

Testimony by David McClary, DIN: 89A7511
New York State Senate Committee on Crime Victims, Crime & Correction Hearing on how
the Elder Parole and Fair & Timely Parole Bills Will Improve Parole Release Laws &
Public Safety in NY State.

December 2, 2022

Dear Madam Chairperson, and New York State Senators, thank you for the opportunity to submit written testimony to you today. My name is David McClary, and I am currently serving time in prison for murder in the second degree. The crime occurred two days after my 22nd birthday in February of 1988. I was charged with murder in the second degree, convicted in June of 1989, and subsequently sentenced to 25 years-to-life. I was 23 years old at the time of my sentencing.

I am now 56 years old and have been in prison for almost 35 years. I've been to the Parole Board six times to date, and despite my non-criminal history (this is the only arrest on record for me), my great prison disciplinary record (just one misbehavior report in 18 years), and my Low Risk Assessment Score for Recidivism (1 out of a possible 12), I was denied parole all six times. My first four Parole Boards hit me with two years each, and then my last two Parole Boards (October 2021 and April 2022) hit me with 18 months each.

It is almost a full ten years past the minimum 25 years required for my parole release. By all standards I am a prime candidate for release. I've completed every state mandated program (both therapeutic and educational), participated in countless volunteer programs, facilitated multiple state programs, led productive prison organizations, created and facilitated many self-development programs for prisoners, and worked extensively on my own self-improvement for the last 30 years. My rehabilitation is real and unimpeachable, as is my contrition for the crime. I have accepted responsibility for my role in the crime which I was convicted of, and I have expressed sincere remorse for the harm I've caused to the victim and his family. There is no further reason to keep me in prison other than to overly exact vengeance.

The New York State parole system is supposedly built on a three point platform: 1) Punishment for the crime; 2) Rehabilitation, and 3) Does the individual pose further threat to the community and/or society?

I fit the bill for all three of the above requirements: 1) I was punished for my crime; 2) I am completely rehabilitated, and 3) I pose no further threat to society. Yet the Parole Board keeps denying my parole based on nothing but the nature of my crime. So, in essence, the parole board essentially changed my original sentence from 25 years-to-life to a de facto death sentence. The evidence to support that statement can be found in all six of my parole denials. The parole board has made it crystal clear that the only reason I'm still in prison is because of the nature of my

crime. If that is the case, and the record shows unequivocally that it is indeed the case, that means I will die in prison because the nature of a crime will never change, which means I will never be released no matter what level of rehabilitation or transformation I achieve. These practices by the parole board are so egregious that even the academics at Columbia University, one of the most prestigious law schools in the country, calls New York's system of extreme sentences routine parole denials New York's new death penalty.

In a 2012 court case, *Hamilton v. New York State Division of Parole*, the court addressed this very issue:

Allowing a parole board to rely on the seriousness of the instant offence in every decision to deny parole release to an inmate who is serving an indeterminate sentence of a minimum amount of years to life, and who is otherwise ready for release, amounts to nothing short of allowing the parole board to rewrite the sentencing guidelines for murder in the second degree to life without parole until a parole board decides otherwise.

Interestingly enough, in the matter of *Dempsey v. New York State Board of Parole* (2015), the court is even more pointed on this issue, stating that

Parole interviews were not intended to circumvent the sentencing guidelines created by the legislature... if the legislature saw fit to punish murder in the second degree with a sentence of life without parole, it could have done so...

The situation that the court is addressing in the above paragraph is exactly what is happening to me and others like me. I admit, I was involved in a very serious crime, and as a result I've done very serious time. However, I also believe in redemption. Once a prisoner is rehabilitated and his punishment is satisfied, he should be released back into society because justice was served. But far too often the Parole Board abuses its authority by denying parole to individuals across New York State that should have been home with their families right now, but are languishing in these prisons because the Parole Board won't do its job without bias.

The Parole Board is supposed to act independently without interference, but because of political pressure, the Parole Board is keeping prisoners away from their families for years longer than is required by their minimum sentences. Family members are getting sick and dying without the benefit of our support because we are being kept away from them and warehoused in these prisons for five, ten, fifteen years to pass our minimum sentences for no good reason other than the nature of our crimes. I am hoping that you will support these bills and restore the principle of rehabilitation and redemption back to the parole process.

Thank you,

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