



STATE OF WASHINGTON

**DEPARTMENT OF CORRECTIONS
INDETERMINATE SENTENCE REVIEW BOARD**

P.O. BOX 40907, OLYMPIA, WA 98504-0907

DECISION AND REASONS

NAME: LAIN, Jerry
DOC #: 238088
INSTITUTION: Monroe Correctional Complex - Twin Rivers Unit (TRU)
TYPE OF HEARING: .100 Hearing
HEARING DATE: February 4, 2014
PANEL MEMBERS: KR, DT, and DM
FINAL DECISION DATE: March 24, 2014

This matter came before Kecia Rongen, Dennis Thaut, and Dick Morgan, who are members of the Indeterminate Sentence Review Board (ISRB or the Board), on the above date for a release hearing in accordance with the provisions of RCW 9.95.100. Mr. Lain appeared in person and was represented by attorney Rich Linn. Testimony was provided by Department of Corrections (DOC) Classification Counselor (CC) Steven Sager and Mr. Lain.

BOARD DECISION:

This was a Deferred Decision. Based on the requirements of RCW 9.95.009(3) and RCW 9.95.100 and the totality of evidence and information considered by the Board, the Board finds that Mr. Lain is parolable.

NEXT ACTION:

Submit an Offender Release Plan (ORP).

JURISDICTION:

Jerry Lain is under the jurisdiction of the Board on a 1982 conviction in Benton County Cause #82-1-00219-8 for Assault in the First Degree (While Armed with a Deadly Weapon and

Firearm). His time start is November 4, 1982. His initial minimum term was set by the Board in 1983 at 240 months. The standard range of the Sentencing Reform Act (SRA) at the time was 77 to 105 months, with an adjusted range of 72 to 102 months. His maximum term is Life. Mr. Lain has served approximately 375 months in prison and 55 days jail time. The Judge and Prosecutor in this case both recommended a Life sentence for Mr. Lain. The Prosecutor further recommended that Mr. Lain not be considered for parole until he had served at least 190 months.

NATURE OF INDEX OFFENSE(S):

Mr. Lain was released from prison in Iowa in 1982 and placed on parole. He self-reported that two weeks after he was out on parole he married a young woman he met at a party. Two months later he had an altercation with her and/or with her father which, according to his estimation, would have resulted in new charges and a trip back to prison. He decided to run instead and hitchhiked to the Tri-Cities area of Washington State. For several months he lived in a campground. He reported that he was drinking heavily and using drugs. He did some odd jobs, but got by "mostly stealing."

On the night of the index crime a witness observed Mr. Lain prowling cars and called the police. About the time that the police arrived the witness yelled at the offender, who began to run, dropping items that had been stolen as he ran. The officer pursued Mr. Lain, calling for him to stop. Finally, Mr. Lain fell to his knees and told the officer to kill him. However, as the officer approached, Mr. Lain suddenly attacked the officer, stabbing at him with a large knife. While the officer's chest was shielded, his arms were vulnerable, and he received some potentially lethal cuts to his arms. When the officer finally managed to wrestle the knife away from his assailant's control, Mr. Lain grabbed the officer's pistol and fired two rounds at him, hitting him first in the abdomen and then, after the officer had fallen to the ground, shooting him in the face. This crime caused severe and permanent disabling and disfiguring injuries to the victim. Mr. Lain reportedly then fled to his campsite, where he made efforts to conceal his involvement in the crime. He was apprehended there a short time later.

Mr. Lain's attorney entered a plea of Not Guilty by Reason of Insanity. At the trial, professionals from Eastern State Hospital testified that he was sane at the time of the crime commission. A private psychologist hired by Mr. Lain testified to the contrary. Mr. Lain told the jury that he thought he was being chased by the Viet Cong, although he had never served in the Army or gone to Vietnam. He later reported that this was a ruse on his part in an attempt to avoid responsibility for the crime. He was found guilty by the jury.

PRIOR CRIMINAL CONDUCT:

Mr. Lain has admitted in previous hearings that as a 15 year old he was discharged from military school because he stabbed two students, one of whom swung a chair at him. This offense was not prosecuted. In 1976, Mr. Lain stabbed a man with a knife in a knife-fight in Iowa and was sent to prison. During that incarceration he permanently blinded another inmate by throwing acid in his face while working in the photo shop. Mr. Lain admits to this offense, but indicates that he was threatened and intimidated by the victim prior to the incident. Shortly before the latter incident, Mr. Lain was involved in an incident with a claw hammer. This incident was apparently never prosecuted. The information regarding this incident comes from a December 3, 1982, intake document titled "Admission Summary." The intake document reflects that Mr. Lain indicated that he was involved in a fight with another inmate. Mr. Lain explained to the Board that he was the one struck in the head with a claw hammer as he was leaving the fight. Mr. Lain displays a scar on his head, which he claims was a result of that fight.

Mr. Lain was paroled from Iowa after those incidents and absconded supervision while there were several charges pending, one of which was a parole violation. The current offense for which Mr. Lain is under the jurisdiction of the Board occurred approximately five months after he was released from prison in Iowa and was committed while on abscond status from parole supervision in Iowa.

HISTORY/COMMENTS:

Mr. Lain's last hearing was held on January 16, 2013. At that time the Board found him not parolable and added 24 months to his minimum term. The Board recommended Mr. Lain be allowed to participate in Chemical Dependency (CD) Treatment, and that a new psychological evaluation be completed.

Mr. Lain was originally found conditionally parolable to a Mutual Reentry Plan (MRP) on August 25, 2009. Mr. Lain subsequently questioned the Board's suggestions, and balked at the idea of a transitional release. A new .100 hearing was scheduled for him to discuss his issues. That hearing, on March 16, 2010, resulted in the Board continuing to find Mr. Lain conditionally parolable. At the hearing the Board and Mr. Lain discussed the MRP program, and he indicated a willingness to participate as required. Unfortunately, the transition through a MRP to Work Release was later denied by the DOC, in part because of increased sensitivity in the community over recent murders and/or serious assaults of law enforcement officers in the region.

Since transitional release was no longer possible the Board directed Mr. Lain to submit an Offender Release Plan (ORP) in November of 2010. The proposed release address was to Mr. Lain's parents' home in Iowa. The Iowa Department of Corrections approved Mr. Lain's release to their state and was willing to accept supervision of him. After a release date of December 20, 2010, was set, the Board received a number of letters, telephone calls and emails from concerned citizens objecting to Mr. Lain's release.

Governor Gregoire undertook a review of Mr. Lain's file, and on December 16, 2010, the Governor issued an order cancelling Mr. Lain's parole. The Governor determined that Mr. Lain was not completely rehabilitated and that he would pose an unreasonable risk to public safety. The Governor based her conclusion on several factors: First, she pointed to the nature and gravity of the crime and noted incidents of violence in the Iowa prison system. Other factors considered were Mr. Lain's actuarial risk to reoffend was in the range of moderate to high. The Governor also identified other factors, including his behavior and verbalization of threats during

incarceration and his statements to the ISRB and others that reflected resistance to the ISRB's direction and a sense of entitlement to release. The Governor's order determined that Mr. Lain's rehabilitation was not complete and that he was not a fit subject for release, citing the statutory test for parole release under RCW 9.95.100. After the issuance of the Governor's Order the Board then conducted an in-person hearing on March 8, 2011 for the sole purpose of setting a new minimum term. At that hearing, the Board provided Mr. Lain and his attorney with a complete opportunity to present any evidence they believed the Board should consider prior to setting his new minimum term. The Board subsequently set the new minimum term at 36 months.

Mr. Lain has completed the following offender change and educational programs: Stress/Anger Management in 1990 and 1998, Victim Awareness in 1995 and 1998, Moral Reconciliation Therapy and Standardized Stress, Getting it Right, Non-Violent Communication, Upholstery Program, Career Awareness/Work Maturity, Computer Basics, Job Dynamics and Information Technology. He also has worked as a Food Service Worker, an Upholsterer, and is currently working as a Carpenter's Helper. Mr. Lane has his GED and has taken college classes through Walla Walla and Grays Harbor Community Colleges for General Maintenance Technology, Business Management, and Computer Applications.

EVIDENCE CONSIDERED:

In preparation for Mr. Lain's hearing and its decision in this case, the Board completed a review of Mr. Lain's DOC and ISRB files. The Board considered all information contained in those files, including but not limited to: the most recent DOC facility plan; information regarding institutional behavior and programming; any letters of support and/or concerns sent to the Board; the Pre-Sentence Investigation report; the psychological evaluation prepared by Dr. Robert Carsrud dated December 4, 2013; and the Offender Performance Evaluation by Thomas Valdez. The Board also considered the testimony of the witnesses listed above.

REASONS:

Since the Board's last meeting with Mr. Lain just over a year ago he has maintained his positive behavior, receiving no infractions, and is working as a Carpentry Helper. CC Sager testified that he is respectful and polite to staff. He also testified that his parents in Iowa would still like him to return there. In regards to Chemical Dependency Treatment, CC Sager testified that it appears priority is given to offenders on DOSA, which does not apply to Mr. Lain. Mr. Lain's performance in work was evaluated as Above Average in one area and Superior in the rest of the areas.

The Board did discuss with Mr. Lain his crime back in 1982. He explained that he was on the run from parole back then and was drinking a lot. He was 24 or 25 at the time and had already spent six years in prison. He described committing the vehicle prowls and that the police were called. He did not want to go to prison and therefore fought with the victim, stabbing him seven times and shooting him with his gun twice. He was under the influence at that time. The Board also discussed remorse with Mr. Lain. He explained that, "if people do not have remorse, then they are destined to do it again." He indicated he was very sorry for "what he has done" and apologizes to the victim and his family. Admittedly he does not show much emotion, which can be a detriment to him at times when others see it as a lack of remorse.

The Board also discussed with Mr. Lain his efforts at rehabilitation over the last 30 years. Mr. Lain describes becoming "more secure with himself and getting an education." He has received skills in carpentry, upholstery, auto body, computer programming, business and accounting. He chooses positive people to hang out with and realizes that when he was doing drugs and drinking on the streets, he was always with other people who were not a positive influence on him. He testified that one of the reasons that he began to use drugs and alcohol was "to fit in and cover up low self-esteem." He does indicate that he now feels proud of his accomplishments and feels better about himself. He is attending AA (Alcoholics Anonymous) currently and has researched potential AA sites in Iowa.

Dr. Carsud's latest psychological report indicates that Mr. Lain scores in the "moderate or high range" for re-offense utilizing actuarial risk-assessment instruments. He also notes that "actuarial risk-assessment instruments are weighted heavily on static variables and rarely predict a lower risk of re-offense over time." Dr. Carsrud also notes that as a protective factor, Mr. Lain has an "unusually broad support system in the community."

Mr. Lain has spent over 30 years in prison for a crime in the SRA range that would have been 77-105 months (6.4-8.75 years) at the time. This represents a sentence significantly greater than the high end of the range. The Board recognized the gravity of Mr. Lain's crime when they set his original minimum term at 240 (20 years) months. His actuarial risk will not change due to it being based on static factors and he has protective factors such as community support, education, employment skills, and a positive attitude which is shown in compliance with facility rules for the last eleven years and a willingness to follow parole conditions. He has participated in a variety of offender change programs as well as educational/vocational programs in efforts towards rehabilitation and is respected by staff.

Mr. Lain has family support in Iowa and would like to return to his parent's home to assist them with the family farm. If for some reason, that is not approved a transition to Tacoma was discussed. In concurrence with RCW 9.95.100, the Board finds that Mr. Lain is rehabilitated and a fit subject for release.

The Board notes that Board Members Tom Sahlberg and Lynne De Lano have recused themselves from this decision.

KR:jas

February 24, 2014

cc: institution
Jerry Lain
File
Rich Linn, Attorney