

OCTOBER 2002 SESSION
PRISON REVIEW BOARD
STATE OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)	
)	Docket No.
vs.)	
)	
BOBBY SIMS,)	Inmate No. A 63742
)	
)	

SUBMITTED TO THE HONORABLE GEORGE RYAN, GOVERNOR
OF THE STATE OF ILLINOIS

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**PEOPLE’S RESPONSE IN OPPOSITION TO PETITION
FOR EXECUTIVE CLEMENCY**

—
HEARING REQUESTED

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I

HISTORY OF THE CASE

14 years ago, Bobby Sims fled the apartment of Robert Nelson, age 67, leaving Nelson, and William Brown, age 58, beaten and stabbed to death on the floor. A jury convicted Sims of murder, home invasion, armed robbery, and residential burglary in January, 1992. In light of his conviction for this double homicide and Sims' prior conviction for the murder of James Williams, a minister, in 1975, the Honorable Michael B. Getty sentenced Sims to death. The Illinois Supreme Court reviewed Sims' trial and sentencing hearing and affirmed both his conviction and death sentence. People v. Sims, 167 Ill. 2d 483, 658 N.E. 2d 413 (1995)(Attachment A). On December 4, 1995, the Illinois Supreme Court denied Sims' request for rehearing. The United States Supreme Court declined to review the decision.

Sims subsequently filed a pro-se petition for post-conviction relief and counsel was subsequently appointed and a supplemental petition was filed. The State filed a Motion to Dismiss. The Honorable Lon Schultz dismissed the petition without an evidentiary hearing. (Attachment B) The appeal from that dismissal is currently pending in the Illinois Supreme Court. People v. Sims,

No. 89942. Oral arguments were presented in that appeal on September 11, 2002. For the reasons that follow, the People of the State of Illinois respectfully request that Governor Ryan and this Board reject Bobby Sims' bid for executive clemency.

II.

FACTS OF THE CASE

On November 22, 1988, the bloodied, beaten, stabbed, and lifeless bodies of 67 year old Robert Nelson and 58 year old William Brown were discovered in Robert Nelson's apartment. In the weeks prior to November 21, 1988, Bobby Sims and Tony Bey discussed a plan to rob a friend. According to Sims' signed confession, on November 21, 1988, Sims and Tony Bey went to 3436 West 12th Place in Chicago and knocked on the door where they were greeted by Robert Nelson who let them in and accompanied them to the kitchen area. Another defendant, Rodney Ivy, waited outside. Robert Nelson offered Sims and Bey a drink and retrieved a gin bottle, some glasses, and a bottle of citrus juice. William Brown then entered Robert Nelson's apartment and Bey asked him for a cigarette. William Brown gave Bey \$20 to buy some cigarettes and Robert Nelson gave Sims \$5 for food. Sims and Bey left the apartment. Instead of buying cigarettes and food, Sims and Bey bought a kitchen knife and walked back to Robert Nelson's apartment. Before they entered, Bey told Sims, "You do your part and I'll do mine." Sims picked up a house brick from the ground and put it in his pocket.

When Bey and Sims returned to the apartment, they were met by William Brown. Sims walked past William Brown into the kitchen where Robert Nelson was seated in a chair. Removing the brick from his pocket, Sims hoisted the brick and repeatedly smashed Robert Nelson in the head with it. Robert Nelson fell to the floor moaning and Sims went to look for a gun, which

he knew Robert Nelson owned, in Robert Nelson's bedroom. Bey told Sims that Robert Nelson was still moaning and after Bey said he would take care of it, Sims no longer heard Robert Nelson moaning. Bey and Sims took several items from the apartment and left, leaving Robert Nelson's and William Brown's beaten, stabbed, and lifeless bodies behind. Sims received \$12 and two BB guns from the proceeds of the robbery.

Sims and Rodney Ivy returned to the apartment of Josie Ivy who was Sims' girlfriend and Rodney Ivy's mother. At that time, Sims gave Rodney Ivy \$2 and both BB guns. When Sims entered the apartment, he went straight to the bathroom where he changed clothes and then took the clothes he'd been wearing earlier out the back door of the apartment. Sims was nervous, upset, and jittery. Sims told Josie Ivy that he had knocked a man out with a brick and that Bey had knocked out another man. Sims told Josie Ivy that Bey then stabbed the man Sims had knocked out with the brick. Sims repeated this to Josie Ivy several times over the next few hours and nervously entered and exited the apartment for the rest of the evening. Early the next morning, Sims told Josie Ivy about the items they had taken from Robert Nelson's apartment and asked her to call her brother Lee Ivy to see if he wanted to buy a VCR.

Lee Ivy came over to Josie Ivy's apartment and saw Sims packing clothes and food into a garment bag. Sims told Lee Ivy that, "he didn't want to know why he [Sims] was acting that way." Sims appeared "nervous, hyper, and sporadic" and was pacing the apartment, checking out the windows and doors. Sims told Lee Ivy that he wanted to leave town. Sims showed Lee Ivy the BB guns and then told him the VCR was at Bey's apartment and Sims, Josie Ivy, and Lee Ivy left to go look at the VCR. When Bey wasn't home, they went to Sims' sister's house. There, Sims told his nephew, James Jackson, that he may be in some trouble and that some people were killed

in the house where James' uncle used to live. Sims, who continued to appear nervous, told James Jackson that some people were stabbed and "a brick or something." Sims told James Jackson that his fingerprints may be found on a bottle in Robert Nelson's apartment and that he should buy a newspaper, saying that "it may be in the paper." A week later, Sims called James Jackson to ask if the police were looking for him.

Police were summoned to Robert Nelson's apartment on November 22, 1988, after Robert's son Randall Williams was unable to contact his father. The police discovered the dead bodies of Robert Nelson and William Brown. Robert Nelson had several lacerations on his head and a stab wound to the chest. His skull was fractured, causing his death. William Brown had multiple stab wounds to the chest and had drowned in his own blood. The apartment had been ransacked and several glass bottles and drinking glasses were found on the kitchen table. Sims' fingerprint was found on a glass bottle of grapefruit juice. A VCR was missing from the apartment.

Following his arrest on December 21, 1988, Sims was questioned at Area 4 where he was advised of his Miranda rights and signed a handwritten confession in the presence of Assistant State's Attorney Robert Buckley and Detective Ralph Vucko. In his confession, detailed above, Sims acknowledged that he had been well treated by the police and given food and drink and been allowed to use the bathroom. Sims' confession was admitted into evidence. (Attachment C)

Despite his confession, Sims testified at trial that he did not go to Robert Nelson's apartment on the night of the murders. He also denied going to Josie Ivy's apartment that night. He denied telling James Jackson that he and Tony Bey had killed two people and specifically denied killing either Robert Nelson or William Brown. Sims testified that after he was arrested, he

was not given his Miranda rights and was struck by Detective Vucko when he denied involvement in the offense. Sims claimed that Detective Vucko repeatedly struck him in the face and head. According to Sims, his confession related facts which Detective Vucko wrote down. To the contrary, Assistant State's Attorney Robert Buckley testified that when he spoke to Sims, he did not notice any injury to Sims' face, head, eyes or mouth. ASA Buckley further stated that after interviewing Sims, Sims agreed to give a handwritten statement and ASA Buckley wrote down what Sims had related to him. Photographs were taken of Sims' face at his first court appearance. Judge Getty, as a factual matter, found that Sims was not a credible witness. Judge Getty did not believe Sims' testimony that he was injured while in police custody. Judge Getty found that Sims' did not suffer any unexplained injuries while in custody. Sims' motion to suppress was denied and the issue was never pursued on direct appeal.

THE SENTENCING HEARING

Sims waived a capital sentencing jury and Judge Getty found him eligible for the death penalty based on his age, prior murder conviction, and the double murder in the present case. In aggravation, the State presented evidence of Sims' prior conviction for the 1975 murder of a minister, James Williams. On November 30, 1975, the body of James Williams was found on the stairwell between the first and second floors of the building where he lived. The police found \$13, a .25 caliber expended shell casing, and James Williams' briefcase in the area surrounding his body. James Williams suffered gunshot wounds to the right side of his chest, his lower left side, and his left forearm. Sims, Darryl Taylor, and Terry Moore were arrested for James Williams' murder. Sims was advised of his Miranda rights and gave a court-reported statement in which he stated that he was waiting in James Williams' building intending to rob someone. When James Williams entered the building, Sims pulled a .25 caliber pistol and told

him it was a "stickup." One of Sims' co-defendants also had a pistol pointed at the back of James Williams' head. When the victim started to back up the stairs, Sims handed his loaded and cocked .25 caliber pistol to the co-defendant and grabbed James Williams' pocket. When James Williams unbuttoned his coat and reached inside, the co-defendant fired the gun at the victim. Sims was sentenced to 25-50 years imprisonment for the armed robbery and murder of James Williams.

In addition, Sims' disciplinary record during his incarceration for James Williams' murder, showed 29 prison violations, six of which were major violations. Included in these violations were Sims' possession of a metal club, and Sims' possession of 8 pieces of metal, 12 inches in length, sharpened at one end. (Attachment D) Other disciplinary reports were gang related.

In mitigation, John Sturman prepared a mitigation report which detailed Sims' impoverished upbringing in Mississippi and his exposure to inner city gang violence upon moving to Chicago at age 11. Several of Sims' family members testified that Sims was a loving person who got along well with others and was a hard worker. Sims' family members testified that Sims was quiet and withdrawn following his release from prison for the murder of James Williams.

Pearl Williams, Robert Nelson's daughter, testified that her family suffered both emotional and financial hardship upon the death of her father.

Finding no mitigating factors sufficient to preclude a death sentence, Judge Getty sentenced Sims to death.

III

REASON FOR DENYING THE PETITION

IN 1975, BOBBY SIMS MURDERED JAMES WILLIAMS, A MINISTER. WHILE INCARCERATED, BOBBY SIMS WAS A DANGEROUS PRISONER. IN 1988, BOBBY SIMS MURDERED ROBERT NELSON AND WILLIAM BROWN. BECAUSE OF HIS PROPENSITY TO KILL, BOBBY SIMS IS NOT A CANDIDATE FOR CLEMENCY .

Introduction

Petitioner asserts that he is entitled 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 his 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, ___ Ill. 2d ___, 2001 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 petitioner's case. Instead, a true

injustice would only result if it were reflexively determined that petitioner's trial was fundamentally unfair without any examination of the proceedings themselves.

In making his opening plea for clemency, petitioner makes representations which completely disregard the fundamental legal premise that it is the function of the jury to assess the credibility of the witnesses who testified against him. People v. Young, 128 Ill. 2d 1, 538 N.E. 2d 461 (1989). Petitioner is now questioning the sufficiency of the State's evidence and the alleged infirmities he attributes to the State's witnesses. Petitioner specifically challenges the credibility of his nephew and girlfriend, calling them "long term drug users." (Pet. 7) Conveniently, petitioner forgets to mention that the jury was instructed that, "When a witness has testified to drug addiction, the testimony of the addict is subject to suspicion and should be considered by you with caution." Furthermore, contrary to petitioner's unsupported opening claims, he was not convicted mostly on the basis of police interrogations. (Pet. 7) His conviction was based on the testimony of his own nephew and girlfriend to whom he confessed only hours after committing a double murder. These witnesses were found credible despite the alleged infirmities petitioner attributes to their testimony. His conviction was based on the fingerprint evidence which showed that he was present in Robert Nelson's apartment on the night of the murders. His conviction was based on the physical evidence at the scene corroborating his account of how the murder occurred. His conviction was based on his confession which was not, as Judge Getty determined, the product of a coercive custodial interrogation. Petitioner's confession was never challenged before the Illinois Supreme Court on direct review. Moreover, petitioner ignores the fact that every court which has examined the proceedings in his case determined that they were fundamentally fair and that he was not unduly prejudiced in any manner.

Finally, petitioner seeks clemency because his co-defendant, Tony Bey, whom he deems most culpable, was acquitted. Conceding that the outcomes of the separate trials were legally correct given the evidence against the respective defendants, petitioner nevertheless finds the imposition of the death penalty “arbitrary,” involving a “large element of pure luck.” (Pet. 8) Luck, or the lack thereof, played no factor in the imposition of a death sentence against Bobby Sims. All the evidence against him, deemed overwhelming by the Illinois Supreme Court, showed that he committed a double murder and chose to talk about it freely afterwards. People v. Sims, 167 Ill. 2d. 483, 503, 509, 658 N.E. 2d 413 (1995). Based on his prior murder conviction for killing a minister, and his commission of a double murder in this case, the sentencing judge determined that no mitigating factors precluded the imposition of the death penalty. Luck played no role in this death sentence. As the Illinois Supreme Court stated, “The State’s evidence established that defendant [Bobby Sims] participated in the brutal, premeditated murder of two persons who knew and befriended the defendant and his co-felon. Defendant had a previous murder conviction and had a history of infractions while imprisoned.” Sims, 167 Ill. 2d at 483. There was no arbitrariness in the imposition of this death sentence.

Illinois Supreme Court Rules

Petitioner asserts that he is entitled to clemency because the new Illinois Supreme Court Rules governing capital cases were not applicable to his proceedings. However, the Illinois Supreme Court has clearly held that the amendments to its rules are not retroactively applicable. Hickey, 2001 Ill. LEXIS 1080 at *65. Petitioner initially claims that under Supreme Court Rule 412(c) , the State “may have known” that Detective Summerville, a **defense** witness who was subsequently charged with and convicted of various unrelated felonies, was possibly under

investigation at the time of Sims' trial. (Pet. 8) Thus, petitioner believes that this was evidence which should have been disclosed as negating his guilt. First of all, Detective Summerville was called as a **defense** witness in an attempt to impeach Josie Ivy's testimony that the police withheld her medication while she was being interviewed. His testimony turned out to be unimpeaching as both Detective Summerville and Ms. Ivy were in agreement as to the circumstances surrounding her request for her medication. Both witnesses agreed that once the police learned that she needed medication, she was given food to eat, felt fine, and wanted to continue speaking with police. Secondly, petitioner's trial was held in January, 1992. The unrelated felony charges against Detective Summerville were filed on September 23, 1993 and his conviction occurred on July 27, 1995. These events occurred well after petitioner's trial. Any claim that the State knew these charges were forthcoming is speculative and unsupported. The State cannot be required to disclose information which will occur sometime in the future.

Next, specifically relying on Supreme Court Rule 416, effective March 1, 2001, petitioner claims that he would have been entitled to capable and experienced trial counsel. What petitioner fails to point out is that he **WAS** represented by capable and experienced trial counsel within the requirements of Supreme Court Rule 701 and 714. Assistant Public Defender Brian Dosch represented petitioner at trial and at sentencing. Brian Dosch is an experienced and capable attorney, having tried other death penalty cases as well as numerous murder and other felony cases.

At the time Dosch represented petitioner, he had been an Assistant Public Defender for 9 years, having assignments in both the Multiple Defender Division and the Murder Task Force. Despite this, petitioner faults his experienced counsel for failing to discover evidence of his history of head trauma, substance abuse, and neurological dysfunction. (Pet. 8) This claim is particularly

interesting in light of the fact that petitioner **HAD NO HISTORY OF HEAD TRAUMA OR NEUROLOGICAL DYSFUNCTION** and testified at trial that he occasionally drank alcohol and had used cocaine occasionally, but was not using drugs in November, 1988 when the murders occurred. The fact that drugs played no role in the commission of this offense, which petitioner says he never committed, makes evidence of substance abuse irrelevant to his guilt and aggravating to the death determination.

Furthermore, petitioner never complained of any neurological, psychiatric, or psychological problems during his imprisonment from November, 1976 until September, 1985 for James Williams' murder. Sims, 167 Ill. 2d at 512. Petitioner never reported having any history of head trauma. (Attachment E) He told Adult Probation that he blacked out once on a hot day while working outside. (Attachment F) There are no medical records to support any claim of head trauma. Petitioner repeatedly denied a history of any psychological, psychiatric, or neurological impairment. Petitioner has attached affidavits from mental health professionals who examined petitioner in 1997-1999 and determined that he: 1) suffered head trauma as a child, 2) was engaged in a "war zone mentality" which resulted in "shoot now, think later" behavior at the time of the murders, and, 3) committed the acts of violence that led to the victims' deaths while in a PCP and cocaine-induced psychotic state. Apparently, these professionals must not have read the facts of this case which showed that: 1) petitioner never, until 1997, reported having any head trauma as a child; 2) these brutal murders were not committed in a "shoot now, think later" manner given that they were premeditated and carefully planned; and 3) petitioner could not have committed the offense while in a drug induced psychotic state since he testified that he was not using drugs in November, 1988, and was not present at the scene of the murders. This Board, and

the Governor, should view these affidavits the same way Judge Schultz did – as making no difference in the outcome. Death would still have been the appropriate sentence. (See Attachment B)

As for petitioner’s claim that experienced trial counsel should have called Dr. Carl Wahlstrom as a witness, the Illinois Supreme Court has disagreed with petitioner, holding that the decision was a sound strategic decision, made after petitioner indicated he didn’t want the witness presented. Sims, 167 Ill. 2d at 520. It is clear that had Dr. Wahlstrom testified, he would have provided testimony that petitioner admitted that he committed the murders of Robert Nelson and William Brown. This testimony would have subjected petitioner to further prosecution for perjury, contradicted petitioner’s testimony at trial, and resulted in additional aggravating evidence in further support of his death sentence. Experienced counsel made an experienced decision which an experienced reviewing court upheld.

Finally, petitioner argues that under new Supreme Court Rule 417, it is “possible, though not certain” that DNA analysis could resolve the question of his guilt. (Pet. 9) That is the sum and substance of petitioner’s claim. This is not a DNA case. There was never, and is not now, an issue concerning the use of DNA testing on any piece of evidence recovered from the scene. As the Supreme Court decided, the People did not violate their discovery obligations by failing to turn over a report which determined that a stain found on the coat of Robert Nelson’s son, Randall Williams, was not a blood stain. Sims, 167 Ill. 2d at 508-509. The Supreme Court found that the People did not fail to comply with their obligation to disclose material or favorable evidence. Sims, 167 Ill. 2d at 507-511.

RESPONSES TO THE GOVERNOR'S COMMISSION ON CAPITAL PUNISHMENT

Public Defender at the Police Station

Petitioner claims that he is entitled to clemency because had this recommendation been in effect, there would be no uncertainty regarding the voluntariness of his confession. However, petitioner fails to mention that he did not request an attorney and indicated, in signing his confession, that he understood he had the right to an attorney, but wished to give a statement without an attorney being present. Therefore, even if this proposal had been in effect at the time of petitioner's arrest, it would not have applied to him. (See Attachment C)

Videotaping

Petitioner also seeks clemency because his statement where he inculpated himself was admitted into evidence even though it was not videotaped or electronically recorded, and points out that under the Governor's Commission's proposals, his statement and the interrogations leading up to it should be videotaped. What petitioner fails to recognize is that neither the Commission nor the governor himself call for the suppression of a statement simply because it was not videotaped. Rather, even under the Governor's proposed legislation (HB3717 & HB2058), such statements will still be admissible if the trial court finds that it was voluntarily made after considering the totality of the circumstances. In denying petitioner's motion to suppress statements, the trial judge expressly found that petitioner's statement was not coerced and that he did not sustain injury while in police custody. Because the trial judge found that petitioner's statement was given voluntarily, it is clear that the failure to videotape petitioner's statement had absolutely no effect on the fairness of his proceedings. Moreover, because the jury was instructed pursuant to Illinois Pattern Instruction 3.06-3.07 to consider all the evidence when determining whether or not petitioner

made the statement and how much weight it should be given, petitioner cannot complain that he was prevented from asserting at trial that his statement was unreliable and should not be considered.

Petitioner also claims that under this proposal, the videotaped police interviews with Josie Ivy and James Jackson would have revealed the extent to which their testimony was influenced by police pressure. Petitioner ignores the fact that both witnesses testified extensively, and were cross-examined, as to the circumstances surrounding their interviews by the police. The jury was well aware of what transpired during those interviews. The fact that these interviews were not videotaped had no effect on the fairness of petitioner's trial.

DNA Testing

Petitioner seeks clemency because hair fibers found on a hat located at the crime scene should have been subjected to DNA testing. Recommendation 25 suggests that DNA testing, pursuant to 725 ILCS 5/116(3), be permitted where it has the scientific potential to produce new, noncumulative evidence relevant to the defendant's assertion of actual innocence, even though the results may not completely exonerate the defendant. However, this Recommendation comports with the statute which has been in effect for the past 4 years. Petitioner has never before requested DNA testing of the hair fiber. Petitioner has never presented a claim of actual innocence before any reviewing court. In fact, on direct appeal, the Illinois Supreme Court noted that after the People indicated their unawareness that the hair had been analyzed microscopically, petitioner declined the trial judge's invitation to pursue this area of investigation. Sims, 167 Ill. 2d at 509-510. The Court further concluded that regardless of whether the hair belonged to petitioner or Robert Nelson's sons, the evidence would not have assisted petitioner in his defense and would not

have affected the outcome of petitioner's trial. Sims, 167 Ill. 2d at 510.

Decision to Seek Death

Petitioner claims his death sentence was imposed without the benefit of Governor's Commission Recommendations 29-31 which control prosecutorial discretion to seek a death sentence and are intended to reduce the degree to which such decisions are the product of unsystematic decisions by local prosecutors. However, "it has long been recognized by the Illinois Supreme Court that the State's Attorney is endowed with the exclusive discretion to decide which of several charges shall be brought, or whether to prosecute at all. A prosecutor's discretion extends to decisions about whether or not the death penalty should be sought." People v. Jamison, 197 Ill. 2d 135, 161-62, 756 N.E.2d 788 (2001). Therefore, any attempt to mandate such a review would constitute an impermissible restriction on the independence of the various State's Attorneys under the Illinois Constitution. Moreover, petitioner does not even allege much less argue that the decision to seek death in his case was the result of an abuse of discretion. Accordingly, it must be rejected.

Judicial Training

Petitioner seeks clemency on the grounds that Recommendations governing judicial training were not in effect at the time of his trial and sentencing hearing. Petitioner has not pointed to one single specific area in which he believes Judge Michael B. Getty's training and experience resulted in a denial of his right to a fair trial or fair sentencing hearing. Judge Getty was one of the most experienced and knowledgeable trial judges to ever sit in the Criminal Division of the Circuit Court of Cook County. Petitioner does not show and can not show that he was prejudiced by the mere fact that Judge Getty presided over his trial and sentencing

hearing.

Qualifications of Defense Counsel

As previously stated, petitioner was represented at trial by Assistant Public Defender Brian Dosch, one of the more experienced trial attorneys employed by the Cook County Public Defender's Office. Without any explanation, petitioner asserts that he "probably would not have been sentenced to death if he had been represented by counsel more skilled and experienced in capital litigation." (Pet. 10) Petitioner offers no example, no reason, and no legal or evidentiary basis for his claim. Given that petitioner has now killed 3 people who were good, decent, law abiding citizens of the State of Illinois, it is hard to imagine that any defense counsel, even one officially trained under the Governor's Recommendations, could have saved petitioner from a death sentence. In fact, the Illinois Supreme Court concluded that Brian Dosch provided constitutionally competent counsel to petitioner at sentencing. Sims, 167 Ill. 2d at 520.

Discovery/Pretrial Proceedings

Petitioner seeks clemency based on the alleged discovery violations which occurred at his trial. The trial judge ultimately found that there were no discovery violations. The Illinois Supreme Court found that there were no discovery violations. Sims, 167 Ill. 2d at 507-511. Petitioner never challenged the Illinois Supreme Court's finding during post-conviction proceedings. Every reviewing court considering this claim has rejected it. While petitioner claims that the Recommendations would have afforded him a reasonable discovery regime which would have given him access to at least two pieces of evidence, the Illinois Supreme Court has determined that those pieces of evidence would not have aided the defense and

would not have affected the outcome of petitioner's trial. Sims, 167 Ill. 2d at 508-510. Any and all exculpatory evidence was disclosed to petitioner.

Jury Instruction/Defendant's Statement Unrecorded

Petitioner seeks clemency because the jury was not given a special instruction that his statement was not recorded. Recommendation 58 seeks to amend IPI Criminal Instruction 3.06 and 3.07 to include an instruction relating to the recording of a statement. As previously stated, the trial judge clearly found that petitioner's statement was given voluntarily and was not a product of physical coercion. Pursuant to IPI Criminal Instructions 3.06 and 3.07, the jury was clearly instructed that in determining the weight to be given petitioner's statement, they were to consider all the circumstances under which the statement was made. In light of this instruction, petitioner cannot complain that he was prevented from asserting at trial that his statement was unreliable and should not be considered. The instruction as given allowed the jury to consider petitioner's testimony as to the circumstances surrounding his statement and afford it the appropriate weight. Petitioner has not shown that the jury failed to follow their instructions.

Allocution

Petitioner also claims that clemency is appropriate because he was denied the opportunity to make a statement in allocution at his sentencing hearing. Despite this clemency claim, the record of petitioner's sentencing hearing clearly establishes that petitioner was not only afforded the right of allocution, but exercised that right. Despite Judge Getty's recognition that the law did not provide for allocution, in the exercise of his discretion, Judge Getty permitted petitioner to allocute. People v. Gaines, 988 Ill. 2d 342, 380, 430 N.E.2d 1046 (1981). This only goes to show the fairness afforded petitioner in his capital sentencing hearing. (Attachment G)

Supreme Court Review

Petitioner also claims that he is entitled to clemency because the Illinois Supreme Court failed to consider whether his death sentence was disproportionate, excessive or otherwise inappropriate. However, because the Illinois Supreme Court has demonstrated that it will address comparative sentencing arguments whenever they are raised by defendants in capital cases (see People v. Emerson, 189 Ill. 2d 436, 727 N.E.2d 302 (2000); People v. Palmer, 162 Ill. 2d 465, 491, 643 N.E.2d 797 (1994)) and will vacate a death sentence if it determines that it is excessive in light of the facts of the case and the defendant's background (see People v. Smith, 177 Ill. 2d 53, 685 N.E.2d 880 (1997); People v. Blackwell, 171 Ill. 2d 338, 665 N.E.2d 782 (1996)), it is clear that the only reason the Illinois Supreme Court did not review petitioner's sentence in such a manner is because he did not ask the Court to do so. Here, conceding that the verdicts were not necessarily incorrect, petitioner claims his sentence is excessive in light of the fact that his co-defendants were acquitted. Challenging his sentence as disproportionate would only be availing to petitioner if his co-defendants had been convicted and received a sentence other than death. Those facts do not exist in this case. Petitioner does not have a valid disproportionate argument as evidenced by the

fact it has never been raised before any Court which has reviewed his conviction and sentence.

Adequate Funding

Petitioner asserts that he is entitled to clemency because he was denied adequate funding to investigate the case resulting in an inadequate proceeding. However, despite the creation of the Capital Litigation Trust Fund, there is no indication that any capital defendant in Illinois, particularly those prosecuted in Cook County has ever been deprived of the necessary funds to investigate or retain appropriate experts. Rather, courts have denied various requests which are deemed unreasonable or unnecessary, the same standard which applies for funds under the Capital Litigation Trust Fund. 725 ILCS 124/15(c). Also, the Cook County Public Defender has significant resources available for capital litigation. Therefore, the mere fact that the Capital Litigation Trust Fund was not created until 2000 is irrelevant. Furthermore, the proceedings in petitioner's case show that he was able to hire John Sturman, a mitigation expert from the Alternative Sentencing Project, who prepared an extensive Sentencing Proposal and testified in mitigation on petitioner's behalf. Petitioner has made no showing nor offered any explanation as to how his trial or sentencing hearing would have been different or improved had greater funding been available to capital defendants.

CONCLUSION

Bobby Sims has murdered 3 innocent people during the 33 years he has lived in the State of Illinois. After moving to Chicago in 1969 at age 11, petitioner murdered his first victim, a minister James Williams in 1975. After serving only 9 years for that murder, petitioner was paroled in 1985 and 3 years later, committed the double murders for which he now seeks clemency. Of petitioner's 33 years as a resident of this State, he has spent 24 of those years in prison. His request for clemency based on the new Supreme Court Rules, statutes and proposals from the Governor's Commission on Capital Punishment are unsupported by the facts of his case. He has made no showing, either legal or factual, that his conviction and death sentence would have been altered by the proposed Recommendations and new Supreme Court Rules. Petitioner's conviction was based on the overwhelming evidence which showed that he participated in the brutal, premeditated murder of two men who knew and befriended petitioner and his co-felon. Sims, 167 Ill. 2d at 517. He was represented by experienced trial counsel. He was tried before and sentenced by an experienced trial judge who considered all the factors in aggravation and mitigation and found no mitigating factors sufficient to preclude the imposition of a death sentence. Every court reviewing petitioner's trial and sentence has rejected his arguments or refused to grant further review. This Board should recommend the same.

For all these reasons, the People of the State of Illinois respectfully request that this

Board and Governor Ryan deny executive clemency to Bobby Sims.

Respectfully submitted,

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