

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-41448 |
| LARRY SCOTT, |) | |
| |) | |
| |) | |

I.

HISTORY OF THE CASE

On August 4, 1984, Larry Scott ["Petitioner"] stalked a Moody Bible Institute student named Kristen Kent as she walked down the street in the area called the "Gold Coast" in Chicago, Illinois. Kristin was walking home from work and listening to music on her Sony Walkman headphones. Petitioner put his arm around her, pulled her into a driveway, and demanded money. When his robbery attempt was unsuccessful, Petitioner strangled and raped Kristen, and he mutilated her body by biting her vagina and biting off the nipples on her breasts.

The jury found Petitioner guilty of murder and attempted robbery and returned a verdict of guilty but mentally ill for aggravated criminal sexual assault. Petitioner then elected a bench sentencing hearing conducted by Judge Earl E. Strayhorn. The judge found Petitioner eligible for the death penalty under 720 ILCS 5/9-1(b)(6), for a murder committed during the course of the felony of aggravated criminal sexual assault. The State presented additional evidence in aggravation, whereas the defense chose to rely on mitigating aspects of the evidence received at trial, particularly conflicting evidence about Petitioner's mental health. On May 30, 1986, Judge

Strayhorn decided there were no mitigating factors sufficient to preclude the death penalty, and he sentenced Petitioner to death for the murder of Kristen Kent. He also imposed a 30 year term of imprisonment for the aggravated criminal sexual assault.

The Illinois Supreme Court affirmed Petitioner's convictions and sentence on direct appeal, see People v. Scott, 148 Ill. 2d 479 (1992), and the United States Supreme Court refused to hear his case. Petitioner then returned to the circuit court where Judge Strayhorn denied his post-conviction petition in 1997. The Illinois Supreme Court affirmed petition dismissal in People v. Scott, 194 Ill. 2d 268 (2000). Petitioner currently has a habeas petition pending before Judge Marvin Aspen of the United States District Court in Scott v. Schomig, No. 02 C 0631.

II.

FACTS OF THE CASE

The State's Case-In-Chief

Petitioner Rapes And Strangles Kristen Kent

At approximately 9:00 p.m. on August 4, 1984, a Moody Bible Institute student named Kristen Kent - who witnesses described as "very polite, very quiet, and very intelligent" - was walking down the street, listening to music on her Sony Walkman headphones, as she headed home from her job at the East Bank Club. (R. 443).¹ Larry Scott ["Petitioner"] was standing in the dark, recessed area of a building doorway when he saw her. Petitioner followed her down the street and stalked her until they came to a driveway on Wells Street in Chicago. Petitioner "put his arm around her" and demanded money, he later recalled. (R. 603). When his robbery attempt was unsuccessful, Petitioner pulled her into the driveway and took her to an area off the street near a garage. He again demanded money and struck her. He also strangled and raped her and mutilated her body by biting the nipples off her breasts before dragging Kristen's body to a more secluded area to conceal it from pedestrians on the street.

Kristen's body was found two days later in a doorway in a dark and concealed area behind 711 N. Wells Street. Kristen had been dragged for a considerable distance across a parking lot. Kristen had abrasions, contusions, and lacerations on her eyes and nose consistent with being struck by a fist. Her scalp, chin, throat, face, elbows, back, legs, wrist, and shoulder contained additional abrasions or bruises. Marks on her neck were consistent with fingernail marks. The nipple of her left breast was missing, and the nipple of her right breast had been partially amputated. A forensic odontologist later examined the marks on Kristen's body and concluded that Petitioner's dentition was "entirely consistent" with the marks found in the area of the

¹ References designated "R." are to the record of proceedings presently on file with the Illinois Supreme Court.

victim's nipples. Marks compatible with teeth marks were found on her vagina. Kristen had been raped, bitten, and strangled.

Petitioner Stalks Sarah Buchsbaum Minutes Before He Rapes And Murders Kristen

Sarah Buchsbaum testified at trial and identified Petitioner as the man who had followed her, too - from Water Tower Place to her car parked on front of the Moody Bible Institute - during the evening of August 4. Sarah took several evasive steps in an effort to shake him, but Petitioner continued to follow her. By the time she reached Clark Street, there were no other people on the street. Sarah finally ran into the lobby of an apartment building which she knew was attended by a doorman. Petitioner continued to watch Sarah for awhile before he finally walked away. When last seen, Petitioner was walking west on Chicago Avenue toward Wells Street. Sarah waited a few minutes and finally arrived at her car at 8:53 p.m. When she later read about Kristen's murder, Sarah contacted the police and gave them a physical description of Petitioner. Petitioner had been wearing a "loud plaid suit" with a herringbone background at the time he followed her. (R. 449).

Police Officers Arrest Petitioner After Watching Him Stalk A Third Woman

During the early evening hours of August 7, police officers on routine patrol in the 600 block of North Wells saw a woman (whose name was never given) walking north on Wells. Petitioner, wearing the same plaid herringbone suit, was following quickly behind her. When Petitioner saw the police officers, he slowed his pace to allow a greater distance between himself and the woman. But the police passed Petitioner, made a U-turn and approached Petitioner from behind. At that time, the officers noticed that Petitioner was walking up quickly behind the woman. Petitioner noticed the police and again slowed his pace. The police passed Petitioner, went around the block and approached Petitioner a third time. Petitioner was again walking

quickly behind the woman, until he saw the police. This time Petitioner turned to walk south on Wells in the opposite direction of the woman. The police made another U-turn, and, as they approached him, Petitioner turned and walked towards an "El" station.

Petitioner's Arrest And Reaction To A News Account Of Kristen's Murder

The officers got out of their squad car, ordered Petitioner to stop, and asked him for identification. Petitioner gave them a number of papers inside a newspaper clipping. As one of the officers began to open the clipping, Petitioner pushed him and hollered "I'm going to kill you". (R. 527). The officers subdued Petitioner and placed him in handcuffs. One of the officers then opened the clipping and noticed it was a newspaper article about Kristen's murder. Petitioner screamed "That pussy bitch. That pussy bitch. I'm tired of hearing about her." (R. 508, 528). The officers arrested Petitioner and transported him to police headquarters where he was read his Miranda rights several times. Petitioner said he understood his rights.

Petitioner's Recounts The Rape And Murder To A Cell Mate

Clifton "Goatee" Wright shared a holding cell with Petitioner after Wright was arrested for non-payment of his El fare. As Petitioner stood in the cell masturbating, he told Wright that he had been arrested for the murder of the "girl from the newspaper article." Wright knocked on the door and asked to be released because he did not want to share a cell with Petitioner. (R. 535).

Petitioner Tries To Deny The Murder

When questioned by the police officers, Petitioner initially denied any knowledge of Kristen's murder other than the information contained in the newspaper article. He said he'd kept the article because he planned to write a book about Kristen's murder exclusively from newspaper accounts. He denied following any woman. When confronted with Sarah's report,

however, Petitioner changed his story and admitted following a woman [Sarah] in the neighborhood of Kristen's murder. Petitioner also admitted following another woman [Kristen] but he denied grabbing or attacking her.

Petitioner Admits Trying To Rob Kristen

Some time later, police officers interviewed Petitioner again after giving him fresh Miranda warnings. This time, Petitioner admitted he had been standing in a recessed entrance to a building on Wells Street when he first saw Kristen. He began to follow her. He put his arm around her and demanded money and pulled her into a driveway. When he asked her again for money, Kristen allegedly called Petitioner a name and he hit her in the face twice, he said. He bit her arm when she struggled to defend herself and he ran away and left her there, Petitioner concluded.

Petitioner Admits He Raped Kristen

In his third oral statement, preceded by fresh Miranda warnings, Petitioner initially admitted only that he had hit and tried to rob Kristen. After he was confronted with his admission to Goatee Wright, however, Petitioner admitted dragging Kristen through a parking lot to an alley where he said he had sexual intercourse with her for an hour. Petitioner admitted biting her breasts and vagina. He couldn't remember whether he had placed his hands around her neck, but he admitted he could have done so. Kristen wasn't moving, Petitioner said, but he thought she was still alive. He did not take anything from her, he concluded, but he wanted to hide her body.

Petitioner Takes The Officers To The Scene Of The Murder

During the evening of his interrogation, Petitioner accompanied police officers to Wells Street where he pointed out the recessed doorway where he had been standing when he first saw

Kristen. He also showed the officers where he had stopped her, where he raped her, and where he left her body. Petitioner described the crimes in considerable detail and provided details which were corroborated by the physical evidence (the victim's belongings) in the case. Petitioner also took the officers to a beach where he had spent the night of August 4, and the officers recovered his shirt there.

Petitioner's Written Confession

Later that night, Petitioner talked to an assistant state's attorney and gave an oral statement which was later transcribed by a court reporter. A copy of that statement is appended to this Response as Exhibit A. In that statement, Petitioner stated that the police had not mistreated him. He also said he understood his Miranda rights. Petitioner initialed three corrections on the written statement after he pointed out an omitted word and a typographical error in transcription. The written and oral statements were identical with one exception. In the oral statement, Petitioner said he moved Kristen's body when he realized she might be "dead". In the written statement, Petitioner changed that word to "hurt". (R. 686).

Petitioner described the initial struggle in the written statement:

Q. When you went into the alley what were you thinking of doing?

A. Just really getting the money.

Q. After the struggle started what did you start thinking about then?

A. Well, having sex, you know.

Q. When the struggle started what did she do?

A. Nothing but tried to keep me from, you know, she put her hand up in my face like that (indicating) and I bit her.

Q. What did you do to her?

A. I hit her a couple times and that was it.

(R. 692). Petitioner then described the sexual assault and disposal of the victim's body:

Q. When you were on the ground what happened?

A. Let's see, I took her clothes off.

Q. How did you take her clothes off?

A. Just pulled down her pants. That is all.

Q. What about he top?

A. Pulled it up.

...

A. After you pushed her clothes like this what did you do?

Q. Well, I unzipped my pants, you know, and we had sex.

A. Did you do anything while you were having sex with her?

Q. No.

Q. Did your penis enter her vagina?

A. Yeah.

Q. Did you penetrate her?

A. Yeah.

Q. What about her breasts?

A. Yeah.

Q. What about them, though?

A. What do you mean? I didn't do nothing but, you know, just the normal, you know.

Q. By 'normal' did you leave any bite marks on her?

A. I could. Yeah.

Q. About her breasts?

A. Yeah.

Q. Larry, earlier didn't you tell us you bit her nipple?

A. Yeah.

Q. Is that true?

A. Yeah.

...

Q. After you had sex with her did you have any other type of sex with her?

A. Oral sex.

Q. What did you do to have oral sex?

A. Just, you know, put my head between her legs and licked her all over, bit her.

Q. During all this time do you remember her screaming at all?

A. No.

Q. During this time that you were having sex with her, both vaginally and orally, do you remember her saying anything to you?

A. No.

Q. Did she say anything to you?

A. Just, just that from the beginning, a little black nigger. That was about it.

Q. About how long did you have sex with her?

A. About an hour.

Q. After that what did you start to think?

A. Maybe I better, you know, get her from right there, you know before somebody sees her.

Q. Did you see her move at all?

A. Seemed like she was breathing and everything.

Q. But did she move?

A. No. I picked her up and carried her.

...

Q. When you picked her up did she move at all?

A. No.

Q. Did she say anything at all then?

A. No.

Q. When you put her down at the other spot did she say anything?

A. No.

Q. Was she moving at all?

A. No.

Q. What did you start to think then?

A. Just leave.

Q. Why?

A. Because, maybe, you know, she could be hurt, you know.

...

Q. When you were having sex with the girl was she conscious or awake?

A. No.

Q. Do you ever remember her regaining consciousness?

A. No.

Q. When you carried her she was not awake either?

A. No.

(R. 693-98).

Additional Physical Evidence

The jacket seized from Petitioner at the time of his arrest contained type O blood consistent with Kristen's blood type. Spermatozoa found in the victim's body corroborated Petitioner's admission of sexual intercourse.

The Defense Case

Defense counsel raised the affirmative defense of insanity at trial. Petitioner's ability to appreciate the criminality of his conduct was never an issue in the case, however. Petitioner

unquestionably knew the difference between right and wrong. The only issue at trial was Petitioner's ability to conform his conduct to the requirements of the law - that is, to control his actions.

Three (3) mental health professionals testified for the defense and said that Petitioner is schizophrenic. These witnesses based their conclusions, in part, on medical records from which they theorized that Petitioner's mental illness had prompted various hospital stays. Petitioner himself admitted, however, that he was hospitalized for drug abuse. Moreover, the defense witnesses agreed that a person can be schizophrenic and still be sane. Schizophrenics can sometimes conform their conduct to the requirements of the law, they testified. The defense experts also acknowledged that Petitioner acted purposefully on the night of Kristen's murder, and the manner in which he concealed her body proved that he had an ability to control his behavior.

According to the defense witnesses, Petitioner is not utterly incapable of controlling his actions. Although he lacked "inner" controls, the experts said, Petitioner could respond to "external" controls, and he was fully capable of modifying his behavior as needed. (R. 727-28). Petitioner was able to control his actions when police officers (or the apartment doorman) were present. The experts then asked the jury to believe that Petitioner was insane, that is that he was unable to control his behavior, only when he was left alone with a woman.

Rebuttal Testimony

Two psychiatrists examined Petitioner and concluded he is not schizophrenic. Petitioner was sane when he raped and murdered Kristen, they concluded. Petitioner knew the difference between right and wrong and "he thought he could get away with it". (R. 982). According to the States witnesses, Petitioner is a sexual sadist who has an anti-social personality disorder.

Disorders such as these are often manifested in drug and alcohol abuse, theft, and rape. The rebuttal witnesses further stated there is no medical distinction between "inner" and "outer" controls. Petitioner's behavior when following the women, his ability to alter that behavior when he saw police officers, his choice of a secluded location for committing the crimes, and his concealment of Kristen's body all demonstrated his ability to control his behavior and his sanity.

Surrebuttal Testimony

The defense then called 2 mental health professionals to testify, and they offered a number of different and conflicting diagnoses. One of the witnesses admitted an inconsistency within his own diagnoses and testified "I made a mistake". (R. 1053).

The Capital Sentencing Hearing

The Eligibility Phase

After the parties stipulated to all the evidence adduced at trial, the judge found Petitioner was eligible for the death penalty because he had intentionally murdered Kristen while committing an aggravated criminal sexual assault.

Evidence in Aggravation

Petitioner' Stalks A Woman in 1979

In August of 1979, a woman named Margaret was walking to her job at a day care center when Petitioner began following her. Petitioner walked away when she looked at him, but he followed her again. When Margaret accelerated her pace, Petitioner did the same. When Margaret took a shortcut across a parking lot, Petitioner followed her. When Margaret ran, Petitioner ran. When Margaret arrived at the day care center, only to discover it was locked, Petitioner came up to her and took her wallet. He also placed some sort of object in her back and threatened to kill her if she screamed. While Margaret was pleading with him, Petitioner led her

to an abandoned building where he again threatened to kill her. A minister arrived at this time and asked Margaret if Petitioner was bothering her. Petitioner claimed he'd only asked for car fare. The minister made Petitioner return Margaret's wallet and chased him away. Petitioner was convicted of theft from person and sentenced to serve 18 months probation.

Petitioner's 1983 Unlawful Restraint And Sexual Assault

A Chicago fireman testified that he saw Petitioner sexually assaulting a woman named Helen in a park near E. Chicago Avenue around 4:00 a.m. on July 21, 1983. Helen was crouched on all fours, with her face pushed against a fence, while Petitioner stood behind her having sexual intercourse with her. The fireman could hear Helen moan "please, please don't hurt me. Don't kill me". (R. 1194-98). The fireman called police officers who arrived and promptly arrested Petitioner. Petitioner was convicted of unlawful restraint and received a 1 year sentence with credit for time served.

Petitioner's 1984 Prison Fight

In December of 1984, Petitioner was involved in a fight with prison guards, and one of the guard was hit. Petitioner was placed in segregation for 29 days.

Mitigating Evidence

Instead of offering additional evidence, defense counsel chose to rely on the mitigating aspects of the evidence received at trial, particularly the conflicting evidence about his mental illness.

Victim Impact Testimony

The victim's mother, Carolyn Kent, then presented an oral statement about the effect that Kristen's death has had on her family. She stated her family has been very depressed, and various family members have had a difficult time associating with others after Kristen's murder.

The judge decided there were no mitigating circumstances sufficient to preclude imposition of the death penalty, and he accordingly sentenced Petitioner to death for the murder of Kristen Kent.

The Post-Conviction Hearing

As noted above, Petitioner sought post-conviction relief in the Illinois courts, and Judge Strayhorn was again assigned to the case. In his petition, Scott raised 25 claims for relief. After examining the petition and the supporting affidavits, Judge Strayhorn denied counsel's request for an evidentiary hearing for all of the claims, with the exception of the claim in which Petitioner had alleged he was denied the effective assistance of counsel when his trial attorneys did not permit him to plead guilty and present evidence of remorse at sentencing. In essence, Petitioner asked Judge Strayhorn to re-evaluate the sentencing decision he had made 11 years before in light of newly-presented evidence of remorse.

The judge then held a hearing at which Petitioner testified and described his feelings about the crimes he had committed. His feelings of remorse were, at best, lukewarm. Petitioner did not say he was sorry he had raped and murdered Kristen. Nor did he express any sympathy for the victim's family. Instead, Petitioner tended to express his fatalistic belief that, because he had taken Kristen's life, it was now time for him, perforce, to forfeit his own:

Q. How did you then feel [during the trial proceedings] about what you did? Whether it was right or wrong, how did you feel about it?

A. I feeled (sic) like it was wrong.

Q. How do you feel about it today?

A. That it was wrong.

Q. Do you feel that it was wrong just for you or wrong for the lady you killed and her family? Do you have any remorse? Did you have any remorse then? What do you feel?

A. I feel the same way I did, that it was wrong.

Q. How wrong was it?

Q. It was wrong enough to get the death sentence.

(PC Supp. R. I-5 to I-6). The psychiatrists who examined Scott to determine his fitness for trial reported that he had made similar statements to them, as well. “He stated that he knows he committed the crime, that he feels bad about it, and [he] stated that no amount of money could replace the girl’s life, so that by taking the death penalty it would ‘make it even’”. (Blumstein report).

This lukewarm expression of remorse was not enough to outweigh Petitioner's long criminal record and the facts of this case. Judge Strayhorn stated that he still believed the death penalty was the only appropriate sentence for Petitioner. In a remarkably moving passage, the judge described the reasons for his decision:

Fifteen years after this event happened, when I was reading this file here this morning to refresh my recollection as to the facts, my blood still runs cold with the cruelty and the heinousness and the inhumanity and the cannibalistic fervor that was exhibited by this man as he killed this woman, bit off both of her nipples, cannibalized her vagina orally.

He wasn’t satisfied with killing her, he had to cannibalize her body. He desecrated, he had no feeling of this woman as a human being.

So, no, I don’t have any feeling that what I did then was wrong and I don’t have any feeling that what I’m doing now is wrong, and I say for the record that the question of remorse, I accept it and I put it on the scale as I must, and it still doesn’t outweigh the heinous act that this man committed in taking that woman’s life.

(PC R. L-11 to L-12). The Illinois Supreme Court agreed and affirmed Judge Strayhorn's decision to dismiss the post-conviction petition. Scott, 194 Ill. 2d at 276.

I.

REASONS FOR DENYING THE PETITION

On August 4, 1984, just after leaving her part-time job at the East Bank Club, Kristen Kent was walking to her dormitory at the Moody Bible Institute. Witnesses said that Kristen was "very polite, very quiet, and very intelligent" - in short, a well-behaved girl who loved her parents, and who was loved by them. (R. 443). Kristin was walking down the street, enjoying the music on her Sony Walkman, when she stepped into the path of Petitioner Larry Scott, a sexual sadist who raped and strangled her after he unsuccessfully tried to rob her. Petitioner mutilated her body by biting her vagina and by biting the nipples off her breasts. We know this is true, because Petitioner later admitted it all to police officers and to an assistant state's attorney. He also recounted the incident to a cell mate while he engaged in an act of sexual gratification in a lockup cell.

Petitioner Does Not Claim Actual Innocence

It is important to note at the outset that Petitioner does not, and indeed cannot, claim he is innocent of the crimes for which he has been convicted. The evidence at Petitioner's trial, which included his corroborated confessions, was truly overwhelming, and Petitioner's counsel now concedes his client's guilt. (Pet. 3). Nor should this Board conclude that Petitioner feels any remorse whatsoever. As noted above, Petitioner said he knew his actions were wrong, but he never said that he was sorry for what he had done. The circuit court judge was able to hear Petitioner testify and judge his demeanor on the stand. After doing so, he rejected Petitioner's claim and reiterated that the death penalty is the appropriate penalty for this petitioner and these crimes. Seven (7) supreme court justices subsequently affirmed his decision. This Board should not overturn their findings now.

Mental Retardation

The real crux of Petitioner's petition concerns his intellectual abilities. Citing Atkins v. Virginia, 122 S. Ct. 2242 (2002), Petitioner urges this Board to recommend clemency because the imposition of the death sentence violates the Eighth Amendment's prohibition against cruel and unusual punishment.

But the Atkins court did not formulate a definition of "mental retardation" for this Board to use. The court did refer in passing to the definition adopted by the American Association of Mental Retardation (AAMR), which defines mental retardation as follows: "Mental retardation refers to substantial limitations in present functioning. It is characterized by significantly subaverage intellectual functioning, existing concurrently with related limitations in two or more of the following applicable adaptive skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure, and work. Mental retardation manifests before age 18." Under this definition, "mild" retardation is typically manifested in an I.Q. of 55 to 70. Atkins, 122 S. Ct. at 2245, n.3.

But the Supreme Court expressly stated that it was not adopting a definition of mental retardation, and the court left it to the various states to adopt a definition and to delineate procedures for determining whether or not a particular Petitioner is 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.

Equally important, the evidence concerning Petitioner's mental abilities is conflicting, at best. Petitioner has now submitted a letter from a doctor who has concluded that additional testing **might** show that Petitioner is mentally retarded. (Pet. Exh. D at 2) ("reliable portions of the [pre-

trial] testing did show that Mr. Scott 's (sic) had an I.Q. **near** retardation")(emphasis added). This doctor recommends additional testing "designed to show the status of a wide range of particular abilities", id., and the doctor estimates that all the additional testing and professional consultation he is recommending will cost \$25,000. (Exh. D at 4).

But the evidence adduced at trial points in exactly the opposite direction. Petitioner's mental state was extensively litigated at the fitness and suppression hearings, and again at trial - 8 mental health professionals testified in all - and they all agreed that Petitioner is **not** mentally retarded. Petitioner's own expert, Dr. Koziol, said Petitioner had a verbal IQ of 77, a performance IQ of 76, and a full scale IQ of 75. (R. 801-803). Both the defense and the State's witnesses used terms such as "dull-normal intelligence", "below average intelligence", "borderline dull intelligence" and the like. (R. 232, 732-33, 802-803, 961, 974, 997). In the words of one of the psychiatrists who had examined him, Petitioner is "alert, oriented and able to function in day-to-day life". (R. 909). There is good reason to conclude, then, that Petitioner may not be able to satisfy any definition of mental retardation that the state of Illinois eventually adopts.

As a final matter, the State notes that Petitioner currently has a habeas petition pending in the federal court, and Petitioner has indicated he will also ask the Illinois courts to hear his retardation claim. Either the state or the federal trial court has the authority to order an evidentiary hearing and to receive additional evidence about Petitioner's mental abilities. Because those courts have the ability to adjourn its proceedings from time to time, in order to receive any testimony it deems relevant and necessary, and because the courts have the ability to see the expert witnesses and judge their credentials and demeanor, the State respectfully submits that the trial courts are better suited to hear this claim. This Board should decline to recommend clemency on this ground.

Mental Illness

As noted above, the jury rejected Petitioner's insanity defense and found him guilty of all the crimes charged in the indictment. The jury did decide he was guilty but mentally ill of the offense of aggravated criminal sexual assault, however. This verdict was apparently prompted by the evidence that Petitioner, a sexual sadist, bit off the victim's nipples and bit her vagina. But Petitioner should not urge this finding of mental illness as a basis for clemency relief. The Atkins decision is limited to claims of mental retardation, and the United States Supreme Court has never suggested it is unconstitutional to execute a mentally ill petitioner. The Illinois Supreme Court, in turn, has ruled that the law permits the execution of the mentally ill. People v. Crews, 122 Ill. 2d 266 (1988). The Constitution bars only the execution of the insane, see Ford v. Wainwright, 477 U.S. 399 (1986), and both a judge and jury have already found that Petitioner is not insane. Moreover, Petitioner has not identified the term "mental illness", has not shown why it applies to him, and has not taken into account the evidence already in the record that a person's mental state can fluctuate over time and often improves with medication.

Equally important, the State has always disputed Petitioner's evidence of his mental illness. Two of the State's witnesses, psychiatrists Tuteur and Cavanaugh, testified that Petitioner does not have any form of mental illness whatsoever. Moreover, the record repeatedly suggests that any mental confusion Petitioner may have had was due to his drug and alcohol addiction, and, as his own witness acknowledged, drug abuse can mimic signs of schizophrenia. (R. 879). When he interviewed members of Petitioner's family, Dr. Cavanaugh learned that Petitioner drank at least a half a fifth of hard liquor a day, which Petitioner combined with greater or lesser amounts of beer. Cavanaugh also discovered that Petitioner injected potentially lethal amounts of "T's and

blues”, that is, the pain killer Talwin and antihistamines. Petitioner had needle marks on his body when he was admitted to the county jail. (R. 926-27).

Petitioner further admitted to his own witness, Dr. Koziol, that it was drug usage rather than any mental illness that prompted his admission to mental health facilities. Petitioner apparently made similar statements to other doctors, too, which they recorded in their reports. (R. 824-26, 879). Both doctors Tuteur and Cavanaugh concluded that Petitioner had himself hospitalized when his drug problem escalated or when he had no place to stay. (R. 926-27, 961, 962, 983, 991).

In sum, Petitioner has not yet finished his appeals - and Petitioner has not accused the appellate courts of any sort of deficient performance, at least. If Petitioner decides to file another post-conviction petition in the Cook County Circuit Court, he will then have 6 more appeals in the state and federal courts², with ample opportunity in which to ask those courts to assess the evidence about his mental state. Executive clemency is inappropriate and should be denied.

Supreme Court Rules And Governor's Commission Proposals

As a final matter, Petitioner notes that he did not receive the benefit of 85 new Supreme Court Rules and Recommendations made by the Governor’s Commission on Capital Punishment. But those Commission Recommendations have only been proposed, rather than adopted. Moreover, the Illinois Supreme Court has expressly rejected any notion that "every capital trial has been unreliable". People v. Hickey, 2001 Ill. LEXIS 1080 at *57 (2001). Indeed, that court has held that the new rules are not retroactive, because the rules “function solely as devices to **further protect those rights [already] given** to petitioners by the federal and state constitutions”

² Petitioner states he intends to file another post-conviction petition in the Cook County Circuit Court. (Pet. 22). He may appeal any adverse ruling to the Illinois Supreme Court, after which he may ask the United States Supreme Court for certiorari review of the state supreme court's decision. If he is unsuccessful in the state courts, he can then seek habeas corpus relief in the United States District Court, appeal any adverse decision to the Seventh Circuit, and seek certiorari review once again.

(emphasis supplied). In this connection, the court has also stated 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. Petitioner has not made any attempt whatsoever to identify the rules that would have assisted him. Nor has he identified any reason to doubt that his trial and sentencing were fair in every respect. Petitioner has not offered any reason for granting clemency.

CONCLUSION

Petitioner Larry Scott indisputably committed the crimes of murder, aggravated criminal sexual assault, and attempted robbery. Larry Scott received a fair trial. Larry Scott received a fair sentencing hearing. On two (2) occasions now, the Illinois Supreme Court has declined to overturn his convictions and death sentence. Petitioner still has an appeal pending in the federal district court, and that court can be counted on to grant any relief that is appropriate. Sixteen (16) years after his convictions, Petitioner claims the spectre of a potential injustice. The only injustice in this case is the anguish still inflicted on the victim's family so many years after the crimes. For all these reasons, the People of the State of Illinois respectfully request that this Board and Governor Ryan deny executive clemency or any other form of relief to petitioner Larry Scott.

Respectfully submitted,

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