

OCTOBER 2002 SESSION
PRISONER REVIEW BOARD
STATE OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)	
)	Docket No. \
vs.)	
)	
TYRONE STRICKLAND,)	Inmate No.N-82016
)	
)	

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: MARIE QUINLIVAN CZECH,
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Assistant State's Attorneys

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INTRODUCTION

ON THE NIGHT OF NOVEMBER 5, 1985, PETITIONER WIELDED HIS GUN, TOOK AIM, AND FIRED AT EVERY SINGLE POLICE OFFICER HE SAW. HE KILLED ONE. IF HE HAD BETTER AIM, HE WOULD HAVE KILLED ALL THREE. ON THE NIGHT OF NOVEMBER 5, 1985, PETITIONER TERRORIZED A GRANDFATHER AND HIS TWO BOYS, AGES 9 AND 15, WHEN HE COMMANDEERED THEIR CAR AND REFUSED TO RELEASE THEM. ON THE NIGHT OF NOVEMBER 5, 1985, PETITIONER COWERED BEHIND A 9 YEAR OLD BOY, FIRING OVER THE BOY'S HEAD, WHILE HE ENGAGED IN A SHOOTOUT WITH POLICE. ON THE NIGHT OF NOVEMBER 5, 1985, PETITIONER FORFEITED HIS RIGHT TO ASK FOR MERCY.

Petitioner's own psychologist describes him as "highly reactive to the emotional stimulation in his environment" and "frighteningly hot headed." (Petitioner's Exhibit 4, p. 5) Those phrases are a perfect description of Petitioner's conduct on November 5, 1985. When Petitioner and his brother Larry first saw Officer Dawson approaching, what did Larry do? He threw away the gun. He diffused some of the danger. What did Petitioner do? He searched for the gun, knowing

that he could and would use it. When he retrieved the gun, he ran with it to Officer Dawson's side. While the officer was preoccupied in his unarmed struggle with Larry, Petitioner placed the gun against the left side of Officer Dawson's chest. At point blank range, Petitioner fired a bullet into the heart of Officer Dawson.

What did he do next? Did he attempt to diffuse the danger? No. Again, he chose to increase the danger. He reached down to the fallen officer, and stole his service revolver. Now he had twice the firepower.

Petitioner unleashed the power of that second gun the moment he saw Officer Stutzman. While Larry drove their getaway car, Petitioner fired two, three or four shots at that officer.

After escaping from Officer Stutzman, did Petitioner do anything to decrease the danger? Quite the opposite. Larry's car had been damaged in the shootout, so he and Petitioner ditched it and began to run on foot. They needed a new car, but did they steal an empty car? No. They stole a car occupied by a grandpa and two boys. When the grandpa begged for the release of the boys, Petitioner said no. For one whole hour, the grandpa and the boys were trapped in that car with Petitioner and Larry. For one whole hour, Petitioner threatened to kill the grandpa and the boys if anyone made a false move.

When the grandpa's quick thinking gave him and the boys a chance to escape, did Petitioner do anything to diffuse the danger. No. While 9 year old Daniel was pinned in the front seat of the car, Petitioner sat in the back and shot over Daniel's head, at Chicago Police Officer Edward Gross.

Petitioner now says:

There was no one else hurt that winter night except for my brother Larry and myself. November 5, 2002, will be

seventeen years we are incarcerated. I feel as though I have suffered enough and done my time.

(Petitioner's Comments, attached to the Petition for Clemency.)

The People of the State of Illinois do not agree.

I.

FACTS OF THE CASE

On November 5, 1985, at 7:30 p.m., Petitioner aimed a gun at the heart of Wheeling Police Officer Kenneth Dawson, and, at point blank range, pulled the trigger. Thus Petitioner was convicted of murder. Immediately after the murder, Petitioner stole Officer Dawson's service revolver. Thus, Petitioner was also convicted of armed robbery. Petitioner also shot at, but missed, Wheeling Police Officer William Stutzman and Chicago Police Officer Edward Gross. Thus, Petitioner was convicted of two counts of attempt murder. While trying to escape, Petitioner wielded a gun and commandeered a car occupied by 61 year old Donald Hamburg and his 9 year old grandson and his 15 year old nephew. Thus, Petitioner was convicted of three counts of aggravated kidnapping. Petitioner confessed to all of these crimes.

The Arrival Of Petitioner And His Brother On Cleo Court

On November 5, 1985, Petitioner and his brother, Larry, had driven approximately 70 miles from their parents' home in East Chicago Heights to Wheeling. (R. 1710-1711, 1795) Petitioner and Larry are black. (R. 1173) Wheeling is an almost entirely white community. (R. 1276) They wanted to see a friend of Larry's named "CC." (R. 1174, 1276, 1547, 1713-1715) "CC" had

apparently done something to a friend, and Petitioner and Larry were there to retaliate. (R. 1373-1374, 1379-1380) Larry had a gun. (R. 1549, 1733)

Larry did not know exactly where "CC" lived. Thus, Petitioner and Larry approached 678 Cleo Court, the home of Christine Hodges, in the belief that "CC" lived there. (R. 1171, 1717) While Ms. Hodges was in the living room, she heard Petitioner and Larry, whom she did not know, open the sliding glass door in her kitchen. (R. 1172-1174) Petitioner was actually coming in through the door when Ms. Hodges confronted them. (R. 1173-1174) Ms. Hodges grabbed the side of the door to try to prevent Petitioner's entry and demanded to know what he wanted. (R. 1174) Petitioner said he was looking for "CC." (R. 1174, 1719) When Ms. Hodges said that "CC" did not live there, Petitioner withdrew and Ms. Hodges was able to close and secure the door. (R. 1174)

Ms. Hodges immediately called the police. (R. 1176) Petitioner and Larry continued looking for "CC." (R. 1722) When Gale Ross, another homeowner on Cleo Court, pulled into her garage, Larry approached her and asked if she knew "CC." (R. 1270, 1273, 1288, 1723) She slammed the garage door shut and went in the house. (R. 1273, 1724) Gale's husband, Jeff, came out a few moments later and gave Larry directions to "a black guy's" house. (R. 1276, 1726-1727)

The Murder And Armed Robbery Of Officer Dawson

Wheeling Police Officer Kenneth Dawson was patrolling alone in a marked squad car. (R. 1107-1108, 1549) He was in full uniform. (R. 1549, 1858) Officer Dawson was the first to respond to the police radio dispatch stating that Ms. Hodges had confronted two strange men at her sliding glass doors. (R. 1107-1108) He pulled in to Cleo Court just after Larry spoke with Jeff Ross. (R. 1729-1730) Petitioner and Larry were walking back to Larry's car. (R. 1730) Officer Dawson shined his flashlight on Petitioner and Larry and asked what they were doing. (R. 1549)

When he first saw Officer Dawson approach, Larry took his gun and pitched it into the grass. (R. 1549, 1733) Officer Dawson directed Petitioner and Larry to stand up against a dumpster and searched them. (R. 1737-1738) The officer wanted to know what Larry had thrown into the grass. (R. 1738) Officer Dawson stepped up to Larry. (R. 1549, 1739) Petitioner then began backing away from the officer and Larry. (R. 1238-1239, 1740) Petitioner put his hands up and said, "Leave me alone and let me go home." (R. 1238-1239)

Officer Dawson then took hold of Larry by the arm or shoulder. (R. 1239, 1740) Dawson called for help on his portable radio. (R. 1241, 1740) Larry grabbed the officer by the lapels and tried to throw him to the ground. (R. 1241) Officer Dawson did not have a weapon in his hands. (R. 1243)

While Officer Dawson and Larry struggled, Petitioner searched the area for the gun that Larry had thrown. (R. 1550, 1745) When he found it, Petitioner ran towards Larry and Officer Dawson. (R. 1244, 1550, 1745) Petitioner walked up behind Officer Dawson. (R. 1551) Petitioner had the gun in his right hand and he reached around to the officer's left side. (R. 1552) According to his confession, Petitioner then held the gun "very close" to the left side of Dawson's chest and pulled the trigger one or twice. (R. 1551-1553) According to his confession, Petitioner shot Officer Dawson in order to free Larry. (R. 1559, 1918) Officer Dawson collapsed immediately. (R. 1181, 1225, 1553, 1751) Larry continued to punch and kick Officer Dawson while Dawson lay on the ground. (R. 1181-1182, 1315) Petitioner then bent over Dawson and removed Dawson's service revolver from his holster. (R. 1182, 1315, 1553, 1752)

Officer Dawson died as a result of the gunshot wound to his chest which pierced his heart and lung. (R. 2261-2262)

The Shootout With Officer Stutzman

Police Officer William Stutzman was sent to Cleo Court as a backup for Officer Dawson. (R. 1108) Officer Stutzman was in full uniform, but he drove an unmarked squad car. (R. 1105, 1248-1249, 1554) After searching the area in his car, Officer Stutzman returned to Cleo Court. (R. 1107, 1114-1115) While he was still sitting in his car, the officer saw Larry's car coming towards him at a high rate of speed. (R. 1115) Even though it was dark out, Larry and Petitioner did not put their headlights on. (R. 1115, 1153-1154) Officer Stutzman turned his car at a 45 degree angle so as to block off the road, which was the only exit from Cleo Court. (R. 1115, 1118, 1316, 1755) Larry tried to drive around Stutzman, but smashed into his left front bumper instead. (R. 1118, 1554, 1860-1861)

Officer Stutzman drew his gun as he got out of his car and called "Stop, police!" (R. 1158, 1317) According to his confession, Petitioner knew that Officer Stutzman was a member of the police force. (R. 1897) Petitioner leaned forward in the passenger seat of Larry's car, aimed directly at Officer Stutzman, and fired a volley of two, three or four shots. (R. 1123, 1165, 1317, 1328, 1757, 1759, 1865, 1897, 1919) Officer Stutzman dove to the ground and then returned fire. (R. 1125, 1755-1756) One of Officer Stutzman's shots hit Larry in the finger. (R. 1756) While Stutzman was still shooting, Larry floored the car, pulled around Stutzman's car, and he and Petitioner left Cleo Court. (R. 1126, 1129, 1166)

Officer Stutzman found the body of Officer Dawson lying in the driveway at 687 Cleo Court. (R. 1135)

The Armed Robbery And Aggravated Kidnapping Of Donald Hamburg, His Nine Year Old Grandson And His 15 Year Old Nephew

When Petitioner and Larry pulled out of Cleo Court, they headed northwest. (R. 1129) Downtown Buffalo Grove is only two miles northwest of Cleo Court. (R. 1147) After driving about one mile, Petitioner suggested that they ditch Larry's car. (R. 1556) Larry parked in a lot at 164 South Buffalo Grove Road. (R. 1791, 2276) Just before they got out of the car, Petitioner gave Larry his gun. (R. 1557, 1568) Petitioner kept Officer Dawson's gun. (R. 1557, 1568) Petitioner and Larry abandoned the car and ran a couple of blocks. (R. 1557, 1568, 1764)

At 7:35 p.m., 61 year old Donald Hamburg drove his nine year old grandson, Daniel Johnson, and his 15 year old nephew, David Duvall, to David's house at 216 Glendale Road in Buffalo Grove. (R. 1338-1340, 1418-1419, 1439) Mr. Hamburg was planning to drive the boys to David's basketball practice and David had to go home first to change into his uniform. (R. 1340, 1419, 1439) While Mr. Hamburg and Daniel waited in the car, Petitioner and Larry came running across the lawn just south of the car. (R. 1346, 1441) Petitioner and Larry cut across a lawn on a diagonal and headed straight for Mr. Hamburg's car. (R. 1125-1126, 1346, 1348, 1441, 1765) Mr. Hamburg told Daniel to lock the car door. (R. 1346-1347) Because he expected David to come out of the house momentarily, Mr. Hamburg got out of his car but told Daniel to stay in. (R. 1347, 1441-1442) Larry, who arrived at the car first, pulled a gun from the waist of his pants and pointed it directly at Mr. Hamburg. (R. 1348, 1444, 1557) Larry demanded Mr. Hamburg's wallet and credit cards. (R. 1350, 1448) Mr. Hamburg, however, did not have his wallet with him. (R. 1350, 1448)

When Petitioner arrived at the car, he also pointed his gun at Mr. Hamburg. (R. 1557) David had come out of the house, and Daniel got out of the car and they were now standing with Mr. Hamburg. (R. 1350-1351, 1419, 1447) Petitioner suggested that he and Larry "get the car and get out of the neighborhood." (R. 1765) So at gunpoint, Petitioner and Larry told Mr. Hamburg to take them

out of the neighborhood. (R. 1445, 1557, 1765) Mr. Hamburg asked if the boys could be left behind. (R. 1351, 1765) Larry agreed to leave the boys but Petitioner refused. (R. 1352) David and Daniel got in the front seat. (R. 1354) Petitioner and Larry got in the back seat and slinked down. (R. 1354, 1356) Mr. Hamburg drove. (R. 1354, 1766) When Mr. Hamburg asked where they wanted to go, Petitioner and Larry said to take them to California. (R. 1355, 1451, 1557, 1767)

Petitioner and Larry repeatedly told Mr. Hamburg that if he failed to cooperate, they would "pop" him and the boys. (R. 1357, 1360, 1363-1364, 1422, 1451) They said that if Mr. Hamburg ran out of gas, they would shoot the boys in front of him. (R. 1423, 1449) They warned Mr. Hamburg not to do anything to draw attention to the car. (R. 1360, 1361) Mr. Hamburg assured Petitioner and Larry that he would cooperate. (R. 1357, 1364)

While driving south on Route 53, a freeway, Mr. Hamburg spotted a squad car. (R. 1366-1368, 1450) In an effort to attract the attention of the police officer, Mr. Hamburg gradually increased his speed so that he could catch up with the squad car. (R. 1368) Mr. Hamburg intended to get the police officer's attention by flashing his bright lights. (R. 1368) Instead, he mistakenly hit the window washer lever. (R. 1368, 1424, 1450, 1768) This caused Petitioner and Larry to renew their threats to kill Mr. Hamburg and the boys. (R. 1369, 1425, 1449-1450, 1769-1770)

As they drove, Petitioner and Larry boasted to each other about how they "got him" [Dawson]. (R. 1372, 1423)

Mr. Hamburg duped Petitioner and Larry, who were unfamiliar with the expressway they were on, and headed east on the Eisenhower towards downtown Chicago. (R. 1381-1382, 1558, 1767) At 8:30 p.m., as he was driving towards the city, Mr. Hamburg spotted another squad car. (R. 1384, 1474) Petitioner and Larry also saw the police car and warned Mr. Hamburg to stay with the

flow of traffic. (R. 1384-1385) Chicago Police Officer Edward Gross was alone in the car. (R. 1384, 1473-1475) He was driving a marked squad car and he was in full uniform. (R. 1507-1508) Officer Gross is an evidence technician and he had just picked up a Vitullo kit from a local hospital. (R. 1473-1474) He was bringing the kit to the crime lab downtown when Mr. Hamburg saw him. (R. 1474-1475)

The expressway they were on, the Eisenhower, ends downtown and becomes a street with traffic lights. (R. 1385) When Officer Gross stopped in the right-hand lane at a traffic light, Mr. Hamburg sped up, cut across three lanes of traffic and pulled right in front of the squad car. (R. 1386, 1426, 1450, 1475-1476) Mr. Hamburg jammed on the brakes thereby pinning Officer Gross' car against the curb. (R. 1386, 1426-1427, 1559, 1770) Mr. Hamburg threw his car into park, told the boys to get out of the car, and jumped out of the car himself. (R. 1387, 1427, 1451, 1559, 1771) 15 year old David got out of the car. (R. 1388, 1427, 1452, 1477) Nine year old Daniel remained in the car. (R. 1435) Mr. Hamburg pounded on Officer Gross' window and told the officer that Petitioner and Larry had guns. (R. 1427, 1477) Then Mr. Hamburg returned to his car and said to Petitioner and Larry, "Goddammit, get out." (R. 1388, 1453)

The Shootout With Officer Gross

Larry got out of the car when Mr. Hamburg commanded him to. (R. 1388, 1453) Larry ran 20 feet, stopped, turned 180 degrees, and fired twice directly at Officer Gross. (R. 1391-1393, 1428, 1479-1480) Then Larry fled. (R. 1482)

Petitioner remained in the car. (R. 1389-1390) Petitioner confessed that while he was still in the car, he "accidentally" fired his gun once or twice. (R. 1560, 1569, 1892) Nine year old Daniel was still in the car pinned between the car seat and the dashboard. (R. 1454)

Then Petitioner got out of the car and shot directly at Officer Gross four times. (R. 1481)
Petitioner fled. (R. 1482)

Officer Gross never fired his gun. (R. 1483)

Petitioner's Arrest

After the shootout with Officer Gross, Petitioner ran south down an alley. (R. 1516, 1518, 1560, 1772) Petitioner hid behind a cooler on the second floor of a building at 706 South State Street. (R. 1518-1519) Petitioner held a gun in his right hand which was cocked and loaded with seven live rounds. (R. 1519, 1522, 1533, 1561-1562)

Chicago Police Officer William Polacek was one of several officers searching for Petitioner. (R. 1516, 1518, 1776) When Officer Polacek found Petitioner, he ordered Petitioner to drop the gun and come out from behind the cooler. (R. 1520-1521) Petitioner did so. (R. 1521) Officer Polacek's partners arrested Petitioner a moment later at 8:55 p.m. (R. 1522, 2165)

At 8:50 p.m., Larry was found hiding under a car in a parking lot at 619 South Plymouth Court. (R. 1539) He also had a loaded gun in his hand. (R. 1539-1540)

Petitioner's Confession

Petitioner was brought to 11th and State for booking. (R. 134) Shortly before 9:30 p.m., Petitioner began to hyperventilate. (R. 499-500) At 9:30 p.m., paramedics Heather Linehan and David Phalin treated Petitioner by having him breathe into a paper bag. (R. 501-502, 1647, 1650) Petitioner's breathing returned to normal within five minutes and he was not in need of further medical treatment. (R. 502-503, 1651)

From 1:30 a.m. until 2:15 a.m., on November 6, 1985, Petitioner confessed to Detectives Lind and Hubner. (R. 395-396, 399, 442-443, 445, 1913-1923) From 2:30 a.m. until 3:15 a.m.

Petitioner confessed to ASA Rakoczy and Detectives Lind and Hubner. (R. 401-402, 446-447, 614-615, 617, 1547-1562) At 4:00 a.m., Petitioner participated in a lineup. (R. 527, 1398) At 6:00 a.m., Petitioner refused to make a court-reported statement. (R. 629, 1563)

Petitioner's Trial

The trial court denied Petitioner's motion to suppress his confession. (R. 921) On the court's own motion, Petitioner's and Larry's cases were severed. (R. 1013, 1069) Petitioner waived his right to a jury. (R. 1076, 2257)

The trial court found that the only issue of fact was whether, at the last instant, Petitioner intended to kill Officer Dawson or whether the gun discharged accidentally. (R. 1974) The court concluded that it could not believe Petitioner's statements about how the shooting occurred. (R. 1975)

The court found, "[it] is not an accident. The shooting was intentional. It was your intent to get your brother free from the officer's grasp." (R. 1975)

The Sentencing Hearing

The People asked that Petitioner be sentenced to death. (R. 1993) Petitioner waived his right to a sentencing jury. (R. 1996-1997, 2040-2041, 2288)

The court found that Petitioner was eligible for the death penalty since he was over 18 years old at the time of the murder and since Petitioner killed a police officer who was acting in the line of duty. (R. 2048-2049, 2118)

In aggravation, the People relied primarily on the facts of this case. (R. 2049) The People also introduced a certified copy of Petitioner's 1985 conviction for burglary. (R. 2050)

The trial court sentenced Petitioner to death for the murder of Officer Dawson. (R. 2122, 2126, 2379-2382) The court found that Petitioner knew that Dawson was a police officer since he

was in full uniform and drove a marked squad car. (R. 2118) The court noted that, when Petitioner killed him, Officer Dawson was simply doing his job by checking out Ms. Hodges' complaint. (R. 2119) The court found Petitioner's testimony incredible and found that the gun could not have accidentally discharged. (R. 2125) The only way the gun could have fired was if Petitioner's finger was on the trigger. (R. 2137) The court also found that Petitioner would not have approached Dawson with the gun pointing towards him unless Petitioner intended to use the gun. (R. 2126)

The court also sentenced Petitioner to consecutive terms of 30 years for the armed robbery of Officer Dawson's gun; 30 years for the attempt murder of Officer Stutzman; 15 years each for the aggravated kidnappings of Mr. Hamburg and the boys; and 30 years for the attempt murder of Officer Gross. (R. 2138-2139) The court also sentenced Petitioner to a concurrent term of 15 years for the armed robbery of Mr. Hamburg's car. (R. 2140)

On appeal, the conviction for armed robbery of Mr. Hamburg's car was reversed and the sentence for that charge was vacated. People v. Strickland, 154 Ill.2d 489, 609 N.E.2d 1366, 1382 (1992).

Larry

Larry also waived his right to a jury trial. The court found Larry guilty of the murder and armed robbery of Officer Dawson, the attempt murder of Officers Stutzman and Gross, the aggravated kidnapping of Mr. Hamburg and the boys, and the armed robbery of Mr. Hamburg's car. The court, however, sentenced Larry to natural life since Larry was not the shooter and because Larry threw the gun away, thereby showing that he did not intend to use the gun.

II

HISTORY OF THE CASE

On March 14, 1988, Petitioner was sentenced to death by the Honorable Judge Fred Suria. On March 21, 1988, Petitioner was sentenced to 30 years for the armed robbery of Officer Dawson, 30 years for the attempt murder of Officer Stutzman, 30 years for the attempt murder of Officer Gross, and 15 years each for the aggravated kidnappings of Mr. Hamburg and the boys.

On December 4, 1992, the Illinois Supreme Court affirmed all of Petitioner's convictions except for the armed robbery of Mr. Hamburg's car. The court affirmed the sentence of death imposed for the murder of Officer Dawson as well as the terms of years for all the charges except armed robbery of Mr. Hamburg's car. People v. Strickland, 154 Ill.2d 489, 609 N.E.2d 1366 (1992). Rehearing was denied on March 29, 1993. The United States Supreme Court denied certiorari on October 4, 1993. Strickland v. Illinois, 510 U.S. 858 (1993).

On March 25, 1994, Petitioner filed a petition for post conviction relief. An extensive hearing was held on the issue of whether Petitioner's fitness for trial was compromised because he was taking psychotropic drugs. On March 29, 2001, the Circuit Court of Cook County denied the petition. Petitioner is currently appealing that decision in the Illinois Supreme Court under docket number 91436.

III

REASONS FOR DENYING THE PETITION

A.

**THE NEW ILLINOIS SUPREME COURT
RULES ARE NOT TO BE APPLIED
RETROACTIVELY. FURTHER, THE
COMMISSION RECOMMENDATIONS ARE NOT
LAW AND MAY NEVER BECOME LAW.**

Petitioner 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, petitioner 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 petitioner's case. Instead, a true injustice would only result if it were reflexively determined that petitioner's trial was fundamentally unfair without any examination of the proceedings themselves. It is telling, however, that petitioner has not even attempted to demonstrate how the recent changes would have affected the outcome of the proceedings. Moreover, petitioner ignores the fact that every court which has examined the proceedings in his case determined that they were fundamentally fair and that he was not unduly prejudiced in any manner.

Video And Audio Taping

Petitioner seeks clemency because his statement where he inculpated himself was admitted into evidence even though it was not video or audio taped, and points out that under the Governor's Commission's proposals both statements and the interrogations leading up to them should be video or audio taped. What petitioner fails to recognize is that neither the Commission nor the governor himself call for the suppression of a statement simply because it was not video or audio taped. 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.

In the case at hand, testimony was taken from every single police officer and assistant state's attorney who spoke with Petitioner on the night of his confession. Petitioner elected not to testify at the hearing on the motion to suppress statements. At the conclusion of all of this testimony, the trial court denied Petitioner's motion to suppress. The court held that the "statement given by Tyrone Strickland was, in fact, freely and voluntarily given, knowingly and intelligently, and in that the Miranda warnings were, in fact, given." (R. 921) Thus, it is clear that the failure to

video or audio tape his statement had absolutely no effect on the fairness of his proceedings.

Public Defender At The Police Station

Petitioner claims that he is entitled to clemency because he requested a lawyer while he was being interrogated but was not appointed an attorney until he appeared in court. He points out that under the Governor's Commission proposals, the public defender would be allowed to represent any suspect in a potentially capital case who requests to speak to a lawyer during an interrogation. However, petitioner fails to mention that he never even alleged that he requested an attorney during his interrogation. (See Exhibit A, Petitioner's Motion to Suppress) Nor is there even one word of testimony to the effect that Petitioner requested counsel during the time of his questioning. Therefore, even if this proposal had been in effect at the time of petitioner's arrest, it would not have applied to him.

"Reduced" Mental Capacity and Borderline Mental Retardation

Petitioner argues that he has a "reduced mental capacity" and that it was therefore unfair for the police to question him using leading questions or to imply that they believed he was guilty. Petitioner cites to the Ryan Commission recommendation 9, which says that if a suspect is determined to be mentally retarded, the police should not use leading questions or imply that they think he is guilty.

In a related claim, Petitioner alleges that it was unfair to sentence him to death because he is "borderline mentally retarded." In a third related claim, Petitioner asserts that his "reduced mental capacity" should have been considered as a mitigating factor.

Petitioner's IQ is 82. (Petitioner's Exhibit 4) The United States Supreme Court has determined that it is unfair to sentence someone to death if he is mentally retarded. The Court

said that an IQ of 70 or below qualifies as mentally retarded.. Atkins v. Virginia, 122 S.Ct. 2242 (2002). Thus, according to the United States Supreme Court, Petitioner is not mentally retarded enough.

Furthermore, Petitioner's psychologist reported that Petitioner completed 12 years of formal education and that Petitioner reported receiving straight A's in his senior year of high school. (Exhibit 4, p. 2)

Decision to Seek Death

Petitioner 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, it "has long been recognized by [the Illinois Supreme Court] that the State's Attorney is endowed with the exclusive discretion to decide which of several charges shall be brought, or whether to prosecute at all. A prosecutor's discretion extends to decisions about whether or not the death penalty should be sought." People v. Jamison, 197 Ill. 2d 135, 161-62, 756 N.E.2d 788 (2001). Therefore, any attempt to mandate such a review would constitute an impermissible restriction on the independence of the various State's Attorneys under the Illinois Constitution. Moreover, petitioner 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, this claim must be rejected.

Additional Mitigating Factors

Petitioner claims that, at sentencing, the court should have considered the additional mitigating factor that he has a history of extreme emotional or physical abuse. This is an interesting claim since, when speaking with his psychologist, Petitioner said he had a "wonderful childhood."

Petitioner commented on how close the family was, performing such tasks as reading the Bible together and eating meals together. He indicated that his family still remains close to him even though he has been in the penitentiary since 1985. (Petitioner's Exhibit 4, p.2)

Right to Allocution

Petitioner complains that the Ryan commission says he should have been given the right to allocution at sentencing. This is another interesting claim since Petitioner did address the court at sentencing. (R. 2115, 2136; People v. Strickland, 154 Ill2d 489, 609 N.E.2d 1366, 1372 (1992)).

B.

PETITIONER'S CONTENTION THAT HIS CONFESSION WAS COERCED BECAUSE, WHEN HE GAVE IT, HIS FOOT WAS SHOT, HAS BEEN CREATED OUT OF WHOLE CLOTH, 17 YEARS AFTER THE FACT. AS FOR HIS CHIN THAT SUPPOSEDLY NEEDED STICHES, THE PARAMEDICS TESTIFIED THAT THERE WAS A SMALL CUT, THAT THEY CLEANED IT, AND THAT IT DID NOT NEED FURTHER TREATMENT.

Petitioner now claims, for the first time ever, that his confession was coerced because his foot was shot. The transcript of Petitioner's pre-trial motions, trial and sentencing hearing spans well over 2000 pages. Yet never once did Petitioner mention that his foot was shot. This is especially blatant since a paramedic treated Petitioner for hyperventilating while he was in the police station, before he confessed. At that time, Petitioner did not complain about his foot. Obviously, the injured foot is part of the same creative writing exercise Petitioner engaged in when he wrote that he tried unsuccessfully to turn himself in, and that he nicely asked the "gentleman driver and two youths" for a ride. (Pro se Petition, p. 4) The foot injury is more of Petitioner's fiction that the only people hurt on the night of November 5, 1985, were himself and his brother.

(Petitioner's Comment).

As for the cut on Petitioner's chin, Petitioner told the paramedic that he got the cut during the first shootout when the glass from the windshield went flying. The paramedic testified that the cut was small, that she cleaned it and that it did not need further treatment. (R. 494-99) Obviously, Petitioner's will was not overborne by this small cut.

Thus, it is obvious that Petitioner was not coerced into confessing because he was in pain and in need of medical attention. The trial court held an extensive hearing on the motion to suppress statements and concluded that Petitioner's statement was freely and voluntarily made. (R. 921) Petitioner's fiction, created out of whole cloth 17 years after the fact, is not a sound basis for granting relief. Clemency should be denied.

CONCLUSION

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

Respectfully submitted,

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