

The Commonwealth of Massachusetts
Executive Office of Public Safety and Security



PAROLE BOARD

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RECORD OF DECISION

IN THE MATTER OF

LUIS PENN
W89083

TYPE OF HEARING: Review Hearing

DATE OF HEARING: April 29, 2021

DATE OF DECISION: October 18, 2021

PARTICIPATING BOARD MEMBERS: Gloriann Moroney, Dr. Charlene Bonner, Tonomey Coleman, Sheila Dupre, Tina Hurley, Colette Santa

STATEMENT OF THE CASE: On January 19, 2007, after a jury trial in Essex Superior Court, Luis Penn was found guilty of first-degree murder in the death of Aneurly Guzman. He was sentenced to life in prison without the possibility of parole. He was also found guilty of carrying a firearm without a license and received a one-year concurrent sentence. Mr. Penn was 17-years-old at the time of the murder.

On December 24, 2013, the Supreme Judicial Court issued a decision, *Diatchenko v. District Attorney for Suffolk District & Others*, 466 Mass. 655 (2013), that the statutory provisions mandating life without the possibility of parole are invalid as applied to juveniles convicted of first-degree murder. Further, the Court decided that Diatchenko (and others similarly situated) must be given a parole hearing. Accordingly, Luis Penn is now before the Parole Board.

Mr. Penn appeared before the Parole Board for a review hearing on April 29, 2021, and was represented Attorney Ryan Schiff. This was Mr. Penn's second appearance before the Board, having been denied in 2019. The entire video recording of Mr. Penn's April 29, 2021, hearing is fully incorporated by reference to the Board's decision.

DECISION OF THE BOARD: After careful consideration of all relevant facts, including the nature of the underlying offense, the age of the inmate at the time of offense, criminal record, institutional record, the inmate's testimony at the hearing, and the views of the public as expressed at the hearing or in written submissions to the Board, we conclude by unanimous vote that the inmate is a suitable candidate for parole. Reserve to his United States

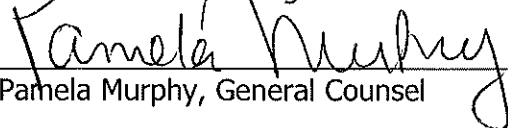
Immigration and Customs Enforcement (ICE) detainer. Mr. Penn was 17-years-old at the time of the offense. His overall adjustment and program participation has been positive. He appears to be insightful and accepts responsibility for his criminal culpability. He has served 17 years for this offense and his security threat group renunciation was accepted by the Department of Correction. He appears to have a solid support network and parole plan in the Dominican Republic. The Board considered the expert opinion of Dr. Michael Sherry who indicated Mr. Penn would benefit from counseling to address history of childhood trauma and that he is motivated to continue to engage in treatment. Mr. Penn's counsel indicated that Mr. Penn will not be opposing deportation.

The applicable standard used by the Board to assess a candidate for parole is: "Parole Board Members shall only grant a parole permit if they are of the opinion that there is a reasonable probability that, if such offender is released, the offender will live and remain at liberty without violating the law and that release is not incompatible with the welfare of society." 120 C.M.R. 300.04. In the context of an offender convicted of first-degree murder, who was a juvenile at the time the offense was committed, the Board takes into consideration the attributes of youth that distinguish juvenile homicide offenders from similarly situated adult offenders. Consideration of these factors ensures that the parole candidate, who was a juvenile at the time they committed murder, has "a real chance to demonstrate maturity and rehabilitation." *Diatchenko v. District Attorney for the Suffolk District*, 471 Mass. 12, 30 (2015); See also *Commonwealth v. Okoro*, 471 Mass. 51 (2015).

The factors considered by the Board include the offender's "lack of maturity and an underdeveloped sense of responsibility, leading to recklessness, impulsivity, and heedless risk-taking; vulnerability to negative influences and outside pressures, including from their family and peers; limited control over their own environment; lack of the ability to extricate themselves from horrific, crime-producing settings; and unique capacity to change as they grow older." *Id.* The Board also has taken into consideration Mr. Penn's institutional behavior, as well as his participation in available work, educational, and treatment programs during the period of his incarceration. The Board has also considered a risk and needs assessment and expert testimony of Dr. Michael Sherry and whether risk reduction programs could effectively minimize Mr. Penn's risk of recidivism. After applying this appropriately high standard to the circumstances of Mr. Penn's case, the Board is of the opinion that Mr. Penn is rehabilitated and merits parole at this time to his ICE detainer, subject to special conditions.

Special Conditions: Reserve to his United States Immigration and Customs Enforcement (ICE) detainer; Approved home plan before release (in the event Mr. Penn is released from ICE custody); Waive work for two weeks; Must be at home between 10 p.m. and 6 a.m.; ELMO-electronic monitoring; Supervise for drugs; testing in accordance with agency policy; Supervise for liquor abstinence; testing in accordance with agency policy; Report to assigned MA Parole Office on day of release; No contact with victim(s) family; Must have substance abuse evaluation - adhere to plan; Must have mental health counseling for adjustment/transition/history of childhood trauma.

I certify that this is the decision and reasons of the Massachusetts Parole Board regarding the above referenced hearing.


Pamela Murphy, General Counsel

10/18/2021
Date