

OCTOBER 2002 SESSION
PRISONER REVIEW BOARD
STATE OF ILLINOIS

PEOPLE OF THE STATE OF
ILLINOIS,

vs.

MAURICE MCDONALD

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Docket No. \

Inmate No. B 42547

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

PEOPLE'S RESPONSE IN OPPOSITION TO PETITION
FOR EXECUTIVE CLEMENCY

HEARING REQUESTED
(IF PETITION IS CONSIDERED)

RICHARD A. DEVINE
STATE'S ATTORNEY OF COOK COUNTY

By: RAYMOND BROGAN
DAVID KELLEY
MICHELLE KATZ

**OCTOBER 2202 SESSION
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I

HISTORY OF THE CASE

On August 27, 1992, after bench trial before the Honorable Richard Neville, Petitioner, Maurice McDonald was convicted of two counts of murder . On March 22, 1993, a jury sentenced him to death for the murders of Lester Coats and Brenda Robertson. Petitioner appealed his conviction and sentence to the Illinois Supreme Court, which affirmed both on October 19, 1995. People v. McDonald, 168 Ill.2d 420, 660 N.E.2d 832 (1995). His Petition for Rehearing was denied on January 29, 1996. The United States Supreme Court subsequently rejected his Petition for A Writ of Certiorari. McDonald v. Illinois, 518 U.S. 1024, 135 L.Ed.2d 1080, 116 S.Ct. 2563 (1996). His Petition for Post-Conviction Relief was denied by the trial court and presently awaits appeal to the Illinois Supreme Court.

II

FACTS OF THE CASE

In February of 1983, Lester Coats, a narcotics dealer, resided in and sold drugs from his single family home at 3530 East 86th Place in Chicago, Illinois. At that time, petitioner was employed as Coats' bodyguard/gopher for about two months. Coats' daughter, Barbara Coats Terrell, also worked for her father, generally running his house and keeping it in order. Coats' son, Clarence helped him with the business from time to time. Another son, Lester, Jr. also worked in the business, but had a falling out with Coats' because he was stealing his customers.

On the evening of February 27, 1983, Barbara, her brother Clarence, her daughter Althea, her niece Dineen, and her father were at Coats' home. Coats asked Barbara to help him count some money upstairs in his bedroom. The money, totalling \$13,000, was the proceeds from drug sales. It was unusual for Coats to keep such a large amount of money in the house because once he accumulated that much it would be quickly converted into more narcotics. While Barbara was counting the money petitioner went upstairs to the bedroom.

Coats then had the children count the money, and subsequently placed it in a little metal box which he locked and stored in the hall closet which he also locked. This was an unusual place for Coats to store anything because he generally kept his money in the master bedroom closet. Coats housed other things in his bedroom closet as well, including jewelry, weapons, and food stamps, all which were received in exchange for drugs.

Coats had no drugs in his home at the time and wanted some for his personal use, so he asked petitioner and Clarence to go buy some cocaine. Clarence and petitioner left the house and drove to the area near Indiana Avenue and Michigan Avenue in the forties or fifties and Clarence waited in the car while petitioner made the purchase. After petitioner got the cocaine, the two went back to Coats' home. In the meantime, Brenda Robinson, Coats' girlfriend, had arrived at his home.

After petitioner returned to Coats' home, Coats' granddaughter, then twelve or thirteen year-old

Dineen Coats overheard petitioner speaking on the phone. Dineen heard petitioner tell someone that "we were about to go and my grandfather was upstairs." When petitioner turned and saw Dineen, he was shocked and told her to get away.

By 1:30 a.m., everyone had departed, leaving Coats and Brenda alone in the house. Coats had asked everyone to leave because Brenda was there and he was not going to do any business that evening.

Lester Coats was extremely security conscious, and in addition to having two trained Doberman pinchers, had a digital security system in his home. The security number was known to only four people: Coats, Barbara, her brother Clarence, and petitioner. The master control box was located in the kitchen and there were two keypads, which operated the system; one was located in the kitchen and another in the living room. Each door to the home was wired to activate the alarm if opened. At the rear of the living room were sliding glass doors. These doors were kept locked and were not used at all during the winter months. Only Barbara and Coats had keys to the house. Petitioner had a number of residences, including the home of girlfriend, Rosemary Small. Rosemary lived at 3739 S. Federal with her son Romando. Petitioner arrived at Rosemary's apartment in the early morning hours of February 28, 1983. Rosemary was sleeping, and had not seen petitioner since the previous morning.

Petitioner awoke Rosemary and told her that they had to get out of the apartment because someone was after him, and had shot at him. Rosemary readied herself and her son, got some clothes together, and went into the kitchen where she saw jewelry, food stamps, and two guns on the table. The petitioner instructed her to put the jewelry and food stamps in her purse, which she did. Petitioner drove Rosemary and her son to his cousin, Janice Thomas' house.

At approximately 4:40 a.m., Officer William Tuck responded to a call of a man down at 530 E. 86th Place. He saw Lester Coats on the ground bleeding in front of his house. At the time, Coats was still alive. Officer Tuck followed a trail of blood to the house and went inside. The front door was unlocked and there were no signs of forced entry. Officer Tuck saw blood all over, noticed that the

kitchen phone was off the hook and heard the sound of dogs barking in the basement.

When Detective Peter F. Dignan arrived on the scene, he went inside the home and saw blood in the foyer on the walls, on the floor throughout the house, and noticed that the house was ransacked. The alarm wires to the alarm box located in the kitchen were severed. The phone was off the hook, the wires to the phone were pulled, and there was blood around the phone and on the floor and carpeting. The sliding glass doors in the living room were unlocked. The master bedroom was tossed: the mattress was moved, the drawers were all pulled out and the closets all gone through.

The basement was also ransacked. In the basement there was a white fur coat with five loose food stamps laying on it, with serial L #C11651608A. The stamps were inventoried. A bloodstained knife found in the kitchen sink was also recovered.

In the basement, Dignan and Tuck also saw the stabbed and bound body of twenty-six year-old Brenda Robinson. Robinson had ligatures around her neck, an electrical cord wrapped around her ankles and one wrist, and multiple stab wounds to the front and back of her body. She had four stab wounds to her chest wall and one incised wound around the nipple of her left breast. Brenda's heart, pulmonary tract and lungs were perforated as a result of the injuries inflicted on her. Brenda died as a result of multiple stab wounds.

Lester Coats was taken to Billings Hospital where he too died as a result of multiple stab wounds; the main wound being a stab wound to his heart. This wound was so serious that a person so injured could only survive five to ten minutes from the time that the injury was inflicted. Lester was stabbed repeatedly, and had a number of defense wounds on his hands and arms. Both Lester's and Brenda's wounds were consistent with a theory of one instrument having been used on both victims, and that instrument being the kitchen knife recovered by police in the sink. Petitioner's cousin, Janice Thomas, lived at 6709 E. 38th Street. She was home with her daughter and a friend when petitioner arrived at her door at, according to her, approximately 5:00 a.m. When petitioner knocked on her door she let him, Rosemary, and Rosemary's son in. Janice let him bring in his things, and said

that Rosemary and her son could spend the night with her. Petitioner left Janice his clothes wrapped in a sheet, and a rifle (later identified by Rosemary in court), and after telling Janice that she could do whatever she wanted with the rifle, took off.

Janice and Rosemary were going to throw the rifle in the incinerator, and even took it to the incinerator room, but later but changed their minds and retrieved it. The sheet with petitioner's clothes turned out to also contain a telephone and two guns in it.

At the time, Janice's sister and petitioner's cousin, Barbara Spencer, was a Chicago police officer. Janice spoke with Barbara and learned that the police were looking for petitioner. On March 2, 1983, when the police went to Janice's apartment she voluntarily turned the two guns and the rifle over to Spencer, Officer John Solecki and Detective Joseph DiGiacomo. The rifle, a 30/30 Winchester, Serial Number 3497190, was in a black case. Also recovered was a Llama .38 caliber six shot revolver, and a Smith and Wesson .44 caliber six shot revolver.

The following day, March 3, 1983, Detective Dignan and his partner, Detective John Yucaitis, found Rosemary Small at her mother's apartment and took her to Area Two Headquarters. After being questioned, Rosemary told the police that petitioner gave her food stamps and jewelry the morning of the murder. The food stamps and jewelry were recovered from her purse and inventoried.

The serial number on some of the food stamps recovered from Rosemary's purse corresponded to the serial number of a food stamp recovered from Coats' basement. This corresponding stamp from the murder scene contained petitioner's palmprint. Additionally, a fingerprint lifted from the open sliding glass doorframe of Coats' living room was also identified as petitioner's.

The weapons which petitioner dropped off at Janice's apartment and the jewelry recovered from Rosemary's purse were subsequently identified by various members of the Coats family as having been Lester Coats' property. Lester Coats liked jewelry and wore many gold chains and diamond rings. When Barbara went to her father's house a few days after the murder she did not find any of his jewelry, food stamps, or money in the house. The money and food stamps that Barbara saw her father

hide away were gone.

Petitioner's brother, Clarence identified the .38 Llama and .44 Smith and Wesson revolvers and the Winchester rifle as being his brother's property. He further identified a 24 inch herringbone chain, recovered from Rosemary as a chain which his brother wore every day.

Barbara Coats Terrell identified the .38 Llama revolver as her father's gun, which he always wore and was wearing on February 27th. She also identified People's Exhibit #5b at trial and A24 at sentencing, as her father's pendant which he wore quite often, and People's Exhibit #5c as a chain which he wore.

Coats' son Clarence identified the Llama revolver as the gun his father normally wore. He also identified the .44 as his father's weapon which Clarence had carried around before and which was generally kept in his father's bedroom. Clarence also identified People's Exhibit #5b as a pendant belonging to his father, and which his father was wearing on February 27, 1983, and #5c as a chain belonging to his father which his father normally wore and which he was wearing on February 27, 1983.

At trial and at sentencing, Dineen identified the .38 Llama revolver as the gun her grandfather always wore and was wearing the night of February 27, 1983. At sentencing, she explained that the .38 stood out in her mind because it had the word "llama" on it and she was fascinated with that word. Her grandfather told her that he got the gun from Hawaii and he was going to take her there when she graduated from the eighth grade. She also identified People's Exhibit #5b as the charm he always wore and was wearing that night and Exhibits #5c, #5d and #5e as her grandfather's jewelry which he was wearing that night. Dineen testified that she had never seen another charm like the one her grandfather wore.

Lester Jr. identified the Llama revolver, the .44 revolver and the rifle as his father's property. He said that the .44 was a "conversation piece" because of the peculiar way that it broke down. He said that his father kept the rifle in a cabinet in the basement. The rifle had a scope on it and he knew

that it was his father's because it reminded him of the "Rifleman" gun. He also identified People's Exhibit #5b as his father's charm, which was also a conversation piece because it was unusual.

For the next three years, efforts to locate petitioner were unavailing. The police looked for him at all of his known "haunts" got a copy of his rap sheet and checked all addresses contained therein, but were unable to find him. A Chicago Police Bulletin dated 3/24/83 contained petitioner's mug shot along with the following description:

WANTED FOR BAIL JUMPING AND QUESTIONING
MAURICE A. MCDONALD
I.R. 474380

Aka: Ron Green, Comptom McDonald
Lka: 12215 S. Princeton

M/B, 28, 6-0 160, medium build dark complexion, brown eyes
black hair. Wanted for Bail Jumping for Delivery of Controlled
Substance Warrant CC036829 on file. Is also wanted for
questioning regarding double homicide which occurred on 28
Feb. 83 530 E. 86th Place. Should be considered ARMED &
DANGEROUS Auth: Area 2 Violent Crimes.

Thereafter, an arrest warrant in the instant cause was issued for petitioner on July 3, 1986, and the police continued trying, without success, to locate petitioner. Finally, on April 13, 1989, the Attorney General's Office in Nevada contacted the Extradition Office in Chicago and informed the authorities that petitioner was in custody in Las Vegas, Nevada, and that the Nevada authorities had learned of the Chicago warrant. Detective Steven Brownfield then contacted the State's Attorney's Office and performed a follow-up investigation of those witnesses named in the homicide.

Extradition efforts were then undertaken. On November 15, 1991, Detective Brownfield, along with Detective Barry Costello went to Carson City, Reno, Nevada to take custody of petitioner.

After advising petitioner of his constitutional rights, petitioner told the detectives that he knew why he was going back to Chicago, and told the detectives that: "if he did kill anybody, they probably deserved to die anyway." Petitioner was brought back to Chicago.

The Trial

On June 10, 1992, petitioner proceeded by way of bench trial with the Honorable Richard E. Neville presiding, representing himself pro-se. On August 27, 1992, after making extensive findings on the evidence, the court found petitioner guilty of two counts of murder and one count of armed robbery. Among other things, the court noted that it believed the testimony of Sergeant Dignan, Rosemary Small, and found the circumstantial evidence sufficient to establish petitioner's guilt. The court indicated that the evidence clearly established that petitioner handled the food stamps which were in close proximity to Brenda's body, and found incredible petitioner's testimony in his case-in-chief. The court noted that petitioner also disappeared from sight after this murder. (R. 1216)

The Sentence

At sentencing, petitioner elected to proceed by way of jury, again representing himself pro-se. After the jury was selected, on March 17, 1993, the eligibility phase began.

Detective Steven Brownfield testified that on November 15, 1991, while investigating this double homicide, he went to Reno Nevada with his partner Barry Costello where he took petitioner into custody and learned that petitioner was born July 2, 1955. After being indicted in case 92 CR 2151, petitioner was subsequently convicted of murdering both victims. A certified copy of the conviction was admitted in evidence.

Officer John Yucaitis testified to the scene which he beheld at 530 86th Place on February 28, 1983. He saw the medics working on Lester Coats, who had been stabbed a number of times, saw blood on the sidewalk outside the house as well as in the house, saw that the alarm system wires were

cut, that there was a knife in the kitchen sink, blood on the walls and floor, and that the patio door was slightly ajar. The house was ransacked.

Officer Yucaitis saw Brenda Robertson lying in a pool of blood in the basement, her hands and feet tied with electrical cord, rags about her neck, and she was dead, having been stabbed four times in the chest and four times in the back. Yucaitis heard locked-up dogs barking. He saw food stamps on a fur coat on the floor.

Robert Lucherini, a senior state prosecutor in Las Vegas testified that In March of 1990, he prosecuted petitioner under the name of Patrick O'Neal Cornish, also known as Maurice Joseph McDonald for a murder which occurred on January 15, 1988. As a result of that prosecution, petitioner was convicted of murder by use of a deadly weapon on March 13, 1990)

The jury found petitioner eligible for the death penalty. Thereafter, they heard testimony in aggravation and mitigation. For the State, Detective Brownfield testified to the conversation which he had with petitioner while transporting him back to Illinois, wherein, petitioner said that he knew why he was being brought back to Illinois and that if he did kill anybody, they probably deserved to die anyway.

Detective John Solecki testified regarding an incident dating back to July 1, 1977 involving petitioner's shooting of his father-in-law for which he was convicted of aggravated battery and received thirty months probation with one year periodic imprisonment. Apparently, petitioner and the mother of his child were having domestic problems so she and the child were living with her family. When his girlfriend's father, victim Gaines Bell refused to allow petitioner to take his daughter from the house, petitioner fired five shots at Mr. Bell, hitting him three times in the right armpit. A certified copy of this conviction was admitted in evidence.

In March of 1983, Detective Solecki was assigned to the instant case. His partner was Detective Joseph DiGiacomo. Solecki spoke with Janice Thomas, learned that petitioner had left a rifle (the 30/30 Winchester rifle and two handguns (the Llama .38 and the .44) at her home, and

subsequently recovered said items. These items were later identified at being Coats' property.

Barbara Coats Terrell testified to essentially the same facts which she recounted at trial.

Dineen Coats testified to essentially the same facts as those testified to at trial and recounted above. As Detective Digna testified to at trial, Officer Yucaitis gave further testimony at sentencing about the wires having been pulled out of the security system, finding a fur coat with five food stamps on it by Brenda Robinson's body, and finding petitioner's palm prints on the back of the food stamp numbered People's Exhibit A25. The house was "tossed". A workup of a knife recovered at the scene revealed the presence of Brenda Robinson's blood. In February of 1983, the police efforts to find petitioner failed. After the murders, petitioner had "disappeared off the face of the earth."

On March 3, 1983, Yucaitis spoke with Rosemary Small, who was arrested, and from whom he then recovered a charm, gold chains, a ring and some food stamps. The sequence number of the food stamps recovered from Rosemary followed in sequential order the number found on the food stamp recovered at the scene which contained petitioner's palmprint. Small told Yucaitis that petitioner came by her house on the morning of the murders, and told her that he was shot at and she should get herself and her child ready to go with him. Rosemary said that petitioner then gave her food stamps and the jewelry, and that he took her and two guns and a rifle to his cousin's house, after which time she never saw him again.

Dr. Kalilkar testified to essentially the same facts which she testified to at trial, describing the wounds suffered by each victim and the cause of death. In addition, Dr. Kalilkar added the following: she noted that the wound around Brenda's left nipple "appears as if somebody tried to cut the areola out of her left breast", that such a wound would definitely cause pain, and was consistent with torturing a person. Kalilkar testified that the victims did not (as petitioner suggested) fight with each other, but rather each fought with another person who was holding a weapon on them. A workup on Coats blood revealed cocaine in his system. Brenda Robinson's system was not tested for cocaine, but was tested for what at the time were other "common drugs of abuse" which revealed negative

results.

Robert Lucherini described in detail the facts surrounding petitioner's Nevada murder conviction. That case was also premised on circumstantial evidence. Apparently, petitioner killed a 29 year-old man named Russell Banks, who was a resident of the same building petitioner lived at. Petitioner and Banks had a business hocking cheap items of jewelry. On January 15, 1988, petitioner shot Banks a number of times, putting his head inside a suitcase and then shooting him. Russell Banks died from being shot in the head. Petitioner, when confronted by a neighbor, said that someone was after him, and that this "someone" must have been the person who killed Banks. Petitioner received a life sentence without possibility of parole for murdering Russell Banks. After moving Exhibits A1-47 in evidence, the State rested. After hearing the petitioner's mitigation evidence, the jury sentenced petitioner to death.

III

REASONS FOR DENYING THE PETITION

Prefatory Note

Initially, as has been previously brought to the attention of this Board, Respondent would maintain that this Petition for Executive Clemency is not properly considered in the first instance, where clearly violative of 5/3-3-13(c), which in pertinent part, provides:

Application for executive clemency under this Section may not be commenced on behalf of a person who has been sentenced to death without the written consent of the defendant, unless the defendant, because of a mental or physical condition, is incapable of asserting his or her own claim.

Petitioner, is, without his consent, represented in this matter by Rob Warden of the Center on Wrongful Conviction. There is no allegation that petitioner is incapable of asserting his own claim because of a mental or physical condition. As such, these petitions offend 5/3-3-13 and should be denied outright.

General Overview

Defense counsel asserts that petitioner 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 proposals from the Governor's Commission on Capital Punishment which were not available at the time of his trial, defense counsel claims that petitioner's 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. Defense counsel ignores the fact that the Illinois Supreme Court has examined the proceedings in his case and determined that they were fundamentally fair and that he was not unduly prejudiced in any manner.

Governor’s Commission on Capital Punishment Recommendations

As a general matter, the recommendations of the Governor’s Commission on Capital Punishment provide no greater justification for granting executive clemency than the new Supreme Court Rules, where, at present, they are just that – recommendations, and where, as is true with respect to the new Rules, wholesale retroactive application would result in a true injustice. Accordingly, defense counsel’s reliance on Recommendations 29, 30, 62, 65, 66 and 70 should be

rejected outright where he fails to provide this Board with any inkling of how such recommendations would have had any actual impact on his trial, sentencing hearing, or its ultimate outcome. Defense counsel asks this Board to engage in wholesale speculation as to what might have been in the absence of a scintilla of evidence to support his claim.

Governor’s Commission on Capital Punishment Recommendation Nos. 29 & 30

Defense counsel claims that petitioner’s sentence should be reduced because the State’s Attorney’s decision to seek death was made without uniform protocols to guide his discretion and was not approved by a state-wide review committee. However, it has long been recognized by the Illinois Supreme Court that the State's Attorney is endowed with the exclusive discretion to decide which of several charges shall be brought, or whether to prosecute at all. A prosecutor's discretion extends to decisions about whether or not the death penalty should be sought.” People v. Jamison, 197 Ill. 2d 135, 161-62, 756 N.E.2d 788 (2001). Therefore, any attempt to mandate such a review would constitute an impermissible restriction on the independence of the various State’s Attorneys under the Illinois Constitution. Moreover, defense counsel does not even allege much less argue that the decision to seek death in petitioner’s case was the result of an abuse of discretion. Accordingly, it must be rejected.

Governor’s Commission on Capital Punishment Recommendation No. 62

Defense counsel claims that clemency is appropriate because petitioner was denied the opportunity to make a statement in allocution at his sentencing hearing. However, as the Illinois Supreme Court stated long ago, “an unsworn statement to the sentencing jury [to be] consider[ed]

along with testimony given under oath and the arguments of counsel would at the least confuse the jurors, and might also impair their ability to weigh the aggravating and mitigating factors.” People v. Gaines, 988 Ill. 2d 342, 380, 430 N.E.2d 1046 (1981). Moreover, petitioner was free to testify under oath at his sentencing hearing to explain why he should not be sentenced to death and did -- extensively. Therefore, he was given, and availed himself of the opportunity to present himself to the trier of fact before he was sentenced.

Governor’s Commission on Capital Punishment Recommendation No. 65

Defense counsel asserts that clemency is warranted because the standard Illinois Pattern Instruction (undisclosed number) was given concerning the weighing of aggravation and mitigation. Both the Illinois Supreme Court and the federal courts have consistently rejected any claim that the statute is confusing and might lead a jury to believe that the death penalty is mandatory. See People v. Mitchell, 152 Ill. 2d 274, 346, 604 N.E.2d 877 (1992); Silagy v. Peters, 905 F.2d 986, 998-99 (7th Cir. 1990). Moreover, because both the prosecution and petitioner argued to the jury about the appropriateness of the death sentence in petitioner’s case, any confusion in the language of the instruction was negated.

Governor's Commission on Capital Punishment Recommendation No. 66

Defense counsel claims that clemency is warranted because the judge was not given the opportunity to override and impose a natural life sentence. Petitioner is wrong, however, because Illinois judges have long had the inherent authority to grant a new trial or sentencing hearing (or even enter a judgment notwithstanding the verdict). Because the trial judge (who in this case presided over the guilt/innocence stage of the case) denied his post-trial motions, it is clear that the judge would not have overridden the jury's verdict.

Governor's Commission on Capital Punishment Recommendation No. 70

Defense counsel asks this Board to grant executive clemency because the Illinois Supreme Court did not consider whether his sentence was disproportionate to other sentences or was the result of an arbitrary factor and did not independently weigh the aggravation and mitigation. The Illinois Supreme Court has consistently 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 on direct appeal is because he did not ask the Court to do so.

Moreover, the likelihood, no less the remote possibility of petitioner prevailing on this claim if raised on appeal from denial of his post-conviction petition is virtually non-existent in this case where petitioner, in addition to his criminal background has, to date, in a pre-meditated fashion,

brutally murdered the victims in this case, and then, fled to Nevada where he killed yet another person.

Supreme Court Rules

Defense counsel asserts that Petitioner 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. Furthermore, petitioner fails to enlighten this Board by referring to a single specific Supreme Court Rule whose non-existence at the time of his trial resulted in an inequity being perpetrated on him.

Miscellaneous Matters – Residual Doubt

Counsel argues that Petitioner should be granted executive clemency because, during sentencing the jury was not able to consider residual doubt. Put plainly, this issue was decided adversely to petitioner by the Illinois Supreme Court, which held that neither the United States' Constitution, nor the Illinois Constitution grant such right to a defendant. 168 Ill.2d at 454-455. In keeping with established precedent, the Illinois Supreme Court refused to allow the affidavits of two jurors, made one month after petitioner's sentence, to be used to impeach the jury's verdict. 168 Ill.2d at 457.

Additionally, Respondent would note that the Illinois Supreme Court found that despite the fact that Petitioner had no right to have the jury consider residual doubt, that the "trial court did not interfere with defendant's presentation of evidence regarding his innocence to the sentencing jury" which, essentially, allowed them to do just that. People v. McDonald, 168 Ill.2d 456-57.

More importantly, however, Petitioner's argument is in no way supported by the new Supreme Court Rules, which do not provide such right, nor by the Commission Recommendations,

which do not advance such right. Thus, residual doubt was not a mitigating factor at the time of petitioner's trial and remains not to be one at this time. As such, executive clemency should not be granted on this basis.

Disciplinary Violations Since Commitment to Death Row

Further support for denial of commutation or clemency is illustrated by Petitioner's continued willful and wanton behavior while incarcerated on death row. Since his commitment, he has continued the behavior so indicative of his complete and utter disregard for, contempt of, and dangerousness to society. A review of petitioner's attached disciplinary reports and summary chart reflects fifteen violations for a wide range of conduct ranging from intimidation and threats, to repeated disobeying of direct orders, sexual misconduct, and possessing drugs and drug paraphernalia. The most egregious violation involves petitioner threatening former Illinois Supreme Court Justice Michael Bilandic in a letter sent to him. Petitioner admitted guilt to this conduct, and essentially bragged about how he meant what he said in the letter when appearing before the Prison Administrative board for a hearing. He was found guilty of all the violations he has amassed since his time on death row. Obviously, petitioner can no more conform his conduct when confined behind bars, to what is expected in a civilized society, than he could when a free member of society wreaking havoc on those whose path he crossed.

CONCLUSION

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

Respectfully submitted,

RICHARD A DEVINE
State's Attorney of Cook County

RAYMOND BROGAN,
DAVID KELLEY
MICHELLE KATZ