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ADVISORY BOARD OF PARDONS

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IN THE MATTER OF
THOMAS E. KOONCE, W52802
PETITION FOR COMMUTATION
REPORT AND RECOMMENDATION

YOUR EXCELLENCY:

The Advisory Board of Pardons (herein after “the Board”) respectfully submits this report and recommendation concerning the commutation of Thomas E. Koonce. Mr. Koonce is serving a life sentence for murder in the first degree, imposed on June 23, 1992, in Bristol Superior Court.

The effective date of Mr. Koonce’s sentence is December 21, 1991 and he is not eligible for parole due to his first-degree conviction.

On June 3, 2014, Mr. Koonce submitted a petition for commutation. (*Attachment A*). On October 27, 2020, the Board conducted a public hearing regarding Mr. Koonce’s petition. After due consideration, the Board voted unanimously to recommend favorable consideration. The reasons for the Board’s recommendations are set forth in the body of this opinion.

PROCEDURAL HISTORY

On August 1, 1987, the Bristol County Grand Jury indicted Mr. Koonce for the murder of Mark J. Santos.

On March 26, 1990, in the Bristol Superior Court, Mr. Koonce's trial began and on April 9, 1990, the trial ended in a mistrial when the jury was unable to reach a verdict on the issue of self-defense.

On November 9, 1990, Mr. Koonce's attorney moved to dismiss the indictment on the ground that the evidence presented at trial was insufficient to permit retrial. On April 17, 1991, the trial judge denied Mr. Koonce's motion to dismiss. Mr. Koonce then appealed the trial judge's decision. On February 27, 1992 the Supreme Judicial Court affirmed the trial court's decision in Thomas Koonce v. Commonwealth, 412 Mass. 71 (1992) and SJ-5756. (*Attachment B*). On June 23, 1992, in Bristol Superior Court, a jury convicted Thomas E. Koonce of murder in the first degree and he was sentenced to life imprisonment without the possibility of parole. (*Attachment B*).

Mr. Koonce appealed this conviction and the denial of his motion for a new trial. On July 15, 1994, the Supreme Judicial Court affirmed the conviction in Commonwealth v. Thomas Koonce, 418 Mass. 367 (1994) and 636 N.E. 2d 1305, 1306-07 (Mass. 1994). (*Attachment B*). Mr. Koonce further brought a petition for a writ of habeas corpus in the District Court for the District of Massachusetts on the sole issue of whether the jury instructions violated his due process rights under the Fourteenth Amendment. The District Court dismissed the petition and on November 6, 1996, the United States Court of Appeals for the First Circuit affirmed the dismissal. (No. 96-1459). (*Attachment B*). On May 4, 2001 Mr. Koonce filed a second motion for a new trial, which was denied by the trial court and affirmed by the Supreme Judicial Court. Commonwealth v. Thomas Koonce, SJ-2001-0377. (*Attachment B*). Then on January 31, 2006, Mr. Koonce filed his third motion for a new trial, which was denied by the trial court. Further appellate review was denied. Commonwealth v. Thomas Koonce, SJ-2006-0388. (*Attachment B*).

STATEMENT OF THE CASE

The statement of the incident in question has been derived from Thomas Koonce v. Commonwealth, 412 Mass. 71 (1992), Commonwealth v. Thomas E. Koonce, 418 Mass. 367 (1994) and reports from the Massachusetts State Police Bristol County CPAC Unit dated July 5, 1987. (*Attachments B and C*)

The events that led to the murder charge in this case are detailed in Commonwealth v. Koonce, 418 Mass. 367 (1994). In brief,

“On July 20, 1987, the defendant, James Reace, Kevin Hamilton, and Andy Webb were driving in Reace's 1981 Chevrolet Monte Carlo automobile. The group traveled to a nightclub in Westport. Near closing time, a fight between groups from New Bedford and Brockton occurred, but the defendant and his friends were not involved in the fight. The defendant and his friends then went to a Burger King restaurant in Dartmouth where another encounter between New Bedford and Brockton groups occurred. According to Reace, the defendant pulled out a gun at the Burger King and became upset when the gun jammed.

After leaving Burger King, the defendant and his friends, as well as another group from Brockton, proceeded to New Bedford, parked their automobile, and walked to the United Front housing development. Reace had a shotgun and the defendant was also armed. Some young women drove past them and informed the New Bedford people that Brockton people had arrived. A large group from New Bedford, including the victim, then chased the defendant and his friends back to their automobile. There was conflicting testimony whether anyone in the New Bedford crowd was armed.¹ During the chase, the New Bedford group beat a member of the other Brockton group. In addition, they smashed his automobile's windows.

When the defendant and his friends entered their automobile, their path was blocked by another automobile. While they were trapped, the crowd from New Bedford continued in its pursuit. Once the path of the defendant and his friends cleared, Reace accelerated. After the automobile accelerated, Reace testified he

¹ There was testimony that the New Bedford crowd was armed with, among other things, bats. Another witness stated that the crowd was unarmed.

heard a gunshot from the passenger's side of the automobile where the defendant was sitting. Another passenger stated that he thought someone had been hit and the defendant said he had not aimed at anyone but rather pointed to the sky. The victim was fatally wounded. There was conflicting testimony concerning how close the New Bedford group came to the automobile. The automobile, however, was not touched or damaged. At some point after Reace was arrested, the defendant and his mother arrived at the Brockton police station and stated that he did not want his friend to pay for his mistake and that he 'did it.' The defendant maintained that '[he] wouldn't have done it if [he] didn't have to.' The defendant told the police that he had discarded the gun after the shooting."

The investigation of the shooting revealed that after the shooting, Mr. Reace drove Mr. Koonce, Mr. Webb and Mr. Hamilton to the house of his ex-girlfriend's sister where Mr. Reace hid his shotgun and Mr. Koonce's gun. Later that same evening, Mr. Reace and Mr. Koonce returned to retrieve Mr. Koonce's gun. Officers were unable to locate Mr. Koonce's gun, but received confirmation from the Agent Dennis Flavin, ATF that on April 21, 1987, Mr. Koonce had purchased a .22 caliber semi-automatic weapon in Bremerton, Washington.

On July 21, 1987, after conducting an autopsy of the victim, Mark Santos, age 24, Dr. Lauro concluded that the cause of death was a single gunshot wound to the chest resulting in massive blood loss.

CO-DEFENDANT² – JAMES REACE

According to court records, on June 26, 1992, Mr. Reace pleaded guilty to accessory after the fact to first degree murder. Mr. Reace testified on behalf of the Commonwealth in exchange for a promise of leniency for his part in the shooting of Mark Santos. The Commonwealth agreed to recommend a sentence of 5 to 7 years in state prison, suspended, with three years probation. On June 26, 1992, the Court sentenced Mr. Reace in accordance with the Commonwealth's recommendation. (*Attachment D*)

² Andrew Webb and Kevin Hamilton were not charged in this incident.

SOCIAL HISTORY

Mr. Koonce was born on March 16, 1967 to Thomas Koonce, Sr. and Lula Irene (Charlie) Koonce in Boston, Massachusetts. Mr. Koonce moved to Brockton, Massachusetts with his mother, oldest brother, Eric and his youngest brother Quintin after his parents' divorce. Mr. Koonce reports that he has one child, with whom he maintains contact with via phone and correspondences.

Mr. Koonce graduated from Brockton High in 1985 and attending one semester at the Olympia Junior College while in the United States Marine stationed in Seattle, Washington. Mr. Koonce received credit for courses taken at the University of Massachusetts at Boston in 1993 and the Massasoit Community College in 1994 and 1995. In May 1998, he received his bachelor's degree in liberal studies (*Magna Cum Laude*) from Boston University Metropolitan College.

Mr. Koonce held several summer and part-time jobs prior to his enlistment with the United States Marines. In 1991, after being discharged from the United States Marines, he held two jobs while awaiting trial; a full-time job in the Financial Division with John Hancock and a part-time job with Sears Roebuck in the Security/Loss Prevention Division. Mr. Koonce acknowledges drinking alcohol prior to his incarceration, however he does not claim nor are there any indications that he has a history of drug and alcohol issues.

According to Mr. Koonce and records maintained in Mr. Koonce's Department of Correction file, in November 1985, Mr. Koonce voluntarily entered the US Marine Corps and completed basic training at Paris Island, South Carolina. Mr. Koonce was assigned to security and later stationed in San Diego, California for six months before being transferred to Seattle, Washington, where he had been assigned until his leave in 1987 and in 1991 he received an Honorable Discharge.

PRIOR CRIMINAL RECORD

According to the Massachusetts Board of Probation record and the National Crime Information Center (NCIC) both dated August 6, 2020, Mr. Koonce is serving his first and only

incarceration of any kind. Mr. Koonce self-reported a 1987 misdemeanor arrest for trespassing in Seattle, Washington. On May 20, 1987, Mr. Koonce was charged in Kitsap County, Washington with two counts of obstructing a public servant and one count of trespassing. All charges were dismissed on September 15, 1987. (*Attachment E*)

INSTITUTIONAL HISTORY

The Department of Correction Classification Report dated March 10, 2020, indicates that Mr. Koonce is currently incarcerated in a medium security facility at MCI -Norfolk where he receives positive work/unit evaluations and where he receives visits from his family and friends. Records indicate the following information: (*Attachments F, G and H*)

Chronological Movement

June 23, 1992 MCI Cedar Junction
February 19, 1993 MCI Norfolk

Returns to Higher Custody

There is no record of Mr. Koonce ever being returned to higher custody.

Disciplinary Chronology (*Attachment I*)

July 9, 1992 Not having a property seal on radio – **Guilty, 30 days loss radio**
June 23, 2001 Using a three-way phone – **Guilty, 4 weeks loss telephone**

Program and Work Involvement

Mr. Koonce's has participated in the following programs/work:

Work:

1992 Flats Runner – Cedar Junction
1993 Weekend Janitor in Unit 2-2 at MCI- Norfolk
2010 Runner in the ID office – MCI-Norfolk

Continuing Education:

1996

Basic Computers and Keyboarding course

1998

Boston University Prison Education Program (Bachelor of Arts, *Magna Cum Laude*)

2003

Introduction to Spanish Course

2004

48 Units of Study by Correspondence from Emmaus Correspondence School
Living in Christ Bible Study Correspondence course from Billy Graham Evangelistic Association

2004

Auditing Courses for The Boston University Prison Postsecondary Education Program

2007

Audit of LS212: Fourth Semester Spanish courses Boston University
Audit of LS311: Fifth Semester Advanced Spanish courses Boston University

2011

Tutor Training I

2012

Computer Skills

2015

Computer Skills

2020 Introduction to Microsoft Office

Programs:

1993-Present Church activities

1994-2019 Second Thoughts Program

2001-Present African American Coalition Committee

2007-2008

Alternatives to Violence Program November 11, 2007 and January 6, 2008
2010

Jericho Circle Project Intensive Training

2010

Alternatives to Violence Facilitator

Jericho Circle Project
Walk for Hunger

2011

Problem Solving and Thinking Skills
Alternatives to Violence Facilitator
Emotional Awareness/Emotional Hearing

2012

Restorative Justice Retreat
Emotional Awareness
Alternatives to Violence Facilitator

2013

Alternatives to Violence Coordinator

2014

Restorative Justice Retreat and Restorative Justice Reading Group
Workshops for Training in Nonviolence Alternatives to Violence Project/New England
Victim Offender Education Group
Alternatives to Violence Coordinator

2015

Restorative Justice Retreat
Victim Offender Education Group
Advanced Emotional Awareness
Restorative Justice Reading Group
Workshops for Training in Nonviolence Alternatives to Violence Project/New England

2016

Restorative Justice Reading Group (March 17, 2016 and December 8, 2016)
Restorative Justice Retreat
Workshops for Training in Nonviolence Alternatives to Project

2017

Restorative Justice Retreat
Restorative Justice Reading Group (April 13, 2017 and June 22, 2017)

2018

Restorative Justice Retreat
Restorative Justice Reentry Group

2019

Restorative Justice Retreat and C.A.I.R. Event
Victim Offender Education Group

PROCEEDINGS BEFORE THE ADVISORY BOARD

On October 27, 2020, the Advisory Board of Pardons held a public hearing on Thomas Koonce's commutation petition. This was Mr. Koonce's second appearance before the Board, having received an unfavorable recommendation after his hearing on February 11, 2010. (*Attachment L*). The hearing was chaired by Gloriann Moroney. Advisory Board of Pardon members Charlene Bonner, Tonomey Coleman, Sheila Dupre, Tina Hurley, and Karen McCarthy were present at the hearing. Mr. Koonce was represented by Attorney Timothy Foley.

Attorney Timothy Foley's Opening Statement

During Attorney Foley's opening statement, he indicated to the Board that Mr. Koonce's post-offense character and behavior fall within the parameters of Governor Baker's Executive Clemency Guidelines, as he has utilized all available resources for self-development, self-improvement and self-assessment as an incentive to act as a law abiding citizen. Attorney Foley indicated that Mr. Koonce has not only expressed remorse for the murder of Mark Santos, but has also lived his life incarcerated in a manner consistent with someone who is remorseful. Attorney Foley told the Board that prior to his incarceration, Mr. Koonce was employed and intended on attending Northeastern University. He joined the Marine Corps with the intention of starting a career in law enforcement. During his incarceration, he has incurred two disciplinary reports in 28 years and has been employed for 19 years. Further, Attorney Foley indicated that Mr. Koonce, along with others, introduced Restorative Justice to MCI-Norfolk and has been involved in many other programs and projects. Finally, Attorney Foley summarized for the Board anticipated testimony in support of Mr. Koonce's commutation petition.

Mr. Koonce's Opening Statement

Mr. Koonce began his statement by thanking the Board for giving him the extraordinary second opportunity to be heard. Mr. Koonce referenced the Board's previous recommendation in 2010 that he continue to work on self-development and self-improvement and as a result, he took on the challenge of his continued rehabilitation. He went on to reiterate how truly sorry he was for taking the life of Mark Santos and expressed his sorrow to the Santos family and indicated he will "forever remain remorseful for [his] reckless and excessive actions that led to Mr. Santos' death." Mr. Koonce indicated that he will be "forever committed to a life of reparation and restoration." Mr. Koonce also apologized to the community and the City of New

Bedford and acknowledged how his actions negatively impacted the entire community. Mr. Koonce also apologized to his supporters, friends and family, including his mother who suffers from dementia, as well as his son.

In addition to his opening statement, Mr. Koonce outlined for the Board in detail the work that he has done since his last appearance before the Board in 2010. Mr. Koonce explained that although he was distraught by the Board's previous unfavorable recommendation, he viewed it as a challenge to gain more insight and to engage in more programming. He enrolled in Jericho circle, Alternatives to Violence ("AVP") and went on to participate in additional AVP workshops. He then became an AVP weekend coordinator. He enrolled in ten additional weekend workshops in AVP. Mr. Koonce highlighted other programs in which he participated including but not limited to, Emotional awareness I and II, Problem Solving, Thinking Skills, Lifer's Group and church groups. In 2010 he was also introduced to Restorative Justice and wanted to play a role in getting the program into the prison. He and others submitted a proposal to the superintendent. The group worked on a curriculum for over a year and coordinated the first retreat in 2012. Mr. Koonce indicated that it was the first chance he was able to hear the impact crimes such as his has on family members and communities. Currently, Mr. Koonce serves as an internal coordinator for the Restorative Justice Program. Mr. Koonce has also participated in the Restorative Justice Reentry Circle where he learned about reentry into the community, preparing for job interviews and the challenges that he may face. Mr. Koonce explained that he also participated in second thoughts, another restorative program that allowed him to give back to the community and constantly remind himself of the victimization he has caused. Mr. Koonce indicated that of the 31 programs in which he participated since 2010, the two programs that impacted him the most were the 34-week Restorative Justice Victim Offender education group and Emotional Awareness II advanced. Mr. Koonce explained that his participation in these programs allowed him to share his childhood history and to better understand past trauma. In addition, Mr. Koonce indicated that he has been mentored by Pastor Horsman for approximately five years. Through mentorship, he was able to work on his childhood trauma and develop coping mechanisms.

The Board's Inquiry

The Board began by noting that Mr. Koonce had two trials for the murder of Mr. Santos, the first resulting in a mistrial and the second resulting in a first-degree murder conviction. Prior to each trial, Mr. Koonce was offered a plea resolution; 5 to 10 years on the first trial and

approximately 8-10 years on the second trial. The Board inquired as to why Mr. Koonce did not accept the plea offers. Mr. Koonce explained that he did not at that time understand his culpability in his role in the crime and was “ignorant.” Mr. Koonce explained that he believed that he would have been found guilty of voluntary manslaughter. The Board also inquired about Mr. Koonce’s appeal attempts, all of which were unsuccessful. The Board noted that Mr. Koonce seemed to understand the reasons for the Board’s unfavorable recommendation in 2010. Mr. Koonce explained that he realized that he was solely focusing on others and had not been focusing on self-improvement. His focus on others was a coping mechanism and allowed him “to put blinders on” so that he wouldn’t have to face taking responsibility and focusing on his own self-development.” He indicated that he realized that prior to 2010, he had only completed eight programs. Mr. Koonce told the Board that he believes he began benefitting from his commitment to programming approximately six to eight years ago because by that time he had done several programs such as Alternative to Violence, Jericho Circle and Second Thoughts.

The Board noted that a commutation is an extraordinary remedy reserved for those individuals who have shown exceptional extraordinary self-development and improvement and that Mr. Koonce has had the second chance to come before the Board along with the family of Mr. Santos. When asked how he believes his petitions affect the Santos family, Mr. Koonce indicated that he believes it “impacted them greatly.” He stated that he knows that it is “painful” for them and “regrets that they have to go through the pain all over again.” The Board inquired why Mr. Koonce believes he meets the expectations for an extraordinary remedy such as a commutation. Mr. Koonce told the Board that he has taken full responsibility for his actions, has made exceptional strides in self-development and self-improvement, will be a law abiding citizen, has served in the military, has given back to the community through his Restorative Justice work, and has received minimal disciplinary reports in 28 years. Mr. Koonce stressed that he took his rehabilitative progress seriously and has been “trying to do the right thing” throughout his incarceration. Mr. Koonce further explained that whether or not he is ever released into the community, his goal is to try to make prison a safer place and to help others. The Board commended Mr. Koonce for his work in Restorative Justice.

At the time of the governing offense, Mr. Koonce was enlisted in the Marine Corps. He wanted to attend Northeastern University and start a career in law enforcement. Prior to joining the military, Mr. Koonce indicated that “by day” he was getting good grades in school and “by night” he liked to play basketball and “party.” He indicated that generally he spent time with

positive peers. However, Mr. Koonce expressed a concern that he could go down the “wrong path” because he would observe fighting, drinking and drug use at parties. He knew he was “walking a fine line” and needed to make a change in his environment and consequently decided to join the military. At the time of the governing offense, Mr. Koonce was home on leave. He had obtained a license to carry firearms approximately a few months prior to the murder. He obtained two handguns, a .357 and .22 caliber. The .22 caliber was the murder weapon. When questioned as to why he chose to carry the .22 caliber, a firearm with less “stopping power,” Mr. Koonce told the Board that at the time he mistakenly believed that the .22 would be less likely to fatally injure someone if he needed to use it. Mr. Koonce indicated that he carried a firearm because it gave him “power” and “respect,” feelings that seemed to fulfill his need for love and acceptance stemming from his childhood. He stated, “I didn’t know who I was. I was looking for my identity in other people.” Mr. Koonce told the Board he carried his firearm wherever he went because it gave him a sense of “bravado.” When asked about his firearms training in the Marines, Mr. Koonce indicated that he did not have frequent training in pistols and that his training was mainly in assault weapons.

On the night of the murder, Mr. Koonce, Mr. Reace and others decided to go to see a movie. They stopped at a convenience store to purchase snacks and there the group ran into another group of individuals who invited them to a night club in Dartmouth. They went to the night club at around 11:00 p.m. where a fight occurred between individuals from New Bedford and Brockton. Mr. Koonce and his friends were asked to leave the club. They went to a Burger King to get something to eat. At some point a van arrived with some individuals from New Bedford who had weapons and began moving towards Mr. Koonce and his friends. Mr. Koonce indicated that he did not know the individuals. Mr. Koonce moved closer to the individuals to see what was happening. As he went back to his vehicle, he pulled out his firearm and attempted to chamber a round of ammunition, but it jammed. Mr. Koonce indicated to the Board that he had no intention of using the weapon at that time. A police officer subsequently arrived on the scene and Mr. Koonce and his group left the Burger King. They were invited by another group to go to a party at the United Front housing complex. Mr. Koonce admitted that he should have gone home, but at the time he wanted “to make something of the night.” When asked about co-defendant, Mr. Reace’s statement that Mr. Koonce went to the United Front to fight and “get revenge,” Mr. Koonce indicated that it was not true and opined that Mr. Reace made the statement to get a more lenient sentence.

Mr. Koonce told the Board that Mr. Reace parked the car a block away from the United Front. The two exited the car, and Mr. Koonce observed Mr. Reace place something in his coat and start walking towards the United Front. Suddenly, other cars began arriving and a crowd began congregating. Mr. Koonce and Mr. Reace went a different way to get away from the crowd. At some point, they started hearing noises and whistling and decided to leave. They returned to the car and proceeded to leave, however, as they were driving up the street, Mr. Reace was blinded by the headlights of an oncoming vehicle and drove up onto a curb. As they were backing up, Mr. Koonce observed an altercation amongst the group of individuals who in turn began coming towards Mr. Reace and Mr. Koonce's car. Mr. Koonce pulled out his gun and fired a shot in the air through the car window. As he fired his gun, Mr. Reace began accelerating and they left the scene. Mr. Koonce indicated that he did not aim the gun at anyone and fired a "warning" shot upwards at an angle. Mr. Koonce told the Board that at the time he fired the gun, he did not realize that he had shot someone, although an individual sitting in the back seat of the car told Mr. Koonce, "I think you just shot someone." When asked why they did not just leave, Mr. Koonce indicated that they were "trapped" on the curb and he would not have pulled out his gun had they been able to leave the area. Afterwards, Mr. Koonce and Mr. Reace went to the home of Mr. Reace's sister-in-law where Mr. Reace retrieved his shot gun and asked Mr. Koonce for his gun. Mr. Koonce told the Board that he reluctantly left the gun with Mr. Reace who brought it upstairs. He further indicated that Mr. Reace asked Mr. Koonce wipe his hands.

The next day, Mr. Koonce returned to the house to retrieve his gun because he did not feel comfortable leaving his registered gun in the house of a stranger. Mr. Koonce admitted that at that point he was not concerned with being charged with shooting someone because he did not know for sure if he had in fact shot someone. He learned that Mr. Santos was shot from an article in the newspaper. Mr. Koonce admitted that initially he lied to the police and did not admit to firing his gun until the arrest of Mr. Reace. Mr. Koonce told the Board that he did not want Mr. Reace "to pay for [his] mistakes."

After his arraignment, Mr. Koonce had been released on bail for approximately five years. The Board noted how unusual it is for an individual charged with first-degree murder to be released on bail pending trial. Mr. Koonce told the Board he believes he was released on bail due to his lack of criminal history and that he was enlisted in the Marines. While on bail, Mr. Koonce worked doing custodial duties, worked part time at a Sears store and obtained his commercial driver license. Additionally, Mr. Koonce's son was born just prior to his sentencing.

Mr. Koonce told the Board that he first took responsibility for the murder of Mr. Santos when he went to the police station to tell the police that he, and not Mr. Reace, fired the shot that killed Mr. Santos. Although, Mr. Koonce admitted that at that time, he asserted that he acted in self-defense. Mr. Koonce clarified that he no longer claims that he acted in self-defense and that after having “done some work” he realized the impact of his actions. Mr. Koonce told the Board that he read an article about the murder of Mr. Santos, which prompted him to write a letter to Mr. Santos’ family expressing remorse. When asked how he believes the Santos family would have felt reading his letter, which indicated he was remorseful, but could not take responsibility for first-degree murder, Mr. Koonce told the Board that his failure to take full responsibility at that time was a result of his “ignorance” and the lack of programming he had done to fully understand “victimization.” Mr. Koonce acknowledged that his letter “could have been construed as offensive” to the Santos family. When asked by the Board if he believed that the jury legitimately found him of first-degree murder, Mr. Koonce indicated he believed it did. However, when pressed, Mr. Koonce referenced the testimony of Attorney John Moses at his hearing before the Board in 2010, who prosecuted his case and told the Board that he believed Mr. Koonce should have been convicted of second-degree murder. The Board noted that the purpose of a commutation is not to intended to review the proceedings of the trial court and that the Supreme Judicial Court affirmed the conviction and denied three motions for a new trial. The Board inquired about a pamphlet created by Mr. Koonce’s son in order to solicit support and attention to Mr. Koonce’s case that suggests that Mr. Koonce was wrongly convicted of first-degree murder. Mr. Koonce indicated that his son was advocating for him, but that he does not agree with all the facts contained in the pamphlet.

In discussing his institutional adjustment, Mr. Koonce indicated that he began taking programs at the beginning of his sentence and advocated for himself in order to be able to utilize resources available to him. The first programs he completed were the Second Thoughts program Boston University Prison Program, for which he earned a degree in 1998, graduating *Magna Cum Laude*. Mr. Koonce also took educational courses, participated in the Lifer’s Group, the African American Coalition and Church groups. Mr. Koonce explained that he participated in programs early on despite his life sentence because he “always wanted to better himself” and knew “how important an education [is].” Furthermore, Mr. Koonce participated in programming in education in order to avoid the “negativity” and “chaos” of prison. Mr. Koonce told the Board he was ridiculed by other prisoners because he wanted to separate himself from the crowd. He

explained he was called a “square” by other inmates, which used to bother him, but now he is proud of his behavior and the work that he has done. The Board also noted that he has done a “tremendous amount of work” since 2010 with a specific focus on Alternatives to Violence (“AVP”) and Restorative Justice. Mr. Koonce was also involved in the Second Thoughts program, from which he stepped down in 2019. He had been coordinating the program and participating for approximately 27 years. The program focuses on helping “at-risk” youth. Mr. Koonce also endeavored deeply in AVP and was instrumental in implementing the Restorative Justice program at MCI-Norfolk. Mr. Koonce told the Board he was approached in 2010 in regards to the Restorative Justice concept. After reading about it, Mr. Koonce “loved” the concept and consequently he along with other put together a program proposal for the facility superintendent. They were given one year to put together a curriculum for the program. The program began with a Restorative Justice retreat in 2012, which was a success and was followed by many more retreats. Mr. Koonce described how the program had helped others, including victims and offenders and was instrumental in helping Mr. Koonce understand victimization. Mr. Koonce told the Board that hearing stories from victims and victims’ families helped him gain insight into how his actions impacted the family of Mr. Santos.

Mr. Koonce also completed Emotional Awareness I and II. The Board noted a conflict in what Mr. Koonce told the Board in 2010 about his family life growing up and what he had written in the Emotional Awareness program. In 2010, Mr. Koonce described a good childhood and that his parents were role models, but described something different in his writing projects in Emotional Awareness. Mr. Koonce told the Board that in 2010, that “was [his] truth” and it was his “ignorance” to paint a picture of a “rosy family.” Mr. Koonce explained that in 2010 that is how he viewed his family and did not recognize his childhood experiences of racism and rejection as trauma at that time. Mr. Koonce’s family moved to the suburbs from Boston when he was approximately six or seven years old. He was accepted to college, but did not have the finances to pay tuition, so he enlisted in the military. Prior to the murder, Mr. Koonce indicated that he was not engaged in criminal activity, but snuck a gun out of his house to show his friends when he was approximately 14-years-old.

The Board noted the uniqueness of Mr. Koonce’s case in that he was not involved in a criminal lifestyle leading up to the murder. When asked by the Board if he believes he has more work to do given that he relatively recently has come to understand the impact of his past trauma, Mr. Koonce told the Board, “there is always room for growth” and that he “will continue

learning and growing forever.” Mr. Koonce told the Board that he learned from programming that he needs to set boundaries because he is a “people pleaser,” being easily led. He now recognizes that his desire to please others stems from his past trauma of racism and rejection growing up. The Board noted Mr. Koonce’s “heartfelt” remorse for the murder of Mr. Santos in a letter he wrote in 2014 for Restorative Justice and where he quoted the words of the mother of Mr. Santos. The Board inquired how Mr. Koonce believes Mr. Santos’ mother would have felt had she received the letter. Mr. Koonce indicated that he believed that it would likely make her have to “relive the pain and anger” had she been in the audience listening to the letter. When asked by the Board what he would say to Mr. Santos if he were here today, Mr. Koonce stated he would say he is sorry for taking Mr. Santos’ life and that did not deserve to be “taken out of the world” and deserved to be a father, uncle, brother and son. When asked what advice he would give to his 20 year old self, Mr. Koonce indicated that he would say that he needed to heal his childhood wounds, that he did not need to look for acceptance from others and that instead he could have asked for support from his parents. He stated he would also tell his younger self that he made some “very bad decisions” on the night of the incident.

SUPPORT

Testimony:

Thomas Andrews

Mr. Andrews, Mr. Koonce’s son appeared before the members of the Advisory Board of Pardons and presented testimony on October 27, 2020. Mr. Andrews thanked the Board and Governor Baker in considering Mr. Koonce’s case for the extraordinary remedy of commutation. Mr. Andrews told the Board that his father was incarcerated since he was one month old. He indicated to the Board that he first met his father at 12-years-old and had to learn about his father and his character. Mr. Andrews indicated he has only observed his father as having a “positive energy” and taught him about “doing the right thing.” Mr. Andrews attributed his own success to the guidance of his father, having graduated from Boston University. Mr. Andrews described his father as “very humble” despite having changed the trajectory of the lives of others through his work. He further described Mr. Koonce as “sensitive” and “vulnerable,” characteristics which he believes are “rare.”

Conan Harris

Mr. Harris, a friend of Mr. Koonce appeared before the members of the Advisory Board of Pardons and presented testimony on October 27, 2020. Mr. Harris told the Board that he is a father and husband. Mr. Harris told the Board that he previously worked in public safety, having worked for Mayor Martin Walsh as well as former mayors of Lawrence and Brockton. Mr. Harris also told the Board that he is a formerly incarcerated individual. Mr. Harris told the Board that he met Mr. Koonce in the institution 24 years ago after having been sentenced to 10 years for drug trafficking. Mr. Harris admitted that initially he did not like Mr. Koonce because Mr. Koonce would not allow him to participate in a program due to his behavior within the institution. However, Mr. Harris later realized that Mr. Koonce was trying to emphasize accountability and that Mr. Koonce held himself, others and the program to “a standard.” Mr. Harris told the Board that Mr. Koonce has not changed since he met him and that when he first arrived in prison, Mr. Harris could tell that “he was not supposed to be inside the institution.” Mr. Harris told the Board that Mr. Koonce is consistent in his actions and his behavior and described him as “exceptional.” Mr. Harris stated that “crimes are things that we do, not who we are.”

Jenifer Drew, Ph.D.

Dr. Jennifer Drew, a former professor and director at Boston University Prison Education Program, appeared before the members of the Advisory Board of Pardons and presented testimony on October 27, 2020. Dr. Drew told the Board that she has known Mr. Koonce for approximately 20 years and has “nothing but the highest respect for him.” Dr. Drew noted his 27 years of contributions in the prison and the community. Dr. Drew also told the Board that Mr. Koonce is a “success story,” having succeeded while incarcerated.

Janet Connors

Ms. Connors, a mentor of Mr. Koonce, appeared before the members of the Advisory Board of Pardons and presented testimony on October 27, 2020. Ms. Connors is a Restorative Justice practitioner and has many years of experience working with youth, offenders, victims and families through a variety of community-based institutes. Ms. Connors also told the Board that she is the mother of a homicide victim and participated in Restorative Justice with the two men that murdered her son and their mothers. Ms. Connors met Mr. Koonce through her Restorative Justice work. Ms. Connors told the Board that Mr. Koonce has been an “important part of [her] healing journey” and has done “so much good in the world” by helping others and working on

himself. She indicated she believes Mr. Koonce has already “saved lives.” She indicated “his dedication is immense and his integrity is absolute.”

Pastor Donald Horsman

Pastor Horsman, a mentor of Mr. Koonce was scheduled to appear before the members of the Advisory Board of Pardons, but due to logistical difficulties Pastor Horsman submitted a letter in support of Mr. Koonce’s commutation petition after the hearing.

Support Letters:

The Following individuals submitted letters of support for Mr. Koonce in connection to his petition for commutation: (*Attachment J*)

Janet Connors Janet Connors, a Restorative Justice Practitioner, submitted a letter dated September 17, 2020 in support of Mr. Koonce’s petition for commutation.

Bishop Orlando Harris Bishop Harris, of New Life Christian Church in Brockton submitted two letters in support of Mr. Koonce’s petition for commutation (undated).

Jenifer Drew Ms. Drew, former Director of the Boston University Prison Education Program submitted a letter dated September 9, 2020 in support of Mr. Koonce’s petition for commutation.

Patrick William Tracy Mr. Tracy, a friend of Mr. Koonce, submitted a letter dated September 4, 2020 in support of Mr. Koonce’s petition for commutation.

Pastor Donald Horsman Pastor Horsman, Mr. Koonce’s mentor, submitted two letters, the most recent dated November 6, 2020 in support of Mr. Koonce’s petition for commutation.

Thomas Andrews Mr. Andrews, the son of Mr. Koonce, submitted a letter dated September 21, 2019 and attached pamphlet, as well as a letter dated October 25, 2013 in support of Mr. Koonce’s petition for commutation.

Dr. Franklin A. Tuitt Dr. Tuitt, an assistant professor at the University of Denver and friend of Mr. Koonce submitted a letter dated February 5, 2010 and a second letter (undated) in support of Mr. Koonce’s petition for commutation.

Joyce King Ms. King, a friend of Mr. Koonce, submitted letters dated November 1, 2013 and June 1, 2020 in support of Mr. Koonce's petition for commutation.

DA Rachel Rollins Suffolk County District Attorney, Rachel Rollins, submitted a letter dated November 10, 2020 in support of Mr. Koonce's petition for commutation.

Lula Koonce Ms. Koonce, the mother of Mr. Koonce, submitted a letter dated October 14, 2014 in support of Mr. Koonce's petition for commutation.

David Abbott Mr. Abbott, Chaplain of the Protestant Chaplain MCI Norfolk submitted a letter dated November 4, 2008 in support Mr. Koonce's petition for commutation.

Joseph Gamboa Mr. Gamboa, a high school friend and colleague in the United States Marine Corps, submitted a letter dated October 11, 2013 in support of Mr. Koonce's petition for commutation.

Angelo Hamilton Mr. Hamilton, friend and colleague in the United States Marine Corps, submitted a letter dated October 17, 2013 in support of Mr. Koonce's petition for commutation.

James Johnson Mr. Johnson, a friend of Mr. Koonce, submitted a letter dated October 10, 2013 in support of Mr. Koonce's petition for commutation.

Rev. Larry Johnson Rev. Johnson, of Mt. Moriah Baptist Church in Brocton, submitted a letter dated October 7, 2013 in support of Mr. Koonce's petition for commutation.

Jose Melendez Mr. Melendez, a friend of Mr. Koonce, submitted a letter dated October 22, 2013 in support of Mr. Koonce's petition for commutation.

Diana Perkins Ms. Perkins, a friend of Mr. Koonce, submitted a letter dated October 21, 2013 in support of Mr. Koonce's petition for commutation.

Gary Perkins Mr. Perkins, a friend of Mr. Koonce, submitted a letter dated October 26, 2013 in support of Mr. Koonce's petition for commutation.

Sara-Ann Semedo Ms. Semedo, a friend of Mr. Koonce, submitted a letter dated March 19, 2014 in support of Mr. Koonce's petition for commutation.

Vandy San Mr. San, a friend of Mr. Koonce, submitted a letter (undated) in support of Mr. Koonce's petition for commutation.

Misti Severini Ms. Severini, the mother of Mr. Koonce's son, submitted a letter dated October 15, 2013 in support of Mr. Koonce's petition for commutation.

Michael Wayne Walker Rev. Walker submitted a letter dated October 1, 2013, in support of Mr. Koonce's petition for commutation.

Leonna A. Brandao Ms. Brandao, President / CEO, New Vision Organization, Inc. submitted a letter dated May 27, 2008 in support of Mr. Koonce's petition for commutation.

Eric A. Gunderway Mr. Gunderway, a patrolman for the Holbrook Police Department and friend of Mr. Koonce, submitted a letter dated and October 17, 2013 in support of Mr. Koonce's petition for commutation.

James A. Perkins Mr. Perkins, a Court Officer for the Commonwealth of Massachusetts and also a friend of Mr. Koonce submitted a letter dated October 20, 2013 in support of Mr. Koonce's petition for commutation.

Ronald L. Barber Mr. Barber, a retired United States Marine Corps Master Gunnery Sgt., submitted a letter dated October 21, 2013 in support of Mr. Koonce's petition for commutation.

Jacqueline A. Tucker Ms. Tucker, a friend of Mr. Koonce submitted a letter dated January 20, 2014 in support of Mr. Koonce's petition for commutation.

William Northington Mr. Northington, a childhood friend of Mr. Koonce and his family, submitted a letter dated October 23, 2013 in support of Mr. Koonce's petition for commutation.

Antonio Randolph Mr. Randolph, a friend of Mr. Koonce, submitted a letter dated November 7, 2013 in support of Mr. Koonce's petition for commutation.

Lidia Reyes Ms. Reyes, a friend of Mr. Koonce, submitted a letter dated October 21, 2013 in support of Mr. Koonce's petition for commutation.

Royal Sibley [sic] Mr. Sibley [sic], a friend of Mr. Koonce, submitted a letter (undated) in support of Mr. Koonce's petition for commutation.

Kwame Somburu Mr. Somburu, a friend of Mr. Koonce, submitted a letter (undated) in support of Mr. Koonce's petition for commutation.

Terri F. Webb

Ms. Webb submitted a letter July 17, 2008, in support of Mr. Koonce's petition for commutation.

Gail Jackson Bryant

Ms. Bryant, a High School friend of Mr. Koonce submitted a letter dated February 8, 2010 and October 28, 2013 in support of Mr. Koonce's petition for commutation.

OPPOSITION**Testimony:****Virginia Santos**

Ms. Virginia Santos, Mark Santos' mother, appeared before the members of the Advisory Board of Pardons and presented testimony on October 27, 2020. Ms. Santos told the Board that Mr. Koonce had an opportunity to accept a plea of 8-10 years but chose not to. Ms. Santos told the Board that Mark Santos graduated from New Bedford High School with aspirations of becoming a police officer and wanted "to serve and protect." Ms. Santos explained how her son would have been "a valued asset to the community." Ms. Santos explained to the Board that her family is also serving a life sentence since the loss of her son. Ms. Santos opposed the commutation of Mr. Koonce's sentence stating, "if you take a life, you give a life."

Michelle Santos

Ms. Michelle Santos, Mark Santos' sister, appeared before the members of the Advisory Board of Pardons and presented testimony on October 27, 2020. Ms. Santos explained to the Board that the commutation hearing is "taking time out of the lives of [her] family" and that it has taken her family "many years to come to a place of acceptance and peace." Ms. Santos explained that Mr. Koonce's actions has caused her family a "life of grief, anger, pain and suffering after the loss of [their] loved one." Ms. Santos told the Board that Mr. Koonce hasn't accepted responsibility for the first-degree murder and expressed that Mr. Koonce's sentence "should never be commuted."

Kerri Santos

Ms. Kerri Santos, Mark Santos' niece, appeared before the members of the Advisory Board of Pardons and presented testimony on October 27, 2020. Ms. Santos told the Board she was "robbed" of the life of Mr. Santos. She indicated that while Mr. Koonce was in prison, he obtained a free education while she pays student loans for her education. She told the Board she "watched [her] family crumble before her eyes" upon the death of Mr. Santos. She indicated that

it was the murder of Mr. Santos that prompted her to go to school to study criminal justice and forensic psychology and currently works in the correctional system. Ms. Santos stated believes that while some people deserve a “second chance,” but that Mr. Koonce is not one of them.

Ashley Williams

Ms. Ashley Williams, Mark Santos’ niece, appeared before the members of the Advisory Board of Pardons and presented testimony on October 27, 2020. Ms. Williams told the Board that Mr. Koonce does not appreciate the “emotional turmoil” that he has caused her family and that no good deeds or achievements can change the fact that he took a life. She expressed that Mr. Koonce has the ability to make an impact on people’s lives from inside prison, however he should never be released because he took a life. Ms. Williams told the Board that Mr. Santos can never come home, but Mr. Koonce’s family can still see him. She told the Board that she believed that Mr. Koonce is not remorseful, but rather regretful. She stated that her family just wants peace and to be “left alone” and does not wish to endure any more appears or hearings.

Bristol County District Attorney’s Office Thomas Quinn

Bristol County District Attorney Thomas Quinn appeared before the Advisory Board of Pardons to present testimony on October 27, 2020. District Attorney Quinn told the Board that Mr. Koonce is “out of remedies,” as he has exhausted all appeals. He told the Board the tremendous impact the murder of Mr. Santos has had on his family. DA Quinn referenced the prior testimony at Mr. Koonce’s 2010 hearing of Assistant District Attorney John Moses who expressed that he believed Mr. Koonce should have been convicted of second-degree murder. DA Quinn stated that in 2010, the Board made the right decision at that time in rendering an unfavorable recommendation based on the length of time he had served in prison and his lack of self-development. DA Quinn expressed concern for what Mr. Koonce is taking responsibility. While Mr. Koonce admits to firing the shot that killed Mr. Santos, it is nonetheless troublesome in light of the evidence, that Mr. Koonce asserts that it was an accident and denies firing the shot into the crowd. However, DA Quinn left it to the Board to decide whether or not Mr. Koonce takes responsibility.

DA Quinn noted Mr. Koonce’s lack of criminal record and good upbringing. He told the Board that it was also rare for an individual to be released on bail on a charge of first-degree murder and that he was surprised that he received an honorable discharge from the military. DA Quinn stated that although he has seen “stronger cases” with respect to the pre-medication theory

of first-degree murder, he nonetheless he “killed Mr. Santos who had his full life ahead of him.” DA Quinn noted Mr. Koonce’s “exceptional institutional record,” especially with serving a sentence of life with no possibility of parole.

DA Quinn told the Board that his 2010 commutation petition was premature, as he still needed to do work on himself. Since then he has done “significant involvement in Restorative Justice” and is now 53-years-old. DA Quinn indicated it is for the Board to decide whether Mr. Koonce now deserves the extraordinary remedy of a commutation. DA Quinn expressed sympathy for the family of Mr. Santos, but that he believes in the “totality of the circumstances,” Mr. Koonce’s petition for commutation “warrants serious consideration for commutation.” He expressed that he “does not think justice would be compromised” by allowing his petition, despite the “terrible injury to the family” and indicated that “it would not undermine the jury verdict because he “stands convicted of murder.”

Opposition Letters: *(Attachment K)*

A letter dated October 26, 2020 was submitted by the family of Mark Santos opposing the commutation of Mr. Koonce’s sentence.

Attorney Timothy Foley’s Closing Statement

At the conclusion of the hearing, Attorney Foley gave a closing statement on behalf of Mr. Koonce. Attorney Foley thanked the Board in conducting the hearing and indicated it was conducted in a “thorough and fair manner.” Attorney Foley told the Board the Dr. Drew and Janet Connors contacted him on their own volition and asked if they could make a statement on Mr. Koonce’s behalf. He explained that Dr. Drew and Ms. Connors have spent many years around Mr. Koonce and saw how he conducted himself. Attorney Foley suggested that Mr. Koonce is extraordinary because despite having a natural life sentence, he took on a role in guiding others, participated in many programs, conducted himself like a “citizen” and has “kept his integrity.” The last piece he needed was in 2015 was to concentrate on himself by doing a “deep dive” and his causative factors. Attorney Foley requested that the Board recommend commuting Mr. Koonce’s sentence to 28 years to life or his conviction to second-degree murder.

Thomas Koonce's Closing Statement

Mr. Koonce again thanked the Board for the opportunity to have his hearing. Mr. Koonce told the Board that he believes he has made exceptional strides in self-development and self-improvement since his 2010 hearing, as he has earned certificated in an additional 31 programs and has completed a number of other non-certificate programs. Mr. Koonce told the Board that he “is not the same man that came before [the Board] ten years ago.” He has been employed since the beginning of his incarceration, has been involved in Restorative Justice for approximately ten years, and earned his bachelor’s degree, graduating *Magna Cum Laude*. He also told the Board that during his incarceration he has only received two “minor” disciplinary reports, has no prior criminal history and was released on bail for five years without incident. He believes he would be a “great candidate” for parole. Finally, Mr. Koonce indicated he is “deeply regretful” for the murder of Mr. Santos and thanked the family of Mr. Santos.

OPINION OF THE ADVISORY BOARD

FAVORABLE RECOMMENDATION

After careful review and consideration, it is the opinion of 6 of the 6 voting members of the Advisory Board of Pardons³ that a favorable recommendation for commutation of sentence be sent to the Governor on behalf of Thomas Koonce.

Unlike a pardon, a commutation does not imply forgiveness of the underlying offense. Rather, a commutation remits a portion of the punishment. The granting of a commutation has no effect on the underlying conviction and does not necessarily reflect upon the fairness of the sentence originally imposed.

Governor Charles D. Baker's Executive Clemency Guidelines, issued on February 21, 2020 ("Guidelines"), establish the grounds upon which a commutation may be granted and provide assistance to the Advisory Board of Pardons in making recommendations to the Governor on clemency petitions. The Guidelines state that a commutation is "an extraordinary remedy" and "an integral part of the correctional process" and provide that "[commutations are] intended to serve as a strong motivation for confined persons to utilize available resources for self-development and self-improvement and as an incentive for them to become law-abiding citizens and return to society." The Guidelines further provide that the nature and circumstances of the offense and the character and behavior of the petitioner are the two "paramount considerations in deciding whether to grant clemency."

Under the Governor's Guidelines, a person who petitions for a commutation of sentence bears the responsibility of demonstrating, by clear and convincing evidence, that:

- (a) The petitioner has clearly demonstrated an acceptance of responsibility for the offense for which the petitioner is seeking clemency;
- (b) the petitioner has participated in Restorative Justice or other similar programs;

³ Board Member Colette Santa did not participate in the hearing and was not a voting board member in this matter.

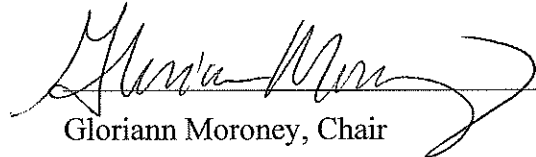
- (c) the petitioner does not have any pending appeals or challenges to a conviction or sentence;
- (d) the petitioner has made exceptional strides in self-development and self-improvement and would be a law-abiding citizen;
- (e) the petitioner has provided substantial assistance to law enforcement in the investigation or prosecution of other more culpable offenders;
- (f) the petitioner has contributed to society through the military or public service, or through charitable work; or
- (g) there is no alternative remedy available to the petitioner.

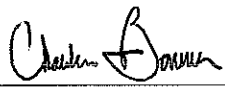
In addition to one of the above requirements, petitions for commutation of a first-degree murder conviction will generally not be considered unless the petitioner has served at least 15 years of incarceration, the minimum amount of time it takes for a person serving a sentence for second-degree murder to become eligible for parole.

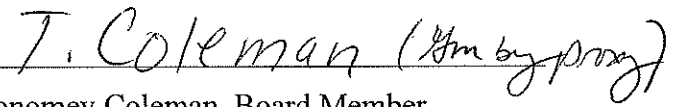
Thomas Koonce appeared before the Advisory Board of Pardons on October 27, 2020. The petitioner was convicted in the Superior Court of first-degree murder and is now seeking reduction of his first-degree sentence to a second-degree sentence. Mr. Koonce is currently serving his first commitment for a single act of violence. He has served 28 years for the first-degree murder of Mark Santos, for which he has always accepted responsibility. Pending his conviction, Mr. Koonce was released on bail in the community for approximately five years without incident. In addition, he has maintained exemplary conduct during his commitment. Mr. Koonce has been instrumental in implementing rehabilitative programming to address restorative justice and emotional healing within the institution. Mr. Koonce has also earned a Bachelor of Arts degree from Boston University Prison Program where he graduated *Magna Cum Laude*. Mr. Koonce initially appeared before the Advisory Board of Pardons in 2010 and has fully committed himself to the recommendations set forth in the Board's prior decision. In addition to Restorative Justice, he has been heavily involved in Alternatives to Violence, where he has served as a facilitator, and the Victim Offender Education Group. Mr. Koonce joined the United States Marine Corps in 1985 and was honorably discharged in 1993. Finally, Mr. Koonce has exhausted all other remedies for release.

In conclusion, the Advisory Board of Pardons recommends the commutation of Mr. Koonce's first-degree murder conviction to second-degree murder based upon his extraordinary commitment to self-development and self-improvement.

For the six members of the Advisory Board of Pardons respectfully recommending favorable consideration, signed on this the 14th of January, 2021:


Gloriann Moroney, Chair


Charlene Bonner, Board Member


Tonomey Coleman, Board Member


Sheila Dupre, Board Member


Tina Hurley, Board Member


Karen McCarthy, Board Member