

CALIFORNIA BOARD OF PAROLE HEARINGS**D E C I S I O N**

DEPUTY COMMISSIONER POMERANTZ: Back on the record.

PRESIDING COMMISSIONER ROBERTS: And this is in the matter of Chuck Johnson, II, CDC number K-11650. Today's date is November 30, 2016. Time is approximately 2:20 p.m. All the parties previously in the room have returned to the room again. The victim's family and next-of-kin who are at a remote site are back on the video conference link. And we're here for the pronouncement of the Panel's decision. By way of a decision, the Panel did not find you suitable for parole today, sir. By way of background, we found that you were received by the California Department of Corrections and Rehabilitation on or about June 20, 1996. You came from the County of San Bernardino. The controlling offense in this case is a First Degree Murder committed on, looks like, 10/10/93. The, it was under the San Bernardino case number FWV02293. In your case, the Panel has read and considered the written record before us. That would include the Central File. That would include the Comprehensive Risk Assessment, prior Board Reports, and prior transcripts, and so

CHUCK JOHNSON K-11650 DECISION PAGE 1 11/30/16

1 forth. And I'll talk about a vast number of letters
2 that came in, in opposition. Which is information we
3 received from the public. We want to incorporate by
4 reference several documents into the record first that
5 were very helpful today. The first being the Probation
6 Officer's Report. For us, it's been a lot of years
7 passed, and we weren't there, and that helped us get a
8 sense of the environment around the time of the life
9 crime. So we got a sense of, you know, who, and what,
10 and those kind of things were happening from that
11 perspective, and, and with you up to that point. And
12 for that respect, it was helpful. We also would
13 incorporate by reference in its entirety the Appellate
14 Court opinion. There, the Justices speak to what they
15 believe the underlying, underlying facts of your case
16 were. And that was helpful. We would incorporate by
17 reference in its entirety the prior Board Reports,
18 particularly with regard to either progress or not
19 progress that you had had up to the last hearing. And
20 also any statements that you had made with regard to the
21 life crime up to the last hearing. We would also
22 incorporate the progress reports since the last hearing.
23 Those were helpful for us to gain some insight into what
24 you've been doing since the last hearing. And they're

25 **CHUCK JOHNSON****K-11650****DECISION PAGE 2****11/30/16**

1 very helpful there. We would also incorporate by
2 reference in its entirety the Comprehensive Risk
3 Assessment done by Dr. Chan of an interview that
4 occurred on or about August 24, 2016, here at
5 Chuckawalla Valley State Prison. And that report was
6 very helpful. It talked about your life before the life
7 crime, it spoke of the life crime and your positions and
8 the stance and statements of it, it spoke of how you've
9 been progressing in prison, and it, ultimately the
10 doctor, Dr. Chan, gave her professional opinion as to
11 your future risk of violence. And all that was very
12 helpful for this Panel. We would incorporate by
13 reference in its entirety the transcript of the last
14 hearing, which occurred here at Chuckawalla Valley State
15 Prison on or about December 1, 2009, overseen by
16 Mr. LaBahn and Deputy Commissioner Mitchell. I know
17 both those individuals. And we used that transcript
18 kind of as a guide as to how we were gonna move forward
19 today. And many of the things that you said last time
20 were considered, and what you had to say about those
21 things today, and kind of the changes in some respects
22 that you had to say. So for that perspective, it was
23 helpful. Sometimes, there was things that we didn't
24 have to cover again, like we talked about your prior

25 **CHUCK JOHNSON****K-11650****DECISION PAGE 3****11/30/16**

1 social much. We relied on your discussion there. And
2 the discussion that you had with the, with the
3 clinician, Dr. Chan. We marked two items as exhibits
4 and they were --

5 **DEPUTY COMMISSIONER POMERANTZ:** A November 28,
6 2016, opposition letter by the trial attorney at
7 Mr. Johnson's trial and an October, I'm sorry, November
8 26, 2016, opposition letter from Steve Lopez, the former
9 roommate at the house in question.

10 **PRESIDING COMMISSIONER ROBERTS:** All right. We
11 also reviewed your confidential portion of the Central
12 File. The most recent concerning, okay, all right, most
13 recent concerning document was October, 2008. But based
14 on the discussion we had today, we didn't rely upon that
15 in determining your suitability for parole. We also
16 considered the testimony that you provided today, and
17 certainly, the impact statements and information
18 provided by the victim's family. So, again, thank you
19 for coming. Now the fundamental consideration when we
20 make a parole eligibility decision is the potential
21 threat to public safety upon an inmate's release. So
22 accordingly, if there's a denial of parole, such as
23 there is today, it should be based upon evidence in the
24 record of the inmate's current dangerousness. And it's

25 **CHUCK JOHNSON** **K-11650** **DECISION PAGE 4** **11/30/16**

1 having those legal standards in mind that we find you
2 continue to pose an unreasonable risk of danger to
3 society or a threat to public safety, and are therefore
4 not suitable for parole today. The record does reflect
5 some circumstances tending to show suitability for
6 parole. We found that your parole plans, in general,
7 and in general concept, were, we thought were good.
8 Going to transitional housing, and you had a machine
9 shop marketable skill. And, and we thought you picked
10 up enough in OSART that you had employable skills.
11 Again, we have the same concern the last Panel did about
12 where, not what, but where you would be going. And we
13 were kind of concerned that, clearly went back and
14 looked and Mr. LaBahn did point that out and thought you
15 should consider it, and you didn't. So that was of a
16 concern to us. But it's not one of those things that
17 would be a showstopper for us. All these other things
18 were showstoppers for us. We felt that you lacked any
19 serious rules violations in the past 13 years, so it was
20 also supportive of parole. Those positives, however, we
21 feel are far outweighed by other circumstances that
22 would tend to show unsuitability for parole and would
23 suggest that you continue to pose a threat to the public
24 safety. With regard to the immutable factors, those

25 **CHUCK JOHNSON**

K-11650

DECISION PAGE 5

11/30/16

1 things that can't be changed, such things as the life
2 crime, the life crime, we found to be especially
3 heinous. In this case, you were allowed to, to live in
4 the home of, people invited you and allowed you to live
5 in the home. And they certainly wouldn't have done that
6 if they thought you posed any threat whatsoever in any
7 way to their, their, their child, or children, or about.
8 And it's clear that, from the evidence, that during the
9 course of your living there, that you choked, strangled,
10 and suffocated this three-year-old victim who in no way
11 Brittany could have offered any kind of resistance or
12 any kind of a threat to you whatsoever. And to do that
13 to such a young child in particular makes it especially
14 heinous. She is very vulnerable. And again, posed no
15 threat to you whatsoever. Your actions did result in
16 the death of Brittany. And the only thing that we could
17 find really that would start to talk about the reasons
18 of it, it has to be selfishness. And it's beyond some
19 of the, well beyond some of the things you put forth
20 today. But it has to be in that arena, because there
21 weren't other things that would suggest anything else.
22 While you had had some substance abuse in, previously,
23 we didn't see that to be a contained element for the
24 reasons for killing the victim. And your selfishness in

1 no way ever would justify this action and, and I think
2 you acknowledged that. No matter what it is and why you
3 were doing it, it wouldn't justify this. You possessed
4 a previous record of violence. We read in the record
5 the previous domestic violence and violence and others,
6 one of which was one of the victim's here today, a
7 mother-in-law. And, and besides the other fights that
8 you'd had previously, clearly you had a record of
9 violence. And as we noted, particularly with women were
10 of concern to us. And we talked about that today. And
11 I'm gonna talk about that more in a little bit. We felt
12 you had an unstable social history prior to
13 incarceration. You put forth substance abuse as a big
14 issue, an ongoing problem for you. Alcohol and, more
15 recent to the life crime, methamphetamine. And that,
16 and then your involvement with that, as you portrayed
17 it, would suggest an unstable social history because of
18 the types of people that you have to associate when
19 you're consuming those kind of things. And, clearly,
20 your difficulty with maintaining long-term pro-social
21 relationships. That would all suggest you had an
22 unstable social history prior to the life crime. And we
23 discussed that to some degree during the record, and it
24 certainly was clearly evident when we reviewed the

1 transcripts of the last hearing and the discussion with
2 the clinician. Now, the California Supreme Court has
3 ruled that after a long period of time, immutable
4 factors such as the commitment offense, your prior
5 criminality, which you had, and which had violence in
6 it, your unstable social history, the court tells us
7 that these things may no longer indicate a current risk
8 of danger to society in light of a lengthy period of
9 positive rehabilitation. So accordingly in your case,
10 we had to consider were there other circumstances or
11 other items that would lead us to conclude, when coupled
12 with those immutable circumstances, that you continue to
13 pose a threat to public safety? And we find that you do
14 for the follow reasons. We considered and didn't give a
15 lot of weight to, and I would say little weight, mostly
16 because of the passage of time, is the fact that you've
17 engaged in serious misconduct while in prison. While
18 there's three 115's, most recent in 2003, and the most
19 recent violence in 1999, we had to consider that. And
20 because you haven't had issues since 2003, we gave very
21 little weight to that. But we had to consider it and
22 had to assess some weight. We, a big area for us today,
23 which we gave significant weight to, was your lack of
24 credibility. Quite frankly, the physical evidence does

1 not support the account of the life crime as you've put
2 forth today. The injuries and conditions of Brittany
3 could not have happened as you've asserted. We find
4 your report of your actions to stretch the bounds of
5 credulity. We told you early on that when you told us
6 about the facts and the reasons, that they just didn't
7 make sense. They don't make sense. And that calls into
8 question your whole credibility. And once your
9 credibility is called into question as it is here, we
10 don't believe your story. Then all the other things
11 that cascade down from that for us. Such things as your
12 discussion of remorse and responsibility. All of those
13 things are called into question. And, quite frankly,
14 you not being believable was a big, huge concern for us
15 today. We also find that you failed to demonstrate
16 sufficient progress in other areas that tend to show you
17 are suitable for parole but demonstrate you are
18 unsuitable for parole. Specifically, and we gave
19 moderate weight to the fact that you failed to show
20 adequate signs of remorse and to take full
21 responsibility for your criminal actions. While you,
22 we, we got the sense that you may feel bad for what you
23 did to Brittany and her family, this is, feeling bad is
24 only a piece of remorse. A, a failure to take full

25 **CHUCK JOHNSON**

K-11650

DECISION PAGE 9

11/30/16

1 responsibility for all those acts which you did and why
2 you did those, vis a vie telling the whole truth, the
3 unabashed truth as it, as ugly as it is, as ugly as it
4 was, that, that's just a necessity to being remorseful.
5 It's a core piece of it. And we don't feel you, you did
6 either of those things. We don't think your remorse
7 that, before was any way sincere, because we don't
8 believe that what you say happened, happened the way it
9 happened. And we know those who fail to take full
10 responsibility for their criminal actions and those who
11 fail to take full responsibility and take truly
12 heartfelt remorse and display that, those people are
13 likely to recidivate. And that makes you a current risk
14 of danger to the public safety. With regard to your
15 parole plans, as I said earlier, we liked your concept.
16 We did not like your location. And, and what was kind
17 of concerning to us is, we went back and Mr. LaBahn told
18 you that. Consider somewhere else. And we're gonna
19 strongly consider it, the same thing. We want you to
20 reconsider that. There's plenty of places that the
21 Board can parole you to, any of the 58 counties. And I
22 would strongly urge you to look to somewhere else. I
23 don't think it's good for you, and I don't think it's
24 good for them to be ultimately ever paroled in the same

25 **CHUCK JOHNSON**

K-11650

DECISION PAGE 10

11/30/16

1 location. And that may very well happen someday, that
2 you're gonna be paroled. We, so we didn't give any
3 weight to that, but we're just giving you some
4 recommendation. We gave significant weight to the fact
5 that we feel you've not engaged meaningfully in
6 institutional activities that indicate enhanced ability
7 to function within the law upon your release in specific
8 areas. The first being domestic violence. Signaled
9 early on that it was obvious to us that you've had a
10 long string of violence against women and, domestically.
11 And you were unable today to demonstrate even a, a
12 modicum of evidence that you understood what that was
13 all about. It's, I told you, a very complicated
14 situation. And when I heard the family of your ex-wife
15 talk, I heard the cycle of violence again, and again,
16 and again. And until you are not only just versed in
17 that, but an expert in that, we'll, you know, we'll
18 consider, you know, a, a possible release for you.
19 Because that's a key, we think, cornerstone to what was
20 going on there. And it probably in, in all estimations
21 we have, probably relates back to your feelings and
22 issues with women in general. Which may very well
23 trickle down to Brittany. And absent those, have a, a
24 great understanding of that, we, we are, we are of great

25 **CHUCK JOHNSON****K-11650****DECISION PAGE 11****11/30/16**

1 concern that, if released, you would recidivate in that
2 way. And that is one of the things that makes you a
3 risk to the public safety. And to a lesser degree, but
4 still of concern, when we spoke to you, and specifically
5 I spoke to you, about the 12 Steps, because you, you
6 asserted you had an alcohol and drug problem, I was a
7 little shocked that I had a guy that didn't really know
8 the 12 Steps truly. He had a grasp of them. I had to
9 guide you through them. And it's, it should be
10 something that, if it's such a big deal like you talked
11 about, if it was such a big item or items that messed up
12 your life or helped you mess up your life, then you
13 certainly would, should have that, you know, it, it, you
14 should be able to say it frontwards, and backwards, and
15 repeat it, and show how you've incorporated it. And I
16 didn't get the sense, or, we didn't get the sense that
17 you did that today. So we'd like you to, to get back
18 and work on your, your 12 Steps of substance abuse.
19 Because it, as you asserted, was a cornerstone, again,
20 of why you were who you were at the time of the life
21 crime. And absent those skill sets, we're convinced
22 that you would recidivate if released from prison. We
23 also considered and gave moderate weight to the
24 Comprehensive Risk Assessment done by Dr. Chan of an

25 **CHUCK JOHNSON K-11650 DECISION PAGE 12 11/30/16**

1 interview that occurred on or about August 24, 2016.
2 Dr. Chan found you to be a moderate risk for future
3 violence. The doctor acknowledged it was somewhat of an
4 increase from the last time. And we talked about that
5 on the record. A big issue for the doctor with you is
6 insight and taking full responsibility for your actions.
7 Because, clearly Dr. Chan's report is not supportive of
8 parole. Anything you'd like to add?

9 **DEPUTY COMMISSIONER POMERANTZ:** You covered
10 everything so well, I have nothing to add other than I
11 agree.

12 **PRESIDING COMMISSIONER ROBERTS:** All right, thank
13 you.

14 **DEPUTY COMMISSIONER POMERANTZ:** You're welcome.

15 **PRESIDING COMMISSIONER ROBERTS:** And now, based
16 on these findings, we conclude that you continue to pose
17 an unreasonable risk of danger or threat to public
18 safety if you're released from prison at this time. So
19 accordingly, we find you not suitable for parole. Told
20 you that, early on in the hearing, the decision we made
21 today has to be reviewed. The Board has 120 days to
22 review and finalize the decision. You'll be notified if
23 there's any changes in that decision. That brings us to
24 length of denial. We're here today to adhere to Marsy's

25 **CHUCK JOHNSON** **K-11650** **DECISION PAGE 13** **11/30/16**

1 Law, and it presumes that we would deny at 15 years
2 unless there's clear and convincing evidence why the
3 public safety would not require a 15-year denial. We
4 feel the fact that you haven't had any violent rules
5 violations or major rules violations in the last 13
6 years would be suggestive that the public safety
7 wouldn't require a 15-year denial. We looked at ten
8 years, and we felt the fact that you've developed
9 marketable skills and you have an idea of what you need
10 to be doing for parole, which is developing parole plans
11 and Relapse Prevention Plans to help you, that would all
12 suggest public safety would not require a ten-year. So
13 we looked then at seven, five, and three. And we didn't
14 see a lot of movement since the last hearing. Even the
15 clinician said there was, you know, some improvement,
16 but we, we could not, we could not find a significant
17 amount to move down in that lesser range of seven, five,
18 and three. We think you're amenable to treatment,
19 because you've demonstrated that when you talked about
20 your involvement with AVP and so forth. So that, that
21 signaled to us that you're amenable to treatment. So
22 you're not a lost cause. But you're amenable to
23 treatment. So this is a seven-year denial. Now having
24 said that, please be aware that you can request an

25 **CHUCK JOHNSON****K-11650****DECISION PAGE 14****11/30/16**

1 earlier hearing than the, the denial period we have
2 issued today, provided there's been a change of
3 circumstance, or new information that suggests a
4 reasonable likelihood that you don't require additional
5 incarceration. And that's done on a Petition to Advance
6 Form. Okay. I have to do two other things. The first
7 being, we defined your term as a result of the *Butler*
8 decision. And it's totally academic to you because in
9 January of this year, Senate Bill 230 was passed and
10 became effective. And it indicates when a person
11 reaches his or her minimum eligible parole date, reaches
12 his elderly or youthful offender date, that that's the
13 date that person's eligible for parole. So what we're
14 doing now is just a calculation and agreement we have
15 with the court until we can get that settled with the
16 court. So in compliance with the *Butler* decision, we
17 defined your term as found in Title 15, section 2403(b),
18 which is a First Degree Murder committed on or after
19 November 8, 1978. We felt the most appropriate column
20 was column C, severe trauma, in that the victim was
21 strangled and, and suffocated. We felt the most
22 appropriate row was, no prior relationship. You clearly
23 had no prior personal relationship with the victim. You
24 made that clear at the last hearing when Mr. LaBahn

25 **CHUCK JOHNSON**

K-11650

DECISION PAGE 15

11/30/16

1 asked you, would you have a relationship with her. You
2 said, really I have none, or, had none. So based on
3 that, and based on what we heard today, we concluded
4 that was an accurate account of your relationship to
5 her. That would suggest a term of 29 years in the mid-
6 30, I'm sorry, 29 on the mitigated, 30 on the mid, and
7 31 on the aggravated. We looked at aggravation and
8 mitigation and found that 2404 and 2405. The fact that
9 the victim was a completely vulnerable victim, and the
10 fact that you went through some pretty significant
11 actions to cover up the, the, the murder of her by, you
12 know, securing her in a closet and covering her with
13 clothes and that's, and that, and, and what the plan
14 ultimately was has never been really established, even
15 through the last hearing. But we felt that was pretty
16 elaborate. And so for those reasons, we felt compelled
17 to aggravate. So your term is 372 months. Again,
18 academic for you because of the change in the law.
19 Between now and the next hearing, the Panel recommends
20 that you stay disciplinary-free. You've been able to do
21 that since, I believe, 2003. You should continue to
22 earn positive chronos. We would encourage you to get
23 self-help in the areas specifically talked about,
24 domestic violence and with substance abuse. You need to

25 **CHUCK JOHNSON**

K-11650

DECISION PAGE 16

11/30/16

1 double-up that. You'd be, you need to be an expert in
2 that. We like what you're doing and continue to do what
3 you're doing with AVP. We, that was a very positive
4 move by you. And then finally, if you think you need
5 it, we would suggest that you seek therapy, which can be
6 done in the institution here, for whatever you think
7 needs to be addressed with regard to the life crime.
8 And we'd encourage you to do that if you think that's
9 gonna help you get to where you need to be. And with
10 that, we'd like to wish you good luck, sir. We'll now
11 conclude the hearing. I'd like to thank the family and
12 everybody for spending your time with us today. Time is
13 approximately 2:40.

14 **DEPUTY COMMISSIONER POMERANTZ:** Off the record.

15 **A D J O U R N M E N T**

1
2
3
4
5
6
7
8
9 THIS TRANSCRIPT CONTAINS THE PROPOSED DECISION OF THE
10 BOARD OF PAROLE HEARINGS (BOARD) ANNOUNCED AT YOUR
11 RECENT BOARD HEARING AND IS PROVIDED TO YOU IN
12 COMPLIANCE WITH PENAL CODE SECTION 3041.5, SUBDIVISION
13 (A) (4), AND CALIFORNIA CODE OF REGULATIONS, TITLE 15,
14 SECTION 2254. THIS PROPOSED DECISION WILL BECOME FINAL
15 WITHIN 120 DAYS OF THE DATE OF THE HEARING AS REQUIRED
16 BY PENAL CODE SECTION 3041, SUBDIVISION (B), UNLESS THE
17 BOARD NOTIFIES YOU IN WRITING BEFORE THEN THAT THE
18 PROPOSED DECISION HAS BEEN MODIFIED, VACATED OR REFERRED
19 TO THE FULL BOARD, SITTING EN BANC, DUE TO AN ERROR OF
20 LAW, ERROR OF FACT OR NEW INFORMATION PURSUANT TO
21 CALIFORNIA CODE OF REGULATIONS, TITLE 15, SECTION 2042.
22 THEREAFTER, THE GOVERNOR HAS AUTHORITY TO REVIEW THE
23 BOARD'S DECISION AND AFFIRM, MODIFY, OR REVERSE IT
24 PURSUANT TO PENAL CODE SECTIONS 3041.1 AND 3041.2.
25 CHUCK JOHNSON K-11650 DECISION PAGE 18 11/30/16

**CERTIFICATE AND
DECLARATION OF TRANSCRIBER**

I, June R. Pennington, as the Official
Transcriber, hereby certify that the attached
proceedings:

| | | |
|---------------------------|---|---------------------|
| In the matter of the Life |) | CDC Number: K-11650 |
| Term Parole Consideration |) | |
| Hearing of: |) | |
| |) | |
| CHUCK JOHNSON |) | |
| _____ |) | |

CHUCKAWALLA VALLEY STATE PRISON

BLYTHE, CALIFORNIA

NOVEMBER 30, 2016

8:55 A.M.

were held as herein appears. Further, this transcript
is a true, complete, and accurate record, to the best of
my ability, of the recorded material provided for
transcription.

June R Pennington

June R. Pennington
December 10, 2016
Northern California Court Reporters
Copyright 2016/All Rights Reserved by BPH