

Beth Marie Kartchner Winters
174 Bella Vista Avenue | Bay Point | California 94565

July 26, 2018

Office of the Pardon Attorney
145 N Street N.E.
Room 5E.508
Washington, D.C. 20530

Subject:	Petitioner:	HINKSON, DAVID R
	Clemency Case File Number:	C182422
	BOP Register Number:	08795-023
	Relief Sought:	Commutation of Sentence
	Status:	Pending

My name is Beth Marie Kartchner Winters, age 59. I am a licensed Real Estate Broker in California. David R. Hinkson is my cousin.

I am aware that David was convicted of violating 18 U.S.C. §373 Solicitation to commit a crime of violence (i.e., murder-for-hire), 3-Counts, Case No. 1:04-cr-00127-RCT, United States District Court, District of Idaho. 18 U.S.C. §3147 (committing offenses while on pretrial release). David is confined in the Federal Institution at USP McCreary, Pine Knot, Kentucky 42635.

We are from a large family in California where David had 17 cousins. As children we enjoyed holiday parties and on the 1st Sunday of each month lessons, singing and dinner. In fact, our Great Uncle James Kartchner owned the land that is now the Kartchner Caverns State Park in Arizona (see attached).

It is difficult to understand David's confinement when, in fact, the solicitation convictions were reversed on appeal by a 3-judge panel on May 30, 2008. Attached are pages from Judge Bea's Opinion filed November 5, 2009. I know that David's zest for life and good-natured personality remain intact. Also, David has changed for the better because of continued learning and personal improvement during confinement.

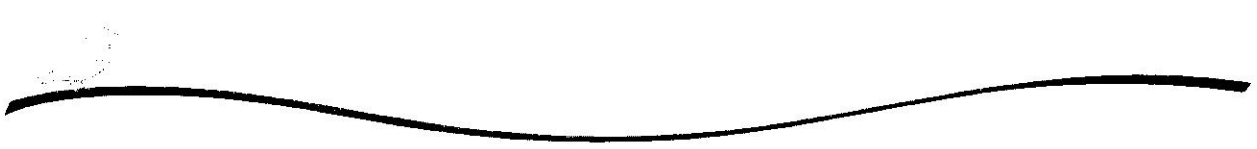
I am confident that if clemency is granted, David will reenter society to the benefit of others and will again take care of his family. Please grant David R. Hinkson clemency.

Thank you for your time.

Respectfully Submitted,



Beth Marie Kartchner Winters
925-262-6678



KARTCHNER CAVERNS

STATE PARK



⚠ Park staff urges you to reserve cave tickets online in advance to guarantee your tour. Thank you.


Maps

Park Location and Directions

Google Map

(<https://www.google.com/maps/place/Kartchner+Caverns+State+Park/@31.836596,-110.3516788,17z/data=!3m1!4b1!4m5!3m4!1s0x86d6e1edc76c967d:0xfd43ee1849cef6e018m2!3d31.8376204!4d-110.350028>)

Kartchner Caverns Park Map

 [Kartchner Caverns Park Map](#)

(https://d2umhuunwbec1r.cloudfront.net/gallery/0004/0009/6B2B8EE743D9493DAB1676CB84656F71/KACA_ParkMap2018_B&W_Final_01.pdf)

Download Printable Park Map

(https://d2umhuunwbec1r.cloudfront.net/gallery/0004/0009/6B2B8EE743D9493DAB1676CB84656F71/KACA_ParkMap2018_B&W_Final_01.pdf)
Park Map shows you an overview of the park.

Park and Facility Hours

Gates are closed from 10:00 p.m. - 6:00

Discovery Center

December 19 - May 31

8:00 a.m. - 6:00 p.m.

June 1 - December 18

9:00 a.m. - 5:00 p.m.

Park Entrance Fee

Per vehicle (1-4 Adults): \$7.00

Individual/bicycle: \$3.00

Cave tour tickets are extra. Entrance fee waived for cave tour and campsite reservations.

Elevation

4700 ft

GPS Coordinates to park entrance

Decimal Degrees (WGS84)

Latitude: 31.835566

Longitude: -110.343676

Degrees, Minutes & Seconds

Latitude: N31 50 08

Longitude: W110 20 37

GPS

Latitude: N 31 50.134

Longitude: W 110 20.621

FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.
DAVID ROLAND HINKSON,
Defendant-Appellant.

No. 05-30303
D.C. No.
CR-04-00127-RCT
OPINION

Appeal from the United States District Court
for the District of Idaho
Richard C. Tallman, Circuit Judge, Presiding

Argued and Submitted
December 16, 2008—Pasadena, California

Filed November 5, 2009

Before: Alex Kozinski, Chief Judge, Harry Pregerson,
Diarmuid F. O'Scannlain, Andrew J. Kleinfeld,
Kim McLane Wardlaw, William A. Fletcher,
Richard A. Paez, Consuelo M. Callahan, Carlos T. Bea,
Sandra S. Ikuta and N. Randy Smith, Circuit Judges.

Opinion by Judge Bea;
Dissent by Judge W. Fletcher

COUNSEL

Dennis P. Riordan and Donald M. Horgan, San Francisco, California, and Curtis R. Smith, Idaho Falls, Idaho, for the defendant-appellant.

John F. De Pue and Michael D. Taxay, Department of Justice, Washington, D.C., for the plaintiff-appellee.

103 Pages numbered 14956 – 15059 omitted.

At a new trial, the government could put Swisher on the stand to testify, as he did at the original trial, that he told Hinkson that he was a decorated Korean War veteran who had killed “too many” people. The government could then argue that Hinkson, believing these things, seriously solicited Swisher to kill three government officials. But this time, on retrial, defense counsel and the government would know the truth.

Defense counsel would impeach Swisher by asking if it was true that he was not in fact a Korean War veteran; that he had in fact not won a Purple Heart or other awards; that he had not in fact been injured in combat in Korea but rather in a private automobile accident; and that in fact he had lied to the Idaho Division of Veterans Services about his injuries and non-existent medals in an attempt to get military benefits to which he was not entitled. That would already be bad enough, but it would get worse.

Defense counsel would also ask Swisher whether, the last time he appeared in court to testify under oath against Hinkson, he wore a Purple Heart lapel pin to which he was not entitled, presented a forged “replacement DD-214,” and lied about his military record. This time, defense counsel would not be left defenseless if Swisher were to choose to lie in response to these questions because this time the government would also know the truth. If Swisher were to lie in response to any of the questions, the government would be obligated to correct the record. *See Napue*, 360 U.S. at 269; *Hayes v. Brown*, 399 F.3d 972, 978 (9th Cir. 2005) (en banc).

In short, a new trial would be a disaster for the government. A new jury would not only learn, as the first jury did, that Swisher and Hinkson, once friends, had become bitter enemies by the time Swisher testified. It would also learn, as the first jury did not, that Swisher had no compunction about lying under oath to serve his ends, and that he had lied under oath and produced forged documents at Hinkson’s first trial.

I therefore conclude, under the fifth part of the *Harrington* test, that a new trial would probably result in acquittal.

6. Summary

Because Hinkson's motion met all five requirements of the *Harrington* test, I would hold that he is entitled to a new trial on the Swisher-related counts of soliciting murder.

Conclusion

The district court committed two errors, either of which was sufficient to reverse its decision and grant Hinkson a new trial. I would reverse the district court's denial of Hinkson's motion for a new trial because the district court erroneously precluded Hinkson from introducing documents into evidence to show that Swisher lied about his military record and forged his "replacement DD-214." I would also reverse the district court's denial of the motion for a new trial because the newly discovered evidence produced in support of the motion satisfies the five-part *Harrington* test.