

OCTOBER 2002 SESSION
PRISONER REVIEW BOARD
STATE OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS)

vs.)

CHRISTOPHER PARKER)

) Docket No. _____
) COOK COUNTY INMATE #19989800932
)

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

PEOPLE'S RESPONSE IN OPPOSITION TO PETITION
FOR EXECUTIVE CLEMENCY

HEARING REQUESTED

RICHARD A. DEVINE
STATE'S ATTORNEY OF COOK COUNTY

By: JAMES PATRICK BYRNE, JR.
ROBERT ROBERTSON
ASSISTANT STATE'S ATTORNEYS

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I

HISTORY OF THE CASE

On July 17, 2002, after a jury trial, the petitioner was found guilty of the murder of two year-old Joshua Sandifer. The People requested a hearing to determine if the Petitioner is eligible for the death penalty and the court continued the proceedings to September 9, 2002 to allow the defense time to prepare. On September 9, 2002, the Petitioner filed a Motion For New Trial and again requested time to prepare for sentencing. The Court granted the Petitioner's request for time and continued the matter to September 27, 2002.

II

STATEMENT OF FACTS

In July 1997, the Petitioner, Parker, was paroled from the Illinois Department of Corrections after serving about two and a half years of a six year sentence for Armed Robbery. Shortly thereafter, Parker met and began dating Roletta Sandifer, the mother of Parker's murder victim, two year-old Joshua Sandifer. Around November 1997, Parker moved in with Roletta Sandifer and her son Joshua. Living in the same house, but on different floors (essentially separate apartments), were Roletta's mother, Patricia Walker, and Roletta's sister, Patricia Sandifer.

Between the end of November and the end of December 1997, the relationship between Parker and Roletta begins to deteriorate and Roletta becomes the victim of repeated domestic abuse by Parker. The baby, Joshua, observes Parker beat his mother on one of these occasions and from that time forward Joshua is afraid to be around Parker. Parker grows increasingly angry at Joshua's attitude towards him and Roletta's apparent favoritism for Joshua. On one occasion, while Parker is beating Roletta, Parker demands that Joshua watch so that Joshua would understand who was boss. Roletta refuses this demand, tries to fight back, and suffers the wrath of Parker.

In the week prior to Joshua's murder, Joshua apparently suffers from an allergic reaction that manifested itself with blotches on Joshua's body. After a day or two, these blotches fade and disappear. This allergic reaction has nothing to do with Joshua's brutal murder. On December 31, 1997, in the morning and early afternoon, Joshua spends time with his grandmother, Pat Walker, and his aunt, Pat Sandifer. Joshua is in good health at this time. Around 3:30 p.m., after Joshua wets his diaper, Pat Walker calls for Roletta to come and get Joshua to change his diaper. Parker comes to get Joshua instead and Joshua kicks and cries because he doesn't want to go with Parker. Parker takes Joshua anyway. From 3:30 p.m. until around 6:45 p.m., when Roletta finds Joshua cold and lifeless, Parker has sole care and custody of Joshua.

Between 3:30 p.m. and 6:30 p.m., Roletta is in her bedroom taking a nap. She sees Joshua with Parker briefly during this period when she gets out of bed and goes to the kitchen. At this time, Joshua complains of a stomachache. Given Joshua's demeanor, which appears normal, Roletta does not think Joshua's complaint is anything to worry about. Roletta goes back to sleep leaving Joshua with Parker. Around 6:20 p.m., Roletta is awakened by Parker as he is getting in bed with her. Roletta notices that Joshua is now also in the bed, facing away from her. Roletta asks Parker to check Joshua because he is laying awkwardly. Parker adjusts Joshua's position and, for some reason, puts his ear to Joshua's back and mouth. Parker tells Roletta that Joshua is fine and then says that he wants sex. Roletta complies and they have sex in the bed. Shortly, thereafter, the phone rings and Roletta has a brief conversation with a friend. After the phone call, Roletta is sitting on the bed when Parker asks her for a hug. While Roletta is hugging Parker, she notices that Joshua's hand is white. Roletta touches her baby's hand only to find that it is cold. Roletta begins screaming. Parker grabs Joshua and Roletta says she wants to take Joshua to the University of Chicago where she worked as a Certified Nurse's Assistant. Parker refuses to go to that hospital because it is a "white hospital." Parker drives to Provident Hospital. Roletta performs C.P.R. on Joshua on the way to the hospital, but is unable to revive Joshua. Joshua is pronounced dead at 7:05 p.m. on December 31, 1997.

The medical examiner, Dr. Nancy Jones, determined that Joshua died as a result of blunt trauma and ruled the case a homicide. Dr. Jones observed over twenty-five internal injuries. The injuries included severe bruising and hemorrhaging to the heart, lungs, diaphragm and adrenal gland. The most serious injuries were the three lacerations to the liver. All of these injuries were caused by massive blows to the body and all were recent, that is, within three hours of the baby's death. All of the injuries were consistent with Joshua being punched. Dr. Jones also found that about one-half of Joshua's blood volume had bled out into the abdominal cavity through the multiple lacerations to the liver. The blood in the abdomen was fresh and the injuries causing the bleeding occurred within two to three hours of the baby's death -- the time period when only Parker had care and custody of Joshua. Dr. Jones' findings were corroborated by two defense experts who also diagnosed the cause of death to be blunt trauma due to child abuse. While one of these defense experts felt that one of the many injuries to Joshua may have occurred in the days prior to his death, even this Doctor, like Dr. Jones, believed the killing blow would have had to have occurred within three hours of the baby's death. The defense tried to advance an additional causal theory based on the possibility of Tylenol poisoning or some other toxic cause but Dr. Jones and the two pathologists relied upon by the defense dismissed this possibility as patently absurd. All agreed that this was a clear, irrefutable, and horrendous case

of child abuse. All of the pathologists, whether relied on by the defense or the prosecution, agreed that Joshua died as result of blows inflicted within hours of his death.

After being confronted with the irrefutable findings of the medical examiner, and the fact that he was the only person with Joshua when the injuries were inflicted, Parker confessed. In his signed handwritten confession, Parker admitted that he punched Joshua in the stomach because Joshua wouldn't listen to Parker when Parker told him to stop crying.

After deliberating for three and one half hours, the jury returned a verdict of guilty.

III

REASONS FOR DENYING CLEMENCY

Parker asks this Board and the Governor to violate the laws and the Constitution of this State and grant clemency because he claims the system is flawed, his defense attorney was under-qualified, and he did not benefit from the reforms suggested by the Governor's Commission on Capital Punishment. Specifically, Parker, who has yet to be sentenced for his murder, asks that the Executive branch of the State interfere with both the Legislative and Judicial branches and dictate to the judge in this case what punishment he may or may not impose. In support of his ludicrous request, Parker does not offer a single Illinois case, provide any controlling authority, or offer any sound rationale that would justify such a blatant and obvious violation of our laws. Instead, Parker questions the ability of one of his attorneys and points to the Commission's suggested reforms. How Parker's allegations with regard to his attorney or the Commission's suggested reforms provide a basis for violating our laws and Constitution is a mystery. Nevertheless, the People will briefly address Parker's claims and dispense with them forthwith.

A. PARKER ASKS THIS BOARD AND THE GOVERNOR TO SET ASIDE SETTLED LAW AND VIOLATE THE CONSTITUTION

Parker asserts that he is entitled to clemency even before a sentencing hearing has been held and, therefore, before a sentence of death has been imposed. In an attempt to circumvent well-established law and procedure, Parker claims that the only prerequisite to the Governor's ability to grant clemency is the conviction. Parker's request is not well grounded in law or fact. Parker is not asking the Governor to exercise authority to commute a properly imposed sentence. Rather, he is attempting to use this request for clemency as a vehicle to impair and interfere with his pending criminal case. At this time, Parker is simply eligible for the death penalty, like a number of other individuals who have committed atrocious acts against the peace and dignity of our State, and, until a sentencing hearing is completed and a sentence imposed, Parker's request is improper.

Although Parker seeks executive clemency to prevent him from being executed, it is clear that such a claim is premature since he is not currently subject to a sentence of death. Article V, section 12 of the Illinois Constitution of 1970 expressly provides that “the Governor may grant reprieves, commutations and pardons, after conviction, for all offenses on such terms as he thinks proper” (emphasis added) and Illinois law has long required the imposition of a valid sentence as a necessary precondition to the existence of any conviction. See e.g. People v. Hager, ___ Ill.2d___, 2002 Ill. LEXIS 374 at *8 (No. 90115 August 29, 2002) (“the word “conviction” is a term of art which means a final judgment that includes both a conviction and sentence”)(emphasis in original). Similarly, in Faunce v. People, 51 Ill. 311, 313 (1869), the Illinois Supreme Court expressly rejected the claim that under the Illinois Constitution of 1848 the Governor had the authority to grant clemency even though no sentence had been imposed.

Moreover, it is clear that such a limitation on the Governor’s clemency powers is necessary because any grant of clemency prior to the imposition of a sentence in a particular case would violate the clear separation of powers under the Illinois Constitution. Article II, section 1, of the Illinois Constitution of 1970 expressly provides: “The legislative, executive and judicial branches are separate. No branch shall exercise powers properly belonging to another. The Illinois Supreme Court has long held, “ the power to impose sentence is exclusively a function of the judiciary.” People v. Davis, 93 Ill.2d 155, 161, 442 N.E.2d 855(1982)(emphasis added). See also People v. Phillips, 66 Ill.2d 412, 415, 362 N.E.2d 1037 (1977); People v. Montana, 380 Ill. 596, 608, 44 N.E.2d 569 (1942). Therefore, any attempt by the Governor to preclude the courts of this State from considering a particular sentence which has been authorized by the legislature would be an unconstitutional infringement of the judicial power which was “exclusively and exhaustively” granted to the courts by Article VI, section 1. People v. Cox, 82 Ill.2d 268, 274, 412 N.E.2d 541 (1980); See also People v. Jackson, 69 Ill.2d 252, 256, 371 N.E.2d 602 (1977) (stating that “although the Constitution of 1970 does not define judicial power, it is an exclusive grant of all such power of the courts.”)

Petitioner also advances the disingenuous claim that it is fundamentally unfair that he would not be able to seek clemency simply because he was not sentenced at his initial sentencing hearing. Petitioner is doing nothing less than attempting to get two bites at the apple, without following the proper procedures for either avenue. In an attempt to gain this Board’s recommendation of leniency, the Petitioner has falsely represented that it was Judge Porter who delayed his sentencing hearing. Quite to the contrary, it was the Petitioner, through his attorneys, that requested a delay in the proceedings to file additional post-trial motions and determine which course they wanted to follow.

B. DEFENDANT CLAIMS THAT THE SYSTEM IS FLAWED BUT HIDES THE FACT THAT HE WAS TRIED PURSUANT TO THE NEW SUPREME COURT RULES.

Parker claims that he is entitled to clemency because the system under which he was convicted is seriously flawed and poses an unacceptably high risk that innocent persons will be condemned to death. Instead of providing a scintilla of evidence to support such an allegation,

Parker merely chants the mantra of the uninformed vocal minority whose sole objective is the elimination of the death penalty. Most egregious, however, is that Parker lies to this Board through omission. Parker conveniently omits the fact that his trial was conducted pursuant to the new Supreme Court rules for capital cases even though the rules were not necessarily applicable due to the fact the his case was arraigned in February 1998 -- a full three years prior to the effective date of the new rules. Despite the fact that the rules were not applicable to Parker's case, Parker asked the judge to apply the rules. The judge, in an effort to eliminate any question of unfairness, complied with Parker's request. Parker benefited from every one of the new Supreme Court rules. The only rule the judge did not enforce, at Parker's request, was the rule governing the qualifications of his attorneys. At Parker's request, the judge allowed his attorneys to represent him despite the fact that they were not admitted to the Capital Litigation Bar. Because, technically, the new rules were not applicable to Parker's case, the judge could accede to Parker's wishes. Therefore, rather than being victimized by a "flawed" system, Parker actually received the benefit of far more due process rights than required by law. Again, he conveniently hides this fact from the Board.

C. PARKER'S CLAIM OF INEFFECTIVE COUNSEL IS PATENTLY DISINGENUOUS AND PURPOSEFULLY MISLEADING.

Parker now claims that he was prejudiced because his lead attorney, David Shelton, was too inexperienced and not a member of the Capital Litigation Bar. Parker intentionally misleads this Board. In fact, when the judge, at Parker's request, decided to apply the new Supreme Court rules to this case, it was Parker himself who asked the judge not to enforce the rules regarding the qualifications of the attorneys. Once the judge made the new rules applicable, the State, on the record and on the countless occasions, asked the court to assign an attorney who was a member of the Capital Litigation Bar. On each of these occasions, the judge questioned Parker and Parker insisted that he did not want the judge to assign another attorney much less an attorney from the Capital Litigation Bar. Had the judge not allowed Parker's request to have the attorneys of his choosing, Parker would now be claiming that the judge interfered with his constitutional right to counsel. Parker can't have it both ways. He made his decision with regard to his attorney. He cannot now claim prejudice. Furthermore, while Parker plays fast and loose with the truth before this Board, he still has that same attorney representing him in court.

In addition to being disingenuous in this claim, Parker fails to provide a single concrete example of how his attorney failed to properly represent him or how, exactly, he was prejudiced by his attorney's qualifications. Parker also fails to mention that his lead attorney, David Shelton, was not Parker's only attorney. In fact, Parker had four attorneys. All zealously represented Parker before and during the trial and all continue to represent him to this day.

**D. PARKER POINTS TO SUGGESTED REFORMS AS A BASIS
FOR THIS BOARD AND THE GOVERNOR TO VIOLATE
THE LAWS AND CONSTITUTION OF THIS STATE.**

Parker claims that he was somehow prejudiced because he did not benefit from the suggested reforms of the Governor's Commission on Capital Punishment. Why Parker, and other Petitioners currently before this Board, rely on this Commission's suggestions is confusing at best. The Commission's suggested reforms are not law and have no bearing on Parker's case. Parker cannot possibly have been prejudiced by reforms that exist only as mere suggestion. Nevertheless, Parker points to three of the Commission's suggested reforms and claims that he was prejudiced because he did not benefit from these suggested reforms. Notably, Parker doesn't say how he was prejudiced and he doesn't claim that the outcome of his trial would have been different even if these reforms had applied to his case. Despite the irrelevance of the Commission's suggestions, the People will briefly address these last groundless claims of the Petitioner.

Parker first claims that he is entitled to Clemency because the statutory eligibility factor under which a sentence of death is being sought – the murder of a child under the age of 12 years old whose death resulted from exceptionally brutal or heinous behavior indicative of wanton cruelty – was a factor that the Governor's Commission recommended for elimination.

Parker asserts that he is entitled to clemency because he may be found eligible for the death penalty based upon an aggravating factor other than those factors which the Governor's Commission has recommended be retained. Specifically, the Commission concluded that the current list of 20 factors is overly expansive and therefore unconstitutional. Accordingly, it was suggested that the list be reduced to just five factors: (1) murder of a peace officer or fireman; (2) murder of any person in any correctional facility; (3) multiple murder; (4) murder accompanied by the intentional infliction of torture; and (5) murder of a witness, prosecutor, defense attorney, juror, judge or investigator.

The Illinois Supreme Court has expressly rejected the Commission's logic and held that Illinois' death penalty statute satisfies the constitutional mandate because it "genuinely narrows the class of individuals eligible for the death penalty and reasonably justifies imposition of a more severe sentence on those defendants compared to others found guilty of first degree murder." People v. Ballard, ___ Ill.2d ___, 2002 Ill. LEXIS 376 at *73 (No. 88885 August 29, 2002) (citing Zant v. Stephens, 462 U.S. 862, 877, 103 S. Ct. 2733, 2742 (1983)). As the Ballard court explained, "there are innumerable examples of first degree murders that do not fit within any of the statutes eligibility factors" and each provision is narrowly tailored to fit a specific set of facts and circumstances," Id., 2002 Ill. LEXIS 376 at *74.

Moreover, each of the aggravating factors represents a determination by the General Assembly that certain types of murders are so deplorable that the death sentence may be imposed. Each one is intended to ensure that the most helpless members of our society, such as a child, are protected against violence or to provide a strong disincentive for the offender to kill the

victim. Furthermore, it is not simply the killing of any child that makes the defendant eligible for capital punishment. Rather, it is only in those instances, such as in this case, where the death results from exceptionally brutal and heinous behavior indicative of wanton cruelty. Clearly, the legislature has a legitimate interest in protecting the most vulnerable and innocent victims of our society from horrific acts of abuse.

Parker next claims that he is entitled to clemency because his confession to this crime was not electronically recorded, a procedure that the Governor's Commission recommended for all custodial interrogations. Specifically, Parker claims that he should be granted clemency because the confession in which he inculpated himself was admitted into evidence even though it was not videotaped. What Parker 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. Because the trial judge expressly found that Parker's statement was voluntarily made when it denied his Motion To Suppress Statements, it is clear that the failure to videotape his 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 a statement and how much weight it should be given, Parker cannot complain that he was prevented from asserting at trial that his statement was unreliable and should not be considered.

Parker's claim is based on his allegation that his handwritten confession was fabricated. Parker does not claim that he was coerced into falsely inculpating himself, but rather that the entire statement was fictional. This self serving claim is inconsistent with all of the evidence offered at trial during which it was established that Parker was the only one who could have inflicted these injuries and that he confessed to the crime. Moreover, Parker fails to mention that, when he gave his confession, he reviewed the entire written document, made corrections and then affixed his signature to every page -- just as he affixed his signature to his Petition.

Finally, Parker asserts that he is entitled to clemency because the State's Attorney of Cook County made the decision to seek death in his case without the benefit of a State Review Committee as recommended by the Governor's Commission. Parker claims the imposition of the death sentence should be barred because the State's Attorney's decision to seek death was made without uniform protocols to guide his discretion and was not approved by a state-wide review committee. However, "[i]t 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.

In each of the above instances, Parker relies on the Commission's suggested reforms to claim prejudice and provide a basis for clemency. Parker fails to make his case. Parker does not

establish how he was prejudiced or how the outcome of his trial would be changed had he benefited from the suggested reforms. More importantly, the mystery remains as to how these suggested reforms are relevant or provide a basis for violating the State's laws and Constitution.

IV

CONCLUSION

Christopher Parker, an armed robber on parole, brutally murdered 2 year-old Joshua Sandifer by beating him to death. The beating was so savage that Joshua suffered injuries throughout his entire midsection and more than half of Joshua's blood volume bled out into his abdominal region. To this day, Christopher Parker has never accepted responsibility for his killing of a defenseless toddler and has never expressed any remorse. Instead, he brazenly proclaims his innocence despite overwhelming evidence to the contrary. Moreover, Parker has the audacity to ask this Board and the Governor to violate the laws and Constitution of our State by dictating to the judge the permissible punishment. The absurd nature of this clemency request is merely an indication of Parker's desperation in the face of the immutable fact of his guilt and the inevitability of his imminent punishment.

For all these reasons, the People of the State of Illinois respectfully request that this Board and Governor Ryan deny executive clemency to Christopher Parker.

Respectfully submitted,

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