

## **Reasons for Determination Terrence John Leary**

**STATE PAROLE AUTHORITY  
OF NEW SOUTH WALES**

**RE: TERRENCE JOHN LEARY**

**Before:**

**The Honourable G J Bellew SC - Chairperson**

**Mr B Gillies- Community Corrections Representative**

**Mr C Stinson – NSW Police Representative**

**Mr D Sword – Community Member**

**Mr R Harvey – Community Member**

**EX TEMPORE REASONS FOR DETERMINATION**

**Thursday, 29 August 2024**

1. At a meeting held on 19 July 2024, the State Parole Authority of New South Wales formed an intention to grant parole to Terrence John Leary (the offender). Following the formation of that intention, the matter was stood over until today, in part, to allow the Commissioner for Corrective Services and the offender to make submissions. It is to be emphasised at the outset that the Commissioner does not oppose the offender's release. The submissions of the Commissioner have been limited to an issue concerning the imposition of a particular condition on release in the event that the Authority determines that release is appropriate. I will return to that issue in a moment.
2. The history of the offending can be shortly stated. On 21 June 1991, the offender was sentenced by Campbell J in the Supreme Court of New South Wales to imprisonment for 24 years, with a non-parole period of 15 years, for the offence of murder. He was released on parole on 24 August 2012. On 19 June 2013, the offender was returned to custody on account of the commission of further offences, namely inflicting actual bodily harm with the intention of having sexual intercourse, as well as an offence of resisting an officer in the execution of their duty. In respect of those matters, the offender was sentenced by Syme DCJ in the District Court on 29 March 2016 to a total term of 15 years' imprisonment with a non-parole period of 11 years and 3 months. He is eligible for release on parole on 18 September 2024 and his sentence expires on 18 June 2028.
3. Under s 135 of the *Crimes (Administration of Sentences) Act 1999* (NSW) (the Act), the Authority must not make a parole order directing the release of an offender unless it is satisfied that it is in the interests of the safety of the community to do so. Section 135 prescribes a number of mandatory factors which are to be taken into account by the Authority in making that determination. By reference to those factors, it is relevant to record the following matters.
4. The offence of murder involved the offender going to a victim's home, waking her, and asking her for sex. When she refused, he, had non-consensual intercourse with the

victim, violently attacked her with a hammer, and, having done so, left her to die. The offending which is the subject of the current sentence occurred when the offender attacked the victim at a bus stop. In the course of him doing so, a bystander called the police. Upon arrival, the offender attacked the police. When the police attempted to handcuff the offender, the blade of a knife fell from his pocket, the handle of which was located near the bus stop.

5. The sentencing judge expressly recognised the complexity of the sentencing task with which she was confronted. She found that the offending was not in the worst possible category although it was not far from that. She was, to say the least, sceptical about the offender's prospects of rehabilitation. Those matters aside, the offender's remaining criminal history is limited, although any further comment about the seriousness of either of the episodes of the offending to which I have referred would be superfluous.
6. The Authority has available to it a pre-release report from Community Corrections of 8 July 2024. It makes reference to the offender being cognisant of, and describing, the profound impact of his offending on his most recent victim and the lifelong consequences for her. The report noted that the offender has expressed a willingness to undertake interventions in the community and observed that the sincerity of that expression appeared to be genuine.
7. The offender has undertaken a sex offender program whilst in custody and has also completed the CONNECT program in which his participation was described as one of general engagement. Accommodation which is regarded as suitable from the point of view of the offender's ongoing supervision has been secured, and the offender has expressed an intention to attempt to secure employment if released. His risk of reoffending has been assessed as medium to high.

8. In the event of the offender's release, a comprehensive supervision plan, would be put in place. The features of that supervision plan include, but are not limited to:
- (i) referral to Corrective Services NSW Psychology for sex offender supervision.
  - (ii) referral to forensic psychology services for sex offender maintenance;
  - (iii) referral to the psychology clinic at the University of New South Wales for assessment and intervention;
  - (iv) contact with the local police to monitor his CPR compliance;
  - (v) the implementation of steps to observe his electronic monitoring compliance;
  - (vi) referral to a general practitioner for ongoing review and mental health monitoring; and
  - (vii) encouraging the offender to engage towards counselling with Victims Services.
9. If released, the offender will be subject to mandatory electronic monitoring and will be required to submit a schedule, in advance, of his proposed activities. He will also be required to comply with all reasonable directions of a Community Corrections officer in relation to electronic monitoring and will be under an obligation not to tamper with, damage or disable his electronic monitoring equipment.
10. The author of the report commented that the offender had demonstrated what was described as reasonable insight into his offending behaviour, but expressed a view that there remained a concern that he had not progressed in his classification. The author of the report took the view that the offender's engagement in an external leave program would offer an opportunity for him to better re-integrate into the community. Seemingly, it is for that reason alone that his release was not recommended by Community Corrections.

11. Ms Kelley, the Community Corrections officer who prepared the report, gave evidence before the Authority today. I will return to that evidence in a moment.
12. A report of the Serious Offenders Review Council of 25 June 2024 expressed the view that the offender's release to parole was appropriate. In the Council's view, the implementation of an external leave program would offer little benefit in terms of the offender's rehabilitation and re-integration into the community. The Council's view was that a greater benefit to the community would be gained through the transition which and plan which were outlined in the pre-release report and which I have summarised.
13. A supplementary report of Community Corrections of 6 August 2024 noted that: the offender had:
  - (i) continued to demonstrate appropriate behaviour;
  - (ii) adhered to the expectations of his custodial employment;
  - (iii) participated in off-site employment without incident; and
  - (iv) had remained engaged with services to enhance the prospect of post-release employment opportunities.
14. The report also confirmed that:
  - (i) the supervision plan I previously outlined remained unchanged; and
  - (ii) the offender's accommodation remained available;
15. Notwithstanding all of these matters, the offender's release was not recommended.
16. The Authority has had the benefit of submissions in writing and orally both on behalf of the offender and on behalf of the Commissioner. As I have already noted, the Commissioner does not oppose the offender's release but submits that condition 20 should be imposed requiring the offender to comply with directions from the mental

health team including treatment and medication. The offender opposes the imposition of that condition and submits, in effect, that the issues to which that condition would be directed are already more than adequately covered in the supervision plan to which I have referred.

17. The Authority has also received submissions as well as from other interested persons. The content of that material is protected by s 194 of the Act and I therefore will not refer to it in any detail. I do make it clear, however, that the Authority has taken that material into account. I would not wish it to be thought that the views of those persons who have provided that material have been disregarded. They have not been. However, it remains the case in considering the offender's release, the Authority is required to consider a constellation of factors. No one factor, and no one view, is conclusive. Having taken all relevant factors into account, the Authority must ascribe to each factor the weight that it considers appropriate, and then come to a conclusion bearing in mind the provisions of s 135 which, as I have outlined, prescribes the safety of the community as the paramount consideration in the Authority's determination.

18. In that regard, it must be remembered that at the conclusion of his sentence and subject to any application which might be made under any related legislation, the offender will be released. On the information, which is presently available to it, the Authority has concluded that the offender's release on supervised parole at this point is conducive to the safety of the community. The alternative is to keep the offender in custody and release him at some later point in time, either with a shorter period of parole supervision or at the end of his sentence with no period of supervised parole at all. In the Authority's view, a moment's reflection on those options leads to the inevitable conclusion that the community is better protected, in terms of its safety, by a period of supervised release. As I have said, the offender's release at some point, between now and the expiration of his sentence, is inevitable. In the Authority's view, it is far more conducive to the offender's successful re-integration into the community, and thus far more conducive to

community safety, for him to be released and closely supervised, rather than to be released at some future time in the absence of any supervision at all.

19. It also needs to be emphasised that the offender will be subject to stringent conditions and, as I have outlined, an equally stringent supervision plan. Any breach of those conditions, or any deviation of the supervision plan, will be brought to the Authority's attention immediately. The obvious likelihood in that event is that the offender would be returned to custody. It follows that he will not, to adopt the wholly inappropriate term which is so often used in circumstances of this nature, be "walking free" from custody. The reality is far from that. The suggestion that he will "walk free" demonstrates a fundamental misunderstanding of the process, and an equally fundamental misunderstanding of the principles which apply to it.
20. In terms of the conditions to which the offender will be subject, the Authority has taken into account the Commissioner's submissions but has come to the view that in all of the circumstances the imposition of condition 20 is not necessary. Condition 20, generally speaking, is directed towards the promotion and monitoring of the offender's mental health. As I have outlined, there are several components of the proposed supervision plan which are already directed to that issue. In the Authority's view, those components, along with the other conditions that it proposes to impose, are sufficient to mitigate any risks arising from the offender's mental health. It is also noted in this regard that according to the evidence before the Authority, the offender has not been taking any prescribed medication since the early part of this year. I also note that the Authority proposes to impose condition 19 which is directed towards those same issues.
21. I have noted the views of Community Corrections that the preferable course is to implement a period of supervised day leave prior to release. Taking all factors into account, the Authority regards that as a less effective alternative. The reality is that the offender will be subject to close supervision. That supervision will be at a higher level than would be the case if he were allowed day or weekend release. That supervision will, as I have noted, include mandatory electronic monitoring.

22. The evidence given by Ms Kelley from Community Corrections this morning fortifies the Authority's view that the offender's release at this point is appropriate. Bearing in mind Ms Kelley's evidence, the Authority's view is that the proposal for day and weekend leave tends to pose more questions than it answers. To begin with, it is clear that that proposal is contingent upon finding a suitable sponsor for the offender, in circumstances where it was acknowledged that he has, as Ms Kelley put it, limited social support in the community. Moreover, even if that support could be found and secured, the evidence before the Authority is that it would be at least five to six months before any leave proposal could be implemented. That, in the Authority's view, would be generally counter-productive. I should make it clear that none of those comments are to be construed in any way as a criticism of Ms Kelley. They simply reflect the fact with which the Authority is faced.
23. For all of those reasons, the Authority has determined that the offender's release is appropriate. It is ordered that parole be granted and the offender be released not earlier than 18 September and not later than 25 September 2024. He will, as I have indicated, be subject to mandatory electronic monitoring. There will be additional conditions which I have recorded on the file in short form.
24. The matters will be stood over to 15 January 2025 for the provision of a progress report to the Authority.