

OCTOBER 2002 SESSION
PRISONER REVIEW BOARD
STATE OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
v.)	Docket No.
)	
FLOYD RICHARDSON,)	Inmate No. A-72159
)	
)	
)	

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

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

HEARING REQUESTED

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I

HISTORY OF THE CASE

Floyd Richardson ["Petitioner"] murdered George Vrabel on April 1, 1980 for no apparent reason, other than that Mr. Vrabel was in the way when Petitioner decided to help himself to the cash receipts at Twin Foods and Liquors in Chicago, Illinois. Mr. Vrabel was a clerk in the liquor department of the store. Richardson entered the store, fired a shot, announced a robbery, and took the contents of a cash register. Although he had the money and no obstacles to an escape, Petitioner then shot and killed Mr. Vrabel before he left the store. Petitioner took a jury trial, and the jury returned verdicts of guilty for both murder and armed robbery.

Petitioner then elected a bench sentencing hearing conducted by the Honorable George Marovich. The judge found Petitioner eligible for the death penalty under Ill. Rev. Stat. ch. 38, para. 9-1(b)(6) for a murder committed during the course of an armed robbery. After hearing evidence in aggravation and mitigation, the judge also decided there were no mitigating factors sufficient to preclude the death penalty. On May 10, 1984, Judge Marovich sentenced Petitioner to death for the murder of George Vrabel and furthered ordered him to serve an extended term of 60 years for the armed robbery.

The Illinois Supreme Court affirmed Petitioner's convictions and sentence on direct appeal, People v. Richardson, 528 N.E.2d 612 (Ill. 1988) (Exhibit C), and the United States Supreme Court refused to hear his case. Petitioner then returned to the Cook County Circuit Court, and Judge Dennis Porter summarily denied a post-conviction petition on March 4, 1997. The Illinois Supreme Court affirmed, see People v. Richardson, 727 N.E.2d 312 (Ill. 2000) (Exhibit D), and the United States Supreme Court again declined to hear the case. Petitioner then filed a petition for writ of habeas corpus in the United States District Court where he received an evidentiary hearing on a claim of actual innocence. That case is still pending, and a decision is expected soon.

Twenty-two (22) years after Mr. Vrabel's death, the victim's family still feels grief and anger about what Mr. Richardson did. Please read the letter submitted by Craig Vrabel, the victim's son. A copy of that letter is appended to this Response as Exhibit A.

II.

FACTS OF THE CASE

Introduction

Petitioner has been litigating this case for 18 years, and 12 jurors and 17 judges have concluded that he murdered Mr. Vrabel. The same 29 people have concluded that, especially in light of his extensive criminal record, justice demands that Petitioner now forfeit his life for the life he has taken. Throughout these lengthy proceedings, the State has repeatedly proven that Petitioner is a seasoned and heartless criminal who committed most of his crimes in his very own neighborhood. Petitioner's mother once claimed that Petitioner "helped the neighbors", but in point of fact he robbed, hurt and murdered his neighbors. (C-131). In a similar manner, Petitioner's mother once averred that Petitioner was always respectful to adults, but Petitioner shot Mr. Vrabel in the chest, shot another man named Fitzpatrick in the back, tried to shoot a police officer, and assaulted two jail guards, necessitating medical treatment for one of them.

In the trial court, the State proved Petitioner's criminal history and proved that Petitioner, a Black Gangster Disciple, had committed 13 offenses in the area between 71st and 79th Streets. Indeed, Petitioner's own mother agreed that he had nothing to do except "be on the corner" of 79th Street and commit crimes. (R. 932)¹. The judge who sentenced him found that Petitioner is a person who "staked out a territory, a turf" and further found that Petitioner would "prey" on any person who entered that turf. (R. 1003). A defense expert similarly agreed that "there is a history of criminality throughout Petitioner's family". (C-96).

¹ References to the record of proceedings, now on file with the Illinois Supreme Court, are designated "R.".

The State's Case In Chief

Petitioner Robs And Kills George Vrabel

On April 1, 1980, Shirley Bowden was working at Twin Foods and Liquors on East 79th Street in Chicago when she noticed Petitioner standing by a display towards the rear of the store. Miss Bowden testified that Petitioner passed within a few feet of her as he walked back into the liquor department, where the victim, Mr. Vrabel, worked as a clerk. She then heard a shot, followed by the warning, "Stay down mother f--r. This is a stickup. Stay down." Bonnie Williams, another employee of the store, testified that she was told someone was robbing the store. She ducked behind the counter but got up when she heard a shot. Both women looked toward the liquor department and saw Petitioner reach behind the counter and take money out of a cash register. Petitioner then ran back to the front door of the store, passing both Bowden and Williams; the women observed him at close range. Bowden contacted the police and then went to the liquor department where she found Vrabel lying on the floor behind the counter, bleeding. Mr. Vrabel was pronounced dead upon arrival at a nearby hospital. Mr. Vrabel was killed by a bullet wound to his chest, and the gun had been fired at close range.

Petitioner has greatly distorted the facts of this case when he claims that the eyewitnesses were able to identify him only because police officers repeatedly showed them his photograph. (Pet. 5). In point of fact, Bonnie Williams unequivocally identified Petitioner from the first group of photographs the police showed her. Shirley Bowden did not view photographs or a lineup, nor did she need to, because she knew Petitioner from the neighborhood and recognized him when she saw him. In this connection, Petitioner also misleads the Board when he claims that "none of the four witnesses who identified Petitioner at trial had known him previously". (Pet. 1). As the Illinois Supreme Court has already found,

both women testified that they had seen Petitioner in the neighborhood prior to April 1, 1980, and both identified Petitioner at trial as the gunman. Richardson, 528 N.E.2d at 615. The court also found that the police officers did not engage in any improper practices with respect to the photographs and lineup. Id. at 621-23.

Petitioner Robs And Shoots Thomas Fitzpatrick Four Days Later

On April 5, 1980, Thomas Fitzpatrick was working at his tavern on South Exchange Street, approximately 1 mile from the location of Mr. Vrabel's murder. Petitioner entered the bar, waved a gun and shouted "this is a stickup". Petitioner then jumped over the bar and shot Fitzpatrick in the back when Fitzpatrick attempted to run away. Fitzpatrick managed to crawl to a hallway lit by a fluorescent light. As Fitzpatrick lay on the ground face up, Petitioner stood over him demanding money. Petitioner left when he realized there wasn't any more. Fitzpatrick later viewed some photographs and tentatively identified Petitioner as the gunman. When he viewed a lineup, Fitzpatrick stated "when I saw Floyd Richardson in the lineup, I knew it was him, positively. There was no doubt in my mind". (R. 579)². Fitzpatrick identified Petitioner again in open court.

Ray Slagle also recalled the events of April 5, when he was entering the bar. Slagle said someone "hollered" to him, he heard gunshots, and he saw Petitioner rifling the cash registers behind the bar. When Petitioner ran toward the door, Slagle threw a chair at him. Slagle positively identified Petitioner during the first opportunity he was given, when he inspected a group of color photographs. Slagle also identified Petitioner as the gunman at a lineup and in open court.

² The police officers arranged for two lineups in this case. The first of these, scheduled in July of 1982, had to be terminated before the witnesses came in because Petitioner threw himself on the floor, covered his head, and refused to participate. Slagle identified Petitioner at a second lineup held in October. The Illinois Supreme Court so found. Richardson, 528 N.E.2d at 622.

A firearms examiner compared fired bullets recovered from Mr. Vrabel's body and the Twin Foods Store with a bullet recovered from Fitzpatrick's abdomen. The witness testified that all 3 bullets had been fired from the same gun. The gun itself was never recovered. Petitioner, in contrast, now claims that "no physical evidence connected him with the offense". (Pet. 1).

Petitioner was arrested in 1982 by a police officer responding to a radio broadcast of a robbery in progress on East 79th Street, and the details of this incident were adduced at the sentencing hearing. When he saw Petitioner crouch down and reach toward his hip pocket, one of the officers fired and shot Petitioner in the hands. Petitioner managed to temporarily escape but, by following a trail of drops of blood, the officers soon found Petitioner hiding in the shadows of a building. The officers never found a gun, but Petitioner was wearing a shoulder holster at the time of the incident. Petitioner then became a suspect in Mr. Vrabel's murder when a police officer, inspecting daily reports, noticed that Petitioner's physical description matched that of Vrabel's murderer.

The Defense Case

A Chicago police officer testified that, after being called to the scene of Mr. Vrabel's murder, he sent a teletype message describing the suspect as wearing a full, trimmed beard. Arkonia Richardson, Petitioner's mother, also testified for the defense and said that Petitioner could never grow a full beard and had only a mustache and a goatee. But the State supplied a photograph of Petitioner taken 6 months after Petitioner murdered Mr. Vrabel, in which Petitioner has facial hair along his chin and on the sides of his face. Moreover, State's witness Slagle agreed that the robber had a "scraggly" beard. (R. 616). In his final summation to the jury, an assistant state's attorney later argued that "I don't know what you'd call it, if it's not a beard ... Maybe it's not full, but it's a beard". (R. 676).

The Capital Sentencing Hearing

The Eligibility Phase

Petitioner waived a jury for sentencing, and Judge Marovich found Petitioner was eligible for the death penalty because he had committed a murder in the course of an armed robbery.

The State's Evidence in Aggravation

The State relied heavily on the evidence of Petitioner's extensive criminal record. The evidence showed that, after he turned 17 in 1971, Petitioner committed a crime every year that he was not in prison.

In 1971, a Chicago police officer arrested Petitioner for theft of gasoline from a car parked in a parking lot.

In 1972, another Chicago police officer arrested Petitioner after a woman reported that Petitioner had struck her in the face.

No charges appear in Petitioner's record between 1972 and 1975, when he served in the United States Marine Corps, from which he was dishonorably discharged. Petitioner himself admitted in his sworn testimony that he was AWOL from the Marines for 498 days of the 850 days in which he was enlisted.

In 1975, a police officer arrested Petitioner after a man reported that Petitioner had set his car on fire. Petitioner was also involved in a fight among several people on the lawn near the car. Petitioner was charged with arson and disorderly conduct, for which a bond forfeiture and warrant were later entered when he failed to appear in court.

In 1976, a security guard called the police to report that Petitioner had caused a disturbance in a bar on East 79th Street. When they went to arrest him for disorderly conduct, police officers discovered an outstanding arrest warrant for the arson.

In 1977, police officers arrested Petitioner and his younger brother and charged them with robbery after they accosted two boys on East 79th Street as they were leaving Harold's Chicken Shack. One of the boys reported that, after demanding money, the men had struck him on the face and lip and had thrown him through a plate glass window. The men also struck the other child and broke his tooth. Petitioner and his brother stole \$7 from the boys.

Five months later, Petitioner approached a man who was leaving Leon's Barbeque on East 79th Street. At Petitioner's direction, the man got into his car and drove to an alley across the street. The man thought Petitioner was armed because Petitioner acted as if he had something in his pocket. After he took the man's money and his watch, Petitioner forced his victim to take off his pants and walk down the alley. Petitioner was apprehended within an hour after officers found him hiding under a porch with the victim's watch and money in his possession. Petitioner pleaded guilty to robbery and was sentenced to serve 1 to 3 years in prison.

Petitioner was released on parole on February 2, 1978. In April of that year, a Chicago police officer assigned to the Gang Crimes Unit was investigating a robbery when he saw Petitioner on East 71st Street and asked him for identification. After Petitioner became "very hostile, loud and vulgar", the officer arrested him for disorderly conduct. There was also an outstanding theft warrant at that time.

In June of 1978, police officers charged Petitioner with felony theft after they saw him driving a stolen van. When the officers signaled him to pull over for a traffic violation,

Petitioner accelerated and tried to drive away. Petitioner drove the van into the grass, however, where it became stuck, and the officers were able to apprehend Petitioner after a short foot chase. Petitioner later admitted that he had decided to take the van when someone he knew pulled up to a liquor store and left the engine running. (Testifying on his own behalf, Petitioner also said he stole the van because he had been drinking with friends and “had a bag on” at the time). Petitioner was present when the officers interviewed the car's owner, and Petitioner said “hey, man, I stole your vehicle. Give me a break. I just got out of the joint”. Petitioner was convicted of felony theft and sentenced to serve 30 months in the penitentiary.

Petitioner was released from prison on September 14, 1979. Two weeks later, on September 29, 1979, police officers were called to a South Yates address to investigate a report of an aggravated assault with shots fired. When officers tried to arrest him, Petitioner became loud and abusive, and the officers needed restraints to subdue him. An outstanding theft warrant was discovered at that time.

On April 1, 1980, Petitioner committed the offenses in the instant case when he robbed Twin Food and Liquors and shot and killed George Vrabel. Four days later, Petitioner robbed Thomas Fitzpatrick and shot him in the back in Fitzpatrick's bar on South Exchange.

In September of 1980, police officers arrested Petitioner after a man reported that Petitioner had assaulted him with a stick in front of the Cook County Criminal Courts Building when he had appeared to testify.

In January of 1981, a Chicago police officer, acting on a citizen's report of a witnessed drug sale, arrested Petitioner and found the controlled substance Talwin in his possession. Petitioner was subsequently sentenced to serve 1 year in prison for this offense.

In February of 1981, Chicago police officers went to Petitioner's East 75th Street apartment to serve him with a warrant. After they knocked on the door, a female voice asked them to wait. The officers entered the apartment, however, when they heard a window opening. The officers saw Petitioner getting up from bed with a laundry bag, and the officers could see the butt of a gun protruding from the bag. Officers arrested Petitioner and charged him with unlawful use of weapons, a felony, after they investigated the bag and found a loaded 20 gauge sawed-off shotgun. Petitioner was on parole at the time. In July, Petitioner was convicted and given a 2 year sentence in the Department of Corrections.

Petitioner was paroled again on January 20, 1982. In May of that year, Petitioner robbed Mildred Hubbard and her friends after they pulled into a parking lot on 79th Street. Petitioner placed a gun in Hubbard's side and repeatedly threatened to kill her. After striking her in the face and tearing her shirt, Petitioner ran away with their money, jewelry and a purse. Hubbard and her friends called the police from Leon's Barbeque on 79th Street and gave a physical description of the robber. Petitioner was then arrested and shot in the hand after he apparently reached for a gun to kill a police officer, as recounted above.

Petitioner was then held in the county jail to stand trial for murder. In 1983, a correctional officer searched Petitioner's cell and found 2 bottles of homemade liquor and a copy of the Black Gangster Disciples bylaws. The officer confiscated these items and showed them to his superior. When the superior officer confronted Petitioner, Petitioner called him a silly h-----, mother----- and announced "I am the Black Gangster Disciple". Petitioner then struck him in the eye and back, necessitating medical treatment, and Petitioner also rammed his head into the chest of another officer who arrived to provide assistance. Five or six officers were needed to subdue Petitioner.

Mitigating Evidence

Petitioner presented two witnesses in mitigation. Victoria Smith, Petitioner's common law wife, testified first and said she had known Petitioner for 10 years. Smith lived with Petitioner off and on for 6 years, and Petitioner fathered her oldest child, although the child was born after Petitioner was sent to prison. Petitioner was also imprisoned when their second child was born. Petitioner tried to "make life a little bit better", she testified. She attributed his criminal record to the fact that "the world don't accept him". (R. 911).

During the later post-conviction proceedings, the evidence showed that both Smith and Petitioner used drugs heavily, with the result that one of their children was born with a drug-related birth defect. Petitioner engaged in chronic substance abuse, including heroin, cocaine, "T's and blues", marijuana, alcohol and other substances.

Petitioner's mother testified that her husband was killed at work while Petitioner was a teenager and that, after his father's death, Petitioner helped look after his brothers and sisters while his mother worked. Mrs. Richardson also recalled that Petitioner returned to her home when he was discharged from the Marines in 1975. Petitioner was convicted of robbery and sent to prison in 1977, however. When asked if Petitioner had involved his 17 year old brother Joe in the robbery, Mrs. Richardson answered "not that I know of".

Mrs. Richardson took Petitioner back into her home again when he was paroled in 1978. She "didn't recall" whether Petitioner was sent to prison 4 months later, but she did agree that he was paroled to her home again in 1979. Once again, Mrs. Richardson tried to "do her best" for her son.

Petitioner still couldn't find a job, however, and he had nothing to do except "be on the corner". He spent most of his time on 79th Street, where he was arrested. (R. 932).

Petitioner Floyd Richardson then took the stand and testified on his own behalf. Petitioner said he quit school in order to work and help support his family after his father died. He maintained the yard, for example. Although he denied any involvement in the crimes at bar, Petitioner freely admitted committing the other crimes for which he had been convicted.

Petitioner said he joined the Black Gangster Disciples in 1977, the first time he went to prison. He admitted that he had Disciple recruitment literature in his prison cell, but denied ordering others to read it.

The judge decided there were no mitigating factors sufficient to preclude the death penalty and sentenced Petitioner to death for the murder of George Vrabel.

Institutional Adjustment

The records of the Illinois Department of Corrections, attached hereto as Exhibit B, show that Petitioner has been in trouble in prison every year between 1985 and 2001. The records summarize 71 incidents for which he has been disciplined. These certainly incidents do not suggest a penitent attitude and do not make him an attractive candidate for clemency.

III.

REASONS FOR DENYING THE PETITION

Claim Of Actual Innocence

Despite the overwhelming eyewitness testimony and physical evidence in the case, Petitioner now claims he is entitled to clemency because he did not commit the robbery or murder of which he stands convicted. Petitioner makes this claim even though 12 jurors and 17 judges have studied the evidence carefully and have been firmly convinced - convinced beyond reasonable doubt - that he is lying. Richardson, 528 N.E.2d at 624. Petitioner's claim of innocence was recently the subject of a hotly-contested evidentiary hearing conducted in the federal district court, from whom a decision is expected any day.

Petitioner's entire claim rests on the demonstrably false testimony of two witnesses named Myron Moses and Leonard Butler. Moses now claims he was standing outside the grocery store at the time of the robbery and murder and saw the offender come running out of the store. Moses does not know who the robber was, but he says he is sure it was not Petitioner. But no one, least of all Moses, has ever explained why Moses waited 22 years after the murder to come forward and claim, for the very first time, that he saw someone other than Petitioner running from the crime scene. Indeed, Moses talked to the police after Petitioner's arrest, and he never once told them that they had arrested the wrong man. Moses waited, instead, for the years to pass, and presumably for the State's witnesses' memories to dim, to come forward and give false testimony for a man he has known for many years. For this reason alone, Moses' evidence should be treated with contempt.

Petitioner now claims that Moses "has consistently stated that petitioner was not the criminal". (Pet. 1, 13). But the police reports in this case state that Moses tentatively identified Petitioner at a lineup conducted at police headquarters a few months after his arrest. Moses told the officers he could not be absolutely sure because he had only seen the side of the offender's face. This makes sense, because Moses began to run as soon as he heard the gunshots inside the store. For these reasons, then, it is also obvious that there was no dark prosecutorial misconduct in this case, as Petitioner now claims. The prosecutors did not hide evidence or conceal the existence of Moses and Butler. The State provided their names and addresses to Petitioner long before the trial began – and Petitioner never denied this point. (R. 631-33). Moreover, the prosecutors did not lie about potential testimony and did not influence defense counsel's decision not to call Moses to testify at trial. (Compare Pet. 14). Petitioner's lawyers knew that Moses was a bad witness who could be contradicted by his earlier identification, and Moses' obviously false testimony would have done Petitioner's case more harm than good. Mrs. Richardson's testimony may not have been particularly strong, but it was better than a lie that could be exposed to the jury within minutes.

At trial, the prosecutors were prepared to call the second witness, Leonard Butler, to testify that, shortly after the murder, Butler heard Moses say that he had seen Petitioner running out of the grocery store. This makes sense; Moses was dating Butler's sister at the time, and Moses very likely would have reported the startling things he'd seen at the grocery store to them. All these years later, however, Butler has changed his mind and now states he did not in fact hear Moses make those statements after all. There are any number of plausible reasons why Butler would now wish to change his story. Butler has twice been convicted of weapons offenses, is no longer employed by the Rosemont Police Department, and may well have an

animosity for the government. His exact motivation for lying is not very important, however, because it is also a fact that Butler has a criminal conviction for perjury. Butler is not just a man likely to tell lies: Butler is a man who has already been convicted for telling lies. In a curious twist in the district court proceedings, Butler waited until 10 years had elapsed from the date of his perjury conviction to give a false affidavit helping Richardson. Many times the government is not permitted to prove a prior conviction that is more than 10 years old, and Butler signed the affidavit on the exact day that the 10 year period of time elapsed. Butler thought - erroneously as it turned out - that the State would not be permitted to mention that conviction.

In sum, the State submits that Petitioner should not be seeking the mercy of the Governor on the basis of perjured testimony. Petitioner's claim for clemency should be denied for this reason alone. At the very least, however, the Board should decline to consider this claim and should defer to the federal courts, where Petitioner's habeas petition is now pending, because it is the federal judge who has heard all the lengthy and highly detailed evidence in this case. Despite his scathing criticism of the state courts, Petitioner has not voiced any concern about the federal courts' willingness to protect his rights. Petitioner should consequently seek relief from them alone.

The Illinois Supreme Court Rules For Capital Cases and The Governor's Commission

Petitioner also seeks clemency because he did not receive the benefit of 85 reforms to the Illinois capital sentencing system, many of which have only been proposed rather than adopted. Petitioner cites a laundry list of new Supreme Court Rules and Governor's Commission Recommendations, and he notes that those reforms were not available at the time of his trial.

He does not make any substantial effort to show how these proposed reforms would have affected the judge's decision to impose the death penalty in this case, however. He then claims that his trial - as well as that of every other capital petitioner in Illinois - was by definition fundamentally unfair.

But the Illinois Supreme Court has expressly rejected any notion that "every capital trial has been unreliable and that all appellate review has been haphazard". People v. Hickey, 2001 Ill. LEXIS 1080 at *57 (September 27, 2001). Indeed, that court has held that the additional safeguards included in the new capital litigation rules are not to be retroactively applied, because the rules "function solely as devices to **further protect those rights [already] given** to petitioners by the federal and state constitutions" (emphasis supplied). In this connection, the court has also stated 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.

In sum, the fact that the Supreme Court, the General Assembly and the Governor's Commission have endeavored to improve the capital litigation process does not mean that an injustice would result simply because the recent reforms were not implemented before Petitioner's trial. In point of fact, a true injustice would result if it were reflexively determined that Petitioner's trial was flawed without any examination of the proceedings themselves. Every court that has examined the proceedings in this case has determined that they were fundamentally fair and that, given the circumstances of the crimes and the character of this petitioner, the death penalty is an entirely appropriate punishment in this case.

New Discovery Rules

Petitioner claims he is entitled to clemency because Supreme Court Rule 412(c), requiring pre-trial disclosure of exculpatory evidence, was not in effect at the time of his trial. (Pet. 16). This is nonsense. The rule merely restates an obligation imposed years ago by the United States Supreme Court in Brady v. Maryland, 373 U.S. 83 (1963). As Petitioner conceded in the district court, the prosecutors disclosed any exculpatory evidence known to them, and they specifically disclosed the names and addresses of Moses and Butler before the trial ever began. (R. 631-33).

Experienced Judges And Competent Counsel

Petitioner next complains that he did not receive the benefit of new Supreme Court Rules 416, 701, and 714, as well as Commission Recommendations 32-39 and 40-45, which would have assured him an experienced judge and competent counsel who would have filed a certificate of readiness for trial. (Pet. 16-17). This is nonsense, too, because the record shows that, at his 1984 trial, Petitioner was represented by 2 attorneys, one of them a supervisor for the Cook County Public Defender, who had specialized in criminal defense and who had been practicing law for 11 and 6 years respectively. Petitioner's lawyer also says that well qualified trial counsel would have presented additional mitigating evidence, but he has not taken the time to identify that evidence or show how it would have outweighed Petitioner's appalling criminal record. Moreover, we will never know whether Petitioner's lawyers made strategic decisions not to investigate his case further, and risk uncovering unfavorable evidence about his character and background, inasmuch as his attorneys filed affidavits in the district court stating they cannot recall the extent of their pre-trial preparation so many years ago. Finally, Petitioner has

not made any specific complaints about Judge George Marovich, who was such an able judge that he was appointed to the federal bench after the trial in this case.

Depositions

Petitioner wishes he had had the benefit of depositions taken under Rule 416 and Commission Recommendations 46-54. (Pet. 16-17). Petitioner has not shown how depositions would have helped him; his attorneys had already interviewed Moses, who (although a terrible witness) was willing to testify him, and his attorneys allegedly declined to interview Butler at all.

DNA Evidence

Petitioner next observes that new Rule 417 governs the use of DNA evidence at trial. (Pet. 16). So it does. But Petitioner has never claimed that the offender left any bodily fluids or other evidence at the scene that could be tested.

Eligibility Factors

Petitioner next seeks clemency because he was found eligible for the death penalty under the felony murder factor, a factor the Commission would like to discard. (Pet. 17). The Commission's recommendation has not been adopted or made law, however. Moreover, that does not mean that Petitioner's sentence was wrong much less illegal. The Illinois Supreme Court has expressly rejected the Commission's logic, and the court has held that the current death penalty statute properly narrows the class of individuals eligible for the death penalty and reasonably justifies the imposition of a more severe sentence for more depraved offenders. People v. Ballard, 2002 Ill. LEXIS 376 at *73 (2002). Each of the current eligibility factors, including the felony murder factor, represents a legitimate determination by the Illinois legislature that certain types of murders are so deplorable that the death sentence may be

imposed. Each one is intended to provide a strong disincentive for the offender to kill the victim. The felony murder factor, in particular, saves lives by threatening a more severe penalty for those who, like Petitioner, kill their victim for no apparent reason after the commission of a felony. Perhaps the law will be changed someday, but Petitioner's sentence is nevertheless legal and appropriate.

Decision to Seek Death

Petitioner next claims his sentence should be reduced because the decision to seek death was made without Commission Recommendations 29-31 and uniform protocols to guide the prosecutor's discretion. (Pet. 17). But both the state and federal courts have consistently stated that such protocols are not essential to a fair sentence. See, e.g., People v. Jamison, 197 Ill. 2d 135, 161-62 (2001). 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 claim that the decision to seek death in his case was the result of an abuse of discretion. Presumably any reviewing board would approve the death penalty for a man such as Petitioner who committed a totally senseless murder, chose to involve himself with gangs, and who has committed crimes or prison violations every year of his life since the age of 17. There is, then, no reason to reduce a lawfully imposed sentence.

Allocution

Petitioner also claims he was denied the opportunity to make a statement in allocution at sentencing. (Pet. 18). It is difficult if not impossible to see how Petitioner was prejudiced in this case, however, inasmuch as Petitioner took the stand at sentencing and testified extensively on his own behalf. Petitioner was denied only one opportunity, that is the opportunity to make an **unsworn** statement that would not expose him to the penalties for perjury. Both the state

and federal courts have also held that no capital defendant has any right to make an unsworn statement of any sort. See, e.g., People v. Gaines, 88 Ill. 2d 342, 380, 430 N.E.2d 1046 (1981). There is no basis for a sentence reduction here.

Burden Of Persuasion

Petitioner next seeks the benefit of Commission Recommendation 65, which would direct the trier of fact to weigh the aggravating and mitigating circumstances in each case. But the law at the time of Petitioner's trial, Ill. Rev. Stat. Ch. 38, para. 9-1(c) (now recodified as 720 ILCS 5/9-1(c)), told the judge to do just that, and there is no reason to assume that Judge Marovich did not know the law. Petitioner also claims the law imposes a burden of persuasion on the defendant to show why death is not an appropriate punishment. All the state and federal courts have disagreed with him. See, e.g., People v. Coleman, 129 Ill. 2d 321 (1989).

Supreme Court Review

Petitioner claims the benefit of Commission Recommendation 70, which would require the Illinois Supreme Court to determine whether the death penalty was the appropriate punishment for him. (Pet. 18). But the Illinois Supreme Court has already stated it will vacate any death sentence that is excessive in light of the facts of the case and the Petitioner's background. See, e.g., People v. Blackwell, 171 Ill. 2d 338 (1996). The Illinois Supreme Court did not vacate Petitioner's sentence because it was not excessive or disproportionate.

Adequate Funding

In his final claim, Petitioner notes that the new Capital Litigation Trust Fund makes new appropriations available for pre-trial investigation of a case. (Pet. 18). But the courts have always had authority to pay reasonable or necessary expenses, the same standard which applies under the Capital Litigation Trust Fund. 725 ILCS 124/15(c). Moreover, the Cook County

Public Defender, who represented the petitioner in this case, has significant resources available for capital litigation. Most importantly, however, Petitioner has not shown how additional money would have enhanced the accuracy of the verdicts or sentence in his case, and has not made a convincing case for clemency as a result.

CONCLUSION

Floyd Richardson committed the crimes of first degree murder and armed robbery. Floyd Richardson received a fair trial and a fair sentencing hearing. Floyd Richardson now asks the state to give him the very mercy he denied his victim. For all these reasons, the People of the State of Illinois respectfully request that this Board and Governor Ryan deny a pardon, clemency, or any other form of relief to petitioner Floyd Richardson.

Respectfully submitted,

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