

OCTOBER 2002 SESSION
PRISONER REVIEW BOARD
STATE OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)	
)	Docket No. \
vs.)	
)	
JERRY WARD,)	Inmate No. A90394
)	
)	

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

—————
PEOPLE'S RESPONSE IN OPPOSITION TO PETITION
FOR COMMUTATION OF DEATH SENTENCE

—————
HEARING REQUESTED

RICHARD A. DEVINE
STATE'S ATTORNEY OF COOK COUNTY

By: RAY BROGAN
JANET MAHONEY

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I

HISTORY OF THE CASE

On February 15, 1986, Jerry Ward shot Bruce Heard in the back of the head and hacked off half of Pamela Williams' head with a tire iron, killing both of them. Following a jury trial before the Honorable Richard Neville in 1988, petitioner was convicted of the shooting murder of Bruce Herd, the bludgeoning murder of Pamela Williams, armed robbery and possession of a stolen motor vehicle. Judge Neville presided over petitioner's bench sentencing hearing. Judge Neville found petitioner eligible for the death penalty. Judge Neville sentenced petitioner to death for each of the murders. Judge Neville also sentenced petitioner to 30 years imprisonment for the armed robbery conviction and 3 years imprisonment for the possession of a motor vehicle conviction.

Petitioner appealed his convictions and sentences to the Illinois Supreme Court. Petitioner raised twenty-four claims. On November 19, 1992, the Illinois Supreme Court upheld petitioner's convictions and sentences. People v. Ward, 154 Ill. 2d 272, 609 N.E.2d 252 (1992). [State Ex. A] A petition for rehearing was denied on March 29, 1993. Petitioner also filed a petition for writ of certiorari seeking review by the United States Supreme Court. That petition was denied on October

4, 1993. Ward v. Illinois, 510 U.S. 873, 114 S.Ct. 204 (1993). [State Ex. B]

On April 4, 1994, petitioner, with the aid of counsel, filed a petition with the Circuit Court of Cook County for relief pursuant to the Post-Conviction Hearing Act. The State filed a motion to dismiss on April 14, 1994. Petitioner then filed an amended petition for post-conviction relief on July 12, 1995, a memorandum in response to the State's amended motion to dismiss on April 11, 1996 and a supplement to the memorandum in response to the amended motion to dismiss on September 10, 1996. After hearing arguments, the court dismissed the post-conviction petition on September 12, 1996.

Petitioner appealed the dismissal of the post-conviction petition to the Illinois Supreme Court. Petitioner raised twelve claims. On June 17, 1999, the Illinois Supreme Court affirmed the judgment of the circuit court denying the post-conviction petition. People v. Ward, 187 Ill. 2d 249, 718 N.E.2d 117 (1999). [State Ex. C] Petitioner also filed a petition for writ of certiorari seeking review by the United States Supreme Court. That petition was denied on February 28, 2000. Ward v. Illinois, 528 U.S. 1193, 120 S.Ct. 1251 (2000). [State Ex. D]

On April 19, 2000, petitioner filed a Motion for Discovery before Judge Gettleman in Federal District Court outlining six areas of discovery. On April 26, 2000, Judge Gettleman granted one of the discovery request and reserved ruling on the other requests.

On June 15, 2000, petitioner filed his Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. sec. 2254 in Federal District Court. On the same day, petitioner filed a motion requesting that Judge Gettleman allow him to file an "Amended Petition for Writ of Habeas Corpus" after authorizing further discovery and thereafter, a reply and supporting memorandum of law on behalf of petitioner after the State files a responsive pleading. Judge Gettleman allowed additional

discovery and stated that the discovery he was allowing was “liberal.”

After discovery was completed, Judge Gettleman allowed petitioner to file an “Amended Petition for Writ of Habeas Corpus.” Ward raised twenty-three claims. The State filed a response to the habeas petition on October 16, 2001. Judge Gettleman has not issued his decision in the matter.

II

FACTS OF THE CASE

Chicago Police Officer Joseph Scardino testified that at 9:35 p.m. on February 15, 1986, he and his partner proceeded to an alley located at 914 South Independence (also considered to be 3830 West Taylor), in Chicago, in response to a call of "man dumped from car." They found the body of Bruce Herd, laying in the snow. He had been shot once in the back of the head. At approximately 9:40 p.m., they received a flash message that a gray Olds with its left rear bumper badly bent, was the "suspect vehicle" in this murder. They passed the described car, and looked "face-to-face" with Jerry Ward, the driver. Ward, after seeing the officers, took off at a high rate of speed. The officers gave chase, Ward's car struck a building and got stuck on the ice. Ward, while still in the car, pulled out a gun from his waistband, placed it on the car seat, and raised his hands. The officer arrested Ward and took the gun. The gun, a Smith and Wesson .38 caliber, had 2 spent cartridges. The officer saw "dots" of a red substance, and also "white fleshy material or matter" on the trunk and right rear half panel of the car. The "red substance in the form of dots," and also the "same type white fleshy matter that [the officer] observed on the trunk" were on Ward's face and the front of his clothing. The officer identified a photograph of this car in court which showed the blood and white fleshy matter. [State Ex. E]

Chicago Police Officer James Peck also responded to the scene and also observed the blood and small pieces of "white flesh" on Ward's face and car. [State Ex. E]

Detective John Summerville also heard the flash message and subsequent monitor of the chase. When he arrived, Ward was handcuffed. Speckles of blood and pieces of flesh were on his face and jacket, as well as his car trunk. [State Ex. E]

Bruce Herd had borrowed his sister's, Clara Herd's, 1977 Buick that evening. Clara identified the car Ward was driving when the police stopped him as her car. Bruce Herd had left her home around 7:30 p.m.

Gerald Williams testified that Bruce came to his house at 8:00 p.m. Bruce was his daughter Pamela's boyfriend. When Bruce arrived, he found that the Williams family was preparing to celebrate Gerald's birthday. Bruce asked Pamela to go to the store with him to buy her father a six-pack for his birthday. They left around 8:20 - 8:25 p.m.

Curtis Rollins lived across the alley from 3824 West Grenshaw. On February 15, 1986 at 9:20 p.m., he heard 2 gunshots. His mother told him to close the window and "don't be nosey." The alley was where Pamela's body was found and was about 2 blocks from where Bruce's body was found.

At 10:35 p.m., a Chicago police officer found Pamela Williams in the alley. Her head had been hacked apart with a tire jack. [State Ex. E]

Chicago Police Evidence Technician Frank DeMarco went to the 3830 West Taylor crime scene and found Bruce Herd with a gunshot to the back of the head. [State Ex. E] There was no brain matter. He then went to the car, and found blood splatters, not smears, and white matter splatterings. He recovered blood samples from the car. He then received a call of a beating at 3824 West Grenshaw; a few blocks away. He found Pamela to have been badly beaten about the face and head. [State Ex. E] There was blood splatters and white tissue matter on the garage door at that location. A red hat with brain matter and blood along with a tire jack were found alongside the body. The detective took blood swabs from the garage door, jack and hat, and photos of the brain matter on the car trunk, on Pamela and on the hat. [State Ex. E]

According to expert testimony, Ward had type "O" blood, Bruce, type "A" and Pamela, type "B". The expert, Pamela Fish, analyzed the bloodstains which were on the left arm and right pocket area of Ward's coat. The blood was consistent with Pamela's type, but not with Bruce's or Ward's. She found the same to be true with the bloodstains she analyzed on Ward's pants and underpants. The bloodstains on the garage door, as well as the car jack, were also Pamela's type. The blood splatters on the trunk of the car which petitioner was driving were also Pamela's type. Ms. Fish

stated that the blood on the car was "splattered," not smeared.

Kathleen Galagan, a chemist with the Chicago Crime Lab, testified that in her expert opinion, the test of Ward's hand residue after his arrest indicated that he had recently discharged a gun.

Dr. Edmond Donaghue, the Assistant Medical Examiner who performed the autopsies on both Bruce and Pamela, testified that Bruce had been shot once in the back of the head and died as a result. Pamela suffered over 46 external injuries, 41 to her face, head and neck, and died as a result of multiple injuries due to beating. Her injuries were such that brain matter was emitted. The doctor circled portions of photographs of Pamela which depicted this white brain matter. While he found no evidence of a bullet itself, the doctor testified that there was also a "punched out" fracture of the skull as well as numerous and extensive lacerations to her head.

Chicago Police Sergeant James Gainer of the Firearms Identification Division examined the gun recovered from the defendant, and the bullet recovered from Bruce Herd. He was able to determine that the bullet had been fired from a Smith and Wesson .38, the type of gun recovered from Ward. The cartridges remaining in Ward's gun and the bullet that killed Bruce were all "reload" or non-factory.

Theatrice Patterson, a latent print examiner, analyzed the prints taken from the exterior of the car and its contents. He determined that a print recovered from the exterior passenger window and from a plastic cup found inside the car was made by Ward. One print recovered from a 7-Up can belonged to Williams and a print from a plastic cup and another from the 7-Up can belonged to Herd. There were no prints recovered from the gun or the tire iron.

A jury found Ward guilty of the murders of Bruce and Pamela, guilty of possession of a stolen motor vehicle and guilty of armed robbery.

During the bench sentencing hearing, evidence was admitted that Ward, while in jail, forced a 17-year-old inmate to have oral sex with Ward and Ward's friend by keeping a "shank"

pointed at his neck. Ward was a Vice Lord "lieutenant" for their galley in prison. A week after the incident, two prison inmates appearing on Ward's behalf threatened to burn the 17-year-old's cell with him in it, if he did not sign an affidavit withdrawing his complaint about Ward.

Cameron Farber, records supervisor for the Illinois Department of Corrections, testified that Ward violated parole and was sentenced March 17, 1982. He was sent to Pontiac, a maximum facility, due to Ward's classification as "violent, aggressive, with no motivation for academic or vocational programming, his moral and social values appeared to be deviate, he was a Vice Lord and was highly manipulative." Additionally, on July 18, 1986, Ward was found with a homemade metal shank in his waistband by a Department of Corrections' sheriff. Ward's prison records, indicating his performance, were admitted.

Renee Jackson, as well as the investigating officer, testified as to Ms. Jackson's July 7, 1980 allegation that Ward raped her. When Renee pointed Ward out to police officers as he stood at a street corner, Ward had a loaded revolver in his right rear pocket. The rape charges were not prosecuted; he was convicted of felony UUW.

Evidence was also received that defendant had two UUW felony convictions, 3 burglary convictions and a felony theft conviction.

The court found the defendant qualified for the death penalty because he was over the age of 18 at the time the offenses were committed, and because he had committed two murders during the course of an armed robbery. After a review of all of the evidence, the court found that there was no evidence of a struggle by the victims, which made the killings appear to be executions. The court further concluded that Ward' s prior felony convictions indicated a propensity for violence. Moreover, the judge considered Ward to be a disciplinary problem in prison, having been found once with a knife while in the county jail, and on three separate occasions while in the Department of Corrections. The judge stated that he believed Ward was unable to assimilate into any society, citing specific incidents Ward had with guards in prison. The court imposed a sentence of death for each of

the murders, 30 years imprisonment for the armed robbery conviction, and 3 years imprisonment for possession of a stolen motor vehicle, concurrent. The court later denied a motion for a new sentencing hearing.

III

REASONS FOR DENYING THE PETITION

Ward asks for mercy because (1) the Illinois Supreme Court created new rules to apply in capital cases and he did not have the benefit of those rules because his death sentence was imposed prior to their effective date; (2) the legislature created a Capital Litigation Trust Fund and he did not have the benefit of it because it did not exist when he was sentenced to death; (3) Governor Ryan created a commission which established a set of rules to be applied in death penalty cases and several of these rules were not followed in this case; and (4) the evidence of his guilt was primarily circumstantial.

A.

PETITIONER IS NOT ENTITLED TO CLEMENCY VIA
ANY NEW RULES ENACTED BY THE
LEGISLATURE, THE ILLINOIS SUPREME COURT
OR THE GOVERNOR'S COMMISSION

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.

SUPREME COURT RULES

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.

CAPITAL LITIGATION TRUST FUND

Petitioner asserts that he is entitled to clemency because he was denied adequate funding to investigate the case and/or to retain the necessary expert witnesses. However, despite the creation of the Capital Litigation Trust Fund, there is no indication that any capital defendant in Illinois, particularly those prosecuted in Cook County has ever been deprived of the necessary

funds to investigate or retain appropriate experts. Rather, courts have denied various requests which are deemed unreasonable or unnecessary, the same standard which applies for funds under the Capital Litigation Trust Fund. 725 ILCS 124/15(c). Also, the Cook County Public Defender has significant resources available for capital litigation. Therefore, the mere fact that the Capital Litigation Trust Fund was not created until 2000 is irrelevant.

RYAN COMMISSION RULES

Videotaping

Petitioner seeks clemency because his custodial interrogation was not videotaped. 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. However, none of this is even relevant here since petitioner never made a statement that was admitted during the trial. Thus, it is clear that the failure to videotape the custodial interrogation had absolutely no effect on the fairness of his proceedings.

Electronically Recorded Interviews of Significant Witnesses

Petitioner seeks clemency because witness interviews were not electronically recorded. The State's case was consisted of police testimony, forensic expert testimony and life and death witnesses. The only other witness presented was Curtis Rollins Rollins testimony did not vary much from what was recorded in police reports. Clearly, petitioner would not have benefited from

this rule.

Moreover, petitioner was provided with all of the witness' names prior to trial. Petitioner was not surprised by any of the witnesses who testified at trial. Moreover, petitioner has failed to demonstrate how the outcome of his trial would have differed had witness interviews been electronically recorded. Finally, petitioner could have interviewed the witnesses prior to trial and could have electronically recorded those interviews. Petitioner chose not to do so.

Evidence Analyzed by State Police Laboratory

Petitioner seeks clemency because the forensic evidence used against him at trial was analyzed by a state police forensic laboratory by an "expert under investigation" as opposed to an independent laboratory. The "expert under investigation" was Pamela Fish and she has never been found remiss in any of her work in this case. In fact, Fish has never been disciplined at work for any of the work she has performed on all of her cases. Moreover, there has never been a judicial opinion written by any court of law that Ms. Fish engaged in a "pattern of overstating results in favor of the prosecution."

Petitioner was aware that a large portion of the evidence the State intended to present in their case consisted of forensic evidence. Petitioner could have obtained an independent analysis yet he never requested one at any point prior to or during the trial. Petitioner never requested an independent analysis during the post-conviction proceedings. Petitioner never requested an independent analysis during the federal court proceedings where Judge Gettleman granted liberal discovery.

Petitioner's present claim ignores the fact that the trial court and the Illinois Supreme

Court have upheld the integrity of the evidence. Petitioner also ignores the fact that the jury heard the evidence, and after considering the credibility of the witness and all the attendant circumstances, deemed the testimony reliable.

Eligibility Factors

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.

Petitioner was convicted of killing two people. Thus, he qualified for the death penalty as a multiple murderer.

Moreover, petitioner qualified for death penalty where he committed the murders while he was committing another felony, armed robbery. 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. Each one is intended to ensure that the most helpless members of our society (such as children, the elderly or disabled) are protected against violence or to provide a strong disincentive for the offender to kill the victim. For example, cold, calculated and premeditated murders are properly death-eligible because they are limited to situations where the defendant has carefully planned the murder over an extended period of time, and the availability of the death penalty may be the only thing which prevents these defendants from deciding to actually kill their victims. As the Illinois Supreme Court stated “a defendant who contemplates a murder for a substantial period of time, yet still commits it, is set apart from other murder defendants in a meaningful way.” People v. Williams, 193 Ill. 2d 1, 36, 737 N.E.2d 230 (2000). Similarly, murders in the course of another felony are properly death eligible to help deter the defendant from killing the victim. Given these important policy considerations, petitioner’s request must be rejected.

Decision to Seek Death

Petitioner 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, A[i]t has long been recognized by th[e Illinois Supreme

C]ourt that the State's Attorney is endowed with the exclusive discretion to decide which of several charges shall be brought, or whether to prosecute at all. A prosecutor's discretion extends to decisions about whether or not the death penalty should be sought.” People v. Jamison, 197 Ill. 2d 135, 161-62, 756 N.E.2d 788 (2001). Therefore, any attempt to mandate such a review would constitute an impermissible restriction on the independence of the various State’s Attorneys under the Illinois Constitution. Moreover, petitioner does not even allege much less argue that the decision to seek death in his case was the result of an abuse of discretion. Accordingly, it must be rejected.

Experience, Qualifications and Training of State and Defense Counsel

Petitioner claims that he is entitled to clemency because recommendations regarding the experience, qualifications or training of the prosecutors and defense attorneys were not available at the time of petitioner’s trial. Assistant State's Attorneys Lon Schultz and Ray Brogan tried the case for the State’s Attorney’s Office. Mr. Schultz was the first chair on the case and probably had more experience with death penalty litigation than anyone in his Office at the time that he tried this case. Mr. Brogan had been a prosecutor for seven years when the case was tried. Assistant Public Defenders Kevin Smith and Anthony Eben of the Public Defender’s Office highly regarded murder task unit represented petitioner. Kevin Smith was one of the most experienced criminal defense attorneys available in Illinois at the time he represented petitioner. The prosecutors and defense attorneys were all experienced, highly qualified individuals who would have qualified to prosecute and defend the case even if there had been standards in place.

Eyewitness Testimony

Petitioner claims that he is entitled to clemency because eyewitness testimony was presented against him at trial and he did not have the opportunity to present expert testimony concerning the problems associated with eyewitness testimony. This case did not involve eyewitness testimony. The State did not present any witness who testified that they saw petitioner shoot Bruce Herd in the back of the head. The State did not present any witnesses who testified that they saw petitioner hack off the back of Pamela Herd's head with a tire iron. The State did present a witness who testified that they saw a man who dumped a body out of a car in which the police found petitioner shortly thereafter but that witness did not identify petitioner as the person who dumped the body. Thus, this case did not involve eyewitness testimony which petitioner could have challenged with an expert.

Even if there was eyewitness testimony involved, the Ryan Commission rule recommended that the admission of expert testimony with respect to problems associated with eyewitness identification be made on a case by case basis by the trial judge. [Recommendation 55] This is exactly what Illinois courts provided for prior to the recommendation. Thus, petitioner could have requested that expert testimony on the issue of identification be allowed and then the court could have considered whether it was appropriate for the case. Petitioner did not make such a request.

Statutory Mitigating Factors

Petitioner complains that his jury was not instructed to consider as statutory mitigating factors the fact that he had a history of extreme emotional abuse. However, although the jury was

not expressly instructed to consider this factor, it was instructed that mitigating factors include “any reason why the defendant should not be sentenced to death” and that it should consider all mitigating evidence even if it does not pertain to one of the enumerated factors. Illinois Pattern Jury Instruction 7C.06.

Allocution

Petitioner also claims that clemency is appropriate because he was denied the opportunity to make a statement in allocution at his sentencing hearing. Petitioner was not denied the opportunity to make a statement in allocution. The court granted petitioner’s request for allocution with the proviso that if petitioner made a statement the court did not understand, the court could question petitioner. Petitioner chose not to make a statement.

Moreover, 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). Moreover, petitioner was free to testify under oath at his sentencing hearing to explain why he should not be sentenced to death, but chose instead to rely upon his witnesses in mitigation and his attorney’s closing argument. Therefore, he was given every opportunity to present himself to the trier of fact before he was sentenced.

Instruction on Alternative Sentences

Petitioner believes that his death sentence should be commuted because the jury was not

instructed as to all the possible alternative sentences, including that he could have been sentenced to as little as 20 years imprisonment. Petitioner was not sentenced by the jury. Rather, he chose to be sentenced by the judge who is presumed to know the law and the appropriate sentencing parameters in a multiple murder case.

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)), it is clear that the only reason the Illinois Supreme Court did not review petitioner's sentence in such a manner is because he did not ask the Court to do so.

B.

THE EVIDENCE OF PETITIONER'S GUILT IN THE SHOOTING DEATH OF BRUCE HERD AND THE BLUDGEONING DEATH OF PAMELA WILLIAMS WAS OVERWHELMING.

Petitioner claims that he is entitled to clemency because the evidence relied upon to convict him was primarily circumstantial. The circumstantial evidence of petitioner's guilt in this case was overwhelming.

The evidence established that Clara Herd Johnson lent her 1977 Buick vehicle to her brother, Bruce Herd, on the evening of February 15, 1986. Bruce Herd went to Pamela William's house. Bruce and Pamela left the house about 8:20 p.m. because they wanted to buy some liquor for a party the Williams family was having for Pamela's father that evening. Around 9:20 p.m., Curtis Rollins who lived at 3837 W. Fillmore heard two gunshots in the alley at 3824 Grenshaw. The police received a call about a man being dumped from a car and in response to the call the police, at about 9:30 or 9:35 p.m., the police found Bruce Herd's body in an alley at 914 South Independence. Bruce had been shot in the back of the head.

The police received a description of the suspect car from which Bruce Herd had been dumped. The description of the car, matched Herd's sister's car. Minutes later, at about 9:45 p.m. and in the same vicinity, police spotted petitioner driving the suspect car. Petitioner, upon seeing the officers, attempted to speed away, but he was eventually apprehended when petitioner's car hit a building and became stuck on some ice. When the police approached the car, the wheels of the car were spinning as petitioner attempted to flee again. When the police reached the window of the car, petitioner had his hands in the air. Petitioner reached into his waistband, flipped a .38 caliber gun onto the front seat and then raised his hands in the air again. Petitioner was driving the car Clara Herd had lent to Bruce.

Petitioner was placed under arrest at approximately 9:50 p.m. While petitioner was being arrested, the police saw blood and white fleshy matter on his face, his clothing, and on the automobile.

At approximately 10:35 p.m. police found Pamela Williams' body in an alley at 3824 W. Grenshaw, just two blocks away from where Herd's body was discovered. Pamela had 46 external

injuries and 11 internal injuries and her head had been “bashed in.” Brain matter, or white fleshy matter, had been emitted during the beating. Pamela had been beaten to death with a tire jack. There was blood and white fleshy matter on the tire jack and splattered on a garage door near Pamela’s body.

Tests performed on petitioner’s hands for gunshot residue indicated that he had recently fired a gun. Ballistic comparisons between the bullet that killed Herd and the gun recovered from petitioner revealed that the gun was a .38 caliber and that the bullet was a "nonfactory" .38 caliber. The recovered bullet possessed the same general characteristics as the bullets test fired from the gun, namely that they had seven lands and grooves with a twist to the right. The expended cartridges found in the gun were also nonfactory or "reload" cartridges.

Petitioner’s fingerprints were recovered from the car window. Petitioner’s fingerprints were also found on a plastic cup found inside the car.

Tests performed on the blood that was splattered on petitioner confirmed that it was consistent with Williams' blood type, but not with petitioner’s or Herd's. Also, the blood swabs taken from the tire jack, garage door, and car trunk lid indicated that that blood was also consistent with Williams' blood type.

Shortly after two gunshots were heard in the alley where Pamela’s body was eventually found, Bruce was dumped out of his sister’s car. Bruce Herd had been killed by a single gunshot wound to the back of the head. Moments later and following a police chase, petitioner was found in Bruce Herd’s cart. Petitioner possessed a gun that was of the same caliber of gun that killed Bruce. Tests revealed that petitioner had recently fired a gun.

Bruce had been with Pamela Herd shortly before his murder. Pamela’s body was found one

hour after Bruce's in the alley two blocks away where the shots had been heard. She had been severely beaten with a tire jack and her blood and brain matter had splattered around. Pamela's blood and brain matter were on the garage and tire iron at the scene. Her blood and brain matter were also on petitioner when he was arrested.

Circumstantial evidence is sufficient to sustain a criminal conviction, provided that such evidence satisfies proof beyond a reasonable doubt of the elements of the crime charged. People v. Hall, 194 Ill. 2d 305, 743 N.E.2d 521 (2000). The evidence presented proved without any doubt that petitioner shot and killed Bruce Herd and hacked off the back of Pamela's head with a tire iron.

Petitioner claims that the genesis of the fleshy matter was Detective John Summerville. Petitioner misstates the facts. Officer Joseph Scardino, one of the arresting officers, and Officer Peck both testified about the fleshy matter. Officer Summerville just happened to be the first officer of the three called to testify.

Petitioner questions Summerville's credibility because subsequent to petitioner's trial, Summerville was arrested and convicted of various sexual assaults on women. Summerville was arrested in 1993, six years after petitioner's arrest.

Petitioner also claims that "there are credible allegations" that at the time of petitioner's trial, Summerville was addicted to cocaine. Petitioner does not and has never provided any proof to this claim. Despite being granted liberal discovery in the federal court proceedings, petitioner was unable to uncover any evidence that at the time of petitioner's arrest, Summerville was addicted to cocaine or engaging in any type of illegal activity.

Petitioner states that the evidence technician who took the swabs of petitioner's hands did

not take any photographs of the fleshy material and did not take any samples of the fleshy material. At the time of petitioner's arrest, the police had not discovered Pamela William's body. Thus, the police were unaware that petitioner was responsible for the bludgeoning murder of Pamela. Thus, they had no reason to suspect that petitioner was walking around with someone's brain splattered all over him.

Petitioner states that the State did not ask the evidence technician about the fleshy material on petitioner. The State is not required to ask the questions petitioner wants answered. Petitioner had the opportunity to ask this question on cross-examination but he chose not to do so.

Petitioner claims that police reports detail that a second suspect was involved. Petitioner claims that Steve Burtin was identified/considered a second suspect through statements made to the police by Phillip Bradshaw, Larry Heard, Charles Williams, Luther Adams, Rickey Graham and Bonita Garrett. Petitioner had these police reports at the time of trial and could have pursued this theory. Petitioner raised this issue in the Illinois Supreme Court. As simply stated by the Illinois Supreme Court, "This evidence neither exonerates defendant nor diminishes the strong evidence of defendant's active participation in this crime." People v. Ward, 187 Ill. 2d 249, 258, 718 N.E.2d 117 (1999).

Petitioner claims that Philip Bradshaw could have provided testimony that Burtin told him that Burtin and petitioner had done something and that if petitioner talked, Burtin and petitioner would go to jail. This is hardly helpful. Petitioner, a career criminal and regular inmate of the Illinois prison system, had done a lot of things in his life for which he could go to jail. There is nothing which indicates that the event of which Burtin was speaking was the horrific double murder committed by petitioner.

As for Charles Houston, petitioner knew where Charles Houston was at the time of trial. He served Houston with a subpoena. When Houston did not show for trial, petitioner did not ask for assistance in compelling Houston's appearance. Perhaps, it was because Houston would not have helped.

Petitioner claims that Houston could have testified that on February 15, 1986, at approximately 9:30 p.m., he saw a male black, whom he could not identify, take a body, whom he could not identify, from a car he would identify as the one petitioner was driving and dump that body in the snow. Petitioner claims that Houston could have testified that there was another person in the car but he could not identify the other occupant. This testimony supports the State's case that petitioner took Bruce's car with Bruce and Pamela in it, petitioner shot Bruce and possibly Pamela, dumped Bruce's body and then drove Pamela to an alley two blocks away where he bludgeoned her to death with a tire jack from the car. Clearly, Houston's testimony would not have helped him.

Petitioner claims that the police and State never asked that any of the unidentified fingerprints recovered from Bruce Herd's car be checked for any matches with AFIS. Petitioner was found in Bruce Herd's car with a gun, gunshot residue on his hands and Pamela's blood and brain all over him and the car. Again, any evidence of a second suspect does not exonerate petitioner. Moreover, petitioner could have investigated the source of these fingerprints during the State court proceedings yet he did not so. Most importantly, petitioner requested that the State run these fingerprints in federal court. Judge Gettleman granted that discovery request in accordance with his order of liberal discovery in the case. Petitioner failed to include the results of that granted discovery request in his habeas petition pending in federal court or in his clemency petition

presented here.

Finally, even if a second person was involved, it does not exonerate petitioner. Petitioner was in Bruce Herd's car with a gun that he had recently fired and that matched the type of weapon that killed Bruce Herd. Petitioner had Pamela Herd's blood and brain all over him. Clearly, petitioner actively participated in the murders of these two people. It also does not change the fact that petitioner has not been able to live within our society or the society of jail without continually breaking the rules and committing crimes upon people. Simply put, so what if a second person was involved. Petitioner is still guilty of these brutal murders and earned the sentence of death that was imposed.

C.

WARD'S REQUEST THAT HIS DEATH SENTENCE BE COMMUTED AND THAT AN APPROPRIATE SENTENCE OF IMPRISONMENT "OTHER THAN NATURAL LIFE" BE IMPOSED SHOULD BE DENIED WHERE WARD, A CAREER CRIMINAL, SHOT BRUCE HERD IN THE BACK OF THE HEAD, HACKED OFF THE BACK OF PAMELA WILLIAMS' HEAD WITH A TIRE IRON AND HE CONSISTENTLY AND REGULARLY COMMITTED CRIMES AND PRISON VIOLATIONS WHILE INCARCERATED.

Petitioner requests that his sentence of death be commuted and an appropriate sentence "other than natural life" be imposed for his convictions in the murder of Bruce Herd and the murder of Pamela Williams. In other words, petitioner is asking that he be allowed out of jail at some point in his life. This request should be denied.

Petitioner was born on January 28, 1956. Petitioner's first arrest as an adult occurred on May 4, 1974. On November 11, 1975, petitioner pled guilty to burglary and was sentenced to a term of not less than one year and not more than one year and one day. On January 30, 1979, petitioner pled guilty to unlawful use of weapons and was sentenced to thirty-two months in the Illinois Department of Corrections. On July 14, 1980, forced RG to have sexual intercourse with her. On July 16, 1980, RG identified petitioner who was standing on a street corner as her attacker. Petitioner had a gun in his waistband when he was arrested. While the rape charges were not ultimately pursued, the weapons charge was. On December 2, 1980, a jury convicted petitioner of unlawful use of weapons. On December 19, 1980, petitioner was sentenced to two years in the Illinois Department of Corrections. Petitioner was released from jail for this conviction on September 3, 1981. On September 12, 1981 he was arrested for burglary and theft. On February 23, 1982, petitioner pled guilty to burglary and theft and was sentenced to two concurrent terms of 4

years in the Illinois Department of Corrections.

During his incarceration on the burglary and theft convictions, petitioner committed 35 violations between 1982 and 1985. [State Ex. F] Petitioner was found in possession of weapons on several occasions. On one occasion, petitioner used a knife to threaten and force a fellow inmate to perform oral sex on petitioner and petitioner's friend. Petitioner was released from prison on July 12, 1985.

Seven months later, petitioner brutally murdered Bruce Herd and Pamela Williams. Before the judge sentenced petitioner to death for the murders, he considered the facts of the crime itself, its nature, and defendant's actions; his prior criminal history, which included four criminal convictions; his history of having weapons while incarcerated, including what he did while in possession of those weapons; his inability to conform his conduct to any social standard; the finding that he was incorrigible and not subject to any type of rehabilitation; and the violence and cruelty which he perpetrated on the community by these assaults.

The same is true today. While incarcerated on this charge, petitioner has continued to commit prison violations and crimes. [State Ex. G details his recent conduct.] He has racked up eleven violations in the past two years alone. Although he has again and again violated rule after rule and committed major infraction after major infraction, he asks for clemency. Even though he sits on the condemned unit, the most secure area in the IDOC, he has managed to threaten, assault, and generally misbehave on a regular basis. He has in recent times been found guilty of insolence, possessing drugs or drug paraphernalia, fighting, disobeying direct orders, intimidation, damaging property, and possessing materials with gang symbols on them. He has been found guilty of throwing books at an IDOC officer, and throwing a syringe and needle at a medical technician. His

whole attitude can probably be summed up by what he said back on April 1, 1991 when he committed an assault: "I have nothing to lose." This is hardly someone that deserves any type of consideration, let alone clemency. Rules and laws mean nothing to this individual; he only cares about them when he thinks they are to his benefit. Sitting on death row for a double murder and he can't be bothered to even make an attempt to behave.

Petitioner, a career criminal, brutally murdered Bruce Herd and Pamela Williams. Petitioner shot Bruce in the back of the head and hacked off the back of Pamela's head with a tire iron. The force of the beating upon Pamela was so brutal that her brain matter splattered. Some of the brain matter landed on petitioner. Petitioner was so unconcerned by the brain matter and blood on him that when the police arrested him, it was still on his face and clothes. While in jail, petitioner repeatedly violated the rules and committed crimes. He continues to do so to date. Petitioner obviously does not think that any rules apply to him.

Petitioner not only requests that his death sentence be commuted but he requests that he be given a sentence that would allow him to walk our streets some day. Petitioner request for mercy, in any form, should be denied where petitioner has demonstrated that he is unable to live with people while in jail or while out of jail without harming them.

CONCLUSION

Jerry Ward brutally murdered Bruce Herd and Pamela Williams. Ward shot Bruce in the back of the head. Ward hacked off the back of Pamela William's head with a tire iron. The beating was so savage that Pamela's brain matter splattered, some on to Ward. Ward was so unconcerned with the presence of brain matter upon himself that at the time of his arrest, Ward still had the brain matter on his face and clothes. To this day, Ward has never stated that he was innocent of these crimes. Rather, he simply claims that he did not do it alone and that he therefore, should not have been found guilty or sentenced to death. Ward has never displayed any remorse or guilt for his brutal actions. While in jail, Ward has continued to break the rules and commit crimes upon other people. Ward has made it clear that he is unable to live with people in jail or out of jail without harming them.

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

Respectfully submitted,

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