

The Commonwealth of Massachusetts  
Executive Office of Public Safety and Security



PAROLE BOARD

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**DECISION**

**IN THE MATTER OF**

**LUIS PENN**

**W89083**

**TYPE OF HEARING:** Initial Hearing

**DATE OF HEARING:** April 25, 2019

**DATE OF DECISION:** February 19, 2020

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

**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 not a suitable candidate for parole. Parole is denied with a review scheduled in three years from the date of the hearing.

**I. 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 Aneury 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 the night of April 1, 2004, Luis Penn and his co-defendant, Benjamin Serrano, went to the apartment of Mr. Serrano's ex-girlfriend, who had been dating Aneury Guzman. Informed that his ex-girlfriend was not at home, Mr. Serrano returned outside, where he observed Mr. Guzman's car. He engaged in a verbal altercation with two unarmed men seated in the car (neither of whom were Mr. Guzman), before showing them a gun and telling them to leave. Shortly thereafter, Mr. Guzman emerged from the apartment and stepped between Mr.

Serrano and the two unarmed men. Mr. Serrano summoned Mr. Penn and gave him the gun, and then proceeded to punch Mr. Guzman in the face. Mr. Penn then pointed the gun at the two unarmed men, one of whom managed to leave the scene. Mr. Guzman broke away from the physical altercation with Mr. Serrano, only to engage in an argument with Mr. Penn for less than a minute. Mr. Penn then shot Mr. Guzman in the head, killing him.

## **II. PAROLE HEARING ON APRIL 25, 2019**

On December 24, 2013, the Supreme Judicial Court issued a decision in *Diatchenko v. District Attorney for Suffolk District & Others*, 466 Mass. 655 (2013), in which the Court determined 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. Following the *Diatchenko* decision, Luis Penn appealed his conviction in the Supreme Judicial Court. On September 9, 2015, Mr. Penn was re-sentenced to life with the possibility of parole for the first degree murder of Aneury Guzman.<sup>1</sup> Accordingly, Mr. Penn became parole eligible in April 2019, and was granted a hearing before the Parole Board.

Luis Penn, now 33-years-old, appeared before the Parole Board for an initial hearing on April 25, 2019, and was represented by Attorney Ryan Schiff. Mr. Penn provided an opening statement to the Board in which he accepted responsibility and expressed his remorse for the murder of Mr. Guzman. When the Board inquired as to his childhood leading up to the murder, Mr. Penn stated that he came to the United States at age 16. He described such challenges as learning English and "trying to fit in." Mr. Penn started spending time with people who smoked, drank alcohol, sold drugs, and stole cars. He came to know Benjamin Serrano a few months prior to the murder, describing him as "someone [he] looked up to." The Board acknowledged and considered Mr. Penn's past trauma during his childhood.

In describing the governing offense, Mr. Penn stated that on the day of the murder, Mr. Serrano asked him to accompany him (Mr. Serrano) to the apartment of the cousin of Mr. Serrano's ex-girlfriend. Since Mr. Serrano thought his ex-girlfriend's boyfriend (Aneury Guzman) was at the apartment, he showed Mr. Penn a gun "in case we see him." When they arrived, the cousin opened the door and stated that the ex-girlfriend was not there. As Mr. Penn and Mr. Serrano were leaving, Mr. Serrano walked up to a car parked outside the building, took out his gun, and questioned the two men inside. At that point, Mr. Guzman came down the stairs and approached them. Mr. Serrano pointed his gun at Mr. Guzman, and then called over to Mr. Penn and handed him the gun. A fight ensued between Mr. Guzman and Mr. Serrano. Mr. Penn pointed the gun at Mr. Guzman and another man, who ran away. Shortly thereafter, Mr. Guzman was also able to run from Mr. Serrano. After Mr. Penn reached him, Mr. Guzman asked, "Why are you caught up in this?" Mr. Penn responded, "Because he is my friend" and proceeded to shoot him. When Board Members asked why, Mr. Penn responded, "I was angry because we [were] going back and forth." At the time of the murder, Mr. Penn was on probation in juvenile court for possession with intent to distribute crack-cocaine.

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<sup>1</sup> *Commonwealth v. Penn*, 472 Mass. 610 (2015).

While discussing his program participation, Mr. Penn told the Board that he is on a waiting list for programs at MCI-Shirley. He said that he is currently employed in the law library, attends school, and occasionally goes to the gym. Mr. Penn has participated in such programming as Alternatives to Violence Program ("AVP"), Restorative Justice, and High Risk Offender Program. He also attends religious services. The Board expressed concern, however, that it appeared Mr. Penn began his participation in the majority of his programming only recently and around the time of the *Diatchenko* decision. Board Members also expressed their concern with Mr. Penn's institutional adjustment, as he incurred 14 disciplinary reports during his incarceration. Mr. Penn had a difficult adjustment initially, having spent time in DDU for slashing another inmate with a razor in 2007. Although Mr. Penn told the Board that he no longer has any issues with anger, his most recent disciplinary report (in 2017) was incurred for using abusive language towards a nurse. At age 20, Mr. Penn became involved with a security threat group. He told the Board that he began the process of disassociation in 2010. His disassociation, however, was not accepted by the Department of Correction until 2017.

The Board considered the testimony of Mr. Penn's mother in support of parole. The Board also considered the oral testimony and evaluation of Dr. Michael Sherry. The Board considered the testimony of Mr. Guzman's mother in opposition to parole. The Board also considered oral testimony and a letter of opposition from Essex County Assistant District Attorneys Elin Graydon and Jennifer Kirshenbaum.

### **III. DECISION**

Mr. Penn appeared before the Board for his initial hearing. He shot the victim in the head. He has yet to demonstrate a level of rehabilitative progress that would make his release compatible with the welfare of society.

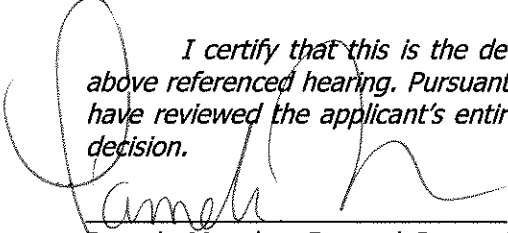
The applicable standard used by the Board to assess a candidate for parole is: "Parole Board Members shall only grant a parole permit if they are of the opinion that there is a reasonable probability that, if such offender is released, the offender will live and remain at liberty without violating the 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 or second 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 recognizes the petitioner's right to be represented by counsel during his appearance before the Board. *Id.* at 20-24. The Board has also considered whether risk reduction programs could effectively minimize Mr. Penn's risk of recidivism. After applying this

standard to the circumstances of Mr. Penn's case, the Board is of the opinion that Luis Penn is not yet rehabilitated and, therefore, does not merit parole at this time.

Mr. Penn's next appearance before the Board will take place in three years from the date of this hearing. During the interim, the Board encourages Mr. Penn to continue working toward his full rehabilitation.

*I certify that this is the decision and reasons of the Massachusetts Parole Board regarding the above referenced hearing. Pursuant to G.L. c. 127, § 130, I further certify that all voting Board Members have reviewed the applicant's entire criminal record. This signature does not indicate authorship of the decision.*

  
Pamela Murphy, General Counsel

  
Date