STATE OF OREGON BOARD OF PAROLE AND POST-PRISON SUPERVISION
BOARD ACTION FORM

Mailed: 10/08/2008

Name: GILLMORE, RICHARD TROY

SID#:	7278260	**Board Hearing/Action DT:**	10/01/2008	**Adjust Incept DT:**	12/19/1986
Inst:	OSP	**Board Action #:**	15	**Current Adm DT:**	10/26/1987
DOB:	11/08/1959	**Registered Victim:**	Y	**Original Admit DT:**	10/26/1987
				Offender Gt DT:	08/11/2024
				Matrix Exp DT:	12/21/2034
				PPS Exp DT:	00/00/0000

A B C D E F	H/RS	CSR	Matrix	CHS	CSS	Grid	Min Supv
		6	46 TO 64		0		0

Activity:	PCRP	**Month Set:**	286	**Original Length:**	
Decision:	R	**Cr Tm Svd:**	311	**Sanc Length:**	
Group #:	1	**Parole Rel DT:**	00/00/0000	**Cumulative Sanc:**	
Dang Off:	Y	**Next Action:**	PC/R 06/01/2010	**Days Avail:**	

SPECIAL CONDITIONS

Any General Conditions and Special Conditions set forth in this order are listed for informational and tracking purposes only; the board actually imposes supervision conditions in an Order of Supervision Conditions. This order does not affect conditions imposed in any previous Order of Supervision Conditions.

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SIGNATURE, PRESIDING MEMBER /S/ POWERS TRJ **SIGNATURE DATE:** 10/01/2008

ADDITIONAL FINDINGS

NAME: 7278260 GILLMORE, RICHARD TROY Decision: 15 10/01/2008

Before Powers, Baker, Wheeler

On June 24, 2008, the Board of Parole and Post-Prison Supervision (Board) held a modified parole consideration hearing with offender as a result of the settlement agreement reached in Edens/Schrunk v. Board of Parole and Post-Prison Supervision, Marion County Circuit Court case nos. 07C22594 and 07C22595. The written settlement agreement, which has been made part of the record, outlined specific procedures for the hearing and required, among other things, that the Board issue written findings of fact and conclusions of law in announcing its decision. This Board Action Form (BAF) complies with the latter requirement.

This order is organized into three sections. First, the Board describes the legal standards that govern a parole consideration hearing for those sentenced as dangerous offenders. It is well settled that the Board's decisions are governed by specific statutes and constitutional provisions, the former category usually having been amended over time to reflect changes in sentencing policy, while the latter category generally requires that the Board apply the substantive law in effect at the time of the commitment offense. Second, the Board briefly explains the factual and procedural history leading up to the most recent parole consideration hearing that is governed by the settlement agreement. Because some of the evidence in the record was used at prior Board hearings, it is important to place that evidence in context and set out the unique procedural posture that this order arises out of. Third, the Board discusses the evidence in the record and explains its findings and conclusions.

The Board unanimously concludes that offender does not, at this time, meet the standard for parole and therefore the Board defers his parole consideration date for 24 months.

GOVERNING LEGAL STANDARDS

At the time offender committed his crimes, Oregon's sentencing policy generally provided for indeterminate sentences, which consisted of, among other things, a judicially-imposed sentence that prescribed the maximum amount of time an offender was incarcerated and on supervision. It was the Board's duty, under the authority granted to it by the Legislative Assembly, to determine what portion of that maximum time an offender would spend in prison and what portion would be spent under supervision in the community. See generally ORS 144.050. Specific to this type of case, the Legislative Assembly also granted the Board release authority over those offenders who were sentenced as "dangerous offenders," which is a designation made by the sentencing court. See generally ORS 144.228.

As a dangerous offender, offender first served a prison term, which was set by the Board in May 1988. Once that was complete, offender was eligible for a parole consideration hearing with the required reports under ORS 144.226 and ORS 144.228. The law in effect at the time of offender's commitment offenses, ORS 144.228(1)(b) (1985), provided:

> "At the parole consideration hearing, the prisoner shall be given a release date in accordance with range and variation permitted if the condition which made the prisoner dangerous is absent or in remission. In the event that the dangerous condition is found to be present, reviews will be conducted at least once every two years until the condition is absent or in remission, at which time release on parole shall be ordered if the prisoner is otherwise eligible under the rules. In no event

shall the prisoner be held beyond the maximum sentence less good time credits imposed by the court."

The Legislative Assembly amended that statute in 1993 and specifically noted that its amendment should be applied retroactively; that is, the amendments applied to any person under the Board's jurisdiction regardless of whether the crime of conviction was committed before, on, or after the effective date of the amendment. See 1993 Or Laws chap. 334 §§ 3, 7. As amended, ORS 144.228(1)(b) (1993) provided, in part:
"At the parole consideration hearing the prisoner shall be given a release date in accordance with the rules of the board if the board finds the prisoner no longer dangerous or finds that the prisoner remains dangerous but can be adequately controlled with supervision and mental health treatment and that the necessary resources for supervision and treatment are available to the prisoner."

Thus, the standard embodied in ORS 144.228, as amended, is the standard used for this order. The Board notes that this is not an "early release" consideration, as that term is used in ORS 144.228(1)(c) (1985); rather, this order stems from offender having served the Board-ordered prison term and coming before the Board every two years for review as is required under Oregon law.

ORS 144.228 also sets out a non-exclusive list of information that the Board gathers for review at a parole consideration hearing. That information includes written reports of a psychologist and an institutional report from DOC that details: the offender's conduct while confined; his or her present attitude towards society, the sentencing judge, prosecutor, arresting police officer, and toward the offender's previous criminal career; and the offender's work and program history. Because this parole consideration hearing was also controlled by the stipulated agreement of the parties, as described above, the record includes other documents for the Board's consideration.

All of this information allows the Board to make an informed decision based on both the historical circumstances that brought the offender into prison, and current, dynamic information that demonstrates what changes, if any, the offender has made while incarcerated and whether parole supervision is appropriate. No one piece of information is determinative. To rely solely on one piece of information would be in direct contravention of a statutory framework that allows the Board to consider everything from the commitment offense and the underlying causes, the institutional performance including work, programming, activities, and disciplinary record, and a current psychological profile, through the offender's efforts at planning for the transition to supervision in the community. Further, the dangerous-offender framework set out in statute and rule calls for a review of the offender's historical and current circumstances to determine fitness for parole, not just a review of the amount of time an offender has been incarcerated. Again, pursuant to legislative directive, the Board's charge at a parole consideration hearing is to ascertain whether the offender is an appropriate candidate for parole, not to determine whether the offender has been appropriately punished for the crime or crimes that resulted in incarceration in the first instance.

That the Board is entitled to gather and consider a large amount of information for use at a parole consideration hearing does not, however, convert the hearing into an adversarial proceeding for the determination of guilt or innocence. A parole consideration hearing is not an opportunity for the offender to protest innocence of the commitment offenses, just as it is not an opportunity to re-prosecute the offender for these or other crimes. Although neither of those scenarios played out in this particular hearing, the Board pauses to make this important point in order to highlight the information-gathering goal of its hearings and to give context to the Board's decision.

The non-adversarial nature of parole hearings explains much of their character. The offender is the only required "party" to the proceeding. A registered victim or the district attorney from the committing jurisdiction may make statements to the Board as provided by ORS 144.120(7), and so may a support person for the offender. The Board welcomes such participation. If a victim, district attorney,

or support person does make a statement, none of them is, in the Board's view, the "opponent" in the proceeding.

In other words, the role created for the Board by the legislature is not the role of disinterested adjudicator observing and resolving disputes among the offender and possibly a victim and district attorney, each fighting for credibility and support for their position. Rather, the Board's task is to gather information to make the best possible decision with the available information while assuring all persons entitled to participate a fair and full hearing.

This proceeding was unique in that it was guided by the general framework outlined above, as well as the stipulated agreement that set out specific provisions for this hearing only.

FACTUAL AND PROCEDURAL BACKGROUND

In October 1987, offender was convicted of two counts of sexual abuse in the first degree, burglary in the first degree, and rape in the first degree for crimes committed on December 5, 1986. Offender was found to be a dangerous offender pursuant to ORS 161.725 and ORS 161.735. He was sentenced to five years in prison on each of the counts of sexual abuse, and to 30 years in prison on each of the burglary and rape convictions, to be served concurrently to the sexual abuse terms, but consecutively to each other. The court ordered a minimum term of imprisonment of 15 years on each of the burglary and rape sentences.

Offender reports that on the evening of December 5, 1986, he was feeling inadequate and frustrated. He had previously achieved relief from this type of stress by acting out in the form of stranger rape. Offender has acknowledged committing seven rapes or attempted rapes in the years 1978 to 1981. On this night he went jogging and approached a home that he had previously identified as a place where a young woman might be alone. After watching through a window for approximately a half hour and assuring himself that no one else was home except the victim, he removed the light bulb at the back of the house and entered the home through sliding glass doors. As the victim, then 13 years old, came into the room where offender was waiting, she saw someone coming toward her holding a blanket in front of his face. He pushed her down, throwing the blanket over her head, and pulled off her jeans. He also tore her shirt off. The victim reported that when she fought back, offender told her to "stop fighting or I am going to kill you." Both offender and victim report that he raped her. She received a scratch on her back during the assault. When she told him her mother was due to arrive home, he left through the back door, while she wrapped herself in a blanket and ran across the street to get help. Offender was arrested two weeks later and confessed to the crime. At that time he also gave specific details of previous rapes.

Following conviction, offender was evaluated by psychiatrist Edward M. Colbach, M.D. Dr. Colbach provided a diagnosis under Axis I of Sexual Sadism, and under Axis II, of Personality Disorder, mixed type, with passive-aggressive and antisocial features. Dr. Colbach stated that offender did meet the criteria for sentencing under Oregon laws as a dangerous offender, but he declined to recommend such sentencing. He stated that he was positively impressed by offender's having refrained from criminal behavior from 1981 to 1986, and opined that offender had potential for rehabilitation. Dr. Colbach concluded his letter to the trial court by saying: "As discussed above, I have no clear recommendation regarding sentencing here. * * * I could understand how you [the trial court] could go either way here. You might decide to just put him away as long as possible or you might decide to work with this young man and give him a chance at some rehabilitation, which just might work here. Some of these cases I see are much more clear than this particular one, although I certainly am very concerned about this man's history of criminal activity of a dangerous nature." As noted above, the court sentenced offender as a dangerous offender.

In 1988, the Board held a hearing to determine how long offender would serve in prison before being eligible for parole consideration under ORS 144.228. In accordance with Board practice at the time, and citing aggravation (that offender threatened violence during the commission of the crime), as well as mitigation (that consecutive sentences were imposed for convictions that resulted from a single criminal episode), the Board determined that the consecutive minimums were not necessary to protect the public and upheld one 180-month minimum, finding it an appropriate sanction. As a result, offender first became eligible for parole consideration in 2001. In 2001, 2003, and 2005, the Board held hearings as required by statute. Parole was denied at each of these hearings.

On September 11, 2007, the Board held a parole consideration hearing with offender, as required by statute. At that hearing the Board considered information submitted by offender and his support, an institutional report prepared by his counselor, and a psychological evaluation completed by psychologist Frank P. Colistro. Based on all the information before it, the Board determined that offender`s dangerous condition was not in remission, but that offender can be adequately controlled with supervision and mental health treatment available in the community. This decision was based, in part, on the Board`s review of Dr. Colistro`s conclusions, which were based on the results of actuarial tests that primarily relied on static factors. When viewing that information in the context of the entire record, which included the equivocal conclusions by Dr. Colbach with respect to dangerousness, offender`s record of positive prison conduct and responsible work history, completed treatment programs, and understanding of his past criminal behavior, the Board ultimately determined that offender could be adequately controlled with supervision. Accordingly, the Board converted offender's parole consideration date of December 18, 2007, to a parole release date.

On September 18, 2007, the Board received a telephone call from the mother ("Rebecca Ahsing") of the victim of offender`s crime of conviction ("Tiffany Edens"), in which she stated that she had heard of offender's impending release. Rebecca Ahsing had not received notice of any of offender's parole consideration hearings because her mailing address had changed a number of years ago and the Board`s last letter had been returned by the U.S. Postal Service in November 1993 as undeliverable. The victim`s family later testified that they remained in the same home, but the city and ZIP code were changed as a result of government action. They also stated that they had not been informed by the Multnomah County District Attorney`s office of any of the parole consideration hearings held on offender since 2000. Pursuant to the requirement of statute, the Board consistently notifies the district attorney`s office from each committing jurisdiction of scheduled hearings.

Upon being informed by Rebecca Ahsing and Tiffany Edens that they wanted an opportunity to submit information to the Board on its release decision, the Board withdrew its order converting the parole consideration date to a parole release date and, in consultation with Rebecca Ahsing and Tiffany Edens, set a date to hold a reopened parole consideration hearing on October 23, 2007. At the October 23rd hearing, the Board considered all of the evidence and statements entered into the record on that date, as well as everything that was before the Board for the September 11th hearing. At the conclusion of the reopened hearing, the Board deliberated and, based on all the available information, converted offender`s parole consideration date of December 18, 2007, to a parole release date.

The victim`s family and the Multnomah County District Attorney disagreed with the Board`s decision and filed a mandamus action in Marion County Circuit Court alleging, among other things, that the Board had failed to provide the victim with adequate notice of the reopened hearing and that the Board was required to provide to the victim "the actual parole release plan." The lawsuit sought to compel the Board to vacate, among other orders, its October order affirming offender`s parole release date.

On April 21, 2008, before judgment was entered, although after the circuit court issued a letter ruling, the parties to this legal action reached an agreement to dismiss the suit, based on a stipulated judgment that required, among other things, the Board to hold a new parole consideration hearing at which there would be no limit on the number of persons testifying on behalf of the victim, or on the length of time each would be allowed to speak. Further, the Board agreed to obtain two new psychological evaluations for offender, one examiner to be chosen by the victim, and one to be chosen by the offender. In addition, the Board agreed to issue written findings of fact and conclusions of law in conjunction with its decision. This hearing was held on June 24, 2008. At the conclusion of the hearing, the Board left the record open for seven days pursuant to the terms of the stipulated agreement. In addition, at that time, the Board specifically requested the district attorney of the committing jurisdiction, through his representative, to provide additional information, including the original indictment in offender's case, to aid the Board in its review. Despite the directive of ORS 144.710, which provides that "[a]ll public officials shall cooperate with the State Board of Parole and Post-Prison Supervision * * *, and give to the board * * * its officers and employees, such information as may be necessary to enable them to perform their functions," the district attorney did not respond to or acknowledge the Board`s request.

The Board also notes that in the written rebuttal statement they submitted, the Edens family and the district attorney appear to misinterpret the Board`s statutory duties and the statutory framework that involve release decisions. Pointing to

the Marion County Circuit Court's letter opinion, which is not controlling, they claim that "the DA and the Edens family were forced to argue without the benefit of knowing the specifics of [offender's] treatment or supervision plans." This position appears to inadvertently blend together the parole consideration hearing process described above with the release planning process that DOC, local community corrections agencies, and the Board undertake once a release decision has been made. See generally ORS 144.096 and 144.098. The latter focuses on setting conditions of supervision and other specific transitional issues and if deemed insufficient, may be delayed by 90 days, while the former looks to whether release is appropriate and if deficient, may be deferred for 24 months. To the extent that the victim's family and the district attorney rely on ORS 144.120(7) to support their position, the Board reads that statute to require it to provide access to the information that the Board "will rely upon," not as a requirement that the Board require specific information for its release hearings.

At the conclusion of the seven days, the record closed and the Board took the matter under advisement and began its deliberations.

After approximately six weeks of deliberations on its written findings and conclusions, the Board temporarily suspended its deliberations pending the outcome of a newly-opened investigation. The Board had received information from the Department of Corrections (DOC) that an investigation had been opened about offender's conduct while incarcerated. In response, the Board issued an order on August 14, 2008, suspending its deliberations.

On September 29, 2008, the Board chose to resume its deliberations in order to finalize its written findings and conclusions. The Board recognizes that DOC has not yet completed its investigation. The outcome of DOC's investigation and any criminal investigations, as well as any action taken, should be forwarded to the Board for consideration at offender's next parole consideration hearing.

FINDINGS AND CONCLUSIONS

Turning to its findings and conclusions, the issue is whether offender remains dangerous and, if so, whether offender can be adequately controlled with supervision and treatment. At the outset the Board recognizes that offender has made substantial progress while incarcerated, including positive involvement with available classes, treatment programs, and activities, a solid employment history within the institution, and some achievement in understanding and continuing to address the issues that brought him to prison. That said, progress is but one factor that the Board weighs in making its decisions. As explained more thoroughly below, the Board ultimately concludes that offender does not, at this time, meet the standard for parole. The Board finds that offender remains dangerous and the Board is unable to find that offender can be adequately controlled with supervision and treatment. Therefore, the Board defers his parole consideration date for 24 months.

First, the totality of the evidence demonstrates that offender remains dangerous, and does not convince the Board that offender can be adequately controlled with supervision and treatment at this time. During the hearing, offender's responses demonstrated a difficulty acknowledging anger and failed to show a depth of insight necessary for the Board to conclude that he could be adequately controlled with supervision and treatment. Although he has shown a determination to change, the Board concludes that, in light of the full record, more time is needed to focus on the necessary self-inquiry and to work through his anger issues and his understanding of the underlying causes of his behavior.

Second, several aspects of the most recent psychological evaluations support the Board's conclusion that deferral is appropriate at this time. Dr. Stuckey

diagnosed offender with, among other things, a personality disorder, not otherwise specified, with antisocial and narcissistic features under Axis II. Dr. McGuffin diagnosed offender with a mixed personality disorder with antisocial and narcissistic personality features under Axis II. Both psychologists also commented on offender`s insight into his criminal behavior.

On the one hand, Dr. Stuckey concluded that offender had little insight into his behavior, remarking that he "spoke in a very glib, superficial, and manipulative manner." On the other hand, Dr. McGuffin stated that offender's responses on the psychological testing were honest, and yielded "an appropriate amount of self-disclosure." He concluded, however: "Unfortunately, [offender`s] clinical outcome by being more forthcoming with honest responses portrayed an individual with critical characterological issues." Dr. McGuffin went on to observe that it is "vital that he is aware of the less conscious elements in his thinking and those behaviors that may signal feelings which he is not completely in touch with or does not fully understand." Dr. Stuckey noted that the testing revealed, in his opinion, highly alarming results. Offender scored two standard deviations above the mean on the antisocial scale, as well as on the paranoid scale on the MMPI. Nevertheless, offender`s effort to provide valid profiles--as opposed to defensive ones that are common among offenders--suggests to the Board that offender was not being outright manipulative and was able to take the risk of disclosing his inner self. In sum, although the Board`s determination of parole suitability does not turn solely on the opinions of psychological evaluators or on any one factor, when viewed as part of the whole record, the current psychological evaluations support the Board`s findings and conclusions.

The decision to grant or defer parole is a decision that requires discretion, judgment, and experience. The legal framework by which the Board is bound and the Board's experience provide essential context for its decisions. Context also includes a thorough review of both the historical information that will never change and the dynamic information that takes into account programming, activities, self-study, behavior in the institution, and steps taken toward planning for the future that have developed over time, as well as the factors that drove the underlying criminal behavior.

Here, after reviewing the entire record, the Board unanimously concludes that offender remains dangerous. The Board further concludes that it is unable to find at this time that offender can be controlled in the community with supervision and treatment. The Board therefore defers his parole consideration date for 24 months for a new parole consideration date of October 1, 2010, for a total of 286 months. A hearing will be scheduled in June 2010 with the required reports pursuant to ORS 144.226 and ORS 144.228.

YOU MUST EXHAUST YOUR ADMINISTRATIVE REMEDIES BEFORE PETITIONING THE COURT OF APPEALS FOR JUDICIAL REVIEW. YOUR ADMINISTRATIVE REMEDIES ARE EXHAUSTED WHEN YOU HAVE REQUESTED ADMINISTRATIVE REVIEW OF A BOARD OF PAROLE AND POST-PRISON SUPERVISION ORDER AND YOU HAVE RECEIVED A RESPONSE FROM THE BOARD ADDRESSING YOUR REQUEST. ORS 144.335; OAR 255-080-0001. PURSUANT TO OAR 255-080-0001 THROUGH -0015, YOU MAY REQUEST ADMINISTRATIVE REVIEW OF THIS ORDER BY SUBMITTING AN ADMINISTRATIVE REVIEW REQUEST TO THE BOARD. YOUR ADMINISTRATIVE REVIEW REQUEST MUST BE SUBMITTED WITHIN 45 DAYS AFTER THE MAILING DATE OF THIS ORDER.

STATE OF OREGON BOARD OF PAROLE AND POST-PRISON SUPERVISION
BOARD ACTION FORM

NAME: 7278260 GILLMORE, RICHARD TROY Decision: 15 10/01/2008

CASE# / COUNTY / CNT / OT / RESTIT	OFFENSE / ORS# / TERM / DATE / CODE	C	IC	SC / PV / PB	SENTENCE / JUDGE	J / S	MIN / CHS/CSS	A / T	ST / CS	A / P	CSR / HRS	BASE / PRIN / GRID	RG	SENT DATE / CRM / PPS	CMT DT / EX DT	CTS / O#/G# / PPSP
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MULT * 0	163.425	CF							0		10	6 /10		12/05/1986		1 /1
MX 0	04/20/1990	EXPI					/ 0					0 /0				0
861236764/03	SEX AB I		1	5 /0 /0	UNIS		0		CC		3	6 /10		10/26/1987		311
MULT * 0	163.425	CF							0		10	6 /10		12/05/1986		2 /1
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