

OCTOBER 2002 SESSION
PRISONER REVIEW BOARD
STATE OF ILLINOIS

PEOPLE OF THE STATE OF
ILLINOIS,

vs.

SAMUEL KARIM,

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Docket No. _____
Inmate No. R-10346

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

PEOPLE'S RESPONSE IN OPPOSITION TO PETITION
FOR EXECUTIVE CLEMENCY

HEARING REQUESTED

RICHARD A. DEVINE
STATE'S ATTORNEY OF COOK COUNTY

By: JOHN SOMERVILLE
JAMES P. BYRNE, JR.
MICHELLE KATZ
ASSISTANT STATE'S ATTORNEY

murder victims. Because Karim is short \$2500.00, Parker agrees to allow Karim to complete payment at a later date. Parker calls Karim numerous times for payment, but Karim refuses. Finally, on March 18, 1996, Karim tells Parker to meet him on the 3800 block of West End Street in Chicago. This area was part of Karim's drug territory. Parker agrees to meet Karim. Parker asks Michael Black and Melvin Harris to accompany him. They agree and Melvin Harris drives Parker and Black to West End Street. While Black had been involved with Parker's drug deal with Karim, Melvin Harris was an innocent bystander who simply offers to drive Parker and Black. None of the three victims are armed and there are no weapons in their car.

While the victims are driving to Karim's drug territory, Karim prepares for their arrival by parking a getaway car on the next street. When Melvin Harris parks his car on West End Street, Michael Black is in the front passenger seat and Jamar Parker is in the rear seat behind Michael Black. Karim walks up to the car and has a short conversation. Karim then calls for one of his "employees," who is armed with a 9mm Glock semi-automatic handgun. Karim takes the gun from his employee and points it at the car. When Melvin Harris sees the gun, he tries to put the car in gear and drive away. Karim is too fast. Karim, at point blank range, puts the gun to the back of Melvin Harris' head and shoots. Karim then fires a second time into the back of Harris' head. Both bullets enter the neck and head of Melvin Harris. Michael Black then opens the front passenger door and tries to flee but Karim stops him by shooting through the car and hitting Black in the back. Black falls to the ground and plays dead in the hope that he won't be shot again. Karim then points the gun at Jamar Parker. As Parker reaches for the gun to deflect it, Karim shoots him once striking him in the abdomen. Karim walks quickly around the car towards Michael Black. As he gets to the passenger side of the car he notices that Parker is still moving in the back seat. Karim then points the gun to the back of Parker's head and shoots Parker again.

Karim then walks up to Michael Black, who is laying motionless on the street, stands directly over Black, and shoots Black over and over again. Karim then runs to his waiting car and flees the scene.

Jamar Parker died at the scene from a gunshot to the abdomen and a gunshot to the head. Melvin Harris clung to life for five days and then died of two gunshots to his head. Michael Black was shot eleven times but survived. He is now a paraplegic, paralyzed from the waist down. He requires constant care.

After the murders, Karim obtained a false identification card and fled, living briefly in California, New York, Ohio and Texas. In November 1996, acting on a tip, the Chicago Police located and arrested Karim while he was visiting Chicago. Karim was identified as the shooter by two witnesses who observed the shooting and by Michael Black. Karim confessed to the murders and the attempt murder and gave a signed handwritten confession. At his jury trial Karim took the witness stand and admitted that he shot Melvin Harris twice in the back of the head, that he shot Jamar Parker in the abdomen and in the back of the head, and that he shot Michael Black numerous times. Karim claimed self-defense. The jury was not convinced and returned guilty verdicts on all counts.

During the sentencing phase of the trial, the jury heard about a rape Karim had committed in December of 1995. Sixteen-year-old Thomasina Henderson, who was the girlfriend of one of Karim's "employees," was at home with her one-year-old son when Karim comes into her apartment. Karim tells Thomasina, "I know you want to fuck me!" Thomasina tells Karim to get out but Karim will not leave. Instead, he grabs Thomasina and they struggle. During the struggle, Thomasina's son wakes up, walks into the living room and begins to cry. Karim tells Thomasina that she better shut the child up or he would shut him up for her. Thomasina grabs her baby and

runs into the bedroom. Karim follows, pulls Thomasina down, pulls off her panties and rapes her. While Karim is raping Thomasina, Thomasina is holding her baby tightly to her chest, trying to keep the baby from crying. When Karim finishes with Thomasina, he leaves the apartment.

Karim put on numerous witnesses in mitigation over several days. After the aggravation and mitigation evidence was complete, the jury deliberated for two and a half hours and then returned a verdict of death.

III

REASONS FOR DENYING THE PETITION

Karim asks this Board and the Governor for mercy and, in support, simply points to a laundry list of suggested reforms proposed by the Governor's Commission on Capital Punishment. Notably, Karim does not claim innocence for either of his two murders, his attempt murder, or his rape. A claim of innocence would clearly be ridiculous in light of the fact that Karim testified at his trial that he shot Melvin Harris, Jamar Parker and Michael Black, and in light of the fact that, subsequent to his trial, he plead guilty to raping Thomasina Henderson. Yet, despite his undisputed guilt, Karim believes he merits clemency. Karim does not explain why he merits clemency, he merely alludes to some suggested reforms and rests on his case. Karim does not bother to mention that these suggested reforms are not applicable to his case and are, therefore, irrelevant. Karim also does not bother to enlighten the Board or the Governor as to how his trial or sentence would have been altered with the application of such reforms. This Karim leaves to the imagination. In spite of the fact that Karim's Petition is groundless on its face, the People will address each of Karim's concerns in turn.

THE PARTIAL APPLICATION OF THE NEW ILLINOIS SUPREME COURT RULES

AND THE INAPPLICABILITY OF THE RECOMMENDATIONS OF THE GOVERNOR'S COMMISSION ON CAPITAL PUNISHMENT AT THE TIME OF PETITIONER'S TRIAL IN NO WAY RENDERED HIS CONVICTION AND SENTENCE UNFAIR OR UNJUST AND DO NOT SUPPORT THE GRANTING OF CLEMENCY IN THIS CASE.

Samuel Karim asserts that he is entitled to clemency because he did not receive the benefit of any of the reforms proposed by the Governor's Commission on Capital Punishment and without the "full and complete benefit" of the new Illinois Supreme Court Rules. Notably, however, Karim relies **exclusively** on the Recommendations, as opposed to the Supreme Court Rules, to argue that his sentence is "unjust." (Pet. pp. 9-10) Petitioner's utter failure to either specify a single Supreme Court Rule whose benefit he was denied, or to demonstrate how application of such Rule would have affected the outcome of the proceedings unhinges his claim that clemency is warranted in this case. Moreover, the Illinois Supreme Court has clearly held that the amendments to its rules are not retroactively applicable. Hickey, 2001 Ill. LEXIS 1080 at *65.

In point of fact, however, Karim was the recipient of the benefits afforded under the new Supreme Court Rules where his case was tried after their enactment. For example, Karim took depositions of witnesses and participated in numerous case management conferences.

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.

Additionally, Karim's reliance on the reforms recommended by the Commission which were not available at the time of his trial do not lend support to his position where 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 petitioners 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 Karim's case. Instead, a true injustice would only result if it were reflexively determined that Karim's trial was fundamentally unfair without any examination of the proceedings themselves.

Furthermore, Karim's reliance on Recommendations #4, 6, 8, 10-15, 20, 29, 30, 55, 56, 58, 61, 62, 65, and 66 should be rejected outright where Petitioner 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. Essentially, Petitioner 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 Recommendations 4, 6, 8, 58

In a series of interrelated claims, Samuel Karim seeks clemency because various evidence against him was not electronically recorded or videotaped and because the jury was not instructed

to consider the fact that it was not recorded. In addition to the foregoing argument, it must be recognized that under the Governor's Commission's proposals neither the Commission nor the Governor himself call for the suppression of a statement simply because it was not videotaped. Rather, even under the Governor's proposed legislation (HB3717 & HB2058), such statements will still be admissible if the trial court finds that it was voluntarily made after considering the totality of the circumstances. Because the trial judge expressly found that Karim's statement was voluntarily made when it denied his Motion To Suppress Statements, it is clear that the failure to videotape his statement had absolutely no effect on the fairness of his proceedings.

Moreover, because the jury was instructed pursuant to Illinois Pattern Instruction 3.06-3.07 to consider all the evidence when determining whether or not Karim made the statement and how much weight it should be given, Karim cannot complain that he was prevented from asserting at trial that his statement was unreliable and should not be considered.

Likewise, with respect to the failure to record the witnesses' testimony, Karim fails to either specify what witnesses he is referring to, or to suggest how his resulting conviction and sentence was unfair. Petitioner was afforded, and availed himself of the opportunity to conduct extensive cross-examination of the witnesses in this case, full discovery was conducted, and there is simply no basis for Karim to now contend that he should be granted clemency simply because this recommendation was not in effect at the time of his trial.

Governor's Commission on Capital Punishment 10-15

Samuel Karim wages a general attack on the lineup procedure utilized in this case, simply alleging that it was not in keeping with the Commission's Recommendations. Petitioner fails to even suggest how he was affected, no less prejudiced by the inapplicability of the

recommendations to his case.

Moreover, respondent would note that any claim of prejudice resulting from identification procedures is directly undermined where the propriety of such procedures was the subject of a Motion To Suppress, which, after thorough litigation, was denied. Petitioner was afforded the opportunity to present all those concerns expressed by the Commission in recommendations 10-14. It is Karim's contention that his lineup identification was somehow unfair because the procedures recommended by the Commission did not apply. Again, Karim can't seem to articulate how the procedure used for his lineup, and the subsequent in court identification, were in any way unfair or prejudicial. It would be fair to say that Karim simply doesn't like the result of the identifications which identify him as the murderer.

Finally, Recommendation 15, even if it became law, does not create an absolute mandate where it only advises that lineup procedures should be videotaped "when practicable." Thus, for this reason too, Petitioner's claim of automatic resulting prejudice requiring the granting of clemency must be rejected.

Governor's Commission on Capital Punishment 20

Samuel Karim argues that clemency is warranted where forensic evidence used against him at the sentencing hearing was not submitted for analysis by the prosecution to an independent lab. To begin with, Recommendation 20 does not require any such action on the part of the prosecution. Rather, the recommendation is that "an independent state forensic laboratory should be created, operated by civilian personnel, with its own budget, separate from any police agency or supervision."

In this case, Karim was free to request independent examination of forensic evidence,

but chose not to do so. The existence or non-existence of an independent laboratory, standing alone, simply does nothing to support a claim that his trial was unfair. This is particularly true where Petitioner is not even discussing forensic evidence used against him at trial to establish his guilt or innocence, but, rather, forensic evidence used against him at sentencing.

Governor's Commission on Capital Punishment 29 & 30

Samuel Karim claims his sentenced 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 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, Karim does not even allege much less argue that the decision to seek death in his case was the result of an abuse of discretion. Accordingly, it must be rejected.

Governor's Commission on Capital Punishment 55 & 56

Samuel Karim claims that Recommendations 55 and 56 further support the granting of clemency. He fails to note, however, that Recommendation 55 speaks to the trial court determining on a case by case basis whether expert testimony regarding the problems associated with eyewitness testimony would be "helpful in appropriate cases." The trial court had broad discretion, under existing law at the time of Petitioner's trial to grant such a request, had it been

made. See, People v. Enis, 139 Ill.2d 264, 285-290 (1990). The fact that Karim never sought the assistance of such an expert was his own decision to make, and one which can not now serve as the basis for a claim of prejudice.

Recommendation 56 speaks to the inclusion of an additional sentence to the present instruction (I.P.I. 3.15) which would state: “Eyewitness testimony should be carefully examined in light of other evidence in the case.” Put plainly, the non-existence of this sentence can not possibly be said to have prejudiced Karim in any way in light of the Commission’s own acknowledgment that I.P.I. 3.15, which has already undergone modification, is a fundamentally solid instruction where it tells the jury to:

“consider all the facts and circumstances in evidence, including, but not limited to, the following: (1) the opportunity the witness had to view the offender at the time of the offense, or (2) the witness’s degree of attention at the time of the offense, (3) the witness’s earlier description of the offender, (4) the level of certainty shown by the witness when confronting the defendant or (5) the length of time between the offense and the identification confrontation.”

Governor’s Commission on Capital Punishment 61

Samuel Karim avers that there was evidence that he suffered from a history of extreme emotional and physical abuse and reduced mental capacity, both of which are proposed as statutory mitigating factors pursuant to the Recommendations. (Pet. p. 11) The fact of the matter is that, listed or not, the jury heard extensive testimony as to both factors. Specifically, Karim presented extensive testimony on post- traumatic stress disorder.

The jury had all of the foregoing mitigating evidence before them. The spirit of Recommendation #61 was fully complied with and Karim was, and is, unable to establish how the fact that the recommendation was not specifically listed in the statute as a mitigating factor would have made any difference in this case. Although the jury was not expressly instructed to consider

these factors, it was instructed that mitigating factors include “any reason why the defendant should not be sentenced to death” and that it should consider all mitigating evidence even if it does not pertain to one of the enumerated factors. Illinois Pattern Jury Instruction 7C.06.

Governor’s Commission on Capital Punishment 62

Samuel Karim claims that clemency is warranted because he 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, Karim was free to testify under oath at his sentencing hearing to explain why he should not be sentenced to death, but chose instead to rely upon his witnesses in mitigation and his attorney’s closing argument. Therefore, he was given every opportunity to present himself to the trier of fact before he was sentenced.

Governor’s Commission on Capital Punishment 65

Samuel Karim 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 the defense 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 by the closing arguments.

Governor's Commission on Capital Punishment 66

Samuel Karim asserts that his sentence should be commuted because the judge was not given the opportunity to override the jury's decision to impose the death penalty. 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 at Karim's trial 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

Finally, Samuel Karim 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 Karim's sentence on direct appeal is because he has not asked the Court to do so.

Petition for Executive Clemency is Premature

Because petitioner's death sentence has not yet been affirmed by the Illinois Supreme Court on direct appeal, this petition for executive clemency is premature. The Illinois Constitution of

1970 expressly provides that “Appeals from judgments of Circuit Courts imposing a sentence of death shall be directly to the Supreme Court as a matter of right.” Article VI, section 4(b). Pursuant to this provision, the Supreme Court promulgated Supreme Court Rule 606(a) which states that “In cases in which a death sentence is imposed, an appeal is automatically perfected without any action by the defendant or his counsel.” Therefore, it is clear that all convictions resulting in death sentences must be reviewed by the Court before the defendant may be executed.

Due to this constitutional restriction, it is clear that no convictions resulting in death sentences are final prior to the completion of the Illinois Supreme Court’s review on direct appeal. As the Court has long recognized, the completion of the direct appeal is a necessary element of criminal prosecution. See People v Mazzone, 74 Ill.2d 44, 46, 383 N.E.2d 947 (1978) (holding that a defendant’s death while his appeal is pending requires the convictions to be abated *ab initio*); O’Sullivan v People, 144 Ill.604, 610, 32 N.E. 192 (1892) (same); People v. Robinson, 187 Ill.2d 461, 463, 719 N.E.2d 662 (1999) (same). Thus, it cannot be disputed that in capital cases, the Court’s affirmance is an indispensable component of a “conviction.” Accordingly, because the Governor’s clemency power is expressly limited to situations “after conviction” (Article V, section 12) (and in fact the practice has always been to wait until the completion of the entire appellate and post-conviction process), neither this Board nor the Governor may consider a clemency petition from petitioner until the finding of guilt and death sentence are affirmed by the Illinois Supreme Court.

CONCLUSION

Samuel Karim is a double murderer, a rapist, and a drug dealer. As it stands today, Karim’s body count includes two dead men, one man dead from the waist down, and one raped mother who

will forever be traumatized by his brutal rape. This body count does not include the victims who suffered as a result of his drug operation. In the face of such devastation, Karim has the audacity to claim his sentence is excessive. He has the audacity to claim that both his trial and sentencing were unfair and then provide no legitimate basis for such a claim. Karim's actions in the past and his list of victim's are testaments to the fact that this murderer, rapist, and drug dealer has no place in our society, whether in prison or not. A jury of twelve men and women understood this fact when they sentenced Karim to death. Karim has offered nothing to this Board or the Governor to justify disturbing the well-considered judgement of his jury. To do so would only relieve Karim of the consequences of his actions and would undermine the integrity of our criminal justice system.

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

Respectfully submitted,

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