

OCTOBER 2002 SESSION
PRISONER REVIEW BOARD
STATE OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)	
)	Docket No. \
vs.)	
)	
DELBERT HEARD,)	Inmate No. B76789
)	
)	

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: KEVIN BYRNE,
KURT SMITKO,
NANCY FAULLS,
Assistant State's Attorneys.

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I.

Delbert Heard has not requested executive clemency. In fact, according to his attorney's affidavit, Heard refused to sign the petition that counsel has filed with the Board and Governor Ryan. (See Attachment 1) Heard specifically told his attorney that he did not want the relief requested by counsel. Heard is requesting no relief from the Board or the Governor. The only relief Heard is interested in is potential future relief he might obtain from either his currently pending post-conviction petition or a possible to be filed in the future federal *habeas corpus* petition. In fact, Heard told his attorney that unless his innocence is "vindicated," through either the post-conviction proceeding or the *habeas corpus* proceeding, Heard does not want to spend his life in prison and **would prefer to be executed**. The People respectfully maintain that the Board and the Governor cannot and should not take any action on the petition filed by Heard's attorney.

The petition is an improperly filed petition, and should be returned by both the Board and the Governor as improperly filed. 730 ILCS 5/3-3-13(a) permits petitions to be filed only if signed by the defendant seeking clemency or "a person on his behalf." Delbert Heard does not want this petition and counsel improperly filed it against Heard's wishes. In fact, based on

counsel's affidavit, as detailed above, Heard specifically told counsel that he would not sign the petition. The only reason the petition has been filed is because of counsel's *personal* objection to the death penalty. While certainly counsel is entitled to his personal opinions, he cannot exercise *his* desires over those of his client's. It is abundantly clear that Heard has refused to sign this petition and does not acknowledge that this petition was filed on his behalf.

The clemency application statute contains a more general provision that nothing in section 5/3-3-13 shall be construed to limit the power of the the Governor *under the Constitution* to grant a reprieve, commutation of sentence or pardon. But, this provision can not be read to permit consideration of unsigned petitions in capital cases. It is the Constitution itself that provides both the Governor's power to grant clemency and the legislature's power to regulate the manner in which clemency must be applied for. Thus, subsection 13(e) specifically contemplates that the Governor will act only "under the Constitution," i.e. that his power will be cabined by any restrictions upon the application process constitutionally enacted by the General Assembly. To read subsection 13(e) to permit the Board or the Governor to act on an unsigned petition would render meaningless all the previous subsections of 5/3-3-13, as well as the language in Article 5, section 12, of the Constitution authorizing legislative regulation of the manner of applying for clemency.

The signing requirement for capital cases was plainly enacted under the constitutional power of the legislature to regulate the manner of applying for clemency. It represents a requirement that is entirely concerned with that procedure, and does not attempt to limit the Governor's power to grant clemency to any inmate or category of inmates based on any substantive distinction, or even any procedural distinction other than one of form. More critically, it does not

implicate the real subject of section 13(e), which was the preservation of a governor's discretion to decide whether and to what extent to grant clemency to a person who qualifies for it and has complied with proper application procedures.

Based on these provisions, counsel's petition has been improperly filed and must be returned to him. The Board and the Governor are without authority to consider or act substantively on.

HISTORY OF THE CASE

Almost 10 years ago, on November 11, 1992, a terrified ten year old little girl nicknamed "TQ" watched her mother's ex-boyfriend, Delbert Heard, massacre her pregnant mother, Natalie Wilson, and the unborn baby's father, Kenneth Seals, while the couple was in bed. Natalie's cousin, Zita Jones' screams were permanently silenced when Heard took his gun and went to Natalie's bedroom and shot her five times.

On March 6, 1996, a jury found Heard guilty of these murders. Heard changed attorneys and current counsel, Fred Cohn, represented Heard on a "Motion for Judgment of Acquittal; Alternatively, Motion for New Trial" and at sentencing. The post-trial motion was 35 pages long. Attached to the motion was an additional 58 page "memorandum" in support of the motion. The motion was denied and Heard waived his right to a jury for sentencing. At sentencing, counsel presented the court with a 153 "memorandum" why counsel believed Heard should not be sentenced to death. On June 6, 1996, the Honorable Stuart E. Palmer sentenced Heard to death.

The Illinois Supreme Court reviewed the record of Heard's trial and sentencing hearing and, on June 17, 1999, issued an opinion affirming both his convictions and death sentence. On March 6, 2000, the United States Supreme Court declined to review the decision.

On December 18, 1997, Heard filed a petition for post-conviction relief. That matter is currently pending before the Honorable Stuart E. Palmer. The case will next be in front of Judge Palmer on October 7, 2002.

Currently and **against Heard's wishes**, counsel for Heard has filed a petition for executive clemency. For the reasons stated previously, the People of the State of Illinois request that the Board and Governor take no action on this petition. However, should the Board and the Governor review Heard's attorney's request, the People respectfully request that the Board and the Governor reject counsel's request for executive clemency for Delbert Heard.

II.

FACTS OF THE CASE

Delbert Heard is a cold-blooded killer that, due to his own despicable conduct, deserves to die. When Natalie Wilson broke up with Heard, Heard wanted Natalie back. In a misguided attempt to regain control of Natalie, Heard began a pattern of harassment, threats and escalating violence. When Heard found out Natalie was pregnant with her new boyfriend's baby, Heard savagely killed Natalie, her boyfriend, Kenneth Seals and Natalie's cousin, Zita Jones. Armed with a gun, **Heard** entered Natalie's apartment and, while they were in bed, **shot Natalie and Kenneth a total of twenty-two times**. Then, in order to eliminate a potential witness, **Heard** walked into Zita Jones' bedroom and **permanently silenced Zita's screams by shooting her five times**. As so callously described by counsel, Zita died because she was an "accidental witness." Adding to the horror, Natalie's ten year old daughter, TQ, witnessed the bloody massacre.

For approximately five years, Heard dated Natalie Wilson. For several years during this time, Natalie, TQ, and Heard lived together. Sometime in 1992, Natalie and Heard's relationship ended. In April of 1992, Natalie began dating Kenneth Seals. Kenneth lived with his mother and sister in Harvey, Illinois. Natalie, her cousin Zita Jones, and TQ lived together in Chicago.

After Natalie started dating Kenneth, there were a number of violent incidents involving Heard. Once, while no one was home, Heard all of Natalie's clothing, including her coat, was taken from the apartment. Natalie filed a police report. Later, Heard came to the apartment door and asked Natalie to let him in. When she refused, Heard said "I'm not going to do anything to you." When she refused again, Heard said he would give her back all of her clothes. Natalie let him into the apartment. At first the two talked, but when Heard attempted to give Natalie back keys to his apartment and she refused,

Heard hit her. Natalie ran away but Heard followed her into TQ's bedroom. Heard continued to beat Natalie in front of TQ and Natalie's face was swollen. Heard also pulled the phone from the wall.

During another incident, Kenneth, Natalie, Zita and TQ were together in a rental car. Heard rammed his truck into the back of their car. Heard pulled back and rammed the car a second time. When Heard pulled his truck back a third time, Kenneth was able to drive off. Kenneth, Natalie, Zita and TQ drove to the police station and filed a report.

Starting sometime in May, 1992, Heard began calling Kenneth's house. He called hundreds of times. It started out as approximately once a day, but escalated to two or three times a day. Kenneth purchased a gun, for protection, because of defendant's continued calls.

On July 17, 1992, during a conversation with his second cousin's common-law wife, Mary Pearson, Heard brought up Natalie's name. Heard told Mary that he loved Natalie and that he had "made" her what she was. He also said that he had "invested too much money on Natalie." **Heard told Mary "All I can say is that nobody is going to have Natalie because Natalie is mine, I made Natalie what she is today and if I have to, I'll kill Natalie and Kenneth."** Mary told him "you don't want to do nothing like that, if the relationship is over, let it be over."

On July 18, 1992, in the vicinity of 57th and Loomis, Natalie and TQ were coming from getting their hair done. Kenneth and TQ's two-year-old cousin, Kaira, came to pick them up. Heard drove up. Natalie and TQ got into Kenneth's car. Heard rammed his truck into Kenneth's car. Kenneth got out of the car to see what had happened. Heard pulled to the side and started shooting a gun. Heard kept shooting as he left the scene. The police were called and came to the scene. Officer John Maples saw broken automobile glass on Loomis. He also saw "what appeared to be ricocheted rounds" in a church that was at the location of the shooting.

On a Sunday morning in late July of 1992, Heard came to the Seals' residence requesting to speak with Natalie. Natalie had spent the previous night at the Seals' home and was in the bathroom fixing her hair, getting ready to leave for church. Natalie did not want to talk to Heard, but Mrs. Seals told Natalie to go outside and talk to him. Mrs. Seals, Kenneth and his sister left the house and got in the car to leave for church. Mrs. Seals informed Natalie that it was time to go and told her to get into the car. Natalie told her that Heard "won't let me go." Mrs. Seals replied "Yes, he's going to let you go. Come on, get into the car." Natalie got into the car. Heard attempted to continue talking to Natalie. Mrs. Seals told him "What's done is done. My son is growed (sic) and so is Natalie. If he wants to see her and she wants to see him, that's between them. She told me you (sic) all broken up." Heard told her "Miss Seals, you don't know the whole story." Mrs. Seals stated "Right now I'm not interested in the whole story. I'm ready to go to church."

Approximately a week or two later Heard called the Seals' residence and Mrs. Seals answered the phone. When he asked to speak with Kenneth, Mrs. Seals told Heard that Kenneth did not want to talk to him. Heard's tone was "very loud" and "rowdy like." **Heard told Mrs. Seals that she "better tell Kenny and Natalie to leave each other alone because if you don't, I'm going to kill them both."**

About a month later, at the end of August or in early September, Heard called the Seals' residence at approximately 2:00 a.m. Kenneth and Natalie were in the house. Heard told Mrs. Seals to tell Natalie and Kenneth to come out of the house. She told Heard that Natalie wasn't there and also told him to leave them alone. Heard said "If you don't get them out of there now, I'm coming in." Mrs. Seals hung up and called the police. She looked outside and saw a pickup truck in front of her house. When the police car came through the alley, the pickup drove off. After the police left, Heard called

again and told Mrs. Seals "You called the police this time." She told him that she had and that he had no right harassing Natalie and Kenneth and told him to "Leave them alone." Heard replied "You stopped me this time, but you won't be able to stop me the next time." Mrs. Seals saw Heard watching her house from a parked tow truck several other times.

Due to all of the above-mentioned incidents, Natalie, TQ and Zita moved to another apartment. Heard called the new apartment and he continued to call, even after the phone number was changed. On six or seven different occasions Heard sat in his vehicle outside the apartment. (R. 903)

Two or three days before the murders, Heard called the Seals' residence and spoke with Kenneth. Mrs. Seals heard arguing and the intensity of the phone call. Kenneth told Heard "I did something you couldn't do. Natalie is pregnant with my baby." Natalie was, in fact, pregnant.

On November 10, 1992, at about 4:45 p.m., Kenneth left his mother's house to go back to Natalie's apartment. At approximately 8:00 p.m., Heard knocked on Natalie's door and asked if he could come in. Natalie said "no" and Heard said "I'm not going to do anything with you." Again Natalie told Heard he couldn't come in and Heard replied "I'm not going to hurt you." Heard asked where TQ was and said he wanted to buy some candy from her. Even though TQ was in the apartment, Natalie told Heard that TQ was not home. Based on the slaughter that followed, Natalie TQ when she told Heard that TQ was not home. Kenneth was there, but did not say anything to Heard. Heard kicked the door and left.

TQ took a bath, said her goodnights and went to bed. Her bedroom was right next to Natalie's bedroom. The door that led to Natalie's room was kept open because the radiator was in Natalie's room and there was no heat in TQ's room. Some time later, TQ heard Zita and her boyfriend, Richard, came home. They were talking and laughing. The two went to Zita's room. Subsequently, Richard left

and Zita went back to her room.

Later TQ again heard the door to the apartment open again, but it was opened slower and the floor squeaked. TQ saw Heard at the foot of Natalie's bed. There were lights outside TQ's room and lights outside her mother's room. Heard exchanged words with Natalie and Kenneth. Heard said "don't try it." TQ heard gunshots and saw Heard leaning over Natalie and Kenneth, firing a long black gun. TQ estimated that Heard fired twenty-five or thirty shots. After these shots were fired, TQ heard Zita screaming and the floor creaking. Heard went to Zita's room and TQ heard more gunshots. TQ then heard the floor squeaking very fast and the outside gate rattled.

TQ went to the bleeding bodies of her mother, Kenneth and Zita. TQ first approached Natalie and asked her if she was o.k. Although Natalie tried to respond to her daughter, Natalie was unable to do so. TQ heard Kenneth moaning, but then the moaning stopped. TQ then went to Zita. Zita was lying down with "a hole in her head" and "stuff" coming out of her neck. TQ ran upstairs to get help from the landlords, Monique Ebony and Melvin DeYoung.

The DeYoungs had gone to sleep at approximately 10:00 p.m. and were awakened some time later by gunfire. Mrs. DeYoung heard several shots, then a pause in the shooting and then more shots. The DeYoungs heard moaning from the first floor. Mrs. DeYoung heard heavy footsteps and then heard the kitchen door to Natalie's apartment slam. TQ came into Mrs. DeYoung's bedroom. TQ's eyes were "bugged," she was shaking and terrified. TQ told Mrs. DeYoung that she'd tried wake up Natalie and Kenneth but Natalie wouldn't wake up and Kenneth said "huh" and then died. TQ told Mrs. DeYoung that when she got to Zita's room, Zita had "something" coming out of her eye and was dead.

TQ and Mrs. DeYoung went back to Natalie's apartment. There were paramedics and police

officers in the apartment. TQ tried to get back to Natalie and became very upset when the officers would not let her into the area. TQ began mumbling to herself. **Mrs. DeYoung heard TQ say "Man, why did Heavy shoot my mama?"** Heard's nickname was "Heavy." When Mrs. DeYoung asked TQ if she saw Heard, TQ said "Man, why did he shoot my mama? I didn't see nothing. I didn't see nothing, Mrs. DeYoung." TQ was "very shaken," "concerned," "frightened," and "she was in shock."

Mary Pearson, Heard's second cousin's common law wife as well as Natalie's commonlaw sister-in-law, arrived at the apartment. When TQ saw her, TQ ran to Mary and said "Aunt Net, he gon killed my mother." Mary asked TQ who had killed her mother, but TQ hugged Mary and would not answer the question. Mary and TQ went with Chicago Police Detectives Brennan and Brankin attempting to find Heard. The group went to four different locations: Heard's parent's house, Heard's house, the garage where Heard parked his tow truck and his sister and brother-in-law's house. At each location TQ laid down in the backseat as if she didn't want to be seen. When the officers pulled up in front of Heard's parent's home, TQ told Mary "he gon see us" and TQ began to cry.

Chicago Police Officer John Butler, a forensic investigator for more than thirty years, and his partner, processed the crime scene. Officer Butler had previously handled thousands of crime scenes and hundreds of murder scenes. Natalie and Kenneth's bodies were on the bed in one of the bedrooms. The two had been shot numerous times. There were "multiple head wounds, chest, leg and arm." In a second bedroom was Zita's body. She had also been shot numerous times.

A total of thirty-two cartridge cases were recovered from the apartment. All of the cartridge cases were nine millimeter Luger FC. There were eight on the floor next to Kenneth's body. There were three cartridge cases and three fired bullets in the bed next to Kenneth. There were eleven

cartridge cases on the floor next to Natalie. There were ten cartridge cases, some metal fragments and a fired bullet in Zita's bedroom.

Assistant Chief Medical Examiner, Dr. Mitra Kalelkar, performed the autopsies on the bodies of Natalie, Kenny and Zita. At the time of Heard's trial, Dr. Kalelkar had been a medical examiner for seventeen years and had performed more than 37,000 autopsies. The parties stipulated that Dr. Kalelkar was an expert in the field of forensic pathology.

Natalie was shot a total of five times. Natalie was shot in the left eye. Dr. Kalelkar followed the track of the bullet and recovered fragments of the bullet. Natalie was also shot in the interior chest wall, slightly to the right of midline. Dr. Kalelkar recovered the bullet from Natalie's back, behind her shoulder blade. Natalie was shot in the left leg. There were wounds to her left thigh, her left knee and her left calf. No bullets were recovered. Dr. Kalelkar found that Natalie had, in fact, been pregnant. The doctor recovered a small, approximately six to eight week old fetus. Dr. Kalelkar determined that Natalie died as a result of multiple gunshot wounds and that the manner of death was homicide.

Kenneth had been shot a total of seventeen times. Kenneth received a graze wound to the right side of his skull. The bullet fractured his skull and the underlying brain matter was "contused and lacerated." A bullet was not recovered. Kenneth was also shot in the corner of his left eye. The bullet went through his skull, lacerated his brain and exited from the right side of his head. No bullet was recovered. He was also shot, from close range, in the left nostril. The bullet went through his nose, through the bone and exited from his right temple. Kenneth was shot in the back side of his left upper arm. The bullet exited the front of his arm, reentered the chest and perforated the lung. Dr. Kalelkar recovered a bullet from the left side of Kenneth's chest.

Kenneth was shot, at close range, in the left elbow. The bullet exited from the inside of his

upper arm and reentered into his chest and perforated his heart and lung. A bullet was recovered from the right side of his body. Kenneth was shot four times on the back side of his left hand, including his left ring finger and wrist. All four bullets exited from the front of his hand and wrist. He was shot near his elbow and toward the middle of his left forearm. Both wounds were through and through and no bullets were recovered. Kenneth was also shot in the back of his left thigh. The bullet exited the front of his thigh. Additionally, he was shot in the back of his left knee. That bullet was recovered. Kenneth was shot in the back of his right lower leg and the back of his left lower leg. Finally, he was shot in the right lower leg. Kenneth died as a result of multiple gunshot wounds. His blood was drawn and tested negative for the presence of alcohol, cocaine or opiates.

Zita was shot five times. Zita was shot in the left side of her forehead. The bullet entered her skull, fractured it and lacerated her brain. A bullet was recovered. She was also shot in the left side of her nose. The bullet fractured her facial bones and the bullet was recovered from her brain. She was also shot in the front of her chest wall. The bullet perforated the main blood vessel of her body and struck her spinal cord. A bullet was recovered. Zita was also shot through and through near her ankle. No bullet was recovered. Additionally she was shot in her left foot, the bullet exited from the inner aspect of that same foot. Zita died as a result of multiple gunshot wounds. Her blood tested negative for alcohol, opiates and cocaine.

Heard, alleging an alibi defense, presented the testimony of Alonzo Williams, Tina Coleman and Kimberly Nelson. The group's story was that, on the night of the murders, Heard had picked Coleman up at approximately 9:30 p.m. and the two met up with Williams and others at a bowling alley at 47th and Pulaski. The story continued with the group staying at the bowling alley from 10:00 p.m. to approximately 1:30 a.m. Next, it was claimed that the group went to a Denny's at 95th and

Cicero until 2:30 a.m. Supposedly when the group split up at 2:30, Heard and Coleman went to the Avenue Hotel because Heard had overnight company staying at his apartment. According to Coleman, she and Heard stayed at the hotel until 7:00 a.m.

Williams admitted that he never came forward to the police, the prosecutor's office or the press to share his information as to Heard's alleged whereabouts on the night of the murders. He also admitted that he never got the group of people he claimed had been with Heard that night to go together to police. Although Coleman was "outraged" when Heard was charged in this case and she had information that, according to her, would establish that Heard could not have murdered Natalie, Kenneth and Zita, Coleman never went to any law enforcement agency. She never went to the State's Attorney's Office, the F.B.I. or the U.S. Attorney's Office.

Heard did not testify at his trial. Judge Palmer questioned Heard about whether or not he wanted to testify. Heard stated that he understood that he had a right to testify and that he did not want to testify. He told Judge Palmer that the decision not to testify was his own and that it was of his own free will. The jury found Heard guilty of the first degree murders of Natalie Wilson, Kenneth Seals and Zita Jones.

Heard retained Fred Cohn as new counsel, and counsel filed a 35 page "Motion for Judgment of Acquittal; Alternatively, Motion for New Trial" along with a 58 page supporting "memorandum." The motion was denied and Heard waived a jury for sentencing.

The following evidence was presented during the eligibility phase of Heard's sentencing hearing. During processing, Heard told Detective Duffy that his date of birth was July 21, 1964. A certified copy of Heard's birth certificate, corroborating what Heard told the detective, was entered into evidence. The verdict forms from Heard's jury trial were introduced and the trial court was asked

to take judicial notice of the testimony heard at the trial. Heard presented no evidence and waived argument on the issue of eligibility. The trial court found Heard eligible for the death penalty.

Chicago Police Officer Allan Garant, a twenty-five year veteran, testified in aggravation, that on October 11, 1989, he was working a plainclothes surveillance with his partner. He and his partner followed Heard and another individual. Heard, with a coat hanger, made a downward motion near a car. Heard opened the car door and the other individual got in the car. Heard stood three or four feet away from the car, moving his head from left to right and looking around. Heard was arrested for the felony charge of burglary and later plead guilty to a reduced misdemeanor charge.

David Heard, Natalie Wilson's brother and Zita Jones' cousin, attended Heard's trial and then wrote a victim impact statement which he read to the trial judge. He explained, that even though he didn't know Zita Jones very well, Zita was a "very nice person." He also knew Kenneth to be "a nice guy and a loving person." Natalie Wilson "was a person from whom you could fill a dictionary with the nice things she has done." Mr. Heard and his wife were raising TQ and it was often difficult. Mr. Heard felt great pain. He hoped that Heard got the maximum penalty available.

Zita Jones was Cynthia Duncan's daughter. Ms. Duncan prepared a victim impact statement and read it to the court. Zita was a "vibrant, beautiful girl." She was a straight "A" student in college and was also working. Zita's twelve year old sister, Alecia, had trouble with her grades because she could not concentrate since Zita's brutal murder. Alecia used to be a happy child, but since Zita's senseless murder she stayed alone in her room.

Kenneth Seals was Alfreida Seals' son. Mrs. Seals testified at trial and then wrote a victim impact statement. Each member of her family had to have counseling due to Kenneth's vicious murder. Kenneth's sister could not finish high school due to her grief over his slaying. Kenneth's nephew had

nightmares, insomnia and medical problems. Mrs Seals had trouble with relationships, had nightmares and depression. Kenneth's family thought that anything but death would be unjust.

Dorothy Lockett, Natalie Wilson's mother, was unable to come to court, therefore, her victim impact statement was read into the record. Natalie had been Dorothy's only daughter. Dorothy's life would never be the same. Dorothy lost her job. TQ received counseling. TQ and Dorothy cried all the time

TQ was Natalie Wilson's daughter. TQ testified at Heard's trial and prepared a victim impact statement. Seeing the brutal murder of her mother changed her and hurt her and her family. Right after the murders, TQ was unable to sleep, eat or dream. When she did sleep she had nightmares and woke up in tears. Something was missing in her heart, soul and body. Her grandmother got sick and TQ was no longer able to live with her. TQ quit school, ran away and started doing the wrong things.

Defense counsel submitted a lengthy, 146 page "memorandum" to the trial judge detailing his theory as to why Heard should not be sentenced to death. Over the People's objection, and although the people were in the courtroom and available to testify, defense counsel presented thirty-two affidavits. Although twelve witnesses testified, their testimony was limited to highlighting certain portions of their affidavits.

After hearing closing arguments, the trial court found that there were no mitigating factors sufficient to preclude the imposition of the death penalty. Delbert Heard was sentenced to death. The trial court issued the execution order.

III.

REASONS FOR DENYING THE PETITION

Despite the fact that Delbert Heard specifically told Mr. Cohn that he wants no relief from the Board or the Governor, counsel has filed a 60-page petition for clemency, as well as 57 pages of affidavits and 71 pages marked “Exhibits.” Although counsel’s filing is a voluminous 188-pages, it is actually a simple two-prong internally inconsistent argument that should not lead to any mercy for his cold-blooded murdering client. Counsel claims, on the one hand, that “there is a genuine concern that Heard *may* be actually innocent.” However, on the other hand, he claims that even if Heard is guilty, Heard is “such an asset to his community,” both in and out of the penitentiary, that Heard should be spared the death penalty. Both claims are meritless and Delbert heard should be executed.

Counsel attempts to support his claims with misstatements, half-truths, contortions of evidence admitted at trial and with total disregard for the rulings of the Illinois Supreme Court as well as the trial court. Counsel provides no actual evidence to support *his* “genuine concern” that Heard *may* be guilty. Counsel’s current petition is merely a repetition of the same arguments presented previously by counsel. Counsel took over Heard’s case after trial and prior to sentencing. Counsel fails to acknowledge that he made the identical arguments in his post-trial motion and his appeal to the Supreme Court. His arguments have been carefully reviewed and rejected. **When counsel’s petition is examined and compared with the real evidence presented in this case, it is abundantly apparent that counsel’s petition is a sham founded upon counsel’s *personal* aversion to the death penalty.**

Counsel states that he seeks clemency for Heard because Heard’s “sentence was

imposed under a system that is fundamentally flawed;” that the sentence was imposed prior to the March 1, 2001, amendments of Illinois Supreme Court Rules regarding capital cases and that the sentence was imposed without the benefit of Ryan Commission reforms. (Petition p.14)

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 actual proceedings themselves. It is telling that petitioner has not even attempted to demonstrate *how* the recent changes would have specifically affected the outcome of his case.

Counsel’s concern that Heard may be innocent

Counsel claims that “there is genuine concern that Heard may be actually innocent.” (Petition p.8) Counsel’s repeats the same argument three times: once in his “prefatory statement,”

again in his “synopsis” and yet again in the “details” section. (Petition p. 1-2; 8-9; 10-14) Such repetition must be wishful thinking that, perhaps, if he says it enough times it will be true. However, no matter how many times he says it, counsel cannot change the fact that the evidence clearly established that his client, and no one else, slaughtered pregnant Natalie Wilson, Kenneth Seals and Zita Jones. Delbert Heard entered Natalie’s apartment and left nothing but bloody carnage in his wake. Moreover, he committed these heinous acts in front of TQ, the terrified ten year old daughter of Natalie Wilson. Heard’s guilt has been solidly established. The evidence has been reviewed by twelve jurors, a circuit court judge and the seven Justices of the Illinois Supreme Court. Heard’s convictions were proper.

Heard’s alleged alibi defense

Utterly lacking in specificity, counsel concludes that Heard presented a “well-corroborated” alibi through three witnesses counsel he labels as “reliable.” (Pet. p.1; 8; 10) To the contrary, it was well established at trial that the so-called “alibi” witnesses were anything *but* reliable. In fact, Judge Palmer, during his ruling denying counsel’s post-trial motion, specifically characterized the alleged alibi as “unsubstantiated by any other evidence.”

Only two witnesses, Alonzo Williams and Tina Coleman, claimed that they were physically with Heard the night of the murders.¹ Their story was that Heard picked Coleman up at approximately 9:30 p.m. and the two met up with Williams and others at a bowling alley at 47th and Pulaski. The story continued with the group staying at the bowling alley from 10:00 p.m. to approximately 1:30 a.m. Next, it was claimed that the group went to a Denny’s at 95th and Cicero until

¹ The third witness, Tina Coleman’s sister, claimed to have talked to Coleman on the phone at approximately 1:30 a.m. Supposedly she heard bowling pins and Heard’s voice in the background of her phone conversation with Coleman.

2:30 a.m. Supposedly when the group split up at 2:30, Heard and Coleman went to the Avenue Hotel because there were overnight guests staying at Heard's apartment. According to Coleman, she and Heard stayed at the hotel until 7:00 a.m.

Counsel makes no mention that during cross-examination, the fact that both Williams and Coleman lacked credibility was firmly established. Williams admitted that he never came forward to the police, the prosecutor's office or the press to share his information as to Heard's alleged whereabouts on the night of the murders. He also admitted that he never got the group of people he claimed had been with Heard that night together to go to police. Although Coleman was "outraged" when Heard was charged in this case and she had information that, according to her, would establish that Heard could not have murdered Natalie and her unborn child, Kenneth and Zita, Coleman never went to any law enforcement agency. She never went to the State's Attorney's Office, the F.B.I. or the U.S. Attorney's Office. Although Williams and Coleman claim they told Heard's attorney, there is no reason to believe that their motivation to fabricate would have been any different at that time.

Commonsense dictates that if someone you care about gets arrested for something you can prove he didn't do, you step up. You go to the authorities and give them the opportunity to check out your claims. You don't sit back, watch him get arrested, sit in jail awaiting trial, and not to tell anyone with the official capacity to do something about it. Moreover, Heard's alleged alibi witnesses told their story to the jury, the jury rejected it and found Heard guilty. It was the jury's responsibility to judge the credibility of the witnesses. Counsel's claim that Heard presented reliable "alibi" witnesses is without merit.

TQ's Credibility

Despite efforts to discredit her, counsel is simply unable to establish that TQ lacked credibility. A commonsense review of the facts of this case, completely destroys counsel's misguided attempts to discredit the child's testimony. Counsel's current arguments regarding TQ are identical to arguments that were rejected by the Illinois Supreme Court and should be rejected by the Board and the Governor.

At the time TQ watched and listened to Heard massacre her mother, Kenneth and Zita, TQ was a ten year old child. A ten year old child that had previously seen Heard's violence go unpunished. She had watch him beat her mother, ram his truck into two different cars and shoot his gun at a vehicle that she was in. TQ was a scared little girl, and rightfully so. Not only did she watch Heard pump her mother and Kenneth full of bullets, but then she heard him shoot and kill Zita Jones, the only witness he thought was in the apartment. The evidence established that earlier in the evening Natalie told Heard that TQ was not in the apartment. That statement saved TQ's life. Due to TQ's age and her terror, it is easy to understand why TQ acted the way she did.

Counsel, citing to pages 963, 1056, and 1058 of the trial transcript, claims here, and as he did in the Illinois Supreme Court, that these pages affirmatively establish that TQ didn't see Heard slaughter Natalie, Kenneth and Zita. Counsel completely misinterprets the cited pages. (See Exhibit) What these pages actually reflect is that TQ was so upset and scared that Heard would kill her too, that she didn't tell the police at that time.

Counsel also questions the 14 month delay before TQ came forward to authorities and labels she said as a "recantation." This argument is without merit and was specifically rejected by both the Illinois Supreme Court and the trial court judge. When TQ revealed to authorities that Heard had shot

and killed her mother, Kenneth and Zita, it simply was not a “recantation,” it was a delayed outcry. Additionally, counsel, as he did on direct appeal, attempts to discredit TQ’s identification of Heard because it occurred during preparation for another trial in which Heard was charged. Despite counsel’s repeated attempts to label this case an identification case, it is not.

TQ knew Delbert Heard. Certainly, there was delay in TQ’s coming forward, but this delay in now way affects TQ’s identification of Heard. It was not that TQ *could* not identify Heard, it was that she *would* not identify him based on her terror. TQ was scared that Heard would kill her. She saw what Heard had done to Natalie and Kenneth right before her eyes. She heard what he had done to her cousin and potential witness, Zita Jones. This scared, frail ten year old had seen the bloody massacre that was Heard’s handiwork. The strength of TQ’s identification of Heard was not harmed to the delay. In fact, the delay was totally understandable and reasonable given the horror committed by Heard. Counsel’s arguments are without merit.

Counsel overlooks that TQ was a ten year old child at the time of the slayings. He also overlooks that when TQ’s landlord Mrs. DeYoung, a full grown woman, saw the carnage that had previously been Natalie and Kenneth, Mrs. DeYoung was “shocked,” “stunned,” and “devastated.” It is clear that TQ, a ten year old child attempting to close herself off from the horror she had gone through, *could* not tell all she new. Counsel’s argument also overlooks the fact that TQ was “terrified,” “very shaken,” “concerned,” “frightened,” “was in shock,” and was a “very frail little girl” immediately following the murders.

Further, counsel’s claims disregards TQ’s demeanor during the search for Heard on the night of the murders. TQ was taken with Mary Pearson and Detectives Brennan and Brankin when they went to Heard’s parents’ home, Heard’s home, the garage where Heard parked his tow truck and Heard’s

sister's home. At each location, TQ laid down in the back seat as if she didn't want to be seen. When the group pulled in front of Heard's parent's home TQ told Mary "he gon see us" and TQ began to cry. When the car pulled up to Heard's home, TQ "got almost on the floor."

Counsel has completely disregarded the emotional component of this case. In fact, he appears to make light of the fact that TQ had counseling. (Petition p.9) Obviously at the time TQ told the Assistant State's Attorney what had occurred, TQ was in a safe place. Time had passed since the brutal slayings, TQ had matured and was ready to share the details of what she had seen. The effect of the extreme trauma TQ suffered as a result of Heard's senseless brutality cannot be minimized or forgotten.

As succinctly put by the Illinois Supreme Court:

A reasonable inference from the facts of this case is that a 10-year-old child would be unresponsive to police after witnessing a murder. It is also reasonable that, as time passed, and the shock of the murders diminished, TQ would be able to recount the events from the night of the crimes, and then be able to identify [Heard].

In his petition counsel claims that "TQ's testimony is the TQ and Dorothy cried all the time basis for convicting Heard," elsewhere counsel claims that there was other evidence against him but it was "merely" circumstantial or from biased witnesses. (Petition 1, 12) TQ's testimony was not the sole evidence against Heard. Mrs. DeYoung, the landlady to whom TQ ran for help, testified that she heard TQ say "Why did Heavy shoot my mama?" Additionally, there were the numerous incidents in which Heard's harassed, stalked, physically assaulted, threatened and shot at Natalie and Kenneth. Heard explicitly told Kenneth's mother that if she didn't tell Kenneth and Natalie "to leave each other alone" he was going to kill Natalie and Kenneth.

Counsel also dismisses Mary Pearson's testimony regarding her conversation with Heard in

which Heard told Mary “all I can say is that nobody is going to have Natalie because Natalie is mine. I made Natalie what she is today and if I have to, I’ll kill Natalie and Kenneth.” Counsel claims that Mary Pearson was biased because Natalie was her common law sister-in-law. (Petition p.12 footnote 8) While it is true that Mary Pearson and Natalie’s brother had been a longstanding couple, what counsel fails to mention is that Delbert Heard and Natalie’s brother are second cousins. Therefore, Mary was “related” to Delbert Heard as well as Natalie.

Despite counsel’s claims to the contrary, TQ told the truth. It was the job of the jury to determine her credibility and they did. In rejecting arguments identical to those raised here, on direct appeal the Illinois Supreme Court held

[Heard] argues that TQ’s testimony is so lacking in credibility that a reasonable doubt of [Heard’s] doubt remains. We disagree *** When reviewing the sufficiency of the evidence in a criminal case, the relevant question is whether, after viewing all the evidence in the light most favourable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. A review of the evidence in this case leads us to the conclusion that a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.

Jury Issues

Counsel continues his quest to retry this case before the Board and the Governor and claims that due to trial counsel ineffectiveness, the jury did not have proper instructions and deliberations were not halted when the jury requested certain transcripts. (Petition p.13) None of these claims are valid and certainly none should lead to granting Heard clemency. The Illinois Supreme Court found that Heard *did* receive effective assistance of counsel. Counsel continues to mislabel TQ’s original statements to the police as “prior inconsistent statements.” Based on this improper label, counsel claims that the jury should have been instructed as if the statements were

prior inconsistent statements. Since her prior statements were not inconsistent, such an instruction was not required. Counsel also complains that the jury was “not instructed that the length of time between the event and the identification is a factor to consider in determining the credibility of the identification testimony.” Counsel completely ignores that TQ *knew* Heard. This claim is ridiculous.

Finally, without explanation, counsel claims that the fact that the jury was allowed to continue deliberating while the transcripts they requested were being transcribed “gives one reason to seriously question the outcome.” (Petition 13-14) Counsel completely fails to mention that Heard himself did not want the requested transcripts to go back to the jury. (See Exhibit) The jury knew that the requested transcripts were being transcribed. The reason they chose to reach their verdict without the requested transcripts is open to speculation. Counsel has nothing that would support his argument other than his own imagination.

Delbert Heard is entitled to same mercy he showed to pregnant Natalie Wilson, Kenneth Seals and Zita Jones: NONE.

Delbert Heard must die for the execution of pregnant Natalie Wilson, Kenneth Seals and, as so callously labelled by counsel, “accidental witness,” Zita Jones. (Petition p. 3) Heard himself told counsel that unless he is found innocent, he wants to be executed. A review of the facts of this case clearly establish that Heard is not innocent and, therefore, should get his asked for relief—Delbert Heard should lose his life.

Once again, in three places, counsel repeats the same claim. He asserts that there is “compelling evidence in mitigation” that establishes that Heard’s life should be spared. (Petition p. 2; 9-10; 14) To the contrary, justice requires that Heard be put to death for the senseless slayings

of Natalie, Kenneth and Zita. Counsel claims that Heard was an asset to his community prior to his incarceration, was an asset after his incarceration, compares Heard's case to other cases, and excuses Heard actions as having been caused by "erotomania." Although counsel acknowledges numerous times that the Board and the Governor are "not a judicial body," counsel nonetheless cites to extensive caselaw and statutes while making legalistic arguments that counsel fails to acknowledge have been previously made and rejected by the circuit court judge and the Illinois Supreme Court.

Counsel then spends more than 20 pages of his argument simply quoting from the same documents that are contained in the 57 page volume accompanying his petition. Again, no matter how many times counsel laboriously repeats a claim, the repetition itself does make the claim valid. The trial court judge specifically stated that in deciding Heard's sentence he had "considered all the evidence in mitigation and read and thoroughly considered all the affidavits presented." (See Exhibit) The circuit court judge went on to sentence Heard to death. The Illinois Supreme Court "after careful consideration" concluded that the death penalty was the appropriate sentence. The Court specifically found that when Heard's relationship with Natalie ended, Heard began to "terrorize" Natalie and Kenneth. That even though Heard had "no significant criminal history, his actions in this case reveal a person with an evil heart."

Counsel spends many pages comparing this case to other cases and then claiming that, by comparison, he does not deserve the death penalty. (41-43; 49-55) Such comparison was considered by the Illinois Supreme Court and rejected. The Court specifically found that "a review of the cases does not lead us to conclude that [Heard's] death sentence is excessive." Counsel's misguided attempt to compare Heard's actions, actions which the Illinois Supreme

Court found to be those of a “cold-hearted murderer,” to cases in which defendants were under the influence of drugs or alcohol; suffered from valid mental or emotional problems or spontaneously reacted to information such as the infidelity of a spouse is absurd.

Even more absurd is counsel’s attempt to excuse Heard’s barbaric actions due to his claim that Heard actions were “the result of rage arising from a volatile love triangle situation.” (Petition p. 43) The facts of this case establish that there was no “triangle.” It was Heard, and Heard alone who would not let go of the past. Natalie had moved on and was pregnant with Kenneth’s child. The only violence was that perpetrated by Delbert Heard. Natalie and Heard had broken up months before and it was Heard that could not let go. Heard took Natalie’s clothing. Heard beat Natalie in front of TQ. On two different dates, Heard crashed his truck into two different cars where Natalie, Kenneth, Zita and TQ were seated. Heard took out a gun and tried to kill Kenneth. Heard told both Mary Pearson he was going to kill Natalie and Kenneth. Heard told Mrs. Seals that he was going to kill Natalie and Kenneth. The facts of this case are not such that “adultery with a spouse as provocation” defense would be applicable. Heard and Natalie were not married. In fact, Tina Coleman testified that *she* was engaged to Heard. Counsel’s argument completely fails to address the murder of Zita Jones, and how his “rage reaction” theory could possibly apply to Heard’s cold, calculated execution of a witness in order to prevent his capture.

Counsel has another claim – if Heard did it, it was because Heard “was a person suffering from the devastating effects of a serious mental disorder (or illness) categorized by psychiatrists as erotomania.” (Petition p.55) Other than relying on counsel’s questionable self-serving diagnostic ability, there is absolutely no evidence whatsoever establishing that Heard suffered from erotomania. Moreover, in rejecting the identical argument, the Illinois Supreme Court held “we

are not persuaded by the suggestion that murdering a person solely because that person is the object of the killer's obsession is mitigating evidence." Further, a claim of erotomania would not apply to Heard shooting Zita five times and killing her.

CONCLUSION

Delbert Heard has not asked for executive clemency and has not signed the petition filed by counsel. The Board and the Governor are, therefore, unable to act on the petition and should return it as having been improperly filed.

According to counsel's affidavit, unless by way of post-conviction petition or *habeus corpus* petition, Heard is found to be innocent, **Heard prefers to be executed**. Delbert Heard is not innocent. As such, if the Board and Governor review this petition, Delbert Heard's wishes should be honored and he should be put to death.

Counsel has shown no reason to grant Delbert Heard clemency. **Delbert Heard is entitled to the same mercy he showed to Natalie Wilson, Kenneth Seals and Zita Jones – absolutely NONE.**

The facts establish that Heard was simply unable to let Natalie go. After a series of violent encounters, Heard found out that Natalie was pregnant with Kenneth's baby. Armed with a gun, Heard got into Natalie's apartment and shot her five times, shot Kenneth seventeen times and, to silence a potential witness, he shot Zita Jones five times. To make matters even worse, ten year old TQ witnessed the bloody massacre.

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

Respectfully submitted,

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