

OCTOBER 2002 SESSION  
PRISONER REVIEW BOARD  
STATE OF ILLINOIS

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PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
v.	)	Docket No.
	)	
OASBY GILLIAM,	)	Inmate No. B-26423
	)	
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	)	

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

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

—  
**HEARING REQUESTED**

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Assistant State's Attorneys

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**I.**

**HISTORY OF THE CASE**

Oasby Gilliam ["Petitioner"] stands convicted of the June 19, 1992 murder, aggravated kidnapping and robbery of a 79 year old Chicago woman named Aileen D'Elia. After trying to rob a man at a nearby bar, as a result of which he needed a getaway car, Petitioner kidnapped Mrs. D'Elia, forced her into the trunk of her car, and drove her to a soybean field in Mt. Vernon, Illinois where he strangled and repeatedly beat her with a tire iron until she finally died. He also stole her car and watch. The jury found Petitioner guilty of first-degree murder, aggravated kidnapping, and two counts of robbery.

Petitioner retained his jury for the sentencing hearing, and the jury concluded that the death penalty was the right punishment for these crimes. The judge then sentenced Petitioner to death for the murder of Aileen D'Elia. After finding the offenses were committed in an exceptionally brutal or heinous manner against a senior citizen, the judge also ordered Petitioner to serve concurrent, extended term sentences of 30 years each for the three remaining felonies.

The Illinois Supreme Court affirmed Petitioner's convictions and sentences on direct appeal. A copy of the decision in People v. Gilliam, 171 Ill. 2d 484, 670 N.E.2d 606 (1996) has been appended to this Response as Exhibit A. The United States Supreme Court did not find any reason to review the case. Petitioner then returned to the circuit court where he filed a post-conviction petition which the judge denied on April 27, 2000. Petitioner has appealed that decision to the Illinois Supreme Court, where his appeal is currently pending.

## II.

### FACTS OF THE CASE

#### The State's Case In Chief

##### **Petitioner Tries To Rob Russell Turner And Beats Him With A Bag Of Bricks**

On June 19, 1992, bartender Russell Turner was alone at work at Sovereign Liquors, a bar located at 6202 N. Broadway in Chicago, Illinois. As Turner leaned over the bar to fill a glass with ice, Petitioner struck Turner on the head with a bag containing two bricks, and a vicious and bloody struggle ensued. Petitioner repeatedly struck Turner with the bricks and with a liquor bottle, as well. In fact, Turner said that Petitioner continued to hit and beat him on the head even after he was down on the floor, defenseless. Turner later received 48 stitches to close his wounds; he had been hit on the head at least 20 times.

Because Turner was covered in his own blood, Petitioner managed to slip out of Turner's hands and escape. Petitioner ran toward Lakewood Avenue, the street on which Mrs. D'Elia lived. The crimes at Sovereign Liquors took place at approximately 2:15 p.m., and the attack on Turner lasted approximately 10 to 15 minutes.

Notwithstanding Petitioner's current protests to the contrary, there was never any genuine doubt about Petitioner's guilt; police officers later found Petitioner's wallet (which contained his identification and photograph) at the bar. Moreover, Turner identified Petitioner from a photograph array, at a lineup, and again in open court. Petitioner was charged with the

attempted robbery of Turner, and the charge was dismissed only because the State elected to proceed on the first degree murder charge in this case.

### **Petitioner Kidnaps Mrs. D'Elia And Forces Her Into The Trunk Of Her Car**

The victim in this case, Aileen D'Elia, lived at 6223 N. Lakewood Avenue in Chicago. Mrs. D'Elia was 79 years old, 5 feet 2 inches tall, and owned a brown Chevrolet Caprice. The car was in good condition because Mrs. D'Elia kept it in the garage behind her home. Mrs. D'Elia routinely wore a Medic Alert bracelet, a ring containing an aquamarine stone, and a watch.

Fifteen (15) minutes or so after Petitioner tried to rob Sovereign Liquors, Mrs. D'Elia returned home and drove her car next to her garage. She had been out to get her hair done. This was the first time she had been out since undergoing cataract surgery 9 days before, and this was the first day that she had not needed assistance from her daughter to put medicinal drops in her eyes. At approximately 4:30 p.m., the victim's granddaughter noticed that the victim's apartment door was ajar and that her car was missing.

### **A Hunter Finds Mrs. D'Elia's Body In A Bean Field**

On July 1, 1992 a hunter found Mrs. D'Elia's badly decomposed body in a soybean field in Jefferson County, approximately 2 ½ miles from Interstate 57. The body was in a wooded area not visible from a nearby access road. Crime technicians found the victim's Medic Alert bracelet, dentures, and a watch crystal near the body. The technicians also found two plastic grocery bags from the grocery store where the victim regularly shopped. One of the bags had a red substance with gray hairs consistent with those of the victim. The hairs were broken off at the roots, consistent with having been struck by a blunt object. The pockets of Mrs. D'Elia's

slacks had been turned inside out, and police officers found only 38 cents in her clothing. The victim's identification and driver's license were subsequently found in a bushy area next to an exit ramp of Interstate 57.

Mrs. D'Elia died from multiple skull fractures caused by multiple blows to the head and face. All of the fractures were consistent with being struck by a tire iron. Injuries to Mrs. D'Elia's voice box also suggested strangulation as a contributory cause of death. The forensic pathologist testified that she may have lived for several hours after the attack.

### **Petitioner Flees The State To Avoid Arrest**

On the afternoon of June 20, Petitioner arrived in Greenwood, Mississippi, to visit an aunt named Theresa Caruthers and a cousin named Thelma Scott-Robinson. Petitioner said he'd come to pay a social call, even though he had not seen them for 4 or 5 years. Petitioner was tired and said he had driven all night. Petitioner drove a brown, four-door Chevrolet in good condition with Illinois license plates, and he claimed to own the car. His relatives did not believe him. When Robinson asked Petitioner about stains in the back seat of the car that appeared to her to be blood, Petitioner replied that children had spilled juice on the seat. Robinson also noticed "a costume jewelry old-time Indian like ring" (by inference, the aquamarine ring) on the front seat of the car. Petitioner said that he had bought it. Robinson thought Petitioner appeared to be nervous and restless. She asked him what was wrong and Petitioner replied, "If you only knew."

A Chicago police detective assigned to investigate the Sovereign Liquors incident looked inside Petitioner's wallet and found a slip for a pawn shop where Petitioner's girlfriend, Daphne "Trina" Townsend, worked. The pawnshop was 1½ blocks away from both Sovereign

Liquors and Mrs. D'Elia's home. Townsend told the officer she had last seen Petitioner on the morning of June 19.

The officer also interviewed one of Petitioner's sisters and Petitioner's employer. The police then applied to the FBI for a federal warrant for Petitioner's arrest. The police also contacted Caruthers and maintained contact with Townsend and another of Petitioner's sisters, Edna Bridges.

### **Petitioner Confesses To Police Officers**

Petitioner returned to Chicago during the week of August 11, 1992 and stayed with Bridges. Seven (7) days later, Petitioner directed Bridges and Townsend to telephone police officers and arrange for his surrender. Police officers went to Bridges' apartment building where they arrested Petitioner. At the family's request, they took him down the back stairs and did not handcuff him until after they had reached the squad car, where an officer gave him his Miranda warnings. Petitioner said he understood his rights. Petitioner was then taken to police headquarters where he was given his Miranda rights several more times.

### **Petitioner's Oral Confession To The Officers**

Townsend told the officers that Petitioner had arrived the previous Tuesday, whereas Petitioner claimed he had arrived in Chicago that very day. Townsend gave the officers a note to pass along to Petitioner which said "Gil, I told them that you came back last Tuesday". Petitioner confessed a short time later.

In his oral confession to the police officers, Petitioner said he had seen Turner enter Sovereign Liquors. Petitioner implausibly claimed he had recognized Turner as the man who had punched his pregnant girlfriend in the stomach the preceding week. Petitioner said he entered the tavern with a brick and a fight ensued.

Continuing his statement, Petitioner claimed he had seen a black man standing in the doorway as he ran out of the bar. He did not know the man's name. As he ran out of the tavern, 2 additional men he did not know chased him into an alley where he saw Mrs. D'Elia by her car. He approached her and ordered her to get in the car. Mrs. D'Elia, believing he had a gun, did so. Petitioner eventually ordered Mrs. D'Elia to drive to a parking area at a nearby beach where he ordered her out of the car and into the trunk. Petitioner then locked her in the trunk of her car.

Petitioner further stated that he thought about what to do with the victim - who he realized could identify him - as he drove south on Interstate 57. As the evidence later proved, Petitioner drove 290 miles and passed 48 exits on the highway while he contemplated killing Mrs. D'Elia. Mrs. D'Elia was still locked in the trunk of her car at that time, and the outside temperature that afternoon was 89 degrees. The temperature inside the trunk was undoubtedly much greater.

Petitioner said he exited the interstate between 7:30 and 8:00 p.m. and drove to a field where he released Mrs. D'Elia from the trunk. Petitioner said he then struck Mrs. D'Elia 2 or 3 times on the head with the tire iron. Petitioner said the woman fell to the ground, but she continued to move, so he struck her several more times on the head with the tire iron until she was finally still. Petitioner then dragged Mrs. D'Elia's body into a wooded area. He returned to the car, methodically cleaned the tire iron and replaced it in the trunk, and continued driving south on I-57. Petitioner said he also took \$10 that he found in the car.

Petitioner told the officers he arrived in Greenwood, Mississippi, the next day. He stayed there for several hours, visited relatives, and used Mrs. D'Elia's car to buy some beer. Petitioner then drove to Dallas, Texas, where he stayed for 5 weeks and worked day labor using

an alias and false identification. At the end of that time, Petitioner sold Mrs. D'Elia's car for \$150. Completing his oral statements, Petitioner said he traveled by train through several southern states before he took a bus to Chicago, where he arrived on August 11, 1992. He stayed with Bridges until his surrender on August 18.

During these interviews with police officers, Petitioner drew 2 maps, in one of which he pinpointed the location at which he had murdered Mrs. D'Elia. The map was highly detailed and displayed Petitioner's intimate knowledge of the facts of the crime; the map even pinpointed the tree line that encompassed the bean field. In the second map, Petitioner showed the officers where he had sold the victim's car.

### **Petitioner's Written Confession**

Petitioner then gave a statement to an assistant state's attorney who transcribed it by hand. Petitioner reiterated what is set forth above and freely admitted that he had kidnapped and murdered Mrs. D'Elia. A copy of the statement is appended as Exhibit B to this Response. Petitioner and the prosecutor reviewed the statement together, word for word, and, after Petitioner pointed out a few typographical errors that needed changes, Petitioner signed each page. The rights waiver within the statement proves that Petitioner was read his Miranda rights and understood them.

When the assistant state's attorney interviewed Petitioner alone and asked him if he had been treated fairly by the police, Petitioner said he had no complaints or concerns of any kind.

### **The Defense Case**

As the Illinois Supreme Court has noted, the defense case was essentially that the State had failed to prove Petitioner guilty of the charged offenses beyond a reasonable doubt. The defense also asserted that police officers had coerced Petitioner into falsely confessing. People

v. Gilliam, 172 Ill. 2d at 497. The jury returned guilty verdicts for first degree murder, aggravated kidnapping, and robbery.

## **The Sentencing Hearing**

### **The Eligibility Phase**

The same jury found Petitioner eligible for the death penalty because he had committed a murder during the course of a robbery or aggravated kidnapping.

### **Evidence In Aggravation**

#### **1984 Auto Burglary**

At the second stage of the hearing, the State proved Petitioner's 1984 conviction for burglary in Greenwood, Mississippi, for which he received a 3 year sentence of probation. Petitioner had broken into a car and had stolen a car radio.

#### **1984 Residential Burglary**

Petitioner's probation was revoked after he committed a residential burglary a few months later. With a companion, Petitioner broke into the Racetrack Plantation near Greenwood, Mississippi (where his aunt lived) and stole two cars. Police officers found one of the cars, a Cadillac, in a ditch.

Sheriff's deputies found Petitioner and his friend in the other car, and Petitioner was driving. There was a "big floor model TV" on the back seat that was so large that Petitioner had to get "up on top of [the] steering wheel, sitting up on [the] steering wheel" in order to drive. (R. 4959). When he was arrested, Petitioner offered to give the officers information about the other suspect if they would destroy the photographs they had taken of him and the car. He also helped the officers recover cassettes and speakers which he had stolen. Petitioner

was convicted of residential burglary and sentenced to serve a 4 year term of imprisonment in the Mississippi State Penitentiary. After his probation was revoked, he was also ordered to serve a concurrent 3 year term for the auto burglary.

### **1990 Liquor Store Burglary**

In February 1991, Petitioner pleaded guilty to the May 1990 burglary of a Chicago liquor store located 2 blocks from his home. Police officers dispatched in response to an alarm saw Petitioner on the roof of the store. Petitioner tried to flee by jumping into a fenced-in area next to the building, but the officers eventually found him hiding under a stairwell. Entry had been made into the store through a hole in a false ceiling of the store. Although he had two prior Class 2 felonies, and was eligible for a Class X sentence of 6 to 30 years as a result, Petitioner took what the judge called "the chance of a lifetime" and pleaded guilty to receive 4 years probation, as well as placement in the Treatment Alternative Street Crimes Program for drug abusers. (R. 4869). Petitioner failed to comply with the terms of his probation, however, and a warrant was issued for his arrest.

### **1992 Kidnapping, Robbery And Murder**

Petitioner was on probation on June 19, 1992 when he kidnapped, robbed and murdered Mrs. D'Elia.

### **1992 Kinko's Robbery: Rajun Callumkal Is Beaten With A Brick And Is Locked In A Bathroom**

At approximately 4:30 a.m. on May 10, 1992, Petitioner entered a Kinko's Copy Center on Sheridan Road in Chicago. Petitioner and the assistant manager, Rajun Callumkal, were alone. Petitioner forced Callumkal down a hallway, hit him 5 or 6 times on the head with a brick, and took his wallet and money from the cash register. He then managed to escape by

ushering Callumkal into a bathroom and wrapping the door with an electrical cord. Callumkal received 5 or 6 stitches to his head. Callumkal identified Petitioner from a photograph array and a police lineup.

### **Efforts To Suborn Perjury**

As a final matter, the State proved that Petitioner had unsuccessfully tried to convince an acquaintance to say that he had loaned him a brown Chevrolet Caprice for a week. The man refused to lie for him.

### **Evidence In Mitigation Employment**

Reverend Charles Mickens and his wife owned a photocopy shop in downtown Chicago. During 1991-92, the Mickens employed Petitioner, first as a machine operator and later as a supervisor. Mickens testified that Petitioner was generally a good worker. On cross-examination, however, Mickens acknowledged that Petitioner was often late for work, and Mickens saw him sneaking in late to the shop.

### **Childhood And Family Life**

Two of Petitioner's sisters, Gloria and Jill Traylor, testified and described his childhood and upbringing. Petitioner had 4 brothers and 6 sisters by different fathers. After his mother died, Petitioner lived with various aunts in Mississippi, including the aunt living at the Racetrack Plantation, and in Chicago. Petitioner was a father figure to Gloria and was very close to Jill, they testified. On cross-examination, however, Gloria said she could not remember whether Petitioner had been convicted of various felonies (the same felonies on his criminal record) when they were living together. Jill similarly did not know anything about Petitioner's convictions or his incarceration in the Mississippi State Penitentiary, nor did

Petitioner ever mention the Kinko's robbery to her, even though they were living together at the time.

Petitioner's girlfriend, Trina Townsend, testified that she met Petitioner in 1990, and they began living together approximately one year later. Petitioner fathered 2 children by her. Townsend said that Petitioner was considerate to her. Approximately 2½ years into their relationship, however, Townsend discovered that Petitioner had a drug problem. She encouraged him to get treatment and he entered a residential drug rehabilitation program. She denied that Petitioner was facing a possible penitentiary sentence at that time, however, and she denied that he was required to get help for his drug abuse pursuant to a court order. On cross-examination, Townsend admitted that their second child was 5 days old, and that she herself had just been released from the hospital, when Petitioner disappeared from Chicago. Petitioner did not contact her for 7 weeks and did not send her any money for the child. Townsend used to work at the Sheridan Road Kinko's Copy Center, and Petitioner was familiar with that store.

The Mickens, Jill Traylor, and Townsend all testified that Petitioner was upset when his son died in 1991.

The jury decided there were no mitigating circumstances sufficient to preclude imposition of the death penalty.

### **Institutional Adjustment**

Petitioner has engaged in a number of disciplinary incidents in prison, including an incident involving drugs. A copy of his prison record is attached to this response as Exhibit C.

### III.

#### REASONS FOR DENYING THE PETITION

##### Introduction

When 79 year old Aileen D'Elia left her home to get her hair done on June 19, 1992, she was recovering from cataract surgery and was happy to be able to care for herself again. She was in good spirits and good health, and she had a family and friends who loved her. Mrs. D'Elia did not know that she would have the misfortune to meet a drug addict named Oasby Gilliam, who needed a getaway car to escape from an attempted robbery, and who would eventually strangle and beat her with a tire iron simply because she was an inconvenient witness.

Petitioner received a fair trial and a fair sentencing hearing. Twelve (12) jurors thought he was guilty and deserving of the death penalty. Seventeen (17) judges in the circuit court, the state supreme court, and the United States Supreme Court have agreed with them.

In a request of breathtaking arrogance, Petitioner now seeks more than mere clemency or a commutation of his death sentence. Petitioner asks this Board to help him obtain a pardon for all the offenses in this case, the legal effect of which is to obliterate guilt, to release him from any punishment whatsoever, and to restore any rights or privileges that he may have forfeited as a result of his convictions. (Pet. 2). See Ill. Const. 1970, art. V, sec. 12; People ex rel. Johnson v. George, 186 Ill. 122, 57 N.E. 804 (1900). In other words, Petitioner now hopes he can simply walk out of prison and walk away from all responsibility for his actions. Petitioner makes this request even though he has an appeal pending in the Illinois Supreme

Court, and can be expected to initiate yet another round of lengthy appeals in the federal courts, all of whom have the authority to grant him any appropriate relief.

**Petitioner Is Guilty.**

It is important to note at the outset that Petitioner does not (and cannot) claim actual innocence of these crimes. After he fled the state to avoid apprehension for the crimes, Petitioner eventually surrendered himself to police officers and gave a number of highly detailed, corroborated statements in which he admitted forcing poor Mrs. D'Elia into the trunk of her car and driving her 290 miles down Interstate 57 - still confined in the car trunk in 89 degree weather - to a soybean field near Mt. Vernon. The temperature inside the trunk, and the agony she endured, can only be imagined. Petitioner drove by 48 exits and 5 rest areas, each of which represented an opportunity to release Mrs. D'Elia and save her life. But Petitioner spurned every one of those opportunities to let his victim live, and he killed her by strangling her and striking her with a tire iron. He then hid her body in a nearby wooded area. The medical experts testified it is entirely possible that she may have lived for several hours after the attack.

Petitioner later sent a letter to the victim's family in which he begged them to forgive him for taking Mrs. D'Elia's life. That letter should not be considered an act of contrition, however. Petitioner wrote the letter after he had been identified in two lineups, had unsuccessfully tried to manufacture false testimony, and had signed a confession to the crimes. The letter did nothing more than inflict additional and needless suffering on the victim's family.

Nor does counsel claim that Petitioner is mentally retarded. Although his counsel claims his client's I.Q. is 85, evidence in the trial record actually indicates Petitioner's performance I.Q. is 92. (Compare Pet. 8 and R. 4562). His trial attorney admitted that Petitioner has at

least average intelligence. His present attorney acknowledges that Petitioner graduated from high school. (Pet. 18).

### **Supreme Court Rules And Governor's Commission Proposals**

Instead, Petitioner seeks a pardon because he did not receive the benefit of various new Supreme Court Rules and recommendations made by the Governor's Commission on Capital Punishment. Those Commission Recommendations have only been proposed, not adopted. After observing that these reforms were not adopted before his trial, Petitioner then claims that his trial - as well as that of every other capital petitioner in Illinois - was by definition fundamentally unfair.

But 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" (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.

### **Videotaping**

Petitioner seeks a pardon because the police officers and assistant state's attorney did not videotape the interviews in which he confessed committing the crimes. (Pet. 21). (A copy of that confession is appended to this Response as Exhibit A). But neither the Commission nor the Governor himself has called for the suppression of a statement simply because it was not videotaped or similarly recorded. Rather, even under the Governor's proposed legislation, such

a statement would still be admissible at trial if the judge finds, after considering the totality of circumstances, that it was voluntarily made.

During both the pre-trial suppression hearing and the trial itself, defense counsel presented evidence designed to show that Petitioner, a man experiencing bereavement for the death of his son some time before, was susceptible to police tactics and psychological "coercion". But Petitioner succeeded in showing only that the officers spoke sympathetically to him. That is not police misconduct.

Petitioner also testified that he feared the officers would place his daughter in foster care if he did not confess. But this theory of emotional susceptibility was contradicted by the State's evidence that Petitioner initially withheld information from police officers, after which he gave a series of contradictory statements in which he selectively doled out additional details only when he needed to, i.e. when the officers confronted him with the fact that Turner had identified him in a lineup. Petitioner finally agreed to give a statement to a Chicago police officer temporarily assigned to the FBI, because Petitioner hoped to serve his time in a federal rather than a state penitentiary. Petitioner also sketched two highly detailed maps in which he showed the officers where he had sold the victim's car and where he had disposed of her body. Petitioner was not emotionally vulnerable. Calculating his own self-benefit every step of the way, Petitioner tried to control the investigation and do what he thought best for himself.

Aware of the importance of his client's confession, defense counsel filed a flurry of suppression motions - about 9 in all - but, after taking testimony, the judge denied them all because he simply did not believe Petitioner's witnesses. He specifically concluded that Petitioner had lied in court. "Mr. Gilliam's testimony is not believable", the judge stated. (R. 1211). The jury later heard much the same evidence and convicted Petitioner. The Illinois

Supreme Court then reviewed all the evidence and agreed that Petitioner's confession had been voluntarily given. Gilliam, 172 Ill. 2d at 505.

Ten (10) years after the crimes, Petitioner asks the state to pardon him for all that he has done to Mrs. D'Elia and to her family. But Petitioner has not presented any new evidence of innocence, much less has he provided any reason to ignore his corroborated confessions. Petitioner now asks the Board to substitute his word (already ruled incredible) for the considered opinions of the jury, the trial court judge, and the seven justices of the Illinois Supreme Court. Because the all the judges and all the jurors have found that Petitioner's statements were voluntarily made, it is clear that the failure to videotape his statements did not affect the fairness of these proceedings in any way.

#### **Mitigating Evidence And Impoverished Childhood**

Petitioner also seeks a pardon because he was represented by two allegedly inexperienced attorneys who did not present mitigating evidence about his impoverished childhood. There are 3 fundamental problems with this argument, however.

First, Petitioner alleges that his attorneys had never tried a capital case before, see Pet. 15, but the State has no way of verifying or refuting that statement. Petitioner has not submitted affidavits or other evidence on this point, so there is no good reason to believe this allegation. In point of fact, however, one of the attorneys, Ed Dull, had at one point been the elected State's Attorney of Jefferson County. Petitioner's other lawyer, Keith Smith, was a respected appellate criminal defense attorney.

Petitioner also alleges that "no evidence was presented by defense counsel detailing Petitioner's childhood of physical and psychological abuse". (Pet. 13, 15). But this statement is more than a little misleading. In point of fact, two of Petitioner's sisters testified at the

sentencing hearing, and they presented most of the information now mentioned in the clemency petition. The sisters testified that Petitioner had 10 step-siblings, all of whom were raised by Petitioner's mother as a single parent. The sisters testified about the lack of stability in Petitioner's early childhood, just as they testified that Petitioner moved to Mississippi, where he was raised by an aunt and an uncle, after his mother died. The jury simply was not persuaded by this evidence. The jury may rightfully have concluded that there are many people who lose a parent during childhood, just as there are many people forced to move their homes, but those people do not grow up to be drug addicts, robbers, stranglers, or murderers.

It is true that Petitioner's sisters did not testify about the physical abuse that Petitioner allegedly experienced at the hands of his aunt and uncle, but, inasmuch as the sisters did not live with Petitioner in Mississippi, it is highly unlikely that they had any knowledge of this matter. Moreover, such evidence would, more likely than not, have underscored the State's very point that Petitioner is a remorseless killer. "Jurors may not be impressed with the idea that to know the cause of viciousness is to excuse it; they may conclude instead that, when violent behavior appears to be outside the Petitioner's power of control, capital punishment is appropriate to incapacitate." Burris v. Parke, 116 F.3d 256, 260 (7th Cir. 1997). In any event, the judge was apparently made aware of this additional evidence when he considered the post-conviction petition, and he found it to be insufficient. The Illinois Supreme Court will soon review the judge's decision, and Petitioner has not alleged that the Supreme Court - the very body to adopt reforms - will ignore his claims. The Supreme Court should decide this issue.

In a related matter, Petitioner claims he has an "extreme mental or emotional disturbance" resulting from the depression he experienced after the death of his son. Contrary to his current protests, however, Petitioner did not need Dr. Althoff or any other expert witness to make this

point for the jury, as the Illinois Supreme Court noted. Gilliam, 172 Ill. 2d at 513. Petitioner's sisters discussed this matter at length in their testimony, and Petitioner's girlfriend also gave extensive testimony on this subject. Petitioner himself did not testify at sentencing. There is nothing new here, and no reason to set aside a Supreme Court judgment.

In sum, it is difficult to imagine what else counsel could have done for his guilty and heartless client. It is true, as Petitioner's present lawyer now notes, that counsel could have introduced evidence about Petitioner's long-standing alcohol and drug (cocaine) problems. (Pet. 18). This evidence certainly does not enhance his character, however, and the State of Illinois does not have any policy of rewarding petitioners for their substance abuse problems by pardoning them and thereby ignoring the crimes they have committed, in addition to the suffering they have inflicted on innocent victims and their families.

### **Expectation Of Reward**

Petitioner next alleges that two family members (Caruthers and Scott-Robinson) testified against him at trial in order to secure a reward offered for Petitioner's arrest and conviction after he fled the state. (Pet. 11-12). Petitioner has not submitted any evidence to support this claim, however, so once again we are left with Petitioner's presumptively false statements. Moreover, the family's testimony was not critical to the State's case, inasmuch as they only testified that they saw Petitioner in Mississippi shortly after the crimes in a "nice" car which, by inference, was Mrs. D'Elia's stolen car. When he turned himself in to the police, Petitioner himself admitted that he had stolen Mrs. D'Elia's car and had sold it in Texas. Petitioner received a fair trial.

### **Psychotropic Medication**

Petitioner also claims he was entitled to a pre-trial fitness hearing because he was taking Darvocet while incarcerated in the county jail. (Pet. 12). But once again Petitioner has not offered any evidence to corroborate this claim, much less has he proven how this drug allegedly affected his lawyers' efforts at trial. Moreover, Petitioner did not have any right to a fitness hearing under Illinois law. Darvocet is a pain reliever, and Darvocet is not prescribed for any of the other purposes mentioned in 725 ILCS 5/104-21, the state's psychotropic drugs statute. As a final matter, the State notes that the fact of medication does not raise a bona fide doubt of Petitioner's fitness and does not, without more, indicate that he could not understand the nature of the trial or help his attorneys conduct his defense. People v. Mitchell, 189 Ill. 2d 312 (2000). Once again, Petitioner has simply ignored the law and has attempted an end-run around the Illinois Supreme Court and its decisions. Once again, the Illinois Supreme Court can be counted on to review this claim, and order any relief it deems appropriate, when it hears Petitioner's post-conviction appeal. Petitioner should let the courts decide this issue.

### **Proportionality Review**

Petitioner next claims the benefit of Commission Recommendation 70, which would require the Illinois Supreme Court to determine whether the death penalty was the appropriate punishment for him. (Pet. 18). But the Illinois Supreme Court has already stated it will vacate any death sentence that is excessive in light of the facts of the case and the Petitioner's background. See, e.g., People v. Blackwell, 171 Ill. 2d 338 (1996). The Illinois Supreme Court did not vacate Petitioner's sentence because it was not excessive or disproportionate for a drug addict who forced an elderly woman into her car before he strangled and beat her to death.

### **Jury Instruction on Alternative Sentences**

Petitioner also notes his jury was not instructed about all the possible alternative sentences, including a term of imprisonment. (Pet. 21). That is not the law in Illinois, however. In Illinois, juries are not permitted to speculate about possible sentencing alternatives. The only exception to this rule is that the jury must be informed if - unlike Petitioner's case - natural life imprisonment is the only available option. People v. Gacho, 122 Ill. 2d 221 (1988). Indeed, such an instruction could have harmed Petitioner's case. If Petitioner's jury had been told that he could have been sentenced to as little as 20 years, with credit for time served in the county jail, the jury might have believed the death penalty was necessary to ensure that he is never released into society to kill or harm more innocent people. Petitioner received a fair sentencing hearing.

### **Jury Instruction Concerning "Appropriate" Death Penalty**

As a final matter, Petitioner claims his jury should have been given an instruction akin to that set forth in Commission Recommendation 65, in which the jury would be told it must decide whether death is the "appropriate" sentence for the Petitioner. (Pet. 21). But Illinois does not have a mandatory death penalty for any type of case. After considering the evidence about the circumstances of the crimes and Petitioner's character, the jury necessarily decided that capital punishment was appropriate for Oasby Gilliam when it returned its verdict imposing the death penalty. The Illinois Supreme Court agreed with them. Gilliam, 172 Ill. 2d at 520. Petitioner should not ask this Board to ignore all the prior court rulings in this case.

## CONCLUSION

Oasby Gilliam received a fair trial. Oasby Gilliam received a fair sentencing hearing. Although the Illinois Supreme Court has already declined to overturn his convictions and present death sentence, Gilliam has yet another appeal pending before the that court, and Petitioner should address his concerns to them. Ten (10) years after his convictions, Petitioner still seeks to avoid responsibility for his actions and 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 Oasby Gilliam.

Respectfully submitted,

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