

OCTOBER 2002 SESSION
PRISONER REVIEW BOARD
STATE OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
vs.)	Docket No
)	
JOHN JOSEPH PECORARO,)	Inmate No. A-10465
)	
)	
)	

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

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

HEARING REQUESTED

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STATE'S ATTORNEY OF COOK COUNTY

By: KENNETH T. McCURRY,
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Assistant State's Attorneys

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I

HISTORY OF THE CASE

Following a jury trial which began on October 13, 1987, the petitioner was convicted of the 1982 murder of Jimmy Christian. The Honorable Kenneth Gillis sentenced the petitioner to death at a capital sentencing hearing at which the prosecution established that the petitioner had been convicted of an earlier murder in 1973 and that the present murder had been committed in a cold, calculated, and premeditated fashion.

On direct appeal to the Illinois Supreme Court, in which one of the issues was the sufficiency of the evidence, the court in 1991 affirmed the conviction and sentence. *People v. Pecoraro*, 144 Ill.2d 1, 578 N.E.2d 942 (1991). The United States Supreme Court denied certiorari on April 20, 1992.

On December 1, 1994, the Circuit Court of Cook County denied

the petitioner's post-conviction petition. The Illinois Supreme Court upheld that denial in 1997. *People v. Pecoraro*, 175 Ill.2d 294, 677 N.E.2d 875 (1997). In the same year the United States Supreme Court denied certiorari.

In June of 1997 the petitioner filed a petition for writ of habeas in the Federal District Court for the Northern District of Illinois. That court allowed extensive discovery, ordering the depositions of 16 witnesses and the tendering of the prosecution's entire trial file to the petitioner's attorneys. The district court denied the petition on April 24, 2001. *United States ex rel. Pecoraro v. Page*, 169 F.Supp.2d 815 (N.D. Ill. 2001)

The petitioner appealed the denial of habeas corpus to the United States Court of Appeals for the Seventh Circuit. That court affirmed the dismissal in a unanimous opinion issued on April 1, 2002. *Pecoraro v. Walls*, 286 F.3d 439 (7th Cir. 2002). The petitioner's request for a writ of certiorari is currently pending before the United States Supreme Court.

II

FACTS OF THE CASE

On December 8, 1982, employees of the Progress-For-Vending Company, located at Addison and Mozart Streets in Chicago, discovered Jimmy Christian's body slumped down in the passenger's seat of his car, which had been parked at 3605 N. Mozart Street for

two days. Police forced entry into the locked car and found no keys in the vehicle or identification on the body. Mr. Christian had been killed by a single contact bullet wound to his chest which lacerated his heart and lung. An evidence technician assigned to the scene recovered a .357 magnum expended bullet embedded in the car's passenger side seat cushion. The victim's wallet, with identification but no money, was later found in a garbage can at 3905 N. Mozart.

Jimmy Christian had been married for ten years to Nadine Christian, an employee of Parklane Jewelers, for whom she conducted house parties where she sold jewelry. Martha Jackson started working for Nadine in August of 1981. A year later, in August of 1982, Martha and Nadine attended a jewelry convention at the Marriott Hotel near O'Hare Airport. At the convention they met the petitioner, who worked at the door for the hotel. Nadine recruited the petitioner to work for Parklane Jewelers.

After this first meeting Martha saw Nadine and the petitioner together at least once each day while Jimmy Christian was at work.

After a convention for Parklane employees in September 1982, a number of workers, including Nadine Christian, Martha Jackson, and the petitioner, went to a bar at Elston and Kedzie. During the evening of drinking, the petitioner, according to Martha Jackson, was "kissing on" Nadine. At one point, after Martha had jokingly said that Jimmy Christian was coming through the door, the

Petitioner said, referring to Nadine, "She's mine, if I can't have her, nobody will." Martha claimed that on another occasion she saw the petitioner at Nadine's home. At that time he had a gun, which she thought was a .45 caliber, in a shoulder holster.

On the morning of August 6, 1986, three and one half years after the murder, the petitioner flagged down Chicago Police Officer Jeffrey Becker near Armitage Avenue and Leavitt Street. The petitioner first said he wanted to go to the police station. After the officer gave him directions, the petitioner said he wanted a ride to the station to turn himself in for a murder he had committed earlier. The officer handcuffed the petitioner, placed him in the squad car, and informed him of his *Miranda* rights. After the officer asked for and received specific information regarding the murder he took the petitioner to the police station.

The petitioner told Officer Becker that he had killed a man named Jimmy Christian near Addison and California in December two years earlier. The petitioner proceeded to state that he had waited outside the victim's home. When Mr. Christian came out, the petitioner pulled a gun on him, forced him into Mr. Christian's own car, and drove him to the location where he shot him in the chest with a .45 caliber weapon. After the shooting the petitioner disposed of the gun by throwing it into the Chicago River at Ashland and Webster. The Petitioner told Becker that he turned himself in because his conscience was bothering him. At the time

petitioner confessed to Officer Becker, the officer had no previous knowledge of Jimmy Christian's murder.

In response to a call from Officer Becker, Detectives William Kauper and Peter Arpaia interviewed the petitioner at the 14th District Police Station. The petitioner gave a more complete account of the murder which he later repeated to Assistant State's Attorney Joseph Barbaro. In the statement the petitioner said that prior to the shooting he had worked for Nadine Christian, helping her with jewelry demonstrations out of her home. The petitioner's relationship with Ms. Christian progressed rapidly to the point where they became lovers. During this time Ms. Christian told the petitioner that Jimmy Christian had beaten her and her son on several occasions. When the petitioner and Ms. Christian discussed the possibility of killing Jimmy, the petitioner told her that he would kill the victim if Ms. Christian wished it done.

The petitioner went on in his statement to say that on the morning of the murder, which he recalled had occurred early in December of 1982, he took a bus to the Christian home where he waited for Jimmy to leave for work. When Jimmy left the home, the petitioner pulled out his .45 caliber gun and ordered Jimmy into his own car. The petitioner then drove the victim a few blocks away, stopped the car, and began calling the victim names. The petitioner then placed his gun in his left hand and fired a single shot into Jimmy Christian's chest.

Assistant State's Attorney Barbaro reduced the petitioner's statement to writing and reviewed the handwritten version with the petitioner. During the course of this review the petitioner insisted on an amendment which Mr. Barbaro made. When asked to sign the statement, the petitioner declined and said, "I don't want to go to jail over this. I just want to get it off my chest."

Prior to trial, on November 6, 1986, the petitioner filed a motion to suppress his post-arrest statements. In that motion he claimed that at the time of his arrest he was under the influence of large amounts of alcohol, cocaine and THC, which made him incapable of making voluntary statements. The trial court conducted an evidentiary hearing on the motion to suppress beginning on February 10, 1987. In the hearing Officer Becker, Detective Arpaia, and Assistant State's Attorney Barbaro all testified for the prosecution that, when he gave his statements, the petitioner did not appear to be under the influence of drugs or alcohol. According to Mr. Barbaro, for example, "His speech was perfect," and "his walking was fine and his speech was fine at the time."

At the same hearing the petitioner presented his own testimony, that of his girlfriend, Lisa Shankman, and that of Joseph Siemioneko, the Petitioner's friend. These witnesses provided an account of the petitioner's ingestion of alcohol and

drugs during the hours just before he turned himself in to police.

At the conclusion of the hearing the trial court denied the petitioner's motion to suppress, stating that it did not believe the facts as presented on the petitioner's behalf. The court explicitly found credible the testimony of the police officers and Assistant State's Attorney Barbaro. As a result the court found that the petitioner's statements were made knowingly, intelligently, and voluntarily.

During a jury trial, which began on October 13, 1987, the prosecution presented evidence of the circumstances surrounding the discovery of Jimmy Christian's body and the petitioner's statements. Martha Jackson testified concerning her acquaintance with the petitioner. In the petitioner's defense his attorney first established that the bullet found in the victim's car was a .357 caliber rather than a .45 caliber. Counsel also offered the testimony of Gynne Fritz, who had been married to the petitioner at the time of the murder. Ms. Fritz testified that on December 6, 1982, the petitioner drove her to work where she punched in at 8:21 a.m. He returned later to take her home for lunch.

Defense counsel also presented the testimony of Lisa Shankman who lived with the petitioner at the time he surrendered to police. Ms. Shankman testified that the petitioner was a heavy cocaine user. On the evening before his surrender and statement he came

home at 5 p.m. He picked up \$30, which was all the money in the house, and left after about five minutes. Ms. Shankman, from her experience with the petitioner, was of the opinion that he was under the influence of cocaine and alcohol at the time. The next morning the petitioner returned home at 8:30 a.m. According to Ms. Shankman, he was definitely high on something at that time.

The jury found the petitioner guilty of the murder of Jimmy Christian. At the conclusion of a capital sentencing hearing, in which the prosecution presented evidence of the petitioner's prior murder conviction, the trial court imposed a sentence of death.

Following the conviction and sentence petitioner appealed directly to the Illinois Supreme Court where, through appointed counsel, he argued, among other things, that the evidence was insufficient to convict, that his confession was involuntary and incredible, and that his trial counsel was ineffective. The reviewing court affirmed. *People v. Pecoraro*, 144 Ill.2d 1, 578 N.E.2d 942 (1991).

The petitioner then filed through counsel a petition pursuant to the Illinois Post-Conviction Hearing Act. 725 ILCS 5/122-1. Chief among his claims in that petition were allegations that the prosecution withheld information in violation of *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194 (1963), and that trial counsel had rendered ineffective assistance. The Circuit Court of Cook County dismissed the petition without an evidentiary hearing. On February

6, 1997, the Illinois Supreme Court in a unanimous opinion affirmed the denial of post-conviction relief. *People v. Pecoraro*, 175 Ill.2d 294, 677 N.E.2d 875 (1997).

On July 29, 1997, the petitioner filed, pursuant to 28 U.S.C. §2254, a Petition for Writ of Habeas Corpus in which he alleged that numerous violations of his constitutional rights occurred in the course of his trial. Following that filing the Court allowed the petitioner extensive discovery including the depositions of sixteen witnesses and disclosure of the prosecution's trial file. As a result of this discovery process the parties, agreeing that no issues of fact existed which would require the taking of testimony, submitted argument and a record for consideration by the court. On April 25 2001, the district court in a memorandum opinion denied the Petition for a Writ of Habeas Corpus.

The petitioner appealed the denial of habeas corpus relief to the Seventh Circuit Court of Appeals. On April 1, 2002, the Court of Appeals in a unanimous opinion affirmed the denial of the Writ of Habeas Corpus.

III

REASONS FOR DENYING THE PETITION

Although titling his petition an application for clemency, the petitioner has asked, not for clemency, but for a pardon. His

only support for such relief is a compilation of over one hundred letters sent from various parts of the world. These letters, all of which are virtually identical, contain the same misinformation and display one apparent shared characteristic, namely, they originate with well-intentioned people who are completely unacquainted with the facts of this case. When closely examined, none of the letters include any accurate and persuasive information pointing to the petitioner's innocence.

One claim made on the petitioner's behalf, for example, is that a Reverend Gibson signed an affidavit stating that another man, Ronald Baker, confessed to him that he was the one who killed Jimmy Christian. This statement is entirely false. There is no such affidavit. In his post-conviction petition and in his habeas corpus petition, the petitioner claimed that the prosecution withheld evidence that Reverend Jerry Gibson heard a man named Ronald Baker confess to the murder. No affidavit from the reverend was included in the petitions. Nonetheless, the Federal District Court ordered that Reverend Gibson be deposed. In his deposition Reverend Gibson testified that he had never met Ronald Baker, had never spoken to him, and had never heard him admit the killing of Jimmy Christian. In denying relief, Judge John Grady of the Federal District Court wrote: "Clearly, even after the exhaustive discovery permitted in this habeas proceeding, there is no evidence, let alone admissible evidence, that Ron Baker ever

admitted killing Jimmy Christian.

Another claim made in the letters is that the prosecution admitted withholding evidence at the time of trial. In his post-conviction filings the petitioner alleged that the prosecution withheld Martha Jackson's pre-trial affidavit in which she stated that the petitioner had agreed to kill her husband in exchange for money. In his deposition the trial prosecutor said that he had never seen the affidavit and, therefore, had not tendered it to the defense. However, the discovery process in the federal court disclosed that all of the information in the affidavit was contained in police reports which had been tendered. In his opinion denying habeas corpus relief Judge Grady stated the following: "There is no doubt that counsel had these reports at the time of trial. Thus, there was no concealment or failure to disclose the information about the solicitation."

The petitioner's materials also claim that the arresting officer had abused the petitioner in a bar one year before petitioner's arrest. While the significance of this allegation is not readily apparent, its validity is certainly questionable. During the sixteen years since his arrest the petitioner has never mentioned such an incident in the trial court, the Illinois Supreme Court, the Federal District Court, or the Federal Court of Appeals. On March 12 1987, the petitioner testified, during a hearing on a motion to suppress evidence, regarding his arrest and

detention. In that testimony he never mentioned that he had a prior relationship of any kind with the arresting officer. None of the letters in the petitioner's support, furthermore, reveal the source of the author's information.

The letters submitted with the petition also state that the Assistant State's Attorney who interviewed the petitioner after his arrest had read the file concerning the murder of Jimmy Christian prior to the interview. The attorney in question was assigned to the State's Attorney's Felony Review Unit, and his function at the police station was to interview witnesses, including the petitioner, and to approve or reject charges. He would have been remiss in his duties had he performed those tasks without first reviewing the available police reports. The attorney was following normal procedures which enabled him to ask pertinent questions when interviewing the petitioner. Of greater significance is the fact that Officer Becker, to whom the petitioner first confessed, had absolutely no knowledge of the murder at the time. This prompted the Illinois Supreme Court to write: "The record shows that defendant flagged down a police officer at random and gave a somewhat detailed account of the offense. The officer had no prior knowledge of the offense and it is thus impossible that this initial confession was the product of leading or prompting by police."

The letters submitted on petitioner's behalf also indicate

that the petitioner did not sign the statement drafted at the police station. Evidence at trial showed that the Assistant State's Attorney took the petitioner's oral statement and reduced that statement to writing. When the attorney asked the petitioner if he wished to sign the statement, petitioner commented, "I don't want to go to jail over this. I just want to get it off my chest." None of these facts were contradicted at trial and all were presented to the jury which found the petitioner guilty. All of the courts that reviewed the conviction were aware that the statement was not signed. At this point the fact that there was no signature is neither alarming nor significant.

Finally, the petitioner points out that there was at trial a discrepancy concerning the caliber of the murder weapon. In his statement to police and the Assistant State's Attorney the petitioner claimed that he shot the victim with a .45 caliber weapon. An evidence technician, however, testified that he recovered a .357 caliber expended bullet in the cushion of the victim's car. Again, the jury and every court that that has reviewed this case was aware of this evidence. They were aware also that the petitioner gave his statement two and a half years after the murder and may have been mistaken about the type of weapon. The jury was also aware of expert testimony at trial that some .357 caliber weapons are made on the same frames as .45 caliber weapons, so that the two types of firearms can look very

much alike.

The petitioner has presented no valid reason to show that he should be granted a pardon. The letters presented were signed by persons who have no personal knowledge of this case and contain allegations which are either untrue, misleading, or immaterial. The petitioner was represented by able counsel at all stages and has received a fair trial before a jury of his peers. The judgment has been repeatedly reviewed by State and Federal courts, all of which have upheld the conviction and sentence. For these reasons a pardon should be denied.

Although the petitioner has not requested a commutation of his sentence, the facts presented establish that the imposed sentence was the appropriate one. In this case the petitioner, in accordance with his premeditated plan, forced the unarmed victim at gunpoint to a secluded location where he simply executed him in a cold and heartless fashion. After his conviction the petitioner was heard to proclaim that, if he were ever released, he would kill the prosecutor. The trial court found the presence of two factors sufficient to impose the death penalty. The first of these was that the offense was committed in a cold, calculated and premeditated manner pursuant to a preconceived plan, scheme or design to take a human life by unlawful means.

A second reason for the imposition of the death penalty was the fact that this was the petitioner's second conviction for

murder. The first murder, committed in 1973, was also a brutal, premeditated, and cold-hearted killing which was perpetrated purely as an act of revenge. The petitioner and several fellow gang members, in an act of retaliation, abducted the victim from the gas station where he worked. From there they took him to a nearby alley where they shot him several times in the head. They then doused the victim's body with gasoline, lit it, and watched the fire for some time until the victim's body was burned beyond recognition.

In a separate incident in 1973 the petitioner in the course of an altercation shot a woman who was merely an innocent bystander. As a result of the shooting she was paralyzed for life and confined to a wheelchair. For this the petitioner was convicted of aggravated battery and sentenced to the penitentiary for one to ten years. By these earlier convictions and the present murder conviction the petitioner has demonstrated that the sentence imposed in this case was the only appropriate one. For this reason clemency should be denied.

CONCLUSION

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

Respectfully submitted,

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