

OCTOBER 2002 SESSION
PRISONER REVIEW BOARD
STATE OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
vs.)	Docket No. _____
)	
WILLIAM PEEPLES,)	Inmate No. N-10071
)	
)	
)	

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

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

—————
HEARING REQUESTED

RICHARD A. DEVINE
STATE’S ATTORNEY OF COOK COUNTY

By: LAWRENCE M. LYKOWSKI
WILLIAM D. CARROLL

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I.

FACTS OF THE CASE

PROCEDURAL HISTORY

On March 9, 1990, following a jury trial, petitioner William Peeples was found guilty of intentional murder of Dawn Dudovic, a 22-year-old bible student who was stabbed 41 times during a home invasion in her own apartment; he was also convicted of aggravated arson and home invasion. Petitioner waived a sentencing jury. At the ensuing death penalty hearing, the trial court determined that Petitioner was eligible for the death penalty due to the presence of an aggravating factor: the murder was committed in the course of a felony, i.e., home invasion. The trial court subsequently found that there were no mitigating factors sufficient to preclude the imposition of the death penalty, the court also sentenced Petitioner to concurrent 30-year terms for aggravated arson and home invasion. On direct appeal, the Illinois Supreme Court affirmed Petitioner's conviction and sentence. People v. Peeples, 155 Ill. 2d 442, 616 N.E.2d 294 (1993).

On July 18, 1994, in the trial court Petitioner filed for a petition for post-conviction

relief, which on January 39, 1996, the trial court dismissed in its entirety. Petitioner appealed the dismissal to the Illinois Supreme Court; on June 20, 2002 the supreme court affirmed the dismissal of the post-conviction petition. People v. Peeples, ___ Ill. 2d ___ (No 83783, filed June 20, 2002) (Attached as Appendix) On August 29, 2002, the Illinois Supreme Court denied Petitioner's petition for rehearing.

STATEMENT OF FACTS

Before discussing the facts which underlie Petitioner's conviction, the People wish to direct this Board's attention to the following points. First, while the appeal from the dismissal of the post-conviction petition was pending, in September of 1998, Petitioner filed in the trial court a motion, pursuant to 725 ILCS 5/116-3, requesting forensic DNA testing on the blood evidence recovered from the victim's apartment in support of a claim of actual innocence. According to the evidence from the trial, some of the blood found in the victim's apartment was of the same type (type A) as belonged to Petitioner. However, in his §116-3 motion, the DNA tests would show that that blood evidence came from the "real killer," and not Petitioner. On October 15, 1998, both the People and Petitioner entered into an agreed order for the blood evidence to be subjected to DNA testing by the Illinois State Police Forensic Science Center.

On July 18, 2000, the Illinois State Police Forensic Science Center issued a report concerning the results of DNA testing performed on certain evidence from the present case. Specifically, exhibit 26A (as designated by the crime lab), which was a bloodstain found in the kitchen sink of the victim's apartment, underwent DNA analysis. (Appendix) The profile identified in exhibit 26A was then compared to the DNA profile in exhibit 58A1, which was the blood standard from Petitioner (Appendix) According to the report, the DNA profile from exhibit 26A matched the DNA profile of Petitioner, that profile being "expected to occur in approximately

1 in 18 quadrillion Black, 1 in 30 quadrillion White or 1 in 26 quadrillion Hispanic unrelated individuals.” (Appendix) The report concluded that the blood from exhibit 26A is consistent with having originated from Petitioner and could not have originated from the victim. (Appendix) Subsequently, Petitioner sent Crime Lab’s case file on Petitioner as well as their testing protocols to Cellmark Diagnostics, an agreed upon DNA analysis lab, for review. On May 2, 2001, Cellmark Diagnostics issued a letter concluding that there neither the processing of the case by the Illinois Crime Lab, nor the results nor the conclusions reached by the lab, were in error. (Appendix) These reports are dispositive of any claims that Petitioner was not the murderer. The DNA tests conclusively show that the Type A blood found in the victim’s apartment came from Petitioner and only Petitioner. Petitioner’s assertions that he was never in the victim’s apartment and that someone else murdered the victim can no longer withstand scrutiny (assuming that they ever could).

The second point is that there is conclusive evidence that this is not the first time that Petitioner committed a crime of this sort. At the aggravation phase of petitioner’s sentencing hearing, Lisa Mowery, the victim from Petitioner’s previous attempted rape conviction, testified that on July 8, 1982, she was thirteen years old and lived with her mother and two sisters in Schaumburg. That evening, while was babysitting for her three-year-old sister Brandy because Lisa's mother was at work, Lisa heard a knock on the front door. Lisa opened the front door and saw Petitioner. Petitioner told Lisa that his car had broken asked if he could use her telephone, which Lisa did. After Petitioner finished his “call,” he asked Lisa if he could wait since it would be a little while before his ride would arrive. Petitioner and Lisa sat in the family room along with Brandy and talked. Petitioner then grabbed Lisa around her neck with his right arm and held a knife which he had brought with him to Lisa's ribs with his left hand, and told her to go upstairs or

he would kill her. Once upstairs, they went into a bedroom where Petitioner told Lisa to take off her clothes. When Lisa refused, Lisa then testified, "He cut my shirt off, and he cut off my bra." When Lisa continued to refuse Petitioner's orders to take off her clothes, Petitioner became angry and beat her badly, hitting Lisa all over her face, breaking her nose and causing her to bleed. When Petitioner saw the blood he turned and ran out the front door. Petitioner signed a confession to this attempted rape; in his confession he proclaimed that "he was sorry and would never do it again." (Appendix). According to the report of the mitigation specialist in the post-conviction petition, Petitioner pleaded guilty to the attempted rape of Lisa Mowery only because "he would be eligible for parole," and that he maintained his innocence to that charge.

Turning to the facts introduced at the trial, it was established that on May 18, 1988, the victim, Dawn Dudovic, and Pamela Killeen were roommates at an apartment complex in Schaumburg, Illinois. Petitioner and his fiancée, Vanessa Allen, lived in an apartment next door to the victim's apartment. On the morning of May 18, Ms. Killeen heard the victim leave the apartment and lock the door. Ms. Killeen returned home from work 5:40 PM and saw the victim's automobile in the parking lot. At the apartment door, Ms. Killeen noticed that a piece of paper towel stained with blood was wedged in the door, which prevented the door from locking, and tried to enter the apartment. Upon entering the apartment, she saw their vacuum cleaner in the middle of the hallway and a pile of sugar on the carpet. She also saw blood on the vacuum and the carpet. When Ms. Killeen looked into the kitchen, she saw the victim lying on her back on the kitchen floor. The back of the victim's dress was pulled up to the buttocks, while the front of the dress was pulled up to the waist, exposing her pantyhose and underwear. Paramedics arrived a short time later, and determined that the victim was dead.

In the meantime, seeking help Ms. Killeen pounded on the door of Petitioner's

apartment and screamed for help. Ms. Killeen did this for about one minute because she heard the sound of a radio or television inside that apartment; however, no one answered. Shortly after 6:00 P.M., several Schaumburg Police Officers, while knocking on the doors of the building's apartments, knocked on the door to Petitioner's apartment; they observed the door's peephole become dark, and then light again. The officers continued to knock and announce his office intermittently for the next 15 minutes, still with no answer. The police then located the building management, who told them that Vanessa Allen was the record tenant of the apartment. The police reached Allen at work, who told them that she lived in the apartment alone and that the only other person with a key to her apartment was her brother. Based on this information, the police realized that no one was supposed to be in the apartment.

At 7:40 P.M., the police saw smoke coming out from underneath the front door of Petitioner's apartment. When a detective to the rear of Petitioner's apartment to look into Petitioner's bedroom, he saw the curtains go up in flames. Inside, the detective saw two fires burning in the bedroom, and then looked through a sliding glass door and saw at least three fires burning in the living room.

Schaumburg fire fighters arrived at the apartment complex and made their way to Petitioner's bedroom window. They broke out the window, and began to extinguish the fires. As Petitioner tried to leave through the bedroom window, he was arrested by police. At the time of his arrest, Petitioner's left hand was bleeding profusely. Petitioner was taken to a local hospital, where a nurse removed a wristwatch from Petitioner and gave it to a police officer. Petitioner's hand had a deep laceration that cut through the tendons of three fingers, and a second cut at the web part of the hand. The attending physician described the deep cut as sharp and clean, and opined that it was made by an instrument such as a knife.

Evidence technician James Herman determined from the pattern of spattered blood in the victim's kitchen that there was a large amount of blood from someone other than the victim. He collected blood samples from various areas in the apartment. He saw the two piles of the white substance that appeared to him to be sugar. Tests of the white substance recovered from the victim's apartment near the vacuum cleaner revealed that it was sugar. During a search of Petitioner's apartment, Herman saw evidence of six fires each in the living room and in the bedroom. In the living room, Herman discovered a satchel bag, inside of which was a coffee cup. Inside the cup was a substance that turned out to be sugar and, on the bottom of the cup, there appeared to be blood. In the bedroom, in a partially burned pile of clothing Herman found a wallet that contained Petitioner's driver's license, and a knife with a stained wooden handle.

The victim's blood was determined to be Type AB, while Petitioner's blood was Type A. Blood samples taken from several locations in the victim's apartment all were of Petitioner's blood type. Additionally, blood found on Petitioner's wristwatch and knife was the blood type of the victim. An autopsy revealed both that the victim died of multiple stab wounds (having been stabbed or slashed 41 times), and that she suffered defense wounds to the hands and arms.

Petitioner testified at the trial. Petitioner denied that he set the fires in his apartment, and believed that the police broke into his apartment and set the fires to force him to come out. Petitioner denied placing the murder weapon in a pile of burning clothes. He believed that police put the knife and wallet in the burning pile because he was the most convenient suspect, and also because of "the prejudice in the northwest suburbs."

Petitioner also addressed the court in allocution at the time of sentencing. He refused to apologize to the court or to the victim's family, who were present. He told the trial judge that he would neither apologize nor request mercy for a crime he did not commit.

In aggravation, in addition to the above prior rape conviction, the prosecution introduced certified copies of Petitioner's prior convictions for misdemeanor battery (R. 3596), and theft. (R. 3629) As to the battery conviction, Officer Carol Daugherty testified that on November 13, 1984, she saw Petitioner running down the street with a knife while an unarmed man over six feet tall and approximately two hundred and sixty pounds was chasing him down the street. The larger unarmed man had a deep laceration to his back. Illinois Department of Corrections Parole Supervisor Phillip McGee testified that the incident which was described by Officer Daugherty resulted in a violation of Petitioner's parole. Based on petitioner being charged with aggravated battery and the technical parole violation of being in possession of a deadly weapon, Petitioner was returned to the penitentiary.

II.

REASONS TO DENY CLEMENCY

INTRODUCTION

Petitioner William Peeples does not raise a claim of actual innocence (nor should he given that the DNA evidence erases all doubt that he is the killer), or claim that he is wrongfully accused. 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 the Illinois Supreme Court has **twice** thoroughly examined the proceedings in his case and determined that they were fundamentally fair and that he was not unduly prejudiced in any manner.

The following are reasons to deny Petitioner’s request for executive clemency.

Eligibility Factors (Governor’s Commission Recommendations 27 and 28)

Petitioner asserts that he is entitled to clemency because he was found eligible for the death penalty based upon an aggravating factor other than those factors which the Governor’s Commission has recommended be retained. Specifically, the Commission concluded that the current list of 20 factors is overly expansive and therefore unconstitutional. Accordingly, it was suggested that the list be reduced to just five factors: (1) murder of a peace officer or fireman; (2) murder of any person in any correctional facility; (3) multiple murder; (4) murder accompanied by the intentional infliction of torture; and (5) murder of a witness, prosecutor, defense attorney, juror, judge or investigator.

However, the Illinois Supreme Court has expressly rejected the Commission's logic and held that Illinois' death penalty statute satisfies the constitutional mandate because it "genuinely narrows the class of individuals eligible for the death penalty and reasonably justifies imposition of a more severe sentence on those defendants compared to others found guilty of first degree murder." People v. Ballard, ___ Ill. 2d ___, 2002 Ill. LEXIS 376 at *73 (No. 88885 August 29, 2002) (citing Zant v. Stephens, 462 U.S. 862, 877, 103 S. Ct. 2733, 2742 (1983)). As the Ballard court explained, "there are innumerable examples of first degree murders that do not fit within any of the statute's eligibility factors" and "[e]ach provision is narrowly tailored to fit a specific set of facts and circumstances." Id., 2002 Ill. LEXIS 376 at *74.

Moreover, each of the aggravating factors represents a determination by the General Assembly that certain types of murders are so deplorable that the death sentence may be imposed. Each one is intended to ensure that the most helpless members of our society (such as children, the elderly or disabled) are protected against violence or to provide a strong disincentive for the offender to kill the victim. For example, cold, calculated and premeditated murders are properly death-eligible because they are limited to situations where the defendant has carefully planned the murder over an extended period of time, and the availability of the death penalty may be the only thing which prevents these defendants from deciding to actually kill their victims. As the Illinois Supreme Court stated "a defendant who contemplates a murder for a substantial period of time, yet still commits it, is set apart from other murder defendants in a meaningful way." People v. Williams, 193 Ill. 2d 1, 36, 737 N.E.2d 230 (2000). Similarly, murders in the course of another felony such as in the case here, aggravated arson and home invasion, are properly death eligible to help deter the defendant from killing the victim. Given these important policy considerations, Petitioner's request must be rejected.

Decision to Seek Death (Governor's Commission Recommendations 29 and 30)

Petitioner 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 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, 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, it must be rejected.

Statutory Mitigating Factors (Governor's Commission Recommendation 61)

Petitioner complains that his jury was not instructed to consider as statutory mitigating factors the fact that he had a history of extreme emotional or physical abuse and/or that he suffers from reduced mental capacity. However, 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.

More importantly, very recently the Illinois Supreme Court expressly rejected the notion that Petitioner's trial attorneys were ineffective for failing to present evidence of his history of abuse and brain impairment. Concerning the issue of brain impairment, the Court held that although Petitioner made a substantial showing that his attorneys were deficient in failing to investigate and present

such evidence, the Court also held that Petitioner **failed** to make a substantial showing that had this evidence been presented he would not have received the death penalty. People v. Peeples, ___ Ill. 2d ___ (No. 83783, filed June 20, 2002; slip opinion at pp. 53-56). The Court specifically took note of Dr. Michael Gelbort's opinion (on which Petitioner relies in this matter) that Petitioner's "brain dysfunction" was "minimal." Peeples (slip opinion at pp. 54). Indeed, the Court went so far as to hold that had the proffered evidence of cognitive impairments contained in Dr. Gelbort's reports been presented at sentencing, the sentencer could have reasonably concluded that this evidence coupled with his history of violence demonstrated Petitioner's future dangerousness. Peeples (slip opinion at pp. 54). Regarding the issue of Petitioner's history of abuse, the Court similarly held that that evidence was "powerful evidence of [Petitioner's] future dangerousness." Peeples (slip opinion at pp. 57). The Court lastly observed that the aggravation evidence in this case was "plentiful and significant." Peeples (slip opinion at pp. 59-60).

Finally, any notion that Petitioner suffers from a mental defect is dispelled by a letter written by Petitioner to the Chicago Sun-Times in 1995. (Appendix) A review of that letter reveals that Petitioner is entirely capable of composing a thoughtful and well-versed letter. The letter is organized in a logical fashion. It refers to an FBI statistical analysis comparing the murder rates in states that do not have the death penalty to states that do. The letter even makes reference to a study issued by the Stanford University Law Review concerning the possibility that hundreds of persons were mistakenly sentenced to death from 1900 to 1985. This letter establishes **conclusively** that Petitioner's mental health is **SOUND**.

Supreme Court Review (Governor's Commission Recommendation 70)

Petitioner 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 petitioner's sentence in such a manner is because he did not ask the Court to do so.

III.

RECOMMENDATION

The People of the State of Illinois respectfully request that the Prisoner Review Board recommend to the Governor that Petitioner's petition for executive clemency be rejected. Additionally, Petitioner has specifically requested that his death sentence be commuted to "imprisonment for an appropriate term of years." Because Petitioner was sentenced during a period where under the law he would be eligible for day-for-day credit against his term, this circumstance could result in Petitioner being mandated for release from the penitentiary within his lifetime. The fact that Petitioner in this case could go from a sentence of death to the possibility of release would clearly undermine the public's confidence in the criminal justice system, violate the closure achieved by the family of the victim and deprecate the seriousness of the offense.

Respectfully submitted,

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