

OCTOBER 2002 SESSION
PRISONER REVIEW BOARD
STATE OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)	
)	Docket No. \
vs.)	
)	
HENRY GRIFFIN,)	Inmate No. A-83622
)	
)	

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

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I.

THE FACTS OF THE CASE

On June 21, 1984 at approximately 3:00 A.M., petitioner placed a .38 caliber revolver to the back of Carl Gibson's head and fired four times. (R. 1478, 1481-83) Gibson died immediately. (R. 1483, 1505-06)

Petitioner had no personal motive for killing Gibson. They appeared to be friends, because, just before the murder, Gibson was in petitioner's family's home. (R. 1479-80) However, Petitioner's occupation was as an "enforcer" for a major drug operation run by a man named Charles Ashley. The enforcer's job was to kill people on Ashley's command. Thus, petitioner accepted a contract in which he agreed to kill Gibson in exchange for \$2500, which would be paid partly in money and partly in cocaine. (R. 1475, 1485)

Before he was murdered, Gibson, also an enforcer for Ashley, ran the day-to-day operations of the drug operation. (R. 782-83, 887) The drug house was located at 47th and Indiana on Chicago's south side. (R. 883, 1476) In the summer of 1984, Ashley's drug ring became the target of a major investigation called "Operation Camelot." (R. 1253) After a series of police raids where it appeared that the police treated Gibson differently than everyone else,

Ashley believed that Gibson was leaking information to the police.

On June 15, 1984, Ashley tried to hire Darryl Moore to kill Gibson. (R. 883-85, 887) Moore, like petitioner, was an "enforcer" for Ashley. (R. 878.881) Moore refused the contract only because Ashley was not offering enough money. (R. 887-88) Moore suggested that Ashley offer the contract to petitioner. (R.888) Petitioner and Moore had previously worked together when Ashley had hired them to kill Ashley's brother. (R. 961. 1001-03, 1475-76)¹

On June 20, 1984, at approximately 9:00 or 10:00 P.M., petitioner, Moore, Ashley and James Allen were at the drug house at 47th and Indiana. (R. 889, 1476) Ashley offered to pay petitioner \$2500 for the murder. (R. 1473-75) Petitioner accepted the contract. (R. 1473-75)

Petitioner asked Moore if he wanted to be in on the contract, but Moore refused. (R. 890) Petitioner then apparently offered a piece of the contract to Allen.

That same night, June 20-21, 1984, petitioner and Allen went to see Moore. (R. 1476-78) Moore gave petitioner a .38 caliber revolver with a short barrel. (R. 1478) Petitioner said he did not tell Moore what the gun was to be used for. (R. 1477) Moore said petitioner said he had a contract to kill Gibson. (R. 889-90, 1007, 1057)

Petitioner and Allen left Moore's and, after another stop, went to petitioner's home at 93rd and Stoney Island. (R. 1479) Gibson was apparently inside petitioner's home when they arrived. (R. 1479-80) Petitioner and Allen told Gibson that Ashley wanted to see him. (R. 893) When petitioner and Allen came out of the home, Gibson was with them. (R. 1480)

All three men then got into the car that petitioner had rented. (R. 1480) Allen was in the driver's seat. (R. 1480) Gibson was in the front passenger seat. (R. 1480) Petitioner was in

¹ Although defendant and Moore went looking for Ashley's brother to kill him. they couldn't find him,

the rear passenger seat directly behind Gibson. (R. 1480) Allen drove to the Chicago Skyway. (R. 1481) It was approximately 3:00 a.m. on June 21, 1984. (R. 1471)

While Allen was driving along the Skyway, petitioner put the gun to Gibson's head, fired and killed him. (R. 1481) When Allen got off the Skyway at 73rd Street, petitioner pulled Gibson's body out of the car and dumped it on the exit ramp. (R. 1483)

Petitioner drove several miles south and abandoned the rental car. (R. 1484-85) Petitioner gave the .38 caliber revolver to Ashley later that day or the next day. (R. 1484)

Petitioner saw Moore later on the day of the murder. (R. 893) Petitioner told Moore "that he had a contract out for Mr. Ashley, and that it was easy..." (R.893)

A day or two later, Ashley paid petitioner \$1500 in cash and \$1000 in cocaine. (R. 1485)

Petitioner was not apprehended until August 9, 1984, almost two months after the murder. (R. 1526, 1595-99) Petitioner became a suspect when Moore, who was in jail on unrelated weapons and narcotic charges, contacted Chicago Police Detective Michael Pochordo. (R. 1645-47) Moore offered the detective information about the homicide where "the body of the victim had been dumped on the skyway exit ramp." (R. 1647)

In exchange for Moore's information and testimony, the State's Attorney's Office agreed to drop the weapons and narcotics charges against Moore. (R. 882, 1648)

so they were never able to collect on that contract. (R. 961, 966, 1061)

PETITIONER'S ORAL AND WRITTEN ADMISSIONS

Moore agreed to call petitioner on the telephone while the call was being tape-recorded. (R. 882, 943-44 1530-31, 1648) During this tape-recorded telephone conversation, petitioner admitted his role in Gibson's murder. (R. 1152-55)

As petitioner was making his admissions on the overhear tape, police officers were simultaneously traveling to his apartment. (R. 1596) When the officers entered petitioner's apartment, they found petitioner in the bathroom with his telephone in his hand. (R. 1598) The police arrested petitioner while Assistant State's Attorney Neil Cohen was still listening on the overhear to petitioner speaking with Moore. (R. 1266)

After his arrest, petitioner made a written confession to Gibson's murder. (R. 1470-87)

THE VERDICT AND SENTENCING HEARING

On July 2, 1985, the jury found petitioner guilty of murder, solicitation to commit murder and conspiracy to commit murder. (R. 2026)

The People sought the death penalty. Petitioner waived his right to have a jury sentence him. (R. 2044-45) Thus, the sentencing decision was in the hands of Judge Earl Strayhorn.

Judge Strayhorn found petitioner eligible for the death penalty because he committed a contract murder, which is a statutory eligibility factor. (R. 2047-48) (R. 2048-49)

In aggravation, the People introduced certified copies of petitioner's convictions for attempt robbery (1965), armed robbery (1972), theft of United States mail (1972), United States bank theft, unlawful use of weapons (1978) and two counts of possession of controlled substance (1982). (R.2050-51)

Petitioner testified in mitigation and said that he did not do contract murder work. (R. 2057, 2061) He said that he had been addicted to heroin and cocaine for many years. (R. 2053) Petitioner said that, at the time of his arrest, he was contributing to the financial support of all six of his children, but that he did not earn the money to support himself and his drug habit doing "legitimate work." (R. 2052, 2055, 2057)

Petitioner testified that, when he was 14 years old, he was committed to a mental institution because he was suffering from depression and he had attempted suicide. (R. 2054-55) He successfully escaped from the mental institution twice. (R. 2054-55)

On August 26, 1985, after hearing all of the evidence in aggravation and mitigation, Judge Strayhorn sentenced petitioner to death. (R. 2678)

II.

PROCEDURAL HISTORY

While Petitioner's direct appeal was pending in the Illinois Supreme Court, Moore recanted his trial testimony. The Illinois Supreme Court stayed the appeal and allowed Petitioner to litigate the reliability of Moore's recantation in a post conviction proceeding.

On October 30, 1987, Petitioner filed a petition for post conviction relief before Judge Earl Strayhorn, the judge who had conducted his trial and sentenced him. His sole issue was that he should be given a new trial because of Moore's recantation. On September 28, 1989, Judge Strayhorn denied the petition without an evidentiary hearing.

Petitioner then included the denial of post conviction relief in his first appeal to the Illinois Supreme Court. On March 12, 1992, the Illinois Supreme Court affirmed Petitioner's convictions and death sentence. The court also affirmed the denial of post conviction relief. People v. Griffin, 148 Ill.2d 45, 592 N.E.2d 930 (1992). Rehearing was denied on June 1, 1992. The United States Supreme Court denied certiorari on February 22, 1993. Rehearing was denied on April 19, 1993.

Petitioner then was given leave to file a second post conviction petition, which he filed on August 5, 1993. On February 10, 1995, Judge Strayhorn denied the petition without an evidentiary hearing. On September 11, 1997, the Illinois Supreme Court affirmed. People v. Griffin, 178 Ill.2d 65, 687 N.E.2d 820 (1997). The United States Supreme Court denied certiorari on June 26, 1998.

On August 14, 1998, Petitioner filed a petition for writ of habeas corpus in the United States District Court, Northern District of Illinois. That petition is still pending before Judge James Zagel. Judge Zagel granted an evidentiary hearing to explore the issue of Moore's

recantation. Moore and Detective Pochordo, who served as his contact, have already testified.

The hearing is set to resume on October 29, 2002.

III.

REASONS FOR DENYING THE PETITION

A.

**PETITIONER DOES NOT DESERVE
MERCY, SINCE IN HIS LINE OF WORK AS A
PROFESSIONAL KILLER, HE DID NOT KNOW
THE MEANING OF THE WORD.**

In 1984, Petitioner was an employee of Charles Ashley, a drug lord who ran a major narcotics operation on Chicago's south side. Petitioner's profession: hit man. He killed on command. He killed without thinking. He killed for money. On June 21, 1984, he put four bullets into the back of a friend's head. His sole personal motive was that he had been hired to kill. His payment: \$1500 in cash and \$1000 worth of cocaine.

On June 21, 1984, the victim, Carl Gibson, was at Petitioner's family home. Gibson was apparently visiting with the family because he was not accompanied by Petitioner. Petitioner and James Allen arrived later. In accordance with their pre-arranged plan, Petitioner and Allen lured Gibson into their car by telling him that Ashley wanted to see him. Instead of taking Gibson to see Ashley, Allen drove out onto the Dan Ryan Expressway. Gibson sat in the front passenger seat. Petitioner sat directly behind him. While Allen drove, Petitioner fired four times into Gibson's head. Allen then turned onto the Chicago Skyway. At an exit ramp off the Skyway, Petitioner dumped Gibson's body out onto the road. Petitioner and Allen then drove away, having completed that night's business.

This murder occurred within two months of Petitioner's release on parole from the penitentiary. In fact, prior to this murder, Petitioner spent his entire adult life either breaking the law or in jail. When he was 17 years old, he was convicted of attempt robbery (1965). He

was sentenced to 1 to 3 years. When he was 24 years old, he was convicted of armed robbery and theft of United States mail (1972). He was sentenced to 3 to 3 ½ years. At age 30 he was convicted of United States bank theft and unlawful use of weapons (1978). He was sentenced to 4 years. At age 34, he was convicted of two counts of possession of controlled substance (1982). He was sentenced to 3 years on one count and 5 years on the other. (R.2050-51; Petitioner's rap sheet, attached as Exhibit A) It was the possession of controlled substances convictions that he was on parole for when he killed Gibson.

This record would be bad enough, but there is even more. Petitioner was indicted for the murder of Robert Ciralsky, another murder for hire that occurred six weeks after the Gibson murder. The only reason these charges were dropped was because the drug lord implicated along with Petitioner in this case, "got to" the informant, Darryl Moore, and pressured him into changing his testimony. When the case at hand is viewed in conjunction with the Ciralsky case, there is a glimpse of Petitioner's true life and it is clear that Gibson's murder was not an isolated event. Rather, murder was a way of life for petitioner.

Thus, the person standing before the Board and the Governor asking for clemency is a hired killer. He is a man who killed a friend for no other reason than that he was paid \$1500 in cash and \$1000 in cocaine. He has already proven that he would kill anyone, any time as long as the price was right. He does not deserve mercy.

B.

**THE NEW ILLINOIS SUPREME COURT
RULES ARE NOT TO BE APPLIED
RETROACTIVELY. FURTHER, THE
COMMISSION RECOMMENDATIONS ARE NOT
LAW AND MAY NEVER BECOME LAW.**

Petitioner asserts that he is entitled to clemency because he did not receive the benefit of the changes to the Illinois capital sentencing system which have recently been adopted, proposed or enacted. By relying upon a laundry list of new Supreme Court Rules, statutes and proposals from the Governor's Commission on Capital Punishment which were not available at the time of his trial, petitioner claims that his trial (as well as that of every other capital defendant in Illinois) was by definition fundamentally unfair. However, the Illinois Supreme Court has expressly rejected the claim "that every capital trial has been unreliable and that all appellate review has been haphazard" (People v. Hickey, ___ Ill. 2d ___, 2001 Ill. LEXIS 1080 at *57 (No. 87286 September 27, 2001)). Rather, the Court held that the additional safeguards included in its rules governing capital cases are not retroactively applicable because they "function solely as devices to further protect those rights given to defendants by the federal and state constitutions" and that "[a] violation of procedures designed to secure constitutional rights should not be equated with a denial of those constitutional rights." Id. at *63, 64.

Thus, the fact that the Court, the General Assembly and the Governor's Commission have endeavored to improve the process does not mean that an injustice would result simply because the recent changes were not applied retroactively to petitioner's case. Instead, a true injustice would only result if it were reflexively determined that petitioner's trial was fundamentally unfair without any examination of the proceedings themselves. It is telling,

however, that petitioner has not even attempted to demonstrate how the recent changes would have affected the outcome of the proceedings. Moreover, petitioner ignores the fact that every court which has examined the proceedings in his case determined that they were fundamentally fair and that he was not unduly prejudiced in any manner.

Petitioner asserts that he is entitled to clemency because the new Supreme Court Rules governing capital cases were not applicable to his proceedings. However, the Illinois Supreme Court has clearly held that the amendments to its rules are not retroactively applicable. Hickey, 2001 Ill. LEXIS 1080 at *65.

C.

**THE COMMISSION RECOMMENDATION
THAT WOULD ELIMINATE CONTRACT
MURDERS FROM THE DEATH PENALTY
ELIGIBILITY FACTORS, HAS BEEN REJECTED
BY THE ILLINOIS SUPREME COURT.**

Petitioner asserts that he is entitled to clemency because he was 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.

However, 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 statute's eligibility factors” and A[e]ach 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. A contract murder, like the one committed by Petitioner, is solidly within that group of deplorable murders.

D.

SINCE PETITIONER CONFESSED TO THE MURDER OF CARL GIBSON ON NO LESS THAN THREE OCCASIONS, AND SINCE HE NEVER ONCE ASKED A COURT TO RELEASE HIM ON THE BASIS OF “ACTUAL INNOCENCE,” HIS CURRENT CLAIM OF INNOCENCE IS A TRANSPARENT PLOY.

Petitioner now claims that he has “always” maintained his innocence. It is true that, at sentencing, Petitioner testified that he did not do contract murder work and that he had not killed Gibson. However, at that point, Petitioner was literally fighting for his life. Of course he denied that he made his living by indiscriminately killing people. And this denial is exactly the opposite of what Petitioner said on three other occasions.

Just prior to his arrest, Petitioner was on the telephone with Darryl Moore. Unbeknownst to Petitioner, the call was being taped by the State’s Attorney’s Office. Petitioner

and Moore were discussing the hit on Gibson.

MOORE: Griff, hold on, hold on, hold on, Griff, it's not that I believe. If you remember correctly me and you was supposed to have been going for Carl, right?

PETITIONER: I don't know.

MOORE: Yes, we was.

PETITIONER: No, he wasn't baby. I hit Carl, that happened that night.

(Transcript of the taped telephone conversation, p. 18, attached as Exhibit B) (emphasis added).

Petitioner's assertion that the tape was unintelligible and that a court reporter could not transcribe it, overlooks the fact that the court reporter did transcribe the tape and that Petitioner's admission, "I hit Carl," is both intelligible and decisively damning. Furthermore, the Illinois Supreme Court held that the determination of whether the tape was audible was within the trial court's discretion and, obviously, the court found that it was audible. People v. Griffin, 148 Ill.2d 45, 592 N.E.2d 930, 934 (1992).

Petitioner's second admission was his court reported confession. (Attached Exhibit C)

Petitioner's third admission was a handwritten letter, dated August 13, 1984, in which Petitioner said: "On June 21st 1984 I alone, without the knowledge of James Allen shot and killed Carl Gibson." (Attached Exhibit 4)

These three admissions, coupled with the fact that Petitioner never asked even a single court to find him actually innocent, shows beyond any question, that Petitioner is the killer of Carl Gibson.

E.

PETITIONER'S CONTENTION THAT HIS CONFESSION WAS BEATEN OUT OF HIM HAS BEEN CREATED OUT OF WHOLE CLOTH, 18 YEARS AFTER THE FACT, WITH THE OBVIOUS INTENT OF RINGING THE BELLS AND WHISTLES OF AN ISSUE THAT GRABS HEADLINES TODAY.

Petitioner now claims, for the first time ever, that his confession was beaten out of him. This is a truly amazing claim since, in the course of the past 18 years, he has never before made this claim. Petitioner's detailed allegations - about the fingers in his neck and shoulders, about his poor sister who would be charged if he did not confess, about the coaching from the police - have never before seen the light of day. This entire portion of the petition is devoid of record cites because there is not one word of sworn testimony to support any of these claims.

This is so even though Petitioner had ample opportunity to make these kind of allegations. Before trial, Petitioner filed a motion to quash arrest and suppress statements. He did not claim that he had been physically coerced into confessing, or that he had been coached, or that he confessed only to spare his sister who could not stand the pressure of being charged. There is not one word about this during the trial itself. At the sentencing hearing, Petitioner testified and could have brought up these issues. He, however, did not. Petitioner had the benefit of not just one, but two post conviction petitions. He said nothing about these issues there. Finally, Petitioner filed a petition for writ of habeas corpus in federal court. Again, this would have been the perfect forum for these claims. Again, Petitioner said nothing.

Petitioning for clemency is not supposed to be an exercise in creative writing. Petitioner should not be rewarded for creating a whole new defense 18 years after the fact.

Petitioner also complains that his confession was involuntary because, at the time he

gave it, he was either under the influence of drugs or going through withdrawal from drugs. The Illinois Supreme Court specifically addressed this issue and said that Petitioner's allegations could not withstand the testimony of the assistant state's attorney who took his statement and said Petitioner was alert and lucid throughout the proceedings. People v. Griffin, 148 Ill.2d 45, 592 N.E.2d 930, 934 (1992).

Petitioner also seeks clemency because his statement where he inculpated himself was admitted into evidence even though it was not videotaped, and points out that under the Governor's Commission's proposals both statements and the interrogations leading up to them should be videotaped. What petitioner fails to recognize is that neither the Commission nor the governor himself call for the suppression of a statement simply because it was not videotaped. Rather, even under the Governor's proposed legislation (HB3717 & HB2058), such statements will still be admissible if the trial court finds that it was voluntarily made after considering the totality of the circumstances. Because the trial judge expressly found that petitioner'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 the statement and how much weight it should be given, petitioner cannot complain that he was prevented from asserting at trial that his statement was unreliable and should not be considered.

Petitioner's request for clemency should be denied.

F.

DARRYL MOORE GAVE TWO TOTALLY OPPOSITE ACCOUNTS OF GIBSON'S DEATH. THE ILLINOIS SUPREME COURT APTLY NOTED THAT MOORE IS A LIAR, AND THE ONLY ISSUE IS DETERMINING WHEN HE IS LYING. EVERY COURT TO CONSIDER MOORE'S TESTIMONY DETERMINED THAT HE WAS TELLING THE TRUTH AT TRIAL WHEN HE SAID PETITIONER WAS GIBSON'S KILLER. FURTHERMORE, ANY RESIDUAL QUESTION OF MOORE'S CREDIBILITY IS BEST LEFT TO THE COURTS WHERE AN EVIDENTIARY HEARING ON THIS VERY ISSUE IS CURRENTLY UNDERWAY.

At Petitioner's trial, Darryl Moore testified that Petitioner killed Gibson. (R. 893-95)

A year after Petitioner's trial, Moore recanted his testimony and said that he had no knowledge of how Gibson was killed. However, these events cannot be read in isolation. Pressure was put on Moore because of his role in another prosecution, which involved many of the same players.

THE ARREST OF FLUKEY STOKES LED DIRECTLY TO MOORE'S RECANTATION

In the 1970's and early 1980's, Flukey Stokes was a notorious and flamboyant drug lord on Chicago's south side. Darryl Moore provided the information that led to Stokes' indictment when, on January 26, 1986, Moore told the grand jury that Stokes had ordered the murder of Robert Ciralsky. Petitioner was also involved as a hit man in the Ciralsky murder. On February 26, 1986, Stokes, Petitioner and four others were indicted for murder. However, in taking on Flukey Stokes, Moore had more than he could handle. Less than two months later, Moore was pressured into recanting his grand jury testimony. On April 14, 1986, Moore gave a complete recantation to Stokes' lawyer, Joseph Ettinger. Each page of the recantation was signed by Ettinger.

Moore's recantation led to the collapse of almost the entire prosecution for the Ciralsky murder.¹ Thus, on August 18, 1986, the State dismissed the charges against Stokes, Petitioner and two other codefendants.

The next day, August 19, 1986, Moore recanted all of his testimony concerning the murder for which Petitioner now stands sentenced to death. This recantation was given on videotape in the offices of Sam Adam, the lawyer for drug lord Charles Ashley.

Thus, although Moore recanted, it is apparent that he was pressured into it by Stokes.

Every court to consider Moore's recantation has found it to be incredible. Judge Strayhorn, who heard Petitioner's trial and who imposed sentence, considered Moore's recantation when it was presented in the first post conviction petition. Judge Strayhorn dismissed the petition without an evidentiary hearing. The Illinois Supreme Court considered the recantation in its first opinion. The Supreme Court affirmed Judge Strayhorn's ruling. People v. Griffin, 148 Ill.2d 45, 592 N.E.2d 930 (1992). The issue was not brought up again in the Illinois Courts.

MOORE WAS AN INFORMANT IN A CASE WHERE THE VICTIM WAS MURDERED BECAUSE HE WAS ONLY *SUSPECTED* OF GIVING INFORMATION TO THE POLICE. THUS, THE ONLY WAY TO KEEP MOORE ALIVE WAS TO KEEP HIM HIDDEN. UNDER THESE CIRCUMSTANCES, THE STATE'S ATTORNEY'S OFFICE WAS JUSTIFIED IN EXPENDING MONEY ON MOORE'S BEHALF.

Moore was the key informant in two major operations designed to take down some of Chicago's most notorious drug lords. From the very moment that he came forward, his life was in danger. The only way to keep him alive was to keep him hidden. With that objective in mind, the State's Attorney's relocation unit moved Moore and his girlfriend and her family, out

¹ The only cases to survive were against the two codefendants who had given statements implicating themselves.

of their neighborhood. Moore was housed in hotels. He kept moving from place to place – partly for his own safety; partly because, as an “enforcer” from the drug world, he did not follow the rules of the hotels and he was repeatedly evicted. Moore’s girlfriend and her family were housed in rental apartments. There were moving expenses involved, transportation expenses, emergency living expenses, medical expenses and meals. Thus, from August 1, 1984, when Moore first came forward, until August 31, 1985, when Petitioner’s sentencing hearing was concluded, the State spent \$23,828.65. The rest of the money expended by the State (Petitioner claims at least \$66,000), was spent during the pendency of the trial on the Ciralsky murder. Under the circumstances, these expenditures were justified.

THE ISSUES OF MOORE’S RECANTATION AND THE MONEY EXPENDED ON HIS BEHALF CAN BEST BE RESOLVED BY THE COURTS WHERE AN EVIDENTIARY HEARING IS CURRENTLY PENDING IN FEDERAL COURT.

In federal court, in his petition for writ of habeas corpus, Petitioner again raises the issue of Moore’s recantation and the propriety of the money expended on his behalf. United States District Court Judge James Zagel is currently conducting an evidentiary hearing on this very issue. Moore has already testified. When a witness’ credibility is at issue, the best forum for resolving the issue is a courtroom, where a trier of fact can observe the witness and his demeanor. People v. Slim, 127 Ill.2d 302, 537 N.E.2d 317 (1989). The only way these issues will ever be fairly and finally resolved is by allowing the case to proceed in federal court.

G.

PETITIONER WAS NOT SENTENCED TO DEATH BECAUSE HE WAS POORLY REPRESENTED BY COUNSEL. PETITIONER WAS SENTENCED TO DEATH BECAUSE, AS A MURDERER FOR HIRE, HE DESERVED TO BE SENTENCED TO DEATH.

Petitioner complains that his trial counsel was ineffective. Petitioner asserts that his counsel failed to investigate Petitioner's background and consequently failed to introduce evidence in mitigation about his family and mental health history. Specifically, Petitioner points to evidence that he was hospitalized for depression when he was a teenager and that he tried to commit suicide. Petitioner also complains that his family members were not called to testify about his disadvantaged youth.

Petitioner has raised this claim in the Illinois Supreme Court on both direct appeal and again on post conviction appeal. On both occasions, the court found that the evidence of Petitioner's mental health history had already been introduced during the competency hearing held before trial. Since sentence was imposed by the trial court, there could be no question but that the court was aware of this testimony at the time of sentencing. Griffin, 592 N.E.2d at 937. Furthermore, during the post conviction appeal, the Illinois Supreme Court noted that both the mental health history and Petitioner's family history were included in the pre-sentence investigation report. People v. Griffin, 178 Ill.2d 65, 687 N.E.2d 820, 833-34 (1997). Thus, the sentencing court had all the information that Petitioner now claims his counsel failed to produce. Counsel was therefore effective in his representation.

The Illinois Supreme Court also questioned the mitigating value of Petitioner's mental health history because it was remote in time from the crime. Id. Petitioner was hospitalized in 1962, when he was 14 years old. He murdered Gibson in 1984 when he was 36

years old. Thus Petitioner is stretching all reasonable limits when he argues that his depression, 22 years before, is evidence that he acted under the influence of extreme mental or emotional distress at the time of the crime. Extreme mental or emotional distress is a mitigating factor only if there is an extreme upset at the time of the crime. An upset from 22 years ago hardly qualifies.

Petitioner further argues that his counsel was ineffective at sentencing because counsel has been disciplined by the Illinois Attorney Registration and Disciplinary Commission. Counsel's issues in other cases are irrelevant if his representation in the case at hand was constitutionally adequate.

In short, Petitioner was afforded constitutionally adequate representation at sentencing. Petitioner was not sentenced to death because he was poorly represented. Petitioner was sentenced to death because, as a murderer for hire, he deserved to be sentenced to death.

H.

SINCE PETITIONER WAS THE SHOOTER, HE DESERVED THE DEATH PENALTY. SINCE ALLEN WAS ONLY THE DRIVER, HE DID NOT DESERVE DEATH. SINCE ASHLEY WAS ON HIS DEATHBED, ANY SENTENCE WAS TANTAMOUNT TO A DEATH SENTENCE ANYWAY.

Petitioner's final argument is that his sentence is disproportionate to the life sentences given Ashley and Allen. The Illinois Supreme Court determined that the sentences were not disproportionate. The court said that Ashley's terminal illness was properly considered as mitigation. Griffin, 687 N.E.2d at 835. Further, since Ashley was going to die within 6 months anyway, he did not really get any break on his sentence.

As for Allen, his role in the murder was significantly less culpable than Petitioner's. Petitioner shot Gibson in the head four times. Allen drove the car. Id. Thus, different sentences were justified.

CONCLUSION

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

Respectfully submitted,

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