



OCTOBER 2002 SESSION  
PRISONER REVIEW BOARD  
STATE OF ILLINOIS

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PEOPLE OF THE STATE OF ILLINOIS,	)	Docket No. \
	)	
vs.	)	Inmate No. N-12780
	)	
JERRY MAHAFFETY	)	

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**MAHAFFEY'S PETITION FOR EXECUTIVE  
CLEMENCY IS IMPROPERLY FILED AND  
SHOULD NOT BE CONSIDERED BY THE  
PRISON REVIEW BOARD OR THE GOVERNOR**

The Petition for Executive Clemency filed by attorneys Gary Pritchard and Alan M. Freedman, as "next friends" on behalf of Jerry Mahaffey is an improperly filed Petition, and should be returned 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." There is no statement whatsoever that defendant Jerry Mahaffey has acknowledged that this Petition could or should be filed on his behalf. There is no such affidavit and in fact the Petition itself specifically admits that defendant has not filed his own verified petition in accordance with the Prisoner Review Board's guidelines. Mr. Mahaffey is certainly capable of filing court documents, since he has filed and signed various pleadings over the 17 year history of this case. He has filed most recently a verified Petition for Writ of Habeas Corpus in September, 1995, which he not only signed, but corrected (see attached)

and testified extensively on closed circuit television from prison in a hearing conducted by Federal District Court Judge James Zagel. (See attached transcript.) It is thus abundantly clear, that he has refused to sign, does not acknowledge that this Petition is signed on his behalf and he is certainly capable of signing as well as deciding whether or not to seek clemency.

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 Governor **under the Constitution** to grant a reprieve, commutation of sentence or pardon. But, this provision cannot be read or interpreted 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 would 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 subsection 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, enacted under the legislature's constitutional power to regulate the manner in which clemency is applied for, the Petition, filed as a "next friend" of Jerry Mahaffey, is improperly filed. It should be returned by both the Prisoner Review Board and the Governor to the "next friends" because it fails to comply with the requirements of the statute, it is unsigned and there is no acknowledgement whatsoever by Jerry Mahaffey who is perfectly capable of signing and or acknowledging his intent that the Petition be filed on his behalf.

## **HISTORY OF THE CASE**

Jerry Mahaffey, along with his brother Reginald, was indicted and convicted by a jury of the 1983 murders of Dean and Jo Ellen Pueschel and the attempted murder and aggravated battery of their eleven year old son, Ricky. At the trial in 1985, Jerry Mahaffey was also convicted of home invasion, rape, armed robbery and residential burglary. He was found eligible for the death penalty by the jury for murdering two or more individuals and for killing during the felonies of armed robbery, rape, home invasion or residential burglary. The jury also found no mitigating factors sufficient to preclude the death penalty. The trial court further entered extended sentences of 60 years for attempt murder, 60 years for rape, 60 years for armed robbery and 30 years for residential burglary to be run consecutively because the crimes were so exceptionally brutal and heinous. (R.4307-4309, R.C4651)

Mahaffey directly appealed to the Illinois Supreme Court. During the pendency of this appeal, the Illinois Supreme Court remanded the case for a Batson hearing. The trial court rejected

the claim, and on return to the Illinois Supreme Court, the convictions and sentences were affirmed. People v. Mahaffey, 128 Ill. 2d 388, 539 N.E. 2d 1172 (1989) Mahaffey filed a Petition for Rehearing with the Illinois Supreme Court and a Petition for Writ of Certiorari with the United States Supreme Court, which were both denied.

Mahaffey then sought post-conviction relief in the Circuit Court of Cook County, which was denied. He appealed the denial of post-conviction relief to the Illinois Supreme Court, which affirmed the denial of post-conviction relief. People v. Mahaffey, 165 Ill. 2d 445, 651 N.E. 2d 174 (1995) He filed a Petition for Rehearing and a Petition for Writ of Certiorari with the United States Supreme Court, which were denied.

Mahaffey then filed for Habeas Corpus Relief in the United States District Court of the Northern District of Illinois, Eastern Division. He was granted an evidentiary hearing via closed circuit television in which Mahaffey participated and testified . The Petition was subsequently denied by the district court. United States ex. rel. Mahaffey v. Peters, 978 F. Supp. 762 (N.D. Ill. 1997)

Mahaffey appealed to the Seventh Circuit Court of Appeals which affirmed the denial of the habeas petition. Jerry Mahaffey v. Thomas Page, Warden, 151 F. 3d 671 (7th Cir. 1998) The panel of the Seventh Circuit that issued the opinion granted rehearing on one issue, Batson, and the Court ordered that the writ be granted unless the State trial court held a new Batson hearing in accord with the court opinion. Chief Justice Flaum dissented from this opinion. Jerry Mahaffey v. Thomas Page, Warden, 162 F. 3d 481 (7th Cir. 1998) A new hearing in accord with the opinion was commenced and Judge John Moran of the Circuit Court of Cook County will issue his opinion on October 1, 2002.

## **FACTS OF THE CASE**

At the time of this trial in 1985, Judge Thomas A. Hett, one of the most experienced and highly respected Judges at the Criminal Courts Building in Cook County stated the following:

I am not the wisest and I am not the most experienced judge on the bench, but I have had some experience both as a prosecutor and as a defense attorney. I have been involved in community activities and community affairs. In all my experiences, I have never run across a case in which the facts were so brutal, so heinous, so wanton. I suppose I have read about things that have been more brutal than this event, but I myself have never run into anything that would match this cold, calculating terror. (R. 4305-4306)

Judge James B. Zagel of the United States District Court for the Northern District of Illinois describes the horrifying brutality of this case as follows:

The crime itself was both heinous and heartless. No one here disputes this now and the Mahaffey's did not dispute it then.

What the jury heard here, what any jury would have heard, was the tale of a grandfather who, along with his wife, became concerned at the failure of his grandson, Richard to arrive so they could babysit for him. After phoning the boy's home and the parents' workplaces to no avail, he drove to the Puschel house and found his eleven year-old grandson wandering, blood covered and beaten, outside the family home. Richard told him that "mom and dad are dead".

The grandfather went in and saw the horrific scene for himself as did the jury by means of photography. While the grandfather and

Richard waited for the ambulance, all the traumatized young boy wanted at that moment of his life was to have his grandfather open a soft drink for him. The grandfather was unable to do so that morning. This was a very powerful image of victimization, it is striking even in the dry text of transcript. United States of America ex. rel. Jerry Mahaffey v. Peters, 978 F. Supp. 762 (1997)

"He was covered with blood from head to foot. His one eye was out like an orange." This is how Joseph Heinrich found his 11 year old grandson, Ricky Pueschel, on the morning of August 29, 1983. When the grandfather asked what he was doing out there, Ricky said, "My mom and dad are dead." (R. 2235) Walking into the apartment from the backyard with Ricky, Joseph Heinrich found his daughter, Jo Ellen, dead, lying face down in a pool of blood in the dining room. (R. 2235-2237) He wrapped Ricky in a shirt, told him to wait outside and phoned 911.

Ricky testified that he attended St. Lambert's School in Skokie, Illinois. On August 28, 1983, his mom picked him up as usual, at 4:30 p.m. from his grandparents' home in Skokie and they returned to their home at 2519 West Jerome. Ricky and his mom and dad, Dean and Jo Ellen Pueschel, went to bed at 8:30 p.m. While Ricky was sleeping that night, he found himself awakened in a headlock position. Two different voices were saying, "shut up" and "be cool." He tried to scream, but a hand blocked his nose. It was difficult to breathe and he was either hit or fell back to sleep. (R. 2386-2387) Ricky awoke again, walked to the kitchen in a daze, saw his mother being held by one man, while another walked through the back door. Ricky and his mother were forced to lie down in the dining room on their stomachs. Ricky saw his mom crying while being hit and then he did not remember what happened. He either fell asleep or was struck. (R. 2387, 2390, 2451)

Ricky awoke at 8:20 a.m., found himself in a puddle of blood on his bed, walked to his dresser and put on a pair of shorts. Ricky went to the bathroom, looked at himself in the mirror, then walked into his parents' bedroom. He saw his father there and then walked into the dining room and saw his mother lying on the ground. (R. 2388) Ricky looked at his own arm and saw he had blood all over his arms. He walked outside in a daze and his grandfather then drove up. (R. 2389) He remembered the paramedics arriving and an oxygen mask being put on him. Ricky next remembered awakening in the hospital. (R.2389-2390)

Ricky testified, "Yes, I had a pretty good glance at them when I was in -- when I walked into the kitchen and saw my mother and the two men." (R. 2394) He observed the men for about 10 seconds. He was scared and nervous, but not crying or fighting. Ricky did not believe he had been struck or stabbed prior to walking in the dining room, but he had been choked. (R. 2443-2444) All his faculties were unclouded. (R. 2446) Ricky identified both defendant Jerry Mahaffey and defendant Reginald Mahaffey, in-court, as the two men who were in his apartment that night. (R. 2394) His identification was 99% certain. (R. 2449)

Detective Anthony Graffeo testified that he arrived at 2519 West Jerome at about 9:30 a.m. He entered the kitchen through the back door and found a bloody bat on top of the washing machine. The name "Reggie Jackson" was inscribed on it. On the floor was a white hand set for a telephone with the cord detached and a black metal gun lock with a key in it. (R.2258-2259) Upon entering the dining room, Detective Graffeo found Jo Ellen Pueschel lying face down with a pool of blood under her head. She was wearing a blue nightgown with no underclothing. Her head was obviously battered, the skin was split on the top of her head and her right eye was swollen. He saw blood on two dining room chairs as well. (R. 2261) In the living room there were spots of blood on

the couch, a lady's trench coat on the floor and a smear of blood on the closet door in the hallway. (R. 2264- 2265, 2334) In the bedroom, Dean Pueschel was lying on the floor. When he was turned over Dean Pueschel was bloody and had been battered about the head. There were numerous puncture wounds on his side. There were blood stains on top of the bed, a bloody green hand towel, a bloody baseball bat with "Ted Simmons" inscribed on it. (R. 2267)

Dr. Edward Donaghue examined the body of Jo Ellen Pueschel and discovered large deep lacerations of the scalp that extended down to the skull on the right side of the head, the back of the head toward the top, and the back of the head in the middle. On the back of the head on the left side there were several other deep lacerations extending down to the skull. (R. 3066-3067) There were several other bruises on the face. There was bleeding over the entire surface of the brain, several hemorrhages, swelling of the brain, and several skull fractures; some comminuted or broken into more than one piece. (R.3068) Dr. Donoghue also examined the body of Dean Pueschel. He discovered 13 stab wounds, six of which were deep, penetrating the aorta, heart and lungs. (R. 3079-3081) There were several large deep lacerations of the scalp which extended down to the skull and on the right hand there were also several large bruises and bleeding beneath the skin. (R. 3081-3083) Dean Pueschel's body also exhibited multiple skull fracture, hemorrhages and multiple comminuted depressed skull fractures which means the broken multiple pieces were pushed below the level of the remaining skull. (R. 3084) The brain was also swollen. (R. 3085) The injuries to both Dean and Jo Ellen were consistent with being struck by a blunt instrument such as a baseball bat or gun. (R. 3098)

Ricky identified the bats found by Detective Graffeo as his "Reggie Jackson" and "Ted Simmons" bats. (R. 2392-2393) The Reggie Jackson bat found in the kitchen had type B(n) blood

on it, the same as Joe Ellen Pueschel. (R. 2344, 2804, 2811-2812, 3342) The Ted Simmons bat, found in the bedroom, had type O(n) blood on it; the same as Dean Pueschel. (R. 2804-2806, 3344) When processed for fingerprints, none were found on the baseball bats. (R. 3281, 3449-3450, 3470-3471) There were no fingerprints on the brown plastic pitcher which was taken from the refrigerator of the Pueschel home. (R. 3281) Officer James Doran from the laser print section of the Chicago Police Department also found nothing at all on the baseball bats or the Shampoo bottles. (R. 3471)

On August 30, 1983, Sergeant Frank Pierczynski discovered the Pueschel's 1982 Red Chevy Camaro, license JOZZ, in a parking lot at 2245 Lake. (R. 2494-2495) A brown towel was recovered from the rear seat. (R. 3435)

The partially loaded .357 magnum revolver found on the nightstand next to where Reginald Mahaffey had been lying when found by police had red stains which appeared to be blood. (R.2539-2540) The blood was subsequently determined to be the same type as Jo Ellen Pueschel. (R.2818) In the back bedroom closet where Reginald Mahaffey was found, a stereo dust cover that contained 24 pieces of jewelry was recovered (R. 2542) From the nightstand, a box of 19, .30 caliber bullets; from a dresser, a box of .12 gauge shotgun shells marked Federal. (R. 2543); a Remington Wingmaster, Model 870 shotgun from a shelf in the bedroom closet as well as three .12 gauge shotgun shells. (R. 2543) Among the jewelry items recovered were a bracelet with the name Ricky inscribed on it, a bracelet with the name Jo Ellen inscribed thereon and another bracelet with a charm bearing the name Jo Ellen on it. (R. 2563-2568)

From the bedroom closet of defendant Jerry Mahaffey's apartment, a Zenith Video Director Recorder, an A P F TV fun electric game, an Atari 5200 electronic game with paddles, a brown wood-type case containing nine TV video cassettes and seven Atari game cassettes were recovered. (R. 2591-2592) Joseph Heinrich, Sr., identified one of the video cassettes recovered from Jerry

Mahaffey's apartment as being that of the wedding of his daughter Jo Ellen and Dean Pueschel. (R. 2230) In court, Ricky identified the Atari 5200 cartridge as a Christmas gift he had received and the Atari 5200 game as his game. He recognized the scratches on the top. (R. 2382-2383) He identified other cassettes; Jaws, Green Beret, Super Bowl, Jaws 2, and Christmas by the handwriting of his mom and dad on the side of the tapes. (R. 2380) Ricky also identified the Betamax recorder found in Jerry Mahaffey's apartment as belonging to his family. (R. 2380)

Reginald Mahaffey was wearing a man's ring with a blue stone, a man's Seiko watch and a yellow chain with a crucifix attached from his rear pocket after his arrest. (R. 2597) These were identified by Mrs. Heinrich as belonging to Dean.

Josephine Heinrich, Jo Ellen's mother, identified the items of jewelry recovered from Reginald Mahaffey's apartment as belonging respectively to Dean, Jo Ellen and her grandson Ricky. (R. 2770-2779) Particularly, she identified the crucifix of Dean that he wore all the time (R. 2779), Ricky's first Holy Communion ring (R. 2770), Jo Ellen's charm bracelet (R. 2773), Ricky's id bracelet (R. 2774) which Mrs. Heinrich had given Ricky and a ring that she had given to her daughter, Jo Ellen. (R. 2771) Mrs. Heinrich also noted that Dean's Seiko watch, which he used "an awful lot" was broken. (R. 2778)

## **THE CONFESSION OF JERRY MAHAFFEY**

Jerry Mahaffey acknowledged in the written statement that he had previously been given his rights and he was again admonished. (R. 2941-2942) In the statement, defendant stated that he and his brother Reginald Mahaffey had discussed committing a burglary on the north side on August 29, 1983. They went to a clothing store in the area of Howard and Western, but defendant observed a paddy wagon in the alley. (R.2943) They drove around the block and parked in a hospital parking lot. They decided against the burglary, but could not start the van; the battery was dead. (R. 2944) They walked behind the hospital toward an alley and defendant stated, "My brother spotted an open window. We went into the window and started taking things out of the window." (R. 2945) Jerry Mahaffey preceded Reginald Mahaffey into the apartment through this bathroom window. He stated they next, "went in the grown-up's room. We thought it was two girls or two ladies, rather." (R. 2945) The Mahaffey's next went in the "boy's room" and then into the kitchen. Reginald Mahaffey had a knife and opened the refrigerator. Jerry Mahaffey stated:

I was wiping off anything he touched ... For not finding fingerprints. (R. 2946)

Jerry Mahaffey returned to "the little boy's room" and he stated the following:

QUESTION: What happened there?

ANSWER: I put a towel, you know, and tried to strangle him, you know, put him to sleep. And then he wouldn't go to sleep.

QUESTION: What did you do then?

ANSWER: Then we put a pillow over his head and he was still, you know, trying to come up for air, you know, trying to make noise.

QUESTION: What did you do?

ANSWER: Then my brother stabbed him.

QUESTION: Were you doing anything to him from behind?

ANSWER: I was still holding the pillow.

QUESTION: Did you try to choke him too?

ANSWER: Yes

QUESTION: How many times did your brother stab him?

ANSWER: I don't know, about four or five times. (R. 2947)

Obviously believing strangulation, suffocation and stabbing were insufficient to kill the little boy, the Mahaffey's armed themselves with two of Ricky's Little League baseball bats.

Jerry Mahaffey stated:

QUESTION: What was done with the bats when you picked him up?

ANSWER: He held the pillow and I hit the boy with the bat.

QUESTION: Where did you hit the boy?

ANSWER: In his head.

QUESTION: How many times, do you know?

ANSWER: About twice. (R. 2948)

The Mahaffeys then proceeded into Dean and Jo Ellen's bedroom and stood on either side of their bed. As Dean slept, the Mahaffeys simultaneously hit him in the head with the bats. Jerry Mahaffey stated:

QUESTION: What did you do then as the two of them were sleeping?

ANSWER: My brother hit him and I hit him.

QUESTION: Where did you guys hit him?

ANSWER: In the head.

QUESTION: Are you talking about the man in bed now?

ANSWER: Yes.

QUESTION: Do you remember how many times each of you hit him?

ANSWER: Somewhere around four times a piece, I guess. (R. 2949)

Dean Pueschel rolled off the bed onto his stomach. Did the Mahaffeys then proceed to beat or strangle or choke or stab Jo Ellen as they had done to Dean and the boy? The answer is, no. Jo Ellen was victimized in other horrible ways. Reginald Mahaffey took Jo Ellen out of the room. (R. 2949-2950) Jerry Mahaffey then entered the living room and he saw that Reginald had his penis in Jo Ellen's mouth and then he observed Reginald put his penis in her vagina. (R.2950). Reginald stated in his confession that Jerry "was having sex with her in the mouth." (R.2941) When Jerry Mahaffey returned to the bedroom and saw Dean Pueschel pulling a pistol out of a holster, Jerry again, slammed Dean in the head with the baseball bat. (R. 2951) Jerry Mahaffey returned to the living room and asked Jo Ellen if there were more guns and she told him, "above the dresser on the wall." (R.2952) Defendant Jerry Mahaffey then returned to the bedroom and saw, "a pump and thirty-thirty." (R. 2952) He tried to pull the shotgun through the hole, but he could not do it. Reginald Mahaffey, however, "snatched it off the wall." (R. 2952) When Dean Pueschel moved,

Reginald Mahaffey stabbed him about four or five times. (R. 2953) Reginald Mahaffey asked Jo Ellen if she had a car and she answered affirmatively. Reginald Mahaffey asked for the keys and Jo Ellen stated, ' "let me take you out to the car and turn the alarm off the car."'

Jerry Mahaffey stated that he then pulled the box that Reginald Mahaffey had packed with the "tape player, the video and that other case," (R. 2954) toward the door. Jerry Mahaffey then identified during the written statement, the video recorder, Atari game and a box with video tapes. (R. 2954) When asked what kind of guns were taken, Jerry Mahaffey stated, ".357, pump shotgun and a thirty-thirty." (R. 2055) He identified the shotgun and rifle as the guns he took from the Pueschel apartment. Jerry Mahaffey also identified two boxes of ammunition. When asked if these were placed in the box, Jerry Mahaffey said, "They were put in a bag but they was in the box." (R. 2955-2956)

When Reginald Mahaffey returned with Jo Ellen, Jerry Mahaffey stated:

ANSWER: When she came back in the little boy ran out the room and said, "Ma-ma, ma-ma." Then I told her to lay down and the little boy laid down too.

QUESTION: What else was said at this time?

ANSWER: My brother just started beating them with the pistol.

QUESTION: Your brother beat who with the pistol?

ANSWER: The lady.

QUESTION: How was he beating her with the pistol?

ANSWER: How?

QUESTION: Yes.

ANSWER: He had the pistol like that and he was doing this.

QUESTION: Let me just try to describe what you are doing. His gun was in his hand and his arm was straight out and he was moving up and down toward her?

ANSWER: Yes.

QUESTION: Where was he hitting her with the pistol as he was moving it up and down?

ANSWER On the head.

QUESTION: Where was the child?

ANSWER: Right beside her.

QUESTION: Was the boy saying anything?

ANSWER: No.

Reginald Mahaffey added to this scenario. Jerry told him,

"Hey man, we have to kill this bitch too." (R.2917).

Reginald Mahaffey then put the box of proceeds in the back of the Pueschel car and then on a second trip took the guns. (R.2958) Jerry Mahaffey was shown a picture of the car and identified it. (R.2959) He and Reginald Mahaffey drove the car to Reginald's house and dropped off the proceeds. Jerry Mahaffey wanted to then burn the car, but Reginald Mahaffey wanted to take it to the Henry Horner Project. (R. 2959-2960) They did the latter. When subsequently splitting the proceeds, Jerry Mahaffey took the "tape stuff," brought it to another brother, Terry Mahaffey's apartment and thereafter to his own apartment. (R. 2960) Jerry Mahaffey identified the items recovered from his apartment as having been taken from the Pueschel apartment. (R. 2961) He also identified several pieces of jewelry that his brother Reginald had taken from the Pueschel apartment. Jerry Mahaffey told his brother "to throw the shit away, there is a thing missing there." (R. 2961) Defendant stated that the gold medallion attached to the cross was missing. (R. 2962)

Defendant identified Dean and Jo Ellen from their wedding photograph as the people he murdered.  
(R. 2962)

When asked if the police had treated him okay, he replied, "Yes, he has." (R. 2963) The following was also asked and responded to as follows:

QUESTION: Has anybody made any threats or promises to you to get you to make this statement?

ANSWER: No. (R. 2963)

Defendant placed his initials on the bottom of each page, made a correction and signed the last page of the written statement. (R. 2964-2965) The court reporter then photographed Jerry Mahaffey. People's Exhibit 63B was identified as accurately depicting defendant at that time. (R. 2966) Assistant State's Attorney Miller testified that Jerry Mahaffey never complained about being beaten and never appeared to have been beaten. He noticed no physical problems regarding defendant. He saw no pain or discomfort; no bruises or marks. (R. 2966, 3000; 3042-3045)

Reginald Mahaffey's confession significantly corroborated the testimony of Ricky Pueschel and the confession of Jerry Mahaffey.

A. My brother noticed it was a kid, He said, man, it's a boy, you know.

Q. What did you do then when you saw the boy sleeping?...

A. I got on him, on his back, and put a pillow over his head telling him everything is going to be all right, just don't make no noise.

Q. Was he lying face up or face down?

A. He was on his stomach.

Q. By getting on him, did you get on his back?

A. Yes, on his back. I held the pillow on his head. Then I proceeded to choke him to try to put him to sleep and then-

Q. What was your brother doing then?

A. My brother--he was--he was holding the pillow and towel. He was trying to hold his mouth with the pillow.

Q. What was the boy doing when you had the pillow over his head?

A. He was trying, you know, he was trying to call for help, something like that.

Q. Was he kicking also?

A. Yes, he was kicking.

Q. Now, when this was going on did you tell your brother to do anything to the boy?

A. When the boy--after we struggled with the boy for about possibly four minutes, I told my brother to stab him.

Q. All right.

A. Then my brother proceeded--I don't know how many times he stabbed him.

Q. So, your brother stabbed the boy after you told him to stab him?

A. Yes.

Q. Now, did you find any objects in the room after your brother stabbed the boy?

A. It was a basket of bats.

Q. A basket of bats?

A. A basket of bats. My brother--this came before the stabbing. My brother got a bat and hit him and tried to put him unconscious.

Q. Where did he hit him at?

A. Over the head.

Q. How many times?

A. A couple I guess.

....

Q. When you and your brother were standing on opposite sides of the bed with bats in your hands, what did you do?

A. We both hit him at that time on his head.

Q. That would be the man that was lying on the bed?

A. That was the man.

...

A. I took her in the kitchen and then we proceeded to have sex. I told her I wanted to have sex with her.

Q. Did you have sexual intercourse with her?

A. Yes.

Q. Was that in the kitchen?

A. Yes.

Q. Did you then take her into another room?

A. Yes. We walked into the living room.

Q. What happened in the living room?

A. We finished--I finished having sex over the arm of the couch.

Q. Was she face down on the couch?

A. Yes.

Q. And you were having sexual intercourse with her from the behind, as that correct?

A. From behind.

Q. In her vagina, is that correct?

A. Yes.

Q. What happened as you were doing that?

A. As I was doing that my brother came out. He had--while I was having sex he was still in there with the man. He came out with a pistol.

Q. What kind of pistol was it?

A. .357 Magnum. And then he told me, man, this mother fucker had a pistol. Now, that is not the precise words that he said and I looked at it.

Q. What did you do?

A. Then I left. I asked the lady, where is the other pistols. She said what other pistols. I said listen, bitch, somebody told us you got a lot of pistols. Then I went in the room and seen the man lying on the floor on the right hand side of the bed.

Q. Face up or face down?

A. Face up. Then I looked in the jewelry box on the dresser. I got a few chains, a few rings, earrings and then I went over to the chest of drawers which was on the left side of the bed. The left side top of the bed, not on the top but at the end of the wall.

Q. All right. What did you do then?

A. I looked in a few drawers and I got a tee shirt out and put it on.

Q. Now, did you go back into the other room after you took these items?

A. Yes. I went in the other room and I seen my brother having sex with the lady.

Q. How was he having sex with her?

A. He was having sex with her in the mouth.

...

A. When I got back in the house I loaded the merchandise in the car I was ready to go. I had--I got the pistol. I had the .357 and I hit the lady in the head. I told her to lay down and she was saying something about I was--I told her lay down and her son mumbled mom, lay down, just lay down, mom. Something like that.

Q. Did she lay down after her son told her to lay down?

A. She was trying to say something.

Q. Was that when you hit her in the head with the pistol?

A. That's when I hit her a couple of times on the head with the pistol.

Q. Was her son next to her when you did that?

A. Right next to her and the I proceeded to leave out of the house with the magnum.

Q. Let me ask you this: Did you have any conversation with your brother before you left out of the house again?

A. I had when I left out of the house. ...My brother told me, hey, man, we have to kill this bitch too.

Q. What did you say?

A. Man, I whispered, I know, man, don't make her panic, you know.

Q. Was that before you hit her in the head with the gun?

A. That was before I hit her with the gun.

Q. Before you left did you see your brother do anything to the boy and his mother?

A. No. On the way out the door I heard solid hits.

Q. Solid hits?

A. Yeah.

Q. Of what?

A. The sounds told me he was finishing off the lady and her son off with the bats, you know. ....

**THE DEATH PENALTY HEARING AND THE INFAMOUS  
ARMED ESCAPE FROM COOK COUNTY JAIL: PRISON  
GUARDS AND THE PEOPLE OF THE STATE OF  
ILLINOIS ARE AT RISK IF LIFE IMPRISONMENT IS  
GIVEN TO THE MAHAFFEY BROTHERS**

1974, Jerry Mahaffey was convicted of robbery, but was given a break and sentenced to only three years probation for the forcible taking of property from another. (Charges had been dropped for criminal trespass to land and armed robbery in 1972 and 1973, respectively.) Failing to complete his probationary period, he was again convicted of robbery in February of 1976 and sentenced to six months in the Cook County jail and was sentenced to 50 days for tampering with a motor vehicle in September, 1975. In 1976, Mahaffey was convicted of theft on three different occasions. In February, 1981, Mahaffey was convicted of criminal damage to property and in July, 1981, he was again convicted of the forcible felony of robbery and sent to the Illinois State Penitentiary for four years. In November, 1982, Mahaffey was acquitted of rape. Upon his release from the penitentiary, Mahaffey and his brother planned to commit a store burglary on the north side of Chicago in August, 1983. When this plan had to be scrapped, they walked down an alley and discovered an open window in a residential building and removed the screen to enter. Everyone's worst nightmare, the Mahaffey brothers, just entered the home of the sleeping Pueschel family.

Did Mahaffey expect the apartment to be unoccupied in the wee morning hours? Of course not. The first thing the Mahaffeyes did was check the bedrooms. Upon seeing that people

were in fact there, did they leave? No. The Mahaffeys went immediately to the kitchen where Reginald armed himself with a knife and Jerry followed him wiping off anything touched. Did the Mahaffeys arm themselves on the mere chance they might be spotted? No. The Mahaffeys chose to kill first, steal later.

After the Mahaffey's arrest, confession and the prospect of the severe penalty that he could suffer for his actions, Mahaffey demonstrated no more respect for the legal system than he had in the past and he demonstrated further no potential whatsoever for rehabilitation. Mahaffey, along with five other inmates in the Cook County jail, armed himself with a blue steel gun, put on an officer's uniform, stole \$650.00 from Officer Williams and escaped. (R. 4022-4025) He was not captured until two days later. Mahaffey was part of a group of inmates, intent on escaping, who armed themselves and did indeed inflict injury and violence on correctional officers at Cook County jail.

Officer Vernon Williams testified that inmate Hill, in an officer's uniform, grabbed him by the collar and told him it was an escape attempt and told him to lie down on the floor. At first, Officer Williams threw inmate Hill on a table, but Reginald Mahaffey, at gunpoint, told Officer Williams to lie on the floor, which he did. (R.4022-4023) Then Jerry Mahaffey entered with two other inmates. Uniforms were taken from the officers and Jerry Mahaffey took \$650.00 from Officer Williams. Jerry Mahaffey was already dressed in an officer's uniform and was wielding a blue steel gun. (R.4023-4024) Officer Callahan was then met by Reginald Mahaffey dressed as a lieutenant with another inmate dressed as an officer in the tunnel at Division 4 of the Cook County jail. Reginald pulled out a gun and Officer Callahan backed into an office. Reginald then put a gun to the head of Officer Robertson and said, "You're coming with me," and told Officer Callahan to come along as well. (R.4040-4042) They headed to the security office and Reginald grabbed Captain Hunt around the neck and told inmate Greer, "You take the big cheese. I'll take the honky

motherfucker." (R. 4045) Captain Hunt testified he was beaten on the head by Reginald Mahaffey. (R.4007) They were then marched down the center of the building and Reginald Mahaffey pointed the gun at the female guard and told Officer Callahan, "if she doesn't open that door, I'm going to kill this motherfucker, and then I'm going to kill her." (R.4010, 4045) The door was opened and the officers were dragged out of the building. Jerry Mahaffey did not surrender as did his brother, Reginald. Rather, he had to be tracked down by Chicago police officers acting on information of his whereabouts and he was not captured until two days later. (R. 4034-4035)

Most telling of all, however, regarding the character of Jerry Mahaffey, and the danger faced by prison guards as well as all the People in the State of Illinois is Jerry Mahaffey's own intention of what he would do when returned to prison. Most telling of all, if clemency is granted to Jerry Mahaffey is his own words. When asked specifically **whether he would escape** again if the chance arose, he stated:

**"I don't know." (R. 4099)**

**Life Imprisonment for Mahaffey will place all the People of the State of Illinois in danger. (See attached newspaper articles)**

## **REASONS FOR DENYING THE PETITION**

### **Introduction**

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

Thus, the fact that the Court, the General Assembly and the Governor's Commission have endeavored to improve the process does not mean that an injustice would result simply because the recent changes were not applied retroactively to petitioner's case. Instead, a true injustice would only result if it were reflexively determined that petitioner's trial was

fundamentally unfair without any examination of the proceedings themselves. 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 for the past 17 years, which included the 1) trial court via post-trial motions; 2.) Illinois Supreme Court; 3.) United States Supreme Court; 4.) trial court again in post-conviction proceedings; 5.) Illinois Supreme Court again; 6.) United States Supreme Court again; 7.) District Court of the Northern District of Illinois on habeas corpus petition of Mahaffey, which granted Mahaffey interrogatories, depositions and an evidentiary hearing conducted via closed circuit television so that he could personally participate and observe witnesses testifying; 8.) Seventh Circuit Court of Appeals; 9.) rehearing granted by the Seventh Circuit Court of Appeals; 10.) United States Supreme Court again; 11.) circuit court of Cook County again to hear more evidence regarding his Batson claim. All of these courts and all of the countless judges that have reviewed every claim Mahaffey has ever made, have all determined that all the proceedings were fundamentally fair and that he was not unduly prejudiced in any manner. (Judge Moran of the Circuit Court of Cook County will issue his ruling on the Batson claim on October 1, 2002, after granting extensive discovery and hearings over a three year period of time, which will be immediately supplemented to this response when it becomes available.)

**I. No Court Has Ever Determined That Mahaffey Is Mentally Retarded And Should Not Be Executed Because He Has Never Made This Free-Standing Claim In Any of His Numerous Court Filings.**

Mahaffey alleges that his death sentence should be commuted in light of Atkins v.

Virginia, 122 S. Ct. 2242 (2002), because he is mentally retarded. In all of the 17 years of proceedings in this case, in State and Federal Court, Mahaffey has **NEVER** made a free-standing claim that he should not be executed because he is mentally retarded. Regardless of what the law was or is in the State of Illinois, many defendants have claimed that they should not be executed because they are mentally retarded. Mahaffey **NEVER** has made that claim until now. He knows that the Prisoner Review Board and the Governor cannot possibly afford him a "true" hearing where his psychologist could be cross-examined and other experts could be called upon to render their opinions. However, under the new Atkins decision of the United States Supreme Court, Mahaffey will indeed have such a hearing in State court.

The only claim he had ever made prior to this Petition was that his original trial attorney was ineffective for not researching and presenting a claim of mental retardation to the sentencing jury. That claim was soundly rejected in both State and Federal court and those findings were affirmed by both the Illinois Supreme Court and the Seventh Circuit Court of Appeals.

Most illuminating is the assessment by District Court Judge James Zagel in 1997, who heard Mahaffey testify by closed-circuit television in an evidentiary hearing regarding the competency of Mahaffey's trial attorney with regard to presenting "evidence" of mental retardation.

Judge Zagel stated:

"Jerry Mahaffey was not a credible witness. I found that he did not answer questions in a truthful manner but rather with the aim of improving his chances in this case. His description of Steven Decker's conversations with him before and during trial is patently false given the evidence that was presented at trial (including Mahaffey's testimony on motions and at sentencing) Moreover, if the Jerry Mahaffey I saw in 1997 is like the Jerry Mahaffey that Steven Decker saw in the mid-1980's, then Decker is not to be faulted for failing to consider mental retardation. Prior to his arrest Mahaffey was employed full time, living with his family and reasonably

capable of holding his own under examination. Mahaffey may not read well but I doubt that he is illiterate. It is true a psychologist found him nearly illiterate, **but I doubt the result of any test which requires an earnest effort from Mahaffey** who is, I believe, conscious of the fact that demonstrating an ability to read will not help his case. United States of America ex. rel. Jerry Mahaffey v. Howard Peters, 978 F. Supp. 762 (1997)

Furthermore, although the Court in Atkins noted that mental retardation is characterized as having a significantly subaverage general intellectual functioning and significant limitations in adaptive functioning in at least two skill areas with the onset prior to age 18 (122 S. Ct. at 2245 n.3), the Court expressly stated that it was not adopting a definition of mental retardation and left it to the various States to adopt a definition of mental retardation and delineate procedures for determining whether or not a particular defendant is mentally retarded. Id. at 2249-50. Because Illinois has not yet adopted a definition of mental retardation nor has it crafted the appropriate procedures, petitioner's claim is premature and should not be considered by the board at this time.

**II. Mahaffey Was Convicted and Sentenced to Death Because the Evidence of His Guilt Was Nothing Short of Absolutely Overwhelming and Because of the Sheer Horror and Brutality of the Murders and Attempted Murder of 11 year old Ricky Pueschel, Who Mahaffey Believed He Had Killed, But Who Lived to Identify Mahaffey And Corroborate Mahaffey's Detailed Confession Which Demonstrated The Lack of Anything Resembling Human Compassion or Morality.**

Mahaffey claims that racism is the reason he was sentenced to death because the jury consisted of 11 white jurors. The trial judge, Judge Hett, one of the most experienced and highly respected judges in the Criminal Court of Cook County stated :

I have had an opportunity to listen to all of the evidence that has been presented in this courtroom, and if I had the opportunity to determine the

question of guilt or innocence, I would vote right along with the jury. I believe the jury had more than sufficient evidence before it at the time that it rendered its decision as to guilt or innocence, and if I would have been the person to determine the question, would have determined it in exactly the same was as the jury did. (R.4304-4305)

Mahaffey was convicted by what can only be called absolutely overwhelming evidence.

He was positively identified by Ricky Pueschel, who had ample opportunity to have a good look at his parents' murderers. He was forced to lay on the floor next to his mother and watch them before they finally beat his mother to death and thought they had finally killed Ricky. Unfortunately for Mahaffey, Ricky lived. When Mahaffey was arrested he had in his possession numerous personal items that he had stolen from the Pueschel home, including guns and jewelry that Jo Ellen's mother and Dean's mother identified as belonging to their children. Mahaffey confessed in vivid detail to the brutal, callous and vicious murders. This confession was perfectly corroborated by the physical evidence of the crime scene, the bloody little league bats, the blood type of Jo Ellen in the cylinder grooves of the .357 handgun (nobody would have known this except the killers since the lab tests came back much later than the confessions), the location of the bodies of the murdered Dean and Jo Ellen, the clothing they had on, the exact location of the guns and all the numerous personal items stolen from the Pueschel home, the exact videotapes taken, the location of the Pueschel's car in the Henry Horner project and the final minutes in the Pueschel apartment that accurately confirmed with what Ricky, who survived the slaughter, remembered. (See attached confession)

The claim that the police officers were white and Mahaffey was black was the reason he could not convince the jury that the white police officers brutalized him is nothing short of ridiculous in this case. The Chief Justice of the Seventh Circuit Court of Appeals, Judge Joel Flaum, discussed the lack of any evidence regarding Mahaffey's claim of police brutality:

"Opposing Mahaffey's physical coercion argument, the prosecution presented testimony of Mahaffey's arresting police officers, all of whom denied any instances of brutality. In addition, two Assistant State's Attorneys who took Mahaffey's confession testified that Mahaffey had not complained of any brutality and that they saw no physical evidence of mistreatment during their contact with Mahaffey. The medical technician who prepared Mahaffey's intake report at the Cook County jail similarly noted that there was no evidence or complaints of physical brutality. Finally, the prosecution presented a photograph taken of Mahaffey at the time he gave his confession which, the district court below noted, contains 'no sign of the substantial injury he claimed was inflicted by a blow to his nose.' 978 F. Supp. At 776." Jerry Mahaffey v. Thomas Page, Warden, 151 F. 3d 671 (1998)

**III. Unlike the Other So-called "death row 10" The Mahaffey Brothers' Claim of Police Brutality Has been Soundly Rejected Not Only By Every Illinois Court, But By Every Federal Court. There Is Absolutely No Evidence to Support It, And Mahaffey's Claim That His 20 Page Extremely Detailed Confession Was Force Fed To Him By Police Officers Over A Very Short Time Span, Alongside His Claim That He is "Retarded" Was Also Soundly Rejected As Ludicrous.**

(See Attached Cases and II, infra.)

**IV. Every State And Federal Court That Has Reviewed Trial Counsel's Performance Has Found That This Highly Experienced and Well-Respected Criminal Defense Lawyer Rendered Competent Representation To Mahaffey**

Although Mahaffey was represented by only one attorney, he was and is, by any standards, one of the most experienced and highly respected defense attorneys in all of Cook County. At the time of trial, Steven Decker had been practicing criminal law for eight years, tried hundreds of cases and had at the time of trial won two acquittals in death penalty cases. His performance at Mahaffey's trial was exemplary. Decker filed a number of key pre-trial motions

which anticipated **future** developments in the law. (Batson, Morgan, Gacho, Lockhart) Working in conjunction with the Illinois Coalition Against the Death Penalty, he filed a pre-trial motion in 1984 raising 13 challenges to the constitutionality of the Illinois Death Penalty Act, some of which are still being litigated today. Because the Mahaffey brothers were tried jointly, although Reginald Mahaffey's lawyer was vigorously representing only Reginald and not Jerry, in this case every State witness was cross-examined **twice, by two** highly experienced criminal attorneys. All courts, State and Federal have found Decker's representation to be highly competent. Counsel for Mahaffey conceded nothing to the prosecution and vigorously defended Mahaffey's rights.

**V. Mahaffey's Allegation that the Jury Should Have Been Instructed That the Only Alternative Sentence Was Natural Life Imprisonment without the Possibility of Parole Is Both Factually and Legally Untrue.**

Factually, Mahaffey's lawyer did NOT request that the jury be told that the only alternative sentence was natural life imprisonment *without the possibility of parole*. The only request was to instruct the jury that the only alternative sentence was natural life imprisonment. (R.4209) The instruction requested was not legally acceptable or permissible.

Legally, the Petition alleges that Simmons v. South Carolina, 512 U.S. 554 (1994) states that the instruction is mandated by the United State Constitution in Mahaffey's case. However, the Seventh Circuit Court of Appeals addressed this very contention of Mahaffey and rejected it, holding Simmons does not apply. The Court held,

Simmons held that when the prosecution argues to a capital defendant's sentencing jury that the defendant represents a future danger, the defendant must be permitted to inform the jury that he would not be eligible for parole, so long as the only statutory alternative to a death sentence is imprisonment without possibility of parole.(citation) Wisely, Mahaffey

does not explicitly rely on Simmons in his briefs to this Court. That is because O'Dell v. Netherland, 521 U.S. 151, 138 L. Ed. 2d 351, 117 S. Ct. 1969, 1977-78(1997), held that Simmons announced a new rule within the meaning of Teague v. Lane, 489 U.S. 288, 103 L. Ed. 2d 334, 109 S. Ct. 1060 (1989); our circuit had previously reached this same conclusion in Stewart v. Lane, 60 F. 3d 296, 299-303 (7th Cir. 1995), cert. denied, 518 U.S. 1033 (1996) The fact that Mahaffey does not explicitly rely on Simmons, however, does nothing to alter Teague's principle of the nonretroactivity of new rules. Mahaffey's conviction became final in 1990, when the Supreme Court denied certiorari on direct review. He therefore cannot benefit from the rule of Simmons, which the Court announced in 1994. Jerry Mahaffey v. Thomas Page, 151 F. 3d 671 (7th Cir. 1998)

Furthermore, one must not forget, that Mahaffey's jury heard about the brutal escape from Cook County jail in which prison guards were beaten and threatened with their lives at gunpoint. They also heard Mahaffey state that he did not know whether he would again try to escape from prison. In a unique case such as this, such an instruction could not possibly have had an impact on Mahaffey's jury.

## **VI .Decision to Seek Death**

Mahaffey claims his sentence should be reduced because the State's Attorney's decision to seek death was made without uniform protocols to guide his discretion and was not approved by a state-wide review committee. However, it has long been recognized by the Illinois Supreme Court that the State's Attorney is endowed with the exclusive discretion to decide which of several charges shall be brought, or whether to prosecute at all. " A prosecutor's discretion extends to decisions about whether or not the death penalty should be sought." People v. Jamison, 197 Ill. 2d 135, 161-62, 756 N.E.2d 788 (2001). Therefore, any attempt to mandate such a review would constitute an impermissible restriction on the independence and the exclusive authority of the

various State's Attorneys under the Illinois Constitution. Moreover, petitioner does not even allege much less argue that the decision to seek death in his case was the result of an abuse of discretion.

## **VII. Allocution**

Mahaffey also claims that clemency is appropriate because he was denied the opportunity to make a statement in allocution at his sentencing hearing. However, as the Illinois Supreme Court stated long ago, "an unsworn statement to the sentencing jury [to be] consider[ed] along with testimony given under oath and the arguments of counsel would at the least confuse the jurors, and might also impair their ability to weigh the aggravating and mitigating factors." People v. Gaines, 988 Ill. 2d 342, 380, 430 N.E.2d 1046 (1981).

Most significantly, however, **Mahaffey testified under oath at his sentencing hearing** and tried to explain why he should not be sentenced to death. He expressed no remorse for the crime and when asked if he would attempt to escape from prison again, he responded, "I don't know." Therefore, this is a nonissue in Mahaffey's case.

## **VIII. No Confusing Jury Instructions Were Given**

Mahaffey asserts that clemency is warranted because of Ryan Commission Recommendation 65. However, the Illinois Supreme Court and the federal courts have consistently rejected any claim that the statute and accompanying instruction is confusing and might lead a jury to believe that the death penalty is mandatory. See People v. Mitchell, 152 Ill. 2d 274, 346, 604 N.E. 2d 877 (1992); Silagy v. Peters, 905 F. 2d 986, 998-99 (7th Cir. 1990) Moreover, because both the prosecution and the defense argued to the jury about the appropriateness of the death sentence in Mahaffey's case, any confusion in the language of the instruction was negated by the

closing arguments.

## **IX. Judicial Override**

Mahaffey asserts that his sentence should be commuted because the judge was not given the opportunity to override the jury's decision to impose the death penalty. Petitioner is wrong, however, because Illinois judges have long had the inherent authority to grant a new trial or sentencing hearing (or even enter a judgment notwithstanding the verdict). Because the trial judge at petitioner's trial denied his post-trial motions, it is clear that the judge would not have overridden the jury's verdict. This is especially borne out by the statement Judge Hett made on the record at Mahaffey's trial. As one of the most experienced and highly respected Judges sitting in the Criminal Courts Building in Cook County, Judge Hett stated: "In all my experiences, I have never run across a case in which the facts were so brutal, so heinous, so wanton. I suppose I have read about things that have been more brutal than this event, but I myself have never run into anything that would match this cold, calculating terror."

## **X. Supreme Court Review**

Petitioner also claims that he is entitled to clemency because the Illinois Supreme Court failed to consider whether his death sentence was disproportionate, excessive or otherwise inappropriate. However, because the Illinois Supreme Court has demonstrated that it will address comparative sentencing arguments whenever they are raised by defendants in capital cases (see People v. Emerson, 189 Ill. 2d 436, 727 N.E.2d 302 (2000); People v. Palmer, 162 Ill. 2d 465, 491, 643 N.E.2d 797 (1994)) and will vacate a death sentence if it determines that it is excessive in light

of the facts of the case and the defendant's background (see People v. Smith, 177 Ill. 2d 53, 685 N.E.2d 880 (1997); People v. Blackwell, 171 Ill. 2d 338, 665 N.E.2d 782 (1996))

**CONCLUSION**

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

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