

OCTOBER 2002 SESSION
PRISONER REVIEW BOARD
STATE OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
vs.)	Docket No. 98CR-5125
)	
JOHN HESTER)	Inmate No. 1998-9804651
)	
)	
)	

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

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

HEARING REQUESTED

RICHARD A. DEVINE
STATE'S ATTORNEY OF COOK COUNTY

By: Alison R. Perona
Joe Magats
Assistant State's Attorneys

The petitioner was tried in a bench trial, which commenced on June 24, 2002 before the Honorable Judge Colleen McSweeney Moore regarding the death of Orachanee Anderson. The trial was completed on June 25, 2002. The court found the defendant guilty of the First Degree Murder of Orachanee Anderson. On August 1, 2002 the court found the petitioner eligible for the death penalty. On August 23, 2002 the court entered a Memorandum Sentencing Opinion Order sentencing the petitioner to death. A hearing on the petitioner's post-trial motions is scheduled for September 24, 2002.

II

FACTS OF THE CASE

Physically disabled and functionally retarded, 22 year old Orachanee Anderson suffered a torturous existence and a pain-filled, lingering death at the hands of the Petitioner, her stepfather, one of the people entrusted with her care. Diagnosed in childhood with psychosocial dwarfism¹ and apraxia (a severe speech disorder which essentially rendered her mute), Orachanee Anderson was wholly dependent on her family for all of her needs. Instead of providing her with essential nutrition and nurturing, the Petitioner beat the defenseless victim several times a week with his hands, belts, and electrical cords. Occasionally, he would duct-tape her to the toilet or hogtie her. As a result of the torture inflicted upon her, she was beaten blind in both eyes and was unable to walk. Unable to call for help, dial a phone, or leave her place of captivity (the family home), Orachanee endured this torture from more than five years before her emaciated, broken, and scar-riddled body ceased to function.

PETITIONER’S ADMISSIONS TO THE CRIME-“SOMETIMES HE WOULDN’T STOP HITTING HER, DEPENDING ON HOW HE FELT.”

Petitioner Hester admitted in a hand-written statement (see Attachment A) to the police and to an assistant state’s attorney that, despite the fact that he was aware of his stepdaughter’s disabilities, he beat her regularly. According to the Petitioner, the beatings began after Orachanee left school because “if she was still going to school, the school would have seen the beat marks and notified DCFS.” He reviewed photo documentation of Orachanee’s injuries and acknowledged that the scars, marks, and wounds were a direct result of his physical violence. He indicated that, in an effort to conceal his crimes, he would treat her wounds with “witch hazel, iodine, Vaseline, and peroxide” because he knew that medical personnel “would call the police and he didn’t want to go to jail.” Petitioner further informed investigators that he forced Orachanee to sleep in the utility room in the family’s apartment.

Petitioner admitted to his psychologist, Dr. Robert L. Smith, that he beat Orachanee. Dr. Smith testified on behalf on the Petitioner that Petitioner told him that he would strike Orachanee with his hands, belts, and electrical cords. Petitioner minimized his actions and motivations to his doctor by characterizing them as “corporal punishment.”

VICTIM’S INJURIES

At the time of her death, Orachanee Anderson’s body was covered with no less than 177 separate and distinct injuries. (See Attachment B) Dr. J. Lawrence Cogan, a deputy medical examiner for the Office of the Cook County Medical Examiner, testified that the injuries on her

¹ Psychosocial dwarfism is a rare diagnosis in which the individual presents with physical, emotional, and intellectual delays that are not attributable to organic causes. Rather, these deficits are caused by long term-neglect and/or abuse.

body ranged from a couple of days to several years old. On some parts of her body, old, mid-range, and recent injuries were superimposed on each other. Her backside evidenced the greatest number of injuries. (See photo attachments C1 and C2.) In the doctor's opinion, a great number of the wounds, scars, and marks were consistent with Orachanee having been struck by either an electrical cord or belt. The doctor noted that her body bore evidence of ligature marks consistent with the victim having been bound with duct-tape and electrical cords. Additionally, he observed that the victim's face was heavily bruised and scarred. She had a "cauliflower ear" which he described occurs when the cartilage in the ear is repeatedly traumatized. From an examination of her eyes, he opined that, as a result of blunt trauma, she was blind in both eyes. (Petitioner's witness, Dr. Elise Torczynski, concurred in both the diagnosis and cause.) Dr. Cogan noted hemorrhages in Orachanee's neck that were consistent with manual strangulation. She had severe cellulitis (redden, swollen skin which had split and crusted) on her left leg. He further noted that the bottoms of her feet were rounded (like a baby's), several bedsores were present on her body, and that her elbows were heavily calloused. From these observations, Dr. Cogan's opined that Orachanee was unable to walk and was only able to propel herself around the apartment with her elbows. Dr. Cogan noted evidence of malnutrition. At the time of her death, Orachanee weighed between 80-85 pounds and was between 58-61 inches in length. Her body-mass index was 16 (normal 20-25). She had little adipose tissue in her body. Dr. Cogan testified that Orachanee Anderson died as a result of blunt force trauma and malnutrition.

JUDGE'S FINDINGS—"THIS MAGNITUDE OF EVIL SHOCKS THE CONSCIENCE."

Judge Colleen McSweeney-Moore presided over both the Petitioner's trial and sentencing hearing. After finding the defendant guilty of the First Degree Murder of Orachanee Anderson, the judge found him eligible for the death penalty under two theories: 1) torture, and, 2) the victim was a disabled adult. After a protracted sentencing hearing in which witnesses testified in aggravation and mitigation, the judge requested four weeks in order to review the evidence, conduct research, and to formalize her opinion. On August 23, 2002, Judge McSweeney-Moore issued a written opinion (see Attachment D) in which she reviewed all legal issues and facts presented, as well as weighed the evidence in aggravation and mitigation, including evidence presented by Petitioner's expert witnesses that he was "borderline mentally retarded." (See Section III, infra, for further discussion.). The judge found that **"Orachanee Anderson was a victim of the ultimate betrayal: to be tortured and brutalized by the very person she expected to care for her and protect her—the person she considered her father. She lived a nightmare. She endured hell on earth."** The judge then sentenced the Petitioner to death.

III

REASONS FOR DENYING THE PETITION

In its ruling the trial court noted that this case is a simple matter of right and wrong. This is not a case where the petitioner claims that he was wrongfully convicted and is innocent of the crime for which he was convicted. There is no such claim in his petition. This is not a case of a mistaken, false or an allegedly coerced identification. This is not a case where there is unknown DNA evidence. It is not a "whodunit." There is no dispute as to the facts of the case or as to the cause or manner of the victim's physical injuries. This is not a case where the petitioner claims that his confession was the product of torture. There is no claim that the petitioner's conviction and sentence were the product of prosecutorial or police misconduct. In short this case has none of the issues that have led to the current changes in the litigation of capital cases. There exists no legal reason to commute the petitioner's death sentence.

It is interesting to note that at the time the petitioner filed his petition he had neither filed a Motion for New Trial nor a Motion to Reconsider Sentence with the trial court. He has not availed himself to any of his myriad appellate rights. Based on his petition, the only dissatisfaction that the petitioner has with his trial and sentencing is the result. By filing his petition in the manner and time that he has, it is apparent that the petitioner seeks to ride the wind of the political decision of one individual.

PETITIONER'S REQUEST FOR CLEMENCY IS PREMATURE BECAUSE HIS CASE HAS YET TO HAVE APPELLATE REVIEW

Because petitioner's death sentence has not yet been affirmed by the Illinois Supreme Court on direct appeal, this petition for executive clemency is premature. (Since the Judgment and Execution Order in Petitioner's case was only signed by the judge on September 24, 2002, briefs have yet to be filed.) The Illinois Constitution of 1970 expressly provides that "Appeals from judgments of Circuit Courts imposing a sentence of death shall be directly to the Supreme Court as a matter of right." Article VI, section 4(b). Pursuant to this provision, the Supreme Court promulgated Supreme Court Rule 606(a) which states that "In cases in which a death sentence is imposed, an appeal is automatically perfected without any action by the defendant or his counsel." Therefore, it is clear that all convictions resulting in death sentences must be reviewed by the Court before the defendant may be executed.

Due to this constitutional restriction, it is clear that no convictions resulting in death sentences are final prior to the completion of the Illinois Supreme Court's review on direct appeal. As the Court has long recognized, the completion of the direct appeal is a necessary element of criminal prosecutions. See People v. Mazzone, 74 Ill. 2d 44, 46, 383 N.E.2d 947 (1978) (holding that a defendant's death while his appeal is pending requires the convictions to be abated *ab initio*); O'Sullivan v. People, 144 Ill. 604, 610, 32 N.E. 192 (1892) (same); People v. Robinson, 187 Ill. 2d 461, 463, 719 N.E.2d 662 (1999) (same). Thus, it cannot be disputed that in capital cases, the Court's affirmance is a indispensable component of a "conviction." Accordingly, because the

Governor's clemency power is expressly limited to situations "after conviction" (Article V, section 12) (and in fact the practice has always been to wait until the completion of the entire appellate and post-conviction process), neither this Board nor the Governor may consider a clemency petition from petitioner until the finding of guilt and death sentence are affirmed by the Illinois Supreme Court.

PETITIONER HAD THE BENEFITS OF THE NEW SUPREME COURT RULES

As pointed out in Section I, this case was tried under the amended Illinois Supreme Court Rules regarding capital cases, even though those rules did not apply to the petitioner's case. The People filed a Notice of Intent to Seek the Death Penalty, a Certificate of Disclosure and complied with all of the amended Illinois Supreme Court Rules regarding discovery in capital cases. The trial court held several case management conferences as required by the amended Illinois Supreme Court Rules. The petitioner also complied with his new discovery requirements as outlined in the amended rules and his attorneys filed a readiness certificate.

Additionally, the petitioner availed himself to the benefits of these new rules by taking an evidence deposition of the pathologist who conducted the autopsy of the victim. The petitioner further benefited from the application of the new rules in this case by having both of the attorneys who actually tried the case be members of the Capital Litigation Trial Bar of the Illinois Supreme Court.

Oblivious to the fact that his case was tried under the amended Illinois Supreme Court Rules regarding capital cases, the petitioner asserts that because he was sentenced to death without the recommendations of Governor Ryan's Commission on the Death Penalty being enacted into law, he was sentenced to death under a profoundly flawed system of capital punishment. 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)).

It is telling, however, that the petitioner has not even made the attempt to demonstrate how the recommendations of the Commission would have affected the outcome of the proceedings. This is especially so as the petitioner was found eligible for the death penalty based upon an aggravating factor, torture, which the Governor's Commission has specifically recommended be retained.

PETITIONER IS *NOT* MENTALLY RETARDED

The petitioner never asserted that he was mentally retarded during the eligibility phase of his death penalty sentencing. Indeed, on July 1, 2002 (after the defendant had been convicted of First Degree Murder but before he was found eligible for the death penalty), the petitioner filed a Motion to Bar the State from Seeking John Hester's Death. That motion never alleged the petitioner is mentally retarded.

The petitioner asserts that he is borderline mentally retarded and suffers from neuropsychological deficits that impair his judgment. The trial court considered these claims and specifically rejected them. See Attachment D, pp. 18-21.

The petitioner claims that he is borderline mentally retarded. As his own psychologist Dr. Robert L. Smith testified, the diagnosis or term “borderline mentally retarded” does not appear in the *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition*. The DSM-IV is a book published by the American Psychiatric Association that lists recognized mental disorders. The petitioner’s IQ is above the levels categorized as retarded in the DSM-IV.

In considering the petitioner’s claim of being “borderline mentally retarded”, the trial court looked to the definition of mentally retarded in the Illinois Compiled Statutes at 730 ILCS 5/5-5-3.1 (13). The court specifically found that the petitioner did not meet the statutory definition of mentally retarded as **“The evidence before me repudiates that defendant had significant limitations in adaptive functioning. He was able to care for himself. He lived in a household with several other people. He went to school. He worked most of his life, and the evidence indicated that he was a good, productive, dependable worker. He was able to function in life on a daily basis. He had the cognitive ability to hide his brutal attacks from the outside world.”** Attachment D, p. 19. The trial court found that the defendant did not meet any of the requirements to be considered mentally retarded.

As to the petitioner’s claimed cognitive defects and lack of judgment and impulse control, the bulk of the evidence regarding these areas came from the testimony of the petitioner’s psychologist Dr. Robert L. Smith. In reviewing this evidence, the trial court found that Dr. Smith’s testimony was incredible. The court found that Dr. Smith’s opinions were based on the petitioner’s self serving statements made to the doctor and that the other evidence in the case failed to substantiate the doctor’s opinions. In rejecting the petitioner’s claims that he lacked impulse control the trial court stated that **“[I]t is clear defendant was able to control himself in every facet of his life except, where Chanee was concerned. Other than with regard to her, defendant was not out of control. Defendant methodically kept the tools of his abuse readily available. He was able to control his torture and violence against others who had the ability to fight back.”** Attachment D, p. 20.

The petitioner requests that his death sentence be commuted to an appropriate sentence of imprisonment. When one considers the victim’s calcified blind eyes, her cauliflower ears; when one considers every strangulation, every fracture, every beating, every punch, every whipping, every duct taping and every inch crawled on the floor on her elbows to avoid the savagery the petitioner inflicted on the victim over the course of years; there is no appropriate sentence of imprisonment. What the petitioner did to the victim in this case more than merely shocks the conscience. It mocks the conscience and perverts our sense of right and wrong and decency, just as a sentence of a term of years would mock the dead and pervert justice. A term of imprisonment would be one final cruel blow to a victim whose existence and body was marked by nothing other than cruel blows from which she could neither defend nor cry out against. The only appropriate sentence in this case is the sentence the trial court handed down on August 23, 2002: Death.

CONCLUSION

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

Respectfully submitted,

RICHARD A. DEVINE
State's Attorney of Cook County

Alison R. Perona
Assistant State's Attorney

Joe Magats
Assistant State's Attorney