

1 BEFORE THE OREGON STATE BOARD OF PAROLE AND POST-PRISON SUPERVISION

2 IN THE MATTER OF THE EXIT INTERVIEW) SID No.: 7339890
3 HEARING HEARING FOR KEVIN A. ROPER)
4) Multnomah County Circuit Court Case No.:
5) 8703-31514
6)
7) MEMORANDUM IN OPPOSITION TO
8) PRISONER'S RELEASE DATE OF MARCH 14,
9) 2012 AND IN SUPPORT OF POSTPONEMENT
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18 **I. INTRODUCTION**

19 This memorandum will start at the beginning, first providing a chronology of this case and its
20 procedural development since the beginning of Mr. Roper's incarceration. Then, Victim's counsel will
21 put forth a compelling argument for the two key reasons that the Parole Board should decide that
Mr. Roper's release must be postponed. These reasons focus on the fact that Mr. Roper's
psychological examination fails to support release on parole, and Mr. Roper's Release Plan is
profoundly lacking in adequacy. This memorandum is being filed on behalf of the victim's family by
the Oregon Crime Victims Law Center which represents Eddie Lee Gibbs' younger sister, Teresa
Robins-Doern.

18 **II. CASE CHRONOLOGY**

19 It is important for the Board to consider how this case began and the circumstances that
20 brought Mr. Roper into the custody of the Department of Corrections in the Oregon State Prison. On
21 the evening of March 5, 1987 Kevin Roper and Scott Wickee visited Eddie Lee Gibbs at his home in

1 Southeast Portland and the three subsequently went for a walk. After luring Eddie into an empty
2 drive-in theater lot, Mr. Roper attacked Eddie from behind with an ax. Mr. Roper and Mr. Wickee
3 mercilessly struck Eddie several times in an attempt to kill and rob him. While Eddie was on his
4 knees in excruciating pain, pleading with his attackers to take his wallet and stop the torture, Mr.
5 Roper and Mr. Wickee coldly ignored Eddie's pleas and continued to beat him. Realizing that Eddie
6 would not succumb to their blows as easily as they had planned, Mr. Roper and Mr. Wickee dragged
7 Eddie -now bloodied, bruised and desperately clinging to consciousness- to a drive-in speaker post,
8 wound a speaker cord around his neck and used all their strength to choke the life out of then 20-
9 year old Eddie Lee Gibbs. Today, nearly twenty-five years later, the family of Eddie Lee Gibbs
10 continues to grieve this tragic and incomprehensible loss.

11 Six months later in September 1987, Mr. Roper was convicted of aggravated murder on a
12 guilty plea. He was sentenced in Multnomah county circuit court to a term of life imprisonment with
13 a mandatory minimum sentence of 30 years without the possibility of parole.

14 In March 1988, Mr. Roper had a Prison Term Hearing before this body to determine what the
15 length of his prison sentence would be. The Parole Board established his matrix range at 120-168
16 months, or 10-14 years of imprisonment. However, by statute, Mr. Roper was not eligible for a
17 Murder Review Hearing until he had served 20 years of his sentence.

18 Twenty years later in March 2008, Mr. Roper had his Murder Review Hearing. The victim's
19 family was present at that hearing and included Eddie Gibbs' mother, sister, brother, step-father,
20 brother-in-law and nephew. Each made statements to this board about what effect Eddie's murder
21 had on them as a family and their concerns about Mr. Roper being dangerous should he be

1 considered rehabilitatable and eligible for release. After considering these victims' statements and
2 other evidence at that hearing, the Parole Board unanimously found that Mr. Roper proved that he
3 is likely to be rehabilitated within a reasonable period of time. The board subsequently changed the
4 terms of his confinement to "life imprisonment with the possibility of parole or work release" and
5 established a projected release date of March 12, 2017 -the date when Mr. Roper would have
6 served 30 years in prison. *Board Action Form #4.*

7 In December 2010, the Oregon Supreme Court decided a case which affected the legal
8 significance of the board's finding in March 2008. In *Janowski/Fleming v. Board of Parole and Post-*
9 *Prison Supervision*, the court determined that the legal effect of finding Mr. Roper likely to be
10 rehabilitated within a reasonable period of time means that Mr. Roper no longer has a mandatory
11 minimum sentence to serve, and in addition, the Parole Board is obligated to set a release date after
12 making such a determination.

13 In accordance with the *Janowski/Fleming* ruling, the Parole Board had a second Prison Term
14 hearing in July 2011 for the purpose of setting a release date in this matter. The Board set Mr.
15 Roper's release date for March 14, 2012 with a requisite preceding Exit Interview on November 15,
16 2011 when a current psychological examination would be available for review.

17 On November 15, 2011, the Parole Board must determine if it is appropriate to keep the
18 March 14, 2012 release date firm, or if Mr. Roper's release date should be postponed.

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21 **III. LEGAL STANDARD OF REVIEW**

1 The sole legal issue before the board is whether there are any statutorily-based reasons for
2 which Mr. Roper's current release date should be postponed. ORS 144.125 (1985). Under this
3 statute, "the board must postpone a prisoner's release date if it finds that the prisoner had engaged
4 in serious misconduct during confinement. The board also is permitted, but not required, to
5 postpone a release date if the prisoner received a psychiatric or psychological diagnosis of a severe
6 emotional disturbance that would make him a danger to the community *** or if it deems the
7 prisoner's release plan to be inadequate" *Janowski/Fleming*, at 457, quoting ORS 144.125 (1985). In
8 making a determination as to whether any of the reasons for postponement exist, the correct
9 standard for the board to apply is that "some evidence" supports the board's decision, and not a
10 "substantial evidence" standard. *Hamel v. Johnson* 173 Or App 448, 456. The victim asserts that
11 there is enough evidence to make at least two of these findings.

12 IV. ARGUMENT

13 A. Mr. Roper has a Psychological diagnosis of Present Severe Emotional Disturbance Such 14 as to Constitute a Danger to the Health or Safety of the Community

15 In making a determination as to whether Mr. Roper has a "severe emotional disturbance
16 such as to constitute a danger to the health or safety of the community",

17 Mr. Roper's August 12, 2011 psychological examination conducted by Dr. H.F. Shellman
18 provides an extremely disconcerting insight into the individual that Mr. Roper really is.

19 In 2010, the Oregon Court of Appeals heard a case where a prisoner sought review of the
20 Parole Board's determination that the prisoner's release should be postponed because a finding was
21 made pursuant to ORS 144.125(3). The court found that there was no evidence that inadmissible

1 information was considered by the board in its determination. Furthermore, the court found no
2 error with the board's decision based on the doctor's report and diagnosis, in conjunction with other
3 evidence presented. *McClure v. Bd. Of Parole* 236 Or App 606, (2010).

4 This case is of particular relevance here because the psychologist in *McClure v. Bd. Of Parole*,
5 Dr. H. F. Shellman, Ph.D., is the same psychologist in this case, and the findings he made as to
6 prisoner McClure are quite similar to the findings he has made as to Mr. Roper. Dr. Shellman's
7 conclusions in the McClure psychological evaluation included "that petitioner lacked insight, had
8 little empathy for the needs of others, and, although cooperative, appeared 'somewhat
9 manipulative and quite guarded during the interview.'" *Id.* at 609. Dr. Shellman also found that
10 though McClure presented himself as being ready for parole, the doctor diagnosed the prisoner
11 under Axis II as "Mixed Personality Disorder with Antisocial and Narcissistic Features" and fell into
12 the "moderate" to "high" range for risk of future violent behaviors. *Id.* The evaluation ended with Dr.
13 Shellman's conclusion that McClure " 'would continue to be a danger to the community if he were to
14 be released at this time.'" *Id.*

15 Here, Mr. Roper's psychological evaluation demonstrates the same serious issues that
16 prevented Mr. McClure from being released. Dr. Shellman states in his evaluation that Mr. Roper has
17 "poor" insight; his problems with social perception "[suggesting] limited empathic capacity on his
18 part"; he "tended to portray himself as being exceptionally free of common shortcomings" with
19 "[PAI] test results very unlikely to be a valid indication of his experience"; and he "falls in the
20 'moderate' to 'high' range of risk for future violence in the community". *Psychological Evaluation* at
21 2,3,4. And finally, while Dr. Shellman reports that Mr. Roper said he feels "ready for parole", the

1 doctor's conclusion is to the contrary: "In any case, it is my clinical judgment that he is not ready for
2 parole at this time. I should consider him a potential danger to the community if released now". *Id.*
3 at 2,4. These observations and conclusions strongly suggest that the board must make the legal
4 conclusion that Mr. Roper has a psychological diagnosis of present severe emotional disturbance
5 such as to constitute a danger to the health or safety of the community and should not be released
6 in March 2012.

8 **B. Mr. Roper's Release Plan is Inadequate**

9 The Oregon Administrative Rules provides at OAR 255-060-0008 that a prisoner's proposed
10 release plan shall be examined by the Parole Board to determine whether it is adequate. OAR 255-
11 060-0008. The rule further states that the plan may include "employment", "a description of support
12 services, program opportunities and treatment programs", etc. *Id.* In light of Mr. Roper's August
13 2011 psychological evaluation, his proposed release plan cannot be considered adequate where it
14 neither addresses the numerous behavioral and psychological issues highlighted by Dr. Shellman's
15 report, nor what Mr. Roper intends to do about them.

16 Mr. Roper's psychological evaluation found him likely to be "quite narcissistic" and warned "if
17 he does not get positive reinforcement or affirmation of his specialness from the environment, he
18 will likely develop frustration, negativism, rationalization and/or denial" *Psych. Eval.* At 4. This is
19 concerning because Mr. Roper reports that he has undergone ten years of Anger Management and
20 has indicated in each of his three proposed 5-year plans that he has *intentions* to stay involved in
21 Anger Management Classes upon release. However, after ten years of Anger Management, the fact

1 that he is still likely to revert to negativism, rationalization and denial indicate that Mr. Roper still
2 has anger issues that cannot be resolved by merely expressing an intention to continue in classes
3 that have failed him for the last ten years. Additionally, there still remains a concern about whether
4 Mr. Roper has reached the point of rehabilitation where he has truly internalized his need for
5 treatment. Dr. Shellman reports that both Mr. Roper's interest in and motivation for treatment is
6 "quite low" and states twice in the evaluation that he expresses *no* remorse for his crime. *Id.* at 1,2.

7 The information Mr. Roper has gathered and presented to the board ranges from personal
8 statements, letters of commendation regarding his work ethic, letters of support from a yoga
9 instructor, a meditation instructor, a former employer, prison volunteers, former work partners and
10 family members. They each speak to the image of Kevin Roper that Kevin Roper wants the board to
11 believe. None of the materials or members of his support groups speak to any strides made in anger
12 management. Nothing speaks to anything gained from 15 months in a Victims Awareness program.
13 Nothing speaks to changes made after 18 months in a Cognitive Self Change program. Mr. Roper's
14 psychological evaluation reveals that he has deficiencies in all these areas, but nothing in his release
15 plan makes any attempt to address them. And while Mr. Roper approached Religious Services staff
16 in September 2009 with the idea to introduce an introspective self-help program, this gesture came
17 only after 22 years of incarceration and a year after he petitioned this board for an administrative
18 review of his 2008 Murder Review Hearing.

19 Finally, and of most concern to the community, the very thinking patterns that Mr. Roper
20 demonstrated the day he murdered Eddie Lee Gibbs are the same thinking patterns that Mr. Roper
21 demonstrates today. In Mr. Roper's own words describing his thinking while he committed the

1 murder: "we ignored every bit of reality that screamed that this was crazy". *Parole Plan*, pg. 2. Just
2 three months ago at his psychological evaluation, Dr. Shellman observed: "he is less capable than
3 others of coming to reasonable conclusions about relationships between events and of maintaining
4 a connected flow of associations", is "likely to function in a fairly simplistic and psychologically
5 impoverished way" and has a "preference for looking at the world with a narrow frame of reference
6 and seeking simple solutions to life's problems". *Psych. Eval.* at 3,4. These test results reveal that Mr.
7 Roper needs treatment that can address these serious psychological issues. If released into the
8 community in the next 6 months, Mr. Roper will inevitably face challenges and frustrations that
9 members of the community face everyday. However, knowing that Mr. Roper has committed
10 murder and has not demonstrated that he has addressed the cognitive issues that led to his heinous
11 actions in 1987, any common frustration he may experience in the community can foreseeably
12 manifest in behavior that would put the health and safety of the community at risk. Mr. Roper's
13 release plan fails to even acknowledge that he has these grave obstacles to overcome.

14 V. CONCLUSION

15 In conclusion, Kevin Roper's currently set release date of March 14, 2012 should be
16 postponed because there is evidence that Mr. Roper has a psychiatric or psychological diagnosis of
17 present severe emotional disturbance such as to constitute a danger to the health or safety of the

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1 community. Additionally, Mr. Roper's release plan is not adequate to fully address the psychological
2 deficiencies that he needs to address further while incarcerated.

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4 Dated November 9, 2011

5 Respectfully Submitted by:

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