

OCTOBER 2002 SESSION  
PRISONER REVIEW BOARD  
STATE OF ILLINOIS

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PEOPLE OF THE STATE OF ILLINOIS )

vs )

SEAN REYNOLDS )

) Docket No. 96CR-14749  
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SUBMITTED TO THE HON. GEORGE RYAN, GOVERNOR OF THE STATE OF ILLINOIS

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PEOPLE'S RESPONSE IN OPPOSITION TO PETITION FOR  
COMMUTATION OF DEATH SENTENCE

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RICHARD A. DEVINE  
STATE'S ATTORNEY OF COOK COUNTY

by: Laura Sullivan  
Assistant State's Attorney

STATEMENT OF FACTS:

During the early morning hours on January 6, 1995, the victim, Joseph Griffin, age 42, was home sleeping along with his wife, four sons, daughter and five year old grandson. Joseph Griffins' elderly, bedridden mother-in-law and sister-in-law also lived in the family home which was located at 4736 W. Maypole on the west side of Chicago. At 4:30 in the morning, the defendant Sean Reynolds, his buddy Dorantay McKay also known as "Creature," and a third unknown offender kicked in the back door of the Griffin home. All three of the offenders were armed with handguns and wearing masks which covered the bottom portion of their faces, but left the eyes, cheeks, forehead and the top of their noses exposed.

Upon entering, Reynolds placed his weapon against the back of the neck of Darrian Griffin who had been sleeping in the back room, and led him toward the front of the house. The offenders woke all members of the family, holding each at gunpoint and forcing them to lie face down on the floor in the living room and dining room. Reynolds immediately began beating Joseph Griffin, Sr., demanding to know where the "stuff" was hidden. When Joseph Griffin told Reynolds that they were in the wrong house and that he didn't have anything, Reynolds, Creature and the third offender took turns ransacking the house and holding the family at gunpoint. Reynolds went upstairs to the second floor apartment, kicked down the door and shot twenty five year old Sherise Griffin in the leg. After searching this apartment, Reynolds held his gun to the head of Sherise's five year old son, Unique Gathings, and forced them downstairs to the floor with the rest of the family. Unique clearly remembers feeling the cold steel of the gun at his neck.

Once downstairs, Reynolds forced Joseph Griffin to this knees with his hands behind his

back and while beating him with the gun asked if he knew "Neal" and again demanded the "stuff." When Joseph Griffin told Reynolds that he did not know anybody named Neal, nor did he have any stuff, the other offenders yelled that they were in the wrong house. Reynolds said "Fuck this shit, we're going to leave a message for Neal. We should kill all these mother fuckers." Creature and the third offender fled out of the back door, leaving Reynolds. Joseph Griffin begged for the lives of his family members, pleading "Please don't kill us, we didn't do nothing to you." Reynolds asked Joseph Griffin, "Are you willing to die for all these mother fuckers up in here, including the old lady?" Still on his knees, Joseph Griffin spoke his last words saying that he was willing to die for his family. Reynolds then shot Joseph Griffin three times as his wife, children and grandchild watched helplessly. Five year old Unique described how Reynolds shook his head and "looked like he was laughing" after the flashes of the shots. Reynolds fled the house as Joseph Griffin died from the gunshot wounds. The only explanation that the family could offer for the murder was that someone named Neal had lived in the house prior to them. The police recovered fired bullets and casings from both the first floor near Joseph Griffin and the second floor where Sherise had been shot. The case remained unsolved for the following eight months.

Just five weeks after the Griffin murder, home invasion, on February 12, 1995, at approximately 1:00 a.m., Reynolds and Creature kicked in the back door of an apartment located at 6647 South Troy in Chicago. Torina Jinks Townsend, along with her two small sons and five girlfriends were present inside the apartment. Reynolds and Creature again wore masks and brandished handguns forcing everyone to lie on the floor. Reynolds and Creature kicked and beat the women repeatedly and demanded money and jewelry. The offenders directed the

eight year old son of Torina Jinks Townsend to go around and collect all the jewelry. Reynolds and Creature then forced all of the women to undress to “see who they would fuck.” The offenders then forced the eight year old to lay on top of one of the women laughing about his first sexual encounter. Reynolds told one of the other women, Darlene Gales, “that if she didn’t say yes when he asked don’t you want to fuck, he would start shooting.” Reynolds then raped Darlene Gales. Creature raped Torina Jinks Townsend. Both Reynolds and Creature fled the apartment. All of the women were frozen with fear, but eventually came forward. Darlene Gales subsequently identified Sean Reynolds in a line up. Charges brought before a preliminary hearing resulted in a finding of no probable cause. However, subsequent DNA technology established that Reynolds was the rapist of Darlene Gales.

In the early morning hours of February 13, 1995, the day after the home invasion, and rape of Gales and Townsend, Reynolds and a co-offender forced their way into the home of Nakeisha Lust, located at 5314 S. May in Chicago. Nakeisha Lust knew Reynolds as an old classmate. Despite his mask, she recognized his eyes, and voice as well as a tattoo on his hand. Once inside the residence, Reynolds demanded money and pistol whipped Nakeisha's father.

Six months later on August 11, 1995 three masked offenders committed a similar murder, home invasion on the southwest side of Chicago, shooting and killing twenty four year old Tanaya Carter, over an apparent drug debt with her boyfriend. While no evidence implicated Sean Reynolds, the police traced the car used in the Carter murder and home invasion to Creature.

On August 12, 1995, Sean Reynolds, Creature and Saphonte Kuykendoll were all sitting

in the car used in the Carter murder, and home invasion of the previous day. The car was parked in a residential parking lot near 87<sup>th</sup> and Parnell in Chicago. An argument erupted during which Reynolds and Saphonte Kuykendoll each shot Creature in the head, killing him. Reynolds and Kuykendoll fled from the car down the alley where they continued to argue about their need "stick together." A scuffle ensued during which Reynolds shot and injured Kuykendoll. Reynolds threw his handgun into a nearby yard before fleeing the area. A neighbor, Romero Taylor witnessed the beginning of the incident. Her boyfriend, Jarrick Zoumah witnessed the entire incident and later identified Sean Reynolds in a photo array. Reynold's finger print was also found inside the car along with Creature's dead body. More importantly, Reynolds thumbprint was found on the magazine or clip of the gun which he had thrown into the nearby yard. Firearms evidence established that this was one of the guns used in the Griffin murder, and home invasion.

Reynolds remained at large until arrested on the murder warrant on May 13, 1996. At the time of this arrest, Reynolds was in possession of another handgun. Line-ups were conducted during which Darrian Griffin and Sherise Griffin positively identified Reynolds as the murderer of their father. Sherise Griffin also identified the defendant positively by voice identification.

Reynolds was charged with the murder and home invasion of Joseph Griffin, the murder of his co-hort, Dorantay McKay also known as Creature, and Unlawful Use of a Weapon. Sean Reynold's other co-hort, Saphonte Kuykendoll was charged with the Carter murder, and home invasion as well as the murder of Dorantay McKay. Basically, Reynolds committed a string of home invasions, a murder, and a sexual assault, choosing homes and victims in which he believed had some quantity of cash or drugs. This pattern continued until Reynolds had a falling

out with his co-horts which resulted in two of the offenders killing the third.

## TRIAL AND SENTENCING PHASES

On November 9, 1998, following a jury trial, Sean Reynolds was convicted of the First Degree Murder of Dorantay McKay and subsequently sentenced to 50 years in the Illinois Department of Corrections. On May 14, 2001, the Appellate Court affirmed the conviction and sentence.

On October 31, 2000, following a jury trial, Sean Reynolds was convicted of the First Degree Murder of Joseph Griffin, Sr. The same jury subsequently found Reynolds eligible for the death penalty on November 1, 2000. Following the eligibility phase, Reynolds waived jury. The trial court examined Reynolds at length regarding his understanding of the consequences of this decision. The trial court then proceeded to hear evidence in aggravation and mitigation over the course of three days.

The State presented evidence in aggravation including witnesses Torina Townsend and Darlene Gales as to the home invasion and rape that Reynolds committed, and witness Nakiesha Lust as to the home invasion and battery that Reynolds committed the day after the Townsend home invasion. Various Chicago Police Officers also testified to Reynolds' previous crimes of theft, possession of cannabis and unlawful use of a weapon. Finally, Cook County Department of Corrections Officers testified to rules violations committed by Reynolds while in custody, and a charge of possessing cannabis while in a penal institution.

The defense presented four witnesses in mitigation including the defendant's mother, a lifelong friend of Reynolds and his family, a neighbor and a former school teacher. The defense

also introduced a letter for the court to consider from an additional friend of Reynolds. The defense evidence in mitigation spanned the course of two days. Upon completion the court continued the case for one week leaving the defense the option of presenting additional testimony prior to arguments, if any.

On November 9, 2000, following arguments from the State and defense, Reynolds was sentenced to death. The case was continued for post trial motions on the next three court dates, while the attorney waited for transcripts in order to prepare his motion. On March 16, 2001, Attorney Edwards filed a motion for a New Trial and Sentencing Hearing arguing the reliability of the identification testimony among other issues. The court denied the motion. The Court granted defense counsel's Motion to Withdraw and allowed the State Appellate Defender to file an appearance in an advisory capacity pending appointment of a new attorney. The State's orders for Judgement and Execution were entered and continued.

On April 23, 2001, Attorney John Moran filed an appearance on behalf of Reynolds. The case was continued for him to file whatever motion he saw fit to file. On September 25, 2001, Attorney Moran filed a Motion for Judgement Notwithstanding the Verdict and for a New Trial or Sentencing. This motion alleged, among other issues, that Reynolds was not proven guilty beyond a reasonable doubt based on the identification testimony; that trial counsel was ineffective by failing to employ a mitigation specialist; and that Reynolds' waiver of jury following eligibility was not knowing and voluntary. On the next court date, Attorney John Moran filed a Supplemental Motion for a New Sentencing Hearing, which addressed legal issues surrounding the verdict forms. Despite the fact that Attorney Moran spent seven months reviewing, investigating and preparing the motions, neither motion even remotely referred to

Reynolds' current claim that he was abused as a child, may have brain damage or is "possibly mildly retarded."

On April 17, 2002 the State filed its Response to the defense motion and arguments were set for May 10, 2002. On May 10, 2002 the defense informed the Court they could not proceed since a mitigation expert assigned to the case six months earlier had not yet completed a report. On June 25, 2002, the defense filed a Motion for a Continuance and for the first time in the six years that the case was pending suggested that the defendant may be "possibly mildly retarded." An attachment to the motion listed thirty eight witnesses which had been interviewed, at least six of whom testified at trial and sentencing. Still, this motion made no mention of Reynolds' current claims that he may suffer from brain damage or suffered some traumatic abuse during childhood. The case is now set for October 15, 2002 for the defense to file its final motion for a new trial or sentencing.

Since the time of Reynolds' last conviction for First Degree Murder he has been incarcerated at the Cook County Department of Corrections. On August 13, 2001, Reynolds was again charged with possessing contraband in a penal institution. The case is pending.

#### RESPONSE TO PETITION:

The petition requests a new trial or commutation of the death sentence to an appropriate term of imprisonment based on Reynolds' allegation that he was represented by an unqualified lawyer. Reynolds' support for this allegation is that his trial lawyer is not currently a member, nor has he applied for membership to the Capital Litigation Bar. Therefore Reynolds concludes that his trial lawyer was inadequate. However, this could not be further from the truth. In fact,

Sean Reynolds has had excellent legal representation throughout his criminal career. On his first murder case, Reynolds was represented by Sam Adams, a prominent, experienced Chicago defense lawyer, to say the least. On his second murder case, Reynolds was represented by Robert Edwards (not Frank Edwards as alleged in the petition).

Mr. Robert Edwards has a wealth of experience in criminal defense which spans over three decades. Mr. Edwards has been practicing law in Cook County for thirty one years, he has tried at least twenty five juries and approximately thirty first degree murder cases, at least four of which were capital murder cases. Mr. Edwards is well versed in criminal defense. In the past his practice was comprised of nearly 80% criminal cases, dating back to the 1980's when he represented some of the notorious El Rukn gang members. Currently, Mr. Edwards practices in Federal Court in addition to maintaining a 75% criminal caseload. Clearly, Mr. Edwards' background meets the criteria for admittance to the Capital Litigation Bar, had he applied. More importantly, his wealth of experience establishes his familiarity with making strategic decisions throughout a capital trial.

The petition suggests that the evidence against Reynolds was so weak that the trial lawyer had to be deficient in order for the conviction to result. Reynolds first claims that the identification testimony was less than credible, because he, Creature and the third offender wore ski masks. Reynolds fails to mention that the masks only covered the bottom portion of the face, leaving the bridge of the nose, cheeks, eyes and forehead exposed. Reynolds also fails to mention that two different members of the Griffin family identified Reynolds as the murderer in a physical line-up, and that a third member of the Griffin family identified Creature from a photo array, as one of the other masked offenders. Both of the witnesses that identified Reynolds each

had considerable interaction with Reynolds during the course of the home invasion. In fact, Reynolds led Darrian Griffin at gun point through the first floor apartment, down to the basement, up to the second floor apartment and back down to the first floor. During this time Reynolds spoke to Darrian, and Darrian had sufficient opportunity to view the defendant up close. The second witness, Sherise Griffin not only identified the defendant in a physical line up but also by a voice identification. Because Sherise was so vocal throughout the home invasion, Reynolds repeatedly spoke directly to her, stating “shut the fuck up bitch, I’m not playing.” Reynolds also threatened Sherise by pushing his gun into her five year old son’s neck saying “you two mother fuckers better not try nothing because if you do, I’m going to shoot this little mother fucker right here.” Sherise Griffin testified that she will never forget that voice.

In addition to the identification testimony of two witnesses and a positive voice identification, Reynolds thumbprint was found on the magazine which held the bullets inside of one of the guns used at the Griffin murder and home invasion. The petition states that Reynolds’ testimony at trial offered a possible explanation that his thumbprint could have been left on the magazine when another person handed him the gun. The petition neglects to mention that Reynolds offered this same explanation in both murder cases, the Griffin murder and the murder of his co-hort Creature, and that both juries found his testimony not credible. It also fails to mention that a witness unrelated to any of the victims in either case and without any interest in either case saw the defendant throw the gun into a yard near the scene of Creature’s murder. Overall, the evidence was hardly as “slender,” as the petition describes, that a conviction could not rest except for a deficient lawyer. Instead, the record reveals that defendant’s trial lawyer strenuously attacked these areas through cross examination and

argument.

Next the petition states that the trial lawyer erred by death qualifying the jury. The petitioner *speculates* that a non-death qualified jury *may* have acquitted based on what he characterizes as “extremely slender evidence.” First of all, as previously established the evidence is far from slender. Not only was evidence presented with respect to the two identifications, plus one voice identification, but additional evidence tied Reynolds to one of the handguns used and to another offender, Creature. Creature was identified by another member of the Griffin family as one of the co-offenders in the murder and home invasion. Clearly, the conviction was strongly supported by the evidence and the contention that a different jury may have acquitted is pure speculation, void of any factual bases.

The petitioner continues to speculate by stating that Reynolds’ jury waiver after the conviction and prior to sentencing amounted to lunacy. This contention is nothing more than a different strategic approach or opinion from a different lawyer. The only valid inquiry is whether Reynolds understood the waiver and entered into it voluntarily. The record establishes that Reynolds knowingly and voluntarily waived his right to jury prior to sentencing. In fact, the Court reviewed the waiver with Reynolds at length, defining and explaining the terms mitigation and aggravation, and detailing the fact that twelve jurors would have to be unanimous in their decision as opposed to the judge alone. The Court emphasized the point that even after a unanimous decision, all twelve of the jurors would have to sign the verdict form in favor of death and that if just one juror could not sign their name, Reynolds would not get death. The record demonstrates that Reynolds understood these concepts and was competent to make the decision.

The petitioner also contends that the trial lawyer was incompetent because he did not have the defendant evaluated by a psychologist or psychiatrist, did not investigate his background beyond cursory interviews with his family and did not hire a social worker or mitigation specialist. Firstly, the petitioner fails to overcome the strong presumption that his counsel's representation fell within a wide range of reasonable professional assistance as set out by law under Strickland v. Washington 466 US 688 (1986).

Secondly, this contention completely ignores two days worth of mitigation testimony. The petitioner claims that his trial lawyer's failure to investigate the case caused certain evidence to be missed, specifically that Reynolds is "possibly mildly retarded," that he may suffer from brain damage, and that he was abused as a child. Each and every one of these claims is contradicted by the mitigation evidence that was presented.

In this case, counsel presented four witnesses in mitigation, one of which was Reynolds' mother. Delilah Reynolds testified that their family was very close, that they had a good life, that she took good care of her three children, even to the point of spoiling them, and that she provided them with every opportunity to succeed. In addition to Reynolds' mother's testimony, a neighbor testified that she knew Reynolds and his family for eighteen or nineteen years. She stated that the defendant came from a very loving, close family and that he lived on the same block for years surrounded by extended family members. She further testified that Reynolds' mother would do everything for him.

Counsel also presented the testimony of a school aide that knew Reynolds and his family since early childhood. She testified that the defendant was a quiet young man who did not present disciplinary problems. She also stated that the defendant performed as an average

student in grade school and had a promising future.

The testimony of these witnesses clearly established that Reynolds had a normal childhood, free of abuse or trauma and that he had the benefits of a stable and supportive upbringing. In light of this evidence, defense counsel was not under an obligation to interview each and every one of the Reynolds' family members, especially since the testimony did not remotely indicate a need to further research or investigate his background.

Additionally, a presentence report from Reynolds previous murder case was introduced at sentencing. This report included specific references to Reynolds' social history, including his educational background, employment history and health history, both physical and psychological. Nothing in this report gave any indication that mitigating evidence needed to be developed or investigated or that it even existed. The record is hardly void of mitigation and the fact that counsel chose not to present a mitigation expert in light of this testimony and the presentence investigation report cannot reasonably be construed as deficient performance. Overall, Reynolds has yet to offer any support for his allegations. Therefore, the fact remains that no evidence existed which would have required or even suggested that the trial lawyer needed to pursue an investigation.

Finally, the petition states that Reynolds is "*possibly* mildly retarded." However, no such classification exists and therefore this statement is misleading. Initially, Reynolds alleges that his IQ is 73 , although he offers no supporting documentation. More importantly, DSM-IV states that mild mental retardation occurs where IQ levels range below 70. This authority also states that "borderline intellectual functioning" describes an IQ range that is higher than 70; generally 71 to 84. Therefore, this is the correct classification for Reynolds, assuming that his

IQ is truly 73. Moreover, the recent decision in Atkins v. Virginia 122 S. ct 2242 (2002) noted that mental retardation is characterized as having a significantly subaverage general intellectual functioning and significant limitations in adoptive functioning in at least two skill areas with the onset prior to age 18. Atkins, 122 S. Ct. at 2245 n. 3. In this case, Reynolds has offered no such support or evidence. Finally, the Atkins Court expressly stated that it was not adopting a definition of mental retardation and left it to the various states to adopt a definition of mental retardation and delineate procedures for determining whether or not a particular defendant is retarded. Because Illinois has not yet adopted a definition of mental retardation nor has it crafted the appropriate procedures, Reynolds' claim, even if true, is premature and should not be considered by the board at this time.

Lastly, Reynolds asserts that he is entitle to clemency because he did not receive the benefit of the changes to the Illinois capital sentencing system which have recently been adopted, proposed or enacted. By relying upon a laundry list of new Supreme Court Rules, statutes and proposals from the Governor's Commission on Capital Punishment which were not available at the time of this trial, petitioner claims that his trial (as well as that of every other capital defendant in Illinois) was by definition fundamentally unfair. However, the Illinois Supreme Court has expressly rejected the claim "that every capital trial has been unreliable and that all appellate review has been haphazard" People v. Hickey, 200 Ill. Lexis 1080 at \*57 (No. 87286 September 27, 2001). Rather, the Court held that the additional safeguards included in its rules governing capital cases are not retroactively applicable because they "function solely as devices to further protect those rights given to defendants by the federal and state constitutions" and that "[a] violation of procedures designed to secure constitutional rights should not be

equated with a denial of those constitutional rights.” Id. at \*63-64.

Thus, the fact that the Court, the General Assembly and the Governor’s Commission have endeavored to improve the process does not mean that an injustice would result simply because the recent changes were not applied retroactively to Reynolds’ case. Instead, a true injustice would only result if it were reflexively determined that Reynolds’ trial was fundamentally unfair without any examination of the proceedings themselves. This is most applicable in the Reynolds case where post-trial motions have yet to be heard and ruled upon, and Judgement on the Verdict has yet to be entered.

Because petitioner’s death sentence has not yet been affirmed by the Illinois Supreme Court on Direct appeal, this petition for executive clemency is premature. The Illinois Constitution of 1970 expressly provides that “Appeals from judgements of Circuit Courts imposing a sentence of death shall be directly to the Supreme Court as a matter of right.” Article VI, section 4(b). Pursuant to this provision, the Supreme court promulgated Supreme Court Rule 606(a) which states that “In cases in which a death sentence is imposed, an appeal is automatically perfected without any action by the defendant or his counsel.” Therefore, it is clear that all convictions resulting in death sentences must be reviewed by the Court before the defendant my be executed.

Due to this constitutional restriction, it is clear that no convictions resulting in death sentences are final prior to the completion of the Illinois Supreme Court’s review on direct appeal. As the Court has long recognized, the completion of the direct appeal is a necessary element of criminal prosecutions. See People v. Mazzone, 74Ill. 2d44, 46,383 N.E.2d 947(1978) (holding that a defendant’s death while his appeal is pending requires the convictions to be

abated *ab initio*); O'Sullivan v. People, 144Ill. 604, 610, 32 N.E. 192 (1892) (same); People v. Robinson, 187 Ill.2d 461, 463, 719 N.E.2d 662 (1999) (same). Thus, it cannot be disputed that in capital cases, the Court's affirmance is a indispensable component of a "conviction."

Accordingly, because the Governor's clemency power is expressly limited to situations "after conviction" (Article V, section 12)(and in fact the practice has always been to wait until the completion of the entire appellate and post-conviction process), neither this Board nor the Governor may consider a clemency petition from petitioner until the finding of guilt and death sentence are affirmed by the Illinois Supreme Court.