In addition, CPCS's Director of Private Social Services (Kristin Dame) and her staff Social Services Advocate (Jacquelyn Oppler) have recently begun handling a small caseload of Parole Advocacy Unit cases. Due to other responsibilities, their capacity is limited to a few parole cases each at a time.

27. As the allowance of motions for funds to procure expert assistance in *Crowell* cases has become increasingly uncertain, panel attorneys have indicated that they will be unwilling to accept assignments in such cases going forward due to concerns that, without the assistance of experts, they will not be able to provide meaningful representation.

Sworn to under the pains and penalties of perjury, this 18th day of December, 2023.

/s/ Mara Voukydis
Mara Voukydis

EXHIBIT A

Commonwealth v. Hastings, 0376CR00106
Affidavit of Attorney Mara Voukydis
In Support of Defendant's Motion for Reconsideration
(Oct. 19, 2022)

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, ss

BERKSHIRE SUPERIOR COURT
No. 0376CR00106

COMMONWEALTH OF MASSACHUSETTS

V.

QUASIM HASTINGS

THE COMMONWEALTH OF MASSACHUSETTS
BERKSHIRE S.S. SUPERIOR COURT
FILED
OCT 24 2022
FILED

AFFIDAVIT OF ATTORNEY MARA VOUKYDIS

General Saperstein

I, Mara Voukydis, do hereby depose and state that the following is true to the best of my knowledge and belief:

1. I am an attorney licensed in Massachusetts since 2008. I received my law degree from Northeastern University School of Law.
2. I am the Director of the Parole Advocacy Unit of the Committee for Public Counsel Services ("CPCS"). Prior to my appointment, I served as Acting Director of the Parole Advocacy Unit for about 14 months. In these capacities, I have provided leadership within CPCS on matters pertaining to parole, and have trained and certified attorneys who handle specialized parole cases. In addition, I consult with attorneys about their parole cases and review parole decisions. I also communicate regularly with Parole Board staff relative to assignment of counsel and related legal matters.
3. Prior to my appointment as Acting Director, I was in a staff counsel position that also included assignment of parole cases for people with disabilities.

In all, I have been involved in the assignment of parole counsel by CPCS for people with disabilities since 2018.

4. The primary cohorts served by the Parole Advocacy Unit are parole-eligible people serving life sentences for offenses committed as juveniles, certain people facing parole revocation, and people with serious disabilities, including mental illness.

5. In order for attorneys to begin handling parole assignments for people with disabilities, they must complete a certification training. Training includes information on how to engage an expert, and the significance of using an expert.

6. It is understood as a practice expectation and standard that, in almost all circumstances, counsel should file a motion for funds for an expert evaluation of their disabled client.

7. The Parole Board's legal staff provides CPCS with notice of people with serious disabilities who will need counsel in order to adequately present their case for parole. CPCS also at times alerts the Parole Board of someone needing counsel, at which point the Board reviews the request and when staff agree, provide a referral back to CPCS.

8. Referrals are made when the Board's legal office has determined that "because of a mental, psychiatric, medical, physical condition or language barrier" the individual "is not competent to offer testimony at or understand the

proceedings of an initial [parole] release or review hearing.” 120 CMR 300.08.

9. Sometimes the Parole Board’s referral states explicitly that the members are seeking an expert evaluation of the individual. Other times CPCS receives a referral for counsel after a hearing has occurred and the Board has noted in its decision denying parole that a disabled prisoner did not have an expert evaluation prior to their parole hearing.

10. The Board often relies upon expert evaluations and reports obtained by counsel via a motion for funds in determining the suitability of disabled prisoners for release on parole.

11. On or about March 6, 2018, CPCS received a referral from the Parole Board, a copy of which is attached as Exhibit A, requesting the assignment of counsel to Quasim Hastings due to “mental illness.”

12. Part of the prisoner’s obligations before the Parole Board is to demonstrate that “he will live and remain at liberty without violating the law and, that release is not incompatible with the welfare of society.” G.L. c.127, § 130. To that end, counsel needs to create a compelling “parole release plan” that describes “risk reduction programs . . . [designed to] minimize the probability of the prisoner re-offending once released.” Id.; 120 CMR 300.05(h).

13. Due to the complex needs of seriously disabled prisoners, it is imperative for parole candidates with mental illness to present a comprehensive

parole release plan that addresses their specific needs. Often the release planning will require navigation of complicated intra-agency referrals, completion of psychosocial assessments, and coordination of specialized residential care, most appropriately handled by a social services expert.

14. Attorneys assigned by the Parole Advocacy Unit to represent clients in their parole hearing routinely file motions in the court of the client's conviction for funds to hire experts to assist in preparing and presenting the case for parole. Such motions are almost always allowed.

15. Once a motion for funds for the payment of expert fees and costs is allowed, those fees and costs are paid by CPCS from its annual appropriation for such expenditures, which for FY2023 may be found at St. 2023, c. 24, § 2 (line item 0321-1520).

16. The following is a partial list of docket numbers of cases in which Superior Court judges have allowed motions for funds to retain an expert—including but not limited to social workers, psychiatrists, psychologists, and other mental health experts—to provide assistance to non-juvenile disabled prisoners facing a parole hearing:

Barnstable County
9872CR48142
0372CR00019
0272CR00010
8572CR42767

Berkshire County
0376CR00106

Bristol County
0673CR00860
8973CR24049
9173CR28440

Essex County
9877CR02014
8377CR05627

Hampden County
0479CR01033
0379CR00590
9979CR00216
8879CR02721
7579CR02726

Middlesex County
0481CR00053 (Pierce,
J.)
0581CR01021 (Pierce,
J.)
0481CR01340
1181CR01270 (Pierce,
J.)
9781CR01880
9081CR01935 (Pierce,
J.)
8781CR03357 (Pierce,
J.)
6081CR58384 (Pierce,
J.)
9781CR01306 (Pierce,
J.)

Norfolk County
9082CR00938
8782CR85850

Plymouth County
1283CR00291
0383CR00445
0183CR00523

Suffolk County
0684CR10406
0284CR11182
0284CR10459
0184CR10903
9584CR10637
7884CR21952

Worcester County
9185CR00986

17. CPCS recognizes that incarcerated people serving parole-eligible sentences have a right to a meaningful consideration by the Board of their request

for parole.

18. CPCS further recognizes that, when the person seeking parole is cognitively or mentally disabled, the Parole Board has “the responsibility to determine whether reasonable accommodations could enable the [prisoner] to qualify [for parole], without changing the fundamental nature of parole.” Crowell v. Massachusetts Parole Board, 477 Mass. 106, 113 (2017).

19. As the Supreme Judicial Court noted in Mr. Crowell’s case, and as is the case for all of the disabled parole-eligible prisoners assigned counsel by CPCS for their parole proceedings, “it is difficult to see how the board could proceed without a professional evaluation of the [prisoner’s] condition and recommendations regarding a postrelease plan that might diminish the risk of recidivism.” Id. at 114, n.16 (emphasis added).

20. Other than the granting of a motion for funds by the Superior Court under G.L. c. 261, §§ 27A-G, there is no mechanism of which I am aware that would allow an indigent, disabled individual in Mr. Hastings’ position to obtain the expert services needed to secure his right to a fair and reliable parole hearing.

21. In a June 2, 2022 email from Parole Board Executive Director Kevin Keefe, he confirmed that the Board itself has no access to funds. He stated that I was “accurate in stating that the Parole Board does not receive funds nor is there a mechanism in place by which the Parole Board is authorized to approve funds.”

Mr. Keefe further stated that Parole Board “support[s]appropriate requests for funds for juvenile lifers and/or disabled clients.”

22. Without such expert assistance, it is highly unlikely that the Parole Board will be in a position (a) to make an informed and reliable decision regarding the intersection of Mr. Hastings’ mental disability, his current psychological status, the risk of recidivism attributable to his disability, his readiness to be in the community, or (b) to conclude that Mr. Hastings has fulfilled his obligation to present a post-release plan that “minimize[s] the probability of the prisoner re-offending once released,” and that ensures “a reasonable probability that . . . [he] will live and remain at liberty without violating the law and that release is not incompatible with the welfare of society.” G.L. c. 127, § 130.

Sworn to under the pains and penalties of perjury, this 19th day of October, 2022.

/s/ Mara Voukydis
Mara Voukydis, Esq.

MASSACHUSETTS CONSTITUTION

Declaration of Rights

* * *

Article II. Every subject of the commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property, or character. He ought to obtain right and justice freely, and without being obliged to purchase it; completely, and without any denial; promptly, and without delay; conformably to the laws.

Article 26. No magistrate or court of law, shall demand excessive bail or sureties, impose excessive fines, or inflict cruel or unusual punishments.

Articles of Amendment

* * *

Article II4. No otherwise qualified handicapped individual shall, solely by reason of his handicap, be excluded from the participation in, denied the benefits of, or be subject to discrimination under any program or activity within the commonwealth.

MASSACHUSETTS GENERAL LAWS

Chapter 127, §130

No prisoner shall be granted a parole permit merely as a reward for good conduct. Permits shall be granted only if the board is of the opinion, after consideration of a risk and needs assessment, that there is a reasonable probability that, if the prisoner is released with appropriate conditions and community supervision, the prisoner will live and remain at liberty without violating the law and that release is not incompatible with the welfare of society. In making this determination, the parole board shall consider whether, during the period of incarceration, the prisoner has participated in available work opportunities and education or treatment programs and demonstrated good behavior. The board shall also consider whether risk reduction programs, made available through collaboration with criminal justice agencies would minimize the probability of the prisoner re-offending once released. The record of the board's decision shall contain a summary statement of the case indicating the reasons for the decision, including written certification that each board member voting on the issue of granting a parole permit has reviewed the entire criminal record of the applicant, as well as the number of members voting in favor of granting a parole permit and the number of members voting against granting a parole permit. Said record of decision shall become a public record and shall be available to the public except for such portion thereof which contains information upon which said decision was made which said information the board determines is actually necessary to keep confidential to protect the security of a criminal or civil investigation, to protect

anyone from physical harm or to protect the source of any information; provided, however, that it was obtained under a promise of confidentiality. All such confidential information shall be segregated from the record of decision and shall not be available to the public. Said confidential information may remain secret only as long as publication may defeat the lawful purposes of this section for confidentiality hereunder, but no longer. A prisoner to whom a parole permit is granted shall be allowed to go upon parole outside prison walls and inclosure upon such terms and conditions as the parole board shall prescribe, but shall remain, while thus on parole, subject to the jurisdiction of such board until the expiration of the term of imprisonment to which he has been sentenced or until the date which has been determined by deductions from the maximum term of his sentence or sentences for good conduct and any further deductions for compliance credits granted pursuant to section 130C, provided that such combined deductions shall not exceed 35 per cent of the term of imprisonment to which the prisoner has been sentenced, or until such earlier date as the board shall determine that it is in the public interest for such prisoner to be granted a certificate of termination of sentence. In every case, such terms and conditions shall include payment of any child support due under a support order, as defined in section 1A of chapter 119A, including payment toward any arrearage of support that accrues or has accrued or compliance with any payment plan between the prisoner and the IV-D agency as set forth in chapter 119A, provided, however, that the board shall not revise, alter, amend or revoke any term or condition related to payment of child support unless the parole permit itself is revoked. If the terms and conditions prescribed by the board include residence in alcohol and drug free housing, the board shall refer and require that the prisoner to whom the permit is granted reside in alcohol and drug free housing that is certified under section 18A of chapter 17 in order to satisfy those terms and conditions.

Chapter 127, §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, except prisoners serving a life sentence for murder in the first degree who had attained the age of 18 years at the time of the murder and except prisoners serving more than 1 life sentence arising out of separate and distinct incidents that occurred at different times, where the second offense occurred subsequent to the first conviction, shall be eligible for parole at the expiration of the minimum term fixed by the court under section 24 of chapter 279. The parole board shall, within 60 days before the expiration of such minimum term, conduct a public hearing before the full membership unless a member of the board is determined to be unavailable as provided in this section. Notwithstanding the previous sentence, the board may postpone a hearing until 30 days before the expiration of such minimum term, if the interests of justice so require and upon publishing written findings of the

necessity for such postponement. For the purposes of this section, the term unavailable shall mean that a board member has a conflict of interest to the extent that he cannot render a fair and impartial decision or that the appearance of a board member would be unduly burdensome because of illness, incapacitation, or other circumstance. Whether a member is unavailable for the purposes of this section shall be determined by the chair. Board members shall appear unless said chair determines them to be unavailable. Under no circumstances shall a parole hearing proceed pursuant to this section unless a majority of the board is present at the public hearing. Unless a board member is unavailable due to a conflict of interest, any board member who was not present at the public hearing shall review the record of the public hearing and shall vote in the matter.

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, the chief of police or head of the organized police department of the municipality in which the crime was committed and the victims of the crime for which sentence was imposed, and said officials and victims may appear in person or be represented or make written recommendations to the board, but failure of any or all of said officials to appear or make recommendations shall not delay the paroling procedure; provided, however, that no hearing shall take place until the parole board has certified in writing that it has complied with the notification requirements of this paragraph, a copy of which shall be included in the record of such proceeding; and provided further, that this paragraph shall also apply to any parole hearing for an applicant who was convicted of a crime listed in clause (i) of subsection (b) of section 25 of chapter 279 and sentenced and committed to prison for 5 or more years for such crime and does not show that a pardon has been issued for the crime.

After such hearing the parole board may, by a vote of two-thirds of 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 five 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 two-thirds of 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.

If a prisoner is indigent and is serving a life sentence for an offense that was committed before the prisoner reached 18 years of age, the prisoner

shall have the right to have appointed counsel at the parole hearing and shall have the right to funds for experts pursuant to chapter 261.

Chapter 261, §27B

Upon or after commencing or answering to any civil, criminal or juvenile proceeding or appeal in any court, including but not limited to civil actions, proceedings for divorce or separate support, summary and supplementary processes, and proceedings upon petitions to vacate, for review or, upon appeal in a criminal case, any party may file with the clerk an affidavit of indigency and request for waiver, substitution or payment by the commonwealth of fees and costs upon a form prescribed by the chief justice of the supreme judicial court and in accordance with the standards set forth in sections twenty-seven C to twenty-seven F, inclusive, and sworn to under oath by the affiant.

An indigent party may subsequently file one or more supplementary affidavits requesting the waiver, substitution or payment by the commonwealth of fees and costs not previously granted at any time while the case is still pending in the original court or elsewhere.

Chapter 261, §27C

(1) If the affidavit is filed with the complaint or other paper initiating the proceeding, the clerk shall receive the complaint or other paper for filing and proceed as if all regular filing fees had been paid. Such filing shall be conditional until either (a) the affidavit is granted or (b) if the affidavit is denied, the payment of necessary and regular filing fees is made within five days of the denial of the affidavit, or such further time as the court may allow, or within five days of the denial of any appeal relating to the affidavit, whichever is later.

(2) If the affidavit appears regular and complete on its face and indicates that the affiant is indigent, as defined in section twenty-seven A, and requests a waiver, substitution or payment by the commonwealth, of normal fees and costs, the clerk shall grant such request forthwith without hearing and without the necessity of appearance of any party or counsel.

(3) If the affidavit does not appear to satisfy the condition of paragraph (2), the clerk or register shall forthwith bring the affidavit to the attention of the justice or judge, as the case may be. The justice or judge may grant such request forthwith or may have the clerk or register notify the affiant that a hearing will be held on the affidavit within five days. If it appears at the hearing that there is a serious question as to the affiant's indigency, as defined in section twenty-seven A, then before making a finding of indigency, the court shall consider the following facts with respect to the applicant as of the time of hearing, in the immediate past and with respect to the immediate future; his age, education, training, physical and mental ability and number of dependents; gross and net income; regular and extraordinary expense, if any; assets and liabilities; whether or not he is a

recipient of public assistance and for what purposes; and any other facts which are relevant to the applicant's ability to pay court costs.

(4) If the court makes a finding of indigency, it shall not deny any request with respect to normal fees and costs, and it shall not deny any request with respect to extra fees and costs if it finds the document, service or object is reasonably necessary to assure the applicant as effective a prosecution, defense or appeal as he would have if he were financially able to pay. The court shall not deny any request without first holding a hearing thereon; and if there is an appeal pursuant to section twenty-seven D following a denial, the court shall, within three days, set forth its written findings and reasons justifying such denial, which document shall be part of the record on appeal.

(5) The clerk of each court shall conspicuously post in the part of his office open to the public a notice informing the public in plain language of the availability of waiver, substitution or payment by the commonwealth of fees and costs for indigent persons.

(6) If the court makes a finding that the applicant could reasonably pay part of the normal fees and costs or extra fees and costs, the court may assess a reasonable partial payment towards said fees or costs and a date by which same is to be paid by the applicant. The court shall not order partial payment without first holding a hearing thereon, and if there is an appeal pursuant to section 27D following such an order, the court shall, within 3 days, set forth its written findings and reasons justifying the order of partial payment, which document shall be part of the record on appeal.

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the rules of court that pertain to the filing of briefs, including, but not limited to: Rule 16(a)(13) (addendum); Rule 16(e) (references to the record); Rule 18 (appendix to the briefs); Rule 20 (form and length of briefs, appendices, and other documents); and Rule 21 (redaction). The brief is set in 14-point Athelas and contains 2,329 non-excluded words, as determined by using the “Word Count” feature in Microsoft Word for Office 365.

/s/ Benjamin H. Keehn
Benjamin H. Keehn

CERTIFICATE OF SERVICE

I certify that in the matter of Commonwealth *vs.* Quasim L. Hastings, SJC-13495, I have today served the Amicus Brief of the Committee for Public Counsel Services by directing copies through the electronic filing service provider to:

Andre A. Janiszewski
Office of the Attorney General
One Ashburton Place
Boston, MA 02108
Andre.A.Janiszewski@mass.gov

Attorney Sharon Dehmand
15 Cottage Avenue, 4th Floor
Quincy, MA 02169
s.dehmand@comcast.net

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

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