

OCTOBER 2002 SESSION
PRISONER REVIEW BOARD
STATE OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)	
)	Docket No.
vs.)	
)	
ROBERT ST. PIERRE,)	Inmate No. N-10989
)	
)	

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)

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I

HISTORY OF THE CASE

Following a jury trial in the Circuit Court of Cook County defendant and his codefendants were convicted of the murders of Sybil and Benjamin Gibbons. The defendant was also convicted of the following crimes: two counts of conspiracy to commit murder, two counts of armed robbery, and two counts of concealment of a homicidal death. The same jury found defendant was eligible for the death penalty and ultimately imposed that sentence. On direct appeal, our Supreme Court found that defendant's statement, which had been used against him at trial, had been taken in violation of his Miranda rights. The defendant's convictions and sentences were vacated accordingly and the case was remanded for a new trial. People v. St. Pierre, 122 Ill. 2d 95 (1988). **On remand, defendant pled guilty to all the charges against him.** Defendant waived a jury for sentencing purposes and the circuit court judge ultimately sentenced him to death. Defendant's convictions and sentences , except the conspiracy convictions, were affirmed on direct appeal. People v. St. Pierre, 146 Ill. 2d 494 (1992). Defendant then filed a petition for post-conviction relief in the Circuit Court of Cook County. While that petition was pending the

defendant began to engage in a series of communications with, and filed numerous motions in, the Illinois Supreme Court, wherein he continuously asked to waive all further appeals. Defendant then would withdraw his requests. Finally, the Court ordered the circuit court to hold a hearing to determine whether defendant was competent to waive further proceedings in Illinois. Following a full hearing wherein many experts and defendant testified, the judge found defendant was competent to waive proceedings. The defendant then once more moved in the Supreme Court that he be allowed to waive further proceedings. After the Court carefully considered the record, defendant's request was granted and his post-conviction petition was dismissed.

Defendant then filed a petition for habeas corpus relief in federal court. The district court found that defendant had procedurally defaulted on all of his claims save one and found that that one issue did not entitle defendant to relief. The petition was therefore denied. The Seventh Circuit found that defendant had not defaulted on his claims, but held that the district court had not erred in dismissing the one claim on substantive grounds. On remand, the district court held that defendant had not been denied his constitutional right to the effective assistance of counsel at his guilty plea, but that he had been denied that right at the sentencing hearing. Defendant appealed the ruling, but the State did not cross-appeal. **Therefore, defendant has no death sentence.** The Seventh Circuit affirmed the District Court's ruling. St. Pierre v. Walls, 2002 U.S. Appeal Lexis 14734 (7th Cir. July 23, 2002).

II

FACTS OF THE CASE

On July 2, 1982, less than a month before the murders of Sybil and Benjamin Gibons, defendant was released from Menard Correctional Center. Upon his release defendant became friends with Barry Wilson, who was dating the Gibons' adoptive daughter Jackie. Wilson was used to Jackie supplying him with money and lending him her credit cards. Mr. and Mrs. Gibons, however, cut off Jackie's money and credit cards. This angered Wilson and Jackie. Wilson and Jackie agreed that they should kill her parents. Wilson decided to commit the crime, but was thwarted when he fell through a window of the Gibons' home. He fled the scene. Jackie told her parents that Wilson had broken the window and they called the police. When defendant was told of the pairs' plight, the three of them planned the murder of Jackie's parents. It was decided that defendant would commit the murders and in return he was promised money from their insurance policies which Jackie would receive. Further plans were laid over the course of the next few weeks, including buying supplies to cover the bodies, where the bodies were to be disposed of (the bodies were found in the desert southwest) and how Mr. and Mrs. Gibons were to be killed.

Defendant's weapon of choice for the murders was a hammer, which belonged to Mr. Gibons. On the appointed night, defendant arrived at the Gibons' residence where he was let in by Jackie. Mr. Gibons was home, but his wife was still at work. Jackie took defendant to the kitchen where she introduced him to her father. After Jackie left the kitchen, defendant took out the hammer and smashed it repeatedly into Mr. Gibons' head, thereby causing his death. Jackie and defendant were cleaning up the mess when her mother phoned and asked Jackie to pick her up at the Skokie Swift. Jackie left and picked up her mom. When they arrived home, Jackie allowed her

mother to enter the front door first. As Mrs. Gibbons walked into her home defendant was waiting for her. He struck her once in the head with the same hammer which he had used minutes before to kill her husband. After this first blow, Mrs. Gibbons was able to ask her daughter “why are you doing this to me.” Defendant then rained down more blows on Mrs. Gibbons, killing her.

Wilson was then called and the three then attempted to clean up the house. They even went to purchase plastic sheets in which they wrapped the battered corpses of Mr. and Mrs. Gibbons. Defendant and Wilson then smashed a hole in the common wall between the Gibbons’ bedroom and garage, so that the bodies could be placed in their car in secrecy. Defendant’s belt, which was issued by the Illinois Department of Corrections and bore his prison identification number, was found by the police under the Gibbons’ bed. Afterwards, defendant bragged about the crime and the money he was to receive from it to his friends.

The defendant was charged by indictment with six counts of murder, two counts of conspiracy to commit murder, two counts of armed robbery, two counts of theft, six counts of armed violence, two counts of obstructing justice, and two counts of concealment of a homicidal death. (R. 498-516) Two others, Jacqueline Gibbons (the adopted daughter of the victims) and Barry Wilson, were indicted along with defendant but their cases were severed from his. All of the above charges stemmed from the July 29, 1982 murders of Sybil and Benjamin Gibbons, the adoptive parents of Jacqueline.

Following a jury trial in the Circuit Court of Cook County, the defendant, Wilson and Gibbons were found guilty of the murders of Sybil and Benjamin Gibbons, two counts of conspiracy to commit murder, two counts of armed robbery, and two counts of concealing a homicidal death. That jury subsequently sentenced defendant to death.

On appeal to the Supreme Court, defendant's convictions and sentences were reversed and the matter was remanded for a new trial. The reversal was based on the Court's finding that defendant's inculpatory statement had been taken in violation of Miranda v. Arizona, 384 U.S. 436 (1966); People v. St. Pierre, 122 Ill. 2d 95, 110-13 (1988). The Court also found that the admission of defendant's statements into evidence was not harmless error. Id. at 113-15. On remand the case was assigned to the calendar of Judge Neville. (R. 4) Robert Barasa was appointed as defendant's counsel. (R. 7)

On August 8, 1988, the court informed both sides that he had received a report from Dr. Stipes which indicated that defendant was fit. The court then inquired of counsel if defendant was still thinking about changing his plea to guilty. Mr. Barasa responded that it was still defendant's desire to change his plea. He also indicated that he had not read Dr. Stipes' entire report and anticipated having the doctor testify that afternoon. (R. 9) The People responded that they were ready to go forward with a plea. (R. 10) Both sides indicated that there had been no plea negotiations, and defendant answered "yes" when the court asked, "So it's what we would call a blind plea, I guess?" (R. 10)

The court then stated:

This ought to be a somewhat extended session because there's a lot of things I have to go through with Mr. St. Pierre to make sure you have all the facts that you need. I'm very sure Mr. Barasa has given it to you anyway, but it's my job to make sure the record is clear that you have all the potential [facts] with you.

One other thing that kind of bothers me is when you indicated last time you were here that is what you wanted to

do, it in some respects dealt with your unhappiness at being at the jail while this thing is pending, and even if you plead today, because of the nature of the charge you are charged with and the potential that the State may, even though you plead guilty, ask for the death penalty, [there] still has to be a hearing on whether that is an appropriate disposition in terms of sentence, and under the statute, whether it's with a plea or a guilty finding or whatever, there's an issue to be decided about how the hearing would go ahead and whether you're going to want a jury for that or not a jury.

I'm not asking you to make any statement now, I'm just throwing this out so everybody is certain [of] what we are doing, and the State, of course, has to make some decisions about who they would call at that hearing and what kind of hearing we'd have.

I don't even know if anybody talked about that, so I would like some information about that for my own benefit contemporaneously with whatever we do at 1:30. (R. 11-12)

Defense counsel immediately told the trial court that he had appraised the jail personnel and the prosecutor that defendant was having difficulty adjusting to the conditions at County Jail and that it was defendant's desire to be transferred and housed at the Illinois Department of Corrections' facility at Joliet. (R. 12)

The trial court then informed defendant that he could not go to the Illinois Department of Corrections because at that time and date defendant was not a convicted felon. It was then explained to defendant that because his case had been reversed that he is once again presumed innocent, that he has the right to a trial, that the State must prove him guilty beyond a reasonable doubt and "so you,

are, as are a number of people in the jail, awaiting trial, and that's why you can't go to the Department of Corrections. There's no facility or no way to get you into that system." (R. 13) When defendant said he was endeavoring to get into the State system, the court stated:

I know you're endeavoring. You understand, because of the seriousness of this, and we know even though, whether you like it or not, it is certain someone is going to look at this transcript after whatever we do here and say, "Was Mr. St. Pierre hitting on all eight when this happened and did he understand everything," because regardless of what we do here now, someone is going to look at this, and people don't generally plead guilty if this is the potential sentence.

I don't mean it's never been done, but certainly [it] is a rare occasion, do you understand that?

[MR. ST. PIERRE]: Yes. (R. 15)

The case was then put over until that afternoon.

When court reconvened, the State called Dr. Albert Stipes, who is employed by the Cook County Psychiatric Institute. (R. 17) Dr. Stipes examined defendant on August 4, 1988, regarding his fitness to stand trial, plead and be sentenced. (R. 18-19) As part of his examination, Dr. Stipes reviewed defendant's previous records from the Psychiatric Institute, as well as the current psychological summary done at the Institute, and interviewed the defendant. (R. 19-20) Based on the foregoing it was Dr. Stipes' opinion that defendant was fit to stand trial, to plead and to be sentenced. (R. 20) Dr. Stipes also found that defendant's knowledge of the charges against him, of the proceedings and of the duties of the court personnel were quite sophisticated. He said that defendant

had a thorough understanding of his case and used legal terms correctly. The doctor also found that defendant had a knowledge and understanding of the consequences of a plea of guilty. (R. 21)

It was also Dr. Stipes' opinion that defendant had the ability to recollect events and was able to communicate with his attorney. Defendant was oriented as to time, place and people. The doctor found nothing abnormal or unusual about defendant's social behavior and abilities, nor did the doctor find anything unusual about defendant's ability to perform motor processes. (R. 22)

Dr. Stipes stated that defendant had told him he was having difficulty dealing with his incarceration at the County Jail. Dr. Stipes said he believed the defendant in this regard and determined that he was indeed having such problems. The doctor said that such problems affected the defendant to the extent that he wanted to get out of the jail because of the difficult time he was having adjusting, and that this would affect the defendant's functioning or his ability to get by on a day-to-day basis. (R. 23) Specifically, defendant complained to Dr. Stipes about the noise at the jail, being bothered by other inmates and the gangs at County Jail. In essence he found the environment at County Jail to be very different from the one which existed on death row. Dr. Stipes said that he took defendant's statements about being upset with his living conditions into consideration in arriving at his conclusion that defendant was fit. (R. 26)

The court then made the following finding:

I think at this point it should be made clear in the record that there was no general indication of any specific abnormality on the part of Mr. St. Pierre that required me to ask for an examination. It was merely the unusual circumstances that someone who has gone through an appeal process whose case is overturned and then gets the

case sent back here for trial and has the opportunity to be represented by able counsel and has a right to defend himself, then decides in spite of it all to plead guilty to the same charges for which he has now been granted a new trial, and with that in mind, I with the concurrence of the lawyers asked for a doctor to have a conversation and examination of Mr. St. Pierre to decide whether he knew what was going on here, and its obvious from what Dr. Stipes said that he does, and not only does he understand it, but because of his participation in the process here, a number of different occasions, of different settings, he's pretty sophisticated about what goes on, so I'm confident that at this point Mr. St. Pierre understands the nature of the charges, that he is able to cooperate with his counsel.

I think the record should be clear that he obviously has been through one trial regarding these cases, the exact same case with which he stands charged now, the same charges and the same evidence basically, and that he cooperated at some length with a lawyer during that trial.

He also had communication with a lawyer in the appeal process and now has had another lawyer who is present with him here, so that I'm confident that he can cooperate with his lawyer, and if he has a decision to make in this case, he's able to do it.

The only thing that bothers me and the only thing that should be clear in the record is that if the decision to plead guilty is not based on one of guilt but is based on one of inconvenience, then I don't know if I can accept it and there will be, and I intend, during the next phase of this hearing which we are going into right now, to ask a number of

questions along that line, so Mr. St. Pierre, again I'll be asking some questions directly of you.

You have Mr. Barasa with you. If you want him to answer for you, he can. If you want to answer directly, you can. If you want to confer with him before you answer, you should do that, okay?

[MR. ST. PIERRE]: All right. (R. 30-32)

There were further discussions between the court, defendant and defense counsel concerning the entering of a plea of guilty and the defendant's problems with the conditions at Cook County Jail. (R. 36-40) Afterwards the trial court stated:

Let me make it clear where I'm at with this. There are, unfortunately, hundreds of people in the Cook County Jail, and society has not yet reached a point where we have the facilities to treat each individual with such individuality that there can be separate decisions made about how they are treated pending trial, and the best we are able to offer for society's benefit and the rights of the individuals that are required is that in those cases where there is no bond prior to trial or a bond that the defendant cannot make, that there has to be someplace for those people to remain prior to trial.

What we have in Cook County is Cook County Jail. I don't think that any court or any appellate court would make a decision that an individual's indication that he is uncomfortable in the jail is a factor that a trial judge can use to determine whether he is to be housed, because we are required to send someone either to the penitentiary after a

conviction, and in the interim to remand them to the Cook County Sheriff, who has control over that incarceration, ..., but I cannot in good conscience accept a plea of guilty from someone who would tell me he's uncomfortable with the conditions, and let me finish, who would not admit that in fact he's guilty of the crimes charged.

If it turns out that the defendant in this case, Mr. St. Pierre, is guilty of the crimes charged and for reasons of personal, I don't know if uncomfort is the right word, but for lack of a better one, for personal comfort wants to plead guilty so that he doesn't have to remain at Cook County Jail, I don't find any problem with that.

Everyone has the right to have their case tried or not have it tried. They have a right to plead guilty, but if the reason for the plea of guilty is not guilt of the crime, then I won't accept the plea.

If the reason for the plea of guilty is the guilt of the crime and I want to do it now rather than spend any more time in the Cook County [Jail], so be it.

So that's my position as the trial judge, and further, as I stated before, Mr. St. Pierre knows full well what the appeal process is. He just went through it and he won his case on appeal.

I don't want this matter set up here in this courtroom to be one where later on there's an appeal on the basis, "I only pled guilty because I was uncomfortable."

That's not acceptable to me and I won't take that kind of plea, so with that in mind, I understand exactly what Mr. St. Pierre said and you, Mr. Barasa, you're right, this is not the first time we have discussed it. This is about the fifth or

sixth time we have talked about it, so with all that in mind, I'm still ready to proceed with that understanding. (R. 40-42)

It was then put on the record that defense counsel had informed defendant that this trial judge had previously imposed the death penalty and that defendant still wished to change his plea and enter a plea of guilty. (R. 43-44) The court then went through each of the counts against defendant and defendant repeatedly told the court that he understood each of these charges. (R. 45-51)

The State then read into evidence the stipulated testimony which formed the factual basis for acceptance of the plea. (R. 52-93) Defense counsel stated that defendant was going against his advice by pleading guilty and that defendant had indicated to him that he was willing to waive any motions concerning the stipulated evidence. Defendant agreed with this statement. (R. 93-94) When asked by the court, defendant stated that he understood what stipulated testimony was. Defendant also said that it would be a fair statement to say that he had heard much of the stipulated testimony at his first trial. The court then found that there was a factual basis for the plea. (R. 95)

Upon questioning by the court defendant said that he understood that the State would not be able to use his written statement as evidence against him. (R. 96) Defendant stated that he understood that by pleading guilty he was waiving the filing of any pre-trial motions. (R. 96-97) The court then admonished defendant as to the possible range of sentences he could receive for each of the crimes charged and, as to each crime and its range of sentences, defendant stated that he understood. (R. 99-100)

Defendant then told the court that he understood that he had a right to a trial and that he did not have to plead guilty. Defendant was then told that he has a right to a jury trial, which was

explained to him, and he stated that he understood what a jury trial was. (R. 101) The court then explained a bench trial to defendant and he stated he understood. (R. 101-102) The court then admonished defendant that by pleading guilty, he is admitting to the court that he did, in fact, commit the acts charged and that by doing so he also was waiving his right to either a bench or jury trial. Defendant stated that he understood this. (R. 102) The court then admonished defendant that by pleading guilty, he would be giving up his right to confront witnesses and to cross-examine them. Defendant stated that he understood this. (R. 102-103) The following colloquy then occurred:

THE COURT: The last thing I have to check with you Mr. St. Pierre, is whether or not this plea is voluntary, and as I indicated to you before when we had the colloquy about the conditions in the jail, I cannot accept your plea unless it is voluntary.

If you are only pleading guilty because you're being forced to do it in some way, then of course it is not appropriate for me to accept your plea of guilty. Do you understand that?

[MR. ST. PIERRE]: Yes, I do, your Honor.

THE COURT: So my question to you, Mr. St. Pierre, is are you pleading freely and voluntarily, without force or threat of someone coercing you into pleading guilty?

[MR. ST. PIERRE]: I'm pleading voluntarily. (R. 103)

In response to the court's explanation of the purpose for a factual basis, the defendant stated, "Your Honor, if I might, okay, to enter a plea of not guilty, okay, when in fact I did commit the crime would be tantamount to trying to get away with murder, and that's not my intention." (R. 105) The

defendant was again admonished as to his rights he would be waiving and entered guilty pleas to each of the charges against him. The pleas were then accepted by the court and judgment was entered on the findings. (R. 111-117)

The court then instructed the defendant to confer with his attorney concerning the question of whether defendant wanted a jury at his sentencing hearing. The court also told defendant that he should talk to his attorney about a new PSI. Defendant had a right to have a new pre-sentence investigation report made, or he could waive a new PSI and the judge would consider the one made at the previous trial. (R. 117-118) After a short recess, defendant told the court that he had conferred with his attorney and that it was defendant's wish to have the judge decide the appropriate sentence. (R. 118-119) The court then told defendant that the possible sentences for the double homicide were either life imprisonment without parole or death. Defendant stated that he understood these possible sentences. (R. 119) The procedure utilized at the sentencing hearing was then explained to the defendant. The jury waiver was then read to defendant and he stated he understood that by signing it he was giving up his right to have a jury decide eligibility and the question of the imposition of the death sentence. The jury waiver was executed by defendant and accepted by the court. (R. 122) Thereafter, the court asked defendant if he had discussed with his attorney the desirability of having a new PSI report made for the hearing in aggravation and mitigation. Defendant stated that he waived the PSI for the hearing and executed a waiver to that effect. (R. 122-123)

On the following day the court asked defendant if he had changed his mind about waiving a jury for the sentencing hearing. Defendant said he had not changed his mind. (R. 125) Defense counsel filed a motion to withdraw the plea of guilty and order appropriate pre-trial incarceration. Defendant informed the court that he did not want that motion filed. (R. 125-126)

The court then questioned defendant regarding his attorney's motion. Defendant agreed with the court that he had plead guilty to the charges because he was guilty. (R. 131) Defendant stated that his plea was voluntary. Defendant agreed that he did not get along with the individuals at the County Jail and that is why he was unhappy about being housed there. (R. 132) The following colloquy then took place:

THE COURT: In any event, I advised you yesterday, and I'm going to do it again, if you are pleading guilty to this charge merely to get out of the jail and you did not in fact commit the acts with which you are charged and which yesterday you plead guilty [to], and that you are in some way indicating that you are at such a high state of discomfort that you can't stand to get ready for trial and prepare your case and assist your lawyer, and you just have to get out of jail, regardless of whether you are guilty or not guilty of the charges, I cannot and will not accept your plea of guilty.

Do you understand that?

[DEFENDANT]: Yes, your Honor.

THE COURT: If you are saying to me that you are guilty of these charges, as you did yesterday, that you committed the acts with which you are charged in the indictment, as you did yesterday, and the statement of facts which was ready [sic] by the State's Attorney is basically the statement of facts as you understand that to be, then if your motivation is to plead now rather than later, or not take a trial, for whatever reason, I can take the plea. But as long as it is done voluntarily, and as long as I am convinced that your

motivation in doing this is one that you are in fact guilty of the crime and, two, you feel it is in your best interests to do it now rather than at some later time.

Is that clear, Mr. St. Pierre?

[DEFENDANT]: Yes, it is, your Honor.

THE COURT: Okay. What is your answer to that questions [sic]?

[DEFENDANT]: I'm not pleading guilty merely to leave the facility.

That, however, is one of the reasons. But the main reason is that I'm in fact guilty of the crime.

THE COURT: Which you are charged with?

[DEFENDANT]: To which I plead guilty.

THE COURT: Okay. All right. On that basis then, and knowing that Mr. St. Pierre did not ask to have this motion filed, then the motion is denied. (R. 133-134)

The sentencing hearing then commenced.

It was stipulated that defendant was 19 years old at the time of the offenses. (R. 140-141) Defendant, himself, acknowledged that he was 19 at the time of the murders. (R. 146, 153) The People asked the court to take judicial notice of the plea proceedings and the judgment of guilt entered thereon. (R. 141) The People's position was that defendant was eligible for the death penalty on three theories: 1) that he had been found guilty of murdering two or more individuals; 2) that the murders were committed during the course of a forcible felony; and/or 3) that the murders were committed pursuant to a contract or understanding for money. (R. 141-142) The court found beyond a reasonable doubt that defendant was eligible for the death penalty because he had attained the age

of 19 years at the time the murders had been committed and because defendant had been convicted of murdering two or more individuals and those murders were committed during the course of another felony. (R. 149-150)

At the second phase of the sentencing hearing it was stipulated that if Investigator Leonard Peterson of the Cook County Sheriff's Department was called to testify, he would detail the attempt escape from Cook County Jail on January 4, 1983, by several inmates, including defendant. Defendant's statement about this affair was published and later admitted into evidence. (R. 154-159, 161, 175) The People also put into evidence defendant's three prior convictions for theft. (R. 177)

Defense counsel stated to the court that it was defendant's wish not to proceed with the calling of witnesses in mitigation. Rather, it was the defendant's wish for his attorney to make a statement with the caveat that defendant would be able to expound on any point if he thought it to be necessary. (R. 163) Counsel stated that he had told defendant about the benefits of going forward with a full mitigation hearing. (R. 170-171) The court told defendant that he should sleep on his decision and reminded defendant that the court would not rush the proceedings because the decision to be made was too important. (R. 164-165, 166-167) The court continued to try to impress upon the defendant the importance of his decision. Finally, defendant acquiesced and the hearing was continued until the next day. (R. 168)

The following day, August 10, 1988, the People presented their closing argument. At its conclusion defense counsel informed the court that defendant wished to put on a full hearing in mitigation. (R. 195) The court agreed and the hearing was put over for 30 days when mitigation evidence was presented. (R. 201) After considering the evidence in aggravation and mitigation the judge sentenced defendant to death.

The trial court thereafter reconsidered its earlier rulings and ordered that defendant be tested to determine his sanity at the time of the offense. (R. 435-436) Dr. Albert Stipes examined defendant on February 23, 1989. The examination consisted of Dr. Stipes' review of ISPI records, transcripts of Monte Williams' testimony, police reports and a personal interview with defendant. (R. 443) Dr. Stipes obtained recent information from defendant, discussed the incident with him and talked with defendant about his life around the time of the murders. The interview lasted approximately two hours and defendant was responsive and oriented. (R. 444) Dr. Stipes concluded that defendant, at the time of the murders, was able to appreciate the criminality of his conduct and able to conform his conduct to the requirements of the law. (R. 445) The court found that defendant was legally sane at the time of the murders.

III

REASONS FOR DENYING THE PETITION

The foremost reason why defendant should not be granted clemency is that there is no sentence of death, or any other sentence, that has been imposed for his murders of Sybil and Benjamin Gibons. As the Seventh Circuit Court of Appeals noted, “Although the state could again seek the death penalty in the new sentencing hearing, this is no longer a death penalty case because there is currently no such penalty awaiting the defendant.” St. Pierre v. Walls, No. 01-3480 (July 23, 2002, 7th Cir.). Since there is no sentence to commute or otherwise seek clemency from (and defendant’s attorneys only seek commutation of his possible sentence and not a pardon for the murders he has freely admitted to committing) his petition for clemency is premature.

The Petition for Executive Clemency filed by defendant’s attorneys on behalf of defendant is an improperly filed petition, and should be returned by both the Governor and the Prisoner Review Board as improperly filed. 730 ILCS 5/3- 3-13(a) permits petitions to be filed only if signed by the defendant seeking clemency or "a person on his behalf." There is no statement whatsoever that defendant has acknowledged that this petition could or should be filed on his behalf. In fact, the petition states that defendant has refused to sign it and that he does not seek clemency. There is no such affidavit and in fact the petition itself specifically states that defendant has not filed his own verified petition in accordance with the Prisoner Review Board's guidelines. Defendant is certainly capable of filing court documents, since he has filed and signed various pleadings over the history of this case. It is thus abundantly clear that he has refused to sign, does not acknowledge that this petition is signed on his behalf and that he is certainly capable of signing as well as deciding whether or not to seek clemency.

The clemency application statute contains a more general provision that nothing in section 5/3-3-13 shall be construed to limit the power of the Governor under the Constitution to grant a reprieve, commutation of sentence or pardon. But, this provision cannot be read to permit consideration of unsigned petitions in capital cases. It is the Constitution itself that provides both the Governor's power to grant clemency and the legislature's power to regulate the manner in which clemency must be applied for. Thus, subsection 13(e) specifically contemplates that the Governor will act only "under the constitution," i.e. that his power would be cabined by any restrictions upon the application process constitutionally enacted by the General Assembly. To read subsection 13(e) to permit the Board or the Governor to act on an unsigned petition would render meaningless all the previous subsections of 5/3-3-13, as well as the language in Article 5, section 12 of the Constitution authorizing legislative regulation of the manner of applying for clemency.

The signing requirement for capital cases was plainly enacted under the constitutional power of the legislature to regulate the manner of applying for clemency. It represents a requirement that is entirely concerned with that procedure, and does not attempt to limit the Governor's power to grant clemency to any inmate or category of inmates based on any substantive distinction, or even any procedural distinction other than one of form. More critically, it does not implicate the real subject of subsection 13(e), which was the preservation of a governor's discretion to decide whether and to what extent to grant clemency to a person who qualifies for it and has complied with proper application procedures.

Based on these provisions, enacted under the legislature's constitutional power to regulate the manner in which clemency is applied for, the petition, filed on behalf of defendant

must be rejected by this Board, because the petition itself states that defendant had refused to sign it and that he does not seek clemency on his own behalf.

The facts of this case alone provide sufficient reason to deny clemency. The Seventh Circuit Court of Appeals, in its most recent opinion in defendant's case, gave the following vivid description of defendant's actions in murdering Sybil and Benjamin Gibons,

At age 19, Robert St. Pierre was involved in a brutal murder for hire scheme in 1982, just three weeks after he was paroled from prison. Subsequently, St. Pierre developed a friendship with a man named Barry Wilson. At the time, Barry Wilson was dating one Jackie Gibons. Wilson became angry with Jackie's parents, Benjamin and Sybil Gibons, because they had taken away Jackie's credit cards and no longer supplied her with cash. This caused Jackie to be unable to supply Wilson with money, and so he devised a scheme to kill her parents.

Originally, Wilson planned on doing the job himself, and had even bought a gun. However, Wilson's attempt at murder was thwarted when he fell through a window at the Gibons' home and abruptly fled. Wilson told Jackie about the attempt and told her to clean up the mess he had made. Instead, Jackie told her parents about Wilson's attempt, and they contacted the police.

A short time later, Jackie and Wilson met with St. Pierre in downtown Chicago to discuss hiring St. Pierre to commit the murders. They discussed the method, timing, and payment in detail. St. Pierre agreed that he would kill Benjamin and Sybil Gibons for \$500 up-front for each murder and \$2,000 later (although as much as \$10,000 was discussed). The plan called for St. Pierre to kill the Gibons at around 6 p.m. that evening.

St. Pierre later met with Jackie Gibons in an alley behind her workplace to verify that she still wanted the murders to take place. Reassured of Jackie's intent, St. Pierre went to the Gibons' home in Skokie, Illinois, at 6:30 p.m. Jackie introduced St. Pierre to her father (Sybil Gibons was not at home), and St. Pierre spoke with Benjamin Gibons for a while. Benjamin Gibons then proceeded into the kitchen and St. Pierre picked up a hammer, followed Benjamin into the kitchen and

bludgeoned him to death. After Benjamin was dead, St. Pierre robbed him, taking all the money in his wallet. As planned, Jackie then called Wilson, who came over, and the three cleaned up the bloody kitchen, wrapped Benjamin Gibons's body in a plastic bag, and placed it in the master bedroom.

At 7 p.m., Detective McLaughlin called the home looking for Benjamin Gibons to follow up on investigation of the murder attempt by Wilson. Jackie told the detective that her father was out and that she would have him return the call when he came home. At approximately 7:10 p.m., Sybil Gibons called and asked Jackie to pick her up at the Skokie Swift train station. First, Jackie drove Wilson to a hardware store to buy some plastic bags, sheets, and . tape, and to a liquor store. Jackie drove Wilson back to her home, and then went to the station to pick up her mother. Upon arriving back at the home, Jackie let her mother enter the home first. As planned, St. Pierre was waiting in the hallway and he bludgeoned Sybil Gibons to death, hitting her on the head with a hammer as she walked through the front door of her own home. The killers cleaned up the blood and wrapped Sybil Gibons' body in plastic. St. Pierre and Wilson punched a hole in the wall leading to the driveway, so they could load the bodies into the trunk without being seen. St. Pierre was to accompany Wilson to dispose of the bodies in Arkansas (or California, accounts differ) and receive the rest of his money. St. Pierre then went home and waited to take the trip and collect his payment. Instead of picking up St. Pierre, Wilson drove the bodies to New Mexico where he buried them in a shallow grave.

A few days later Sybil Gibons' sister contacted the police because Sybil had not been to work for several days. A detective was dispatched to the Gibons' home and there he discovered evidence of the carnage that was not completely cleaned up by the killers. The detective also found a belt belonging to St. Pierre, bearing his name and prison identification number. The next day the police questioned Jackie Gibons and she gave the police a statement about the murders. The police then apprehended St. Pierre; Wilson was later arrested in Arizona.

St. Pierre v. Walls, slip op. at 2-4. The brutal and heinous nature of this crime are apparent from

these facts. Indeed, the facts of this case are alone sufficient reason to deny the petition for clemency.

The defendant continues to complain in his petition that his counsel was ineffective when defendant voluntarily entered his guilty pleas to the murders of Sybil and Benjamin Gibbons. This claim has been rejected by every court which has reviewed the issue. It must be remembered that defendant pled guilty against the advice of counsel. Also, it was defendant who frustrated counsel at every turn by refusing to heed his advice. Defendant fought him over every motion he filed on defendant's behalf. In emphatically rejecting defendant's claim the Seventh Circuit held,

Counsel for St. Pierre wanted to put on a defense at trial, even sought to withdraw the guilty plea. It was St. Pierre who made the decision to plead guilty to the charges. Several psychologists, the judge, and counsel all agreed that he was competent to do so. Based on all the available evidence at the time of the plea and the Strickland standard, it is impossible to say that counsel's performance was deficient. In fact, counsel's overall performance at the pleading stage, considering his client's attitude and intent, was commendable. See Balfour v. Haws, 892 F.2d 556 562-63 (7th Cir. 1989) (noting that for specific allegations of effective assistance courts must "weigh the overall quality of representation provided to the defendant" and not individual shortcomings). The district court's conclusion, finding counsel's performance did not fall below objective standards of reasonableness, was correct.

St. Pierre v. Walls, slip op. at 30. Defendant's complaints to this Board are just that, complaints. Defendant simply wants this Board to review the evidence once again. He is not entitled to further review because his trial attorney did all that he could do for defendant despite defendant's best efforts to frustrate his every attempt to assist him in defending against the charges.

Defendant also complains that his guilty plea hearing was not fair and that he did not

knowingly and voluntarily enter his pleas of guilty. Nothing could be further from the truth. Judge Neville held a lengthy hearing before allowing defendant to enter his guilty pleas. The judge ordered several exams to determine defendant's competency to plead, to stand trial and to be sentenced. He even allowed the defendant to be examined to determine his sanity at the time of the offenses. Judge Neville repeatedly, over a two day period, questioned defendant about why he wanted to plead guilty. The judge would not accept the plea until he was fully satisfied that defendant was competent to enter the pleas and that he was pleading guilty because he was in fact guilty of the crimes charged. In rejecting this claim, the Seventh Circuit held,

The facts most indicative of a knowing and voluntary plea are directly drawn from St. Pierre's own participation in the proceedings. Both Judge Neville and counsel stated that St. Pierre knew what he was doing and had meaningfully participated in the proceedings and his defense. St. Pierre staunchly contested a minor issue of fact, related to the robbery count and Sybil Gibbons' ring, until it was resolved to his satisfaction. Following a comprehensive hearing, Judge Neville concluded that St. Pierre knew his rights and made the voluntary decision to plead guilty. And when counsel filed a motion to withdraw the plea, St. Pierre interrupted to make it clear that the motion was being made by counsel and against his wishes.

St. Pierre was advised not to plead guilty, and about the possibility of using insanity as a defense. He flatly rejected the option of going to trial, and according to Judge Neville he did so knowingly and voluntarily. St. Pierre was found competent, and as the judge noted, appeared to meaningfully participate in his defense. Additionally, counsel noted that St. Pierre understood the charges and clearly wanted to plead guilty. Today St. Pierre says he wouldn't have pled guilty. However, hindsight is expressly prohibited in our analysis. See Hill, 474 U.S. at 56-59; Strickland, 466 U.S. at 688-91. All the facts show that he understood the decision he was making and voluntarily made it because he wanted to accept responsibility for his crimes. There is no evidence indicating that the plea was not knowing and voluntary.

St. Pierre v. Walls, slip op. at 33. Thus, as defendant's pleas were knowingly and voluntarily given he is not entitled to clemency on this ground.

As noted previously, defendant has a criminal record and committed these crimes when he was 19 years old. His adjustment to prison life has been miserable. The People have attached to this response defendant's disciplinary record which lists his violations and covers ten (10) pages. That record contains every violation from being disorderly to possession of drugs and other contraband to arson to possession of a dangerous weapon (stainless steel sharpened to a point). Defendant has continued his criminal ways even while confined to death row. His life-long

addiction to crime shows contempt for our society and our system of justice. Defendant is not a person who should be granted clemency.

Defendant asserts that he 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 Supreme Court Rules, statutes and proposals from the Governor's Commission on Capital Punishment which were not available at the time of his trial, defendant claims that his 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 defendant's case. Instead, a true injustice would only result if it were reflexively determined that defendant's guilty plea hearing was fundamentally unfair without any examination of the proceedings themselves. It is telling, however, that defendant has not even attempted to demonstrate how the recent changes would have affected the outcome of the proceedings.

Supreme Court Rules

Defendant asserts that 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.

Decision to Seek Death

Defendant claims his 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, "[i]t has long been recognized by th[e Illinois Supreme C]ourt 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, defendant does not even allege much less argue that the decision to seek death in his case was the result of an abuse of discretion. It must be remembered that defendant was found eligible for the death penalty under two factors: (1) that the deaths occurred during the course of another felony; and (2) that defendant had been convicted of murdering two or more individuals. Accordingly, it must be rejected.

Allocation

Defendant also claims that clemency is appropriate because he was denied the opportunity to make a statement in allocation 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, defendant was free to testify under oath at his sentencing hearing to explain why he should not be sentenced to death, and he did so. Therefore, he was given every opportunity to present himself to the trier of fact before he was sentenced.

Supreme Court Review

Defendant also claims that he is entitled to clemency because the Illinois Supreme Court failed to consider whether his death sentence was disproportionate, excessive or otherwise inappropriate. However, because the Illinois Supreme Court has 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 defendant’s sentence in such a manner is because he did not ask the Court to do so.

In any event, the Supreme Court did find in this case that the trial judge had properly considered the evidence in mitigation and rendered a sentence which was commensurate with the gravity of the crimes committed. People v. St. Pierre, 146 Ill. 2d 494, 513-16 (1992). Defendant also contends that clemency should be granted because his sentence is harsher than the ones received by his co-defendants even though each is equally responsible for the murders. While Jackie Gibons and Barry Wilson may have originally conceived the plan to murder Jackie's parents and drew defendant into that plan, the fact remains that they did not strike the blows which resulted in the deaths of Sybil and Benjamin Gibons. It was defendant, and not his co-defendants, who repeatedly struck Mr. Gibons in the head with a hammer as the man stood in his own kitchen. It was the defendant, and not his co-defendants, who waited 30 minutes for Mrs. Gibons to come home from work and then struck the blows that killed her as she entered the front door of her own home. While the conduct of the co-defendants is reprehensible, the conduct of the defendant, as the man who actually killed Sybil and Benjamin Gibons, is much more reprehensible. His actions were cold and calculating. He murdered these people in their own home. First he struck down Mr. Gibons and then waited 30 minutes for Mrs. Gibons to return home before striking her down. During these 30 minutes defendant could have disassociated himself from the criminal enterprise, but chose not to do so. Instead, defendant acted with the coldest of hearts and continued his murderous deeds.

In conclusion, it is clear that defendant should not be granted clemency for his brutal and heinous murders of Sybil and Benjamin Gibons in their own home. Much planning went into the commission of these crimes and defendant committed these murders in expectation of financial gain. He has been a criminal his entire life and has shown no signs of changing that lifestyle since

his incarceration. The history of this case shows that our system of justice has worked as it was designed to work. When a trial error affecting the verdict occurred, defendant was afforded a new trial. When it was found that defendant received the ineffective assistance of counsel at sentencing he was granted a new sentencing hearing, which has not yet been held. Since defendant has no sentence of any kind and because he did not sign his petition there is no ground upon which commutation of sentence can be based. Defendant's rights have been recognized and guarded every step of the way over these many years.

There is no doubt that defendant committed these murders. He freely pled guilty to the charges in open court while represented by counsel. Granting clemency to this defendant would be an insult to the memory of the victims and to their surviving friends and family. As defendant said at his guilty plea hearing, after stating that his pleas were voluntarily entered,

“Your Honor, if I might, okay, to enter a plea of not guilty, okay, when in fact I did commit the crime would be tantamount to trying to get away with murder, and that's not my intention.”

To grant clemency to defendant would be tantamount to allowing defendant to get away with murder. Moreover, defendant has declined to sign the petition which was filed by his attorneys and he does not seek clemency on his own behalf. His petition for clemency must be denied.

CONCLUSION

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

Respectfully submitted,

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