

BEFORE THE HONORABLE RON DESANTIS
GOVERNOR OF THE STATE OF FLORIDA

IN THE MATTER OF:

**KEVIN RICHARD HERRICK
DOC NO. 240583**

**MEMORANDUM IN SUPPORT OF
REQUEST FOR REVIEW FOR COMMUTATION OF SENTENCE**

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I. INTRODUCTION

Kevin Richard Herrick, hereinafter referred to as “Kevin” or “Mr. Herrick”, is a (53) fifty-three-year-old prison inmate who **has been incarcerated for 30 years**. He is presently housed at Hardee Correctional Institution, 6901 State Road 62, Bowling Green, Florida 33834-8976.

The Governor of Florida should give serious consideration to commutation applications wherein the prisoner demonstrates by clear and convincing evidence that he has made exceptional strides in self-development and self-improvement, and otherwise shows himself to be rehabilitated to the extent that the ends of justice would be achieved by release back into the community.

Mr. Herrick will demonstrate that he is particularly worthy of this serious consideration for earlier release, and such action at this time would in no way deprecate the seriousness of the offense nor promote disrespect for the law.

In this bid for Executive Clemency, he is strongly supported in this effort by family and other citizens, and it is prayed that the Governor of Florida will conclude the ends of justice have been achieved and his "debt to society" sufficiently paid so that he might be released from further incarceration under such terms or conditions deemed appropriate.

II. SUMMARY OF THE CASE

What follows is a summary of the facts of the case for which Mr. Herrick stands convicted by a jury as gleaned from documents presented to the court in Case No. CRC-89-11425-CFANO, in the Judicial Circuit, Pinellas County, Florida:¹

Armed Burglary, Sexual Battery and Aggravated Battery. He was sentenced by the Honorable Brant C. Downey III, on January 4, 1991, to the following: Armed Burglary – Life; Sexual Battery – Life; and Aggravated Battery – 15 years – all sentences to be served concurrently

III. EVENTS SURROUNDING THE OFFENSES

The following represents Mr. Herrick's narrative regarding the events surrounding his convictions:

“In July 1989, I was staying with a childhood friend of mine named Patrick Porrey. Pat lived with his mother, Theresa, in her triplex unit on Audubon Drive in Largo, Florida. In the late 1970's my father owned a triplex on the same road. Pat and my brother were good friends growing up. I was the younger brother who tagged along. My family moved from there around 1978. Pat was no longer a constant presence in our lives. We might see each other periodically, but for the most part, years could and did go by without us seeing each other.

In 1987, I was released from prison. I had been sentenced to 30 months for convictions I sustained as a result of using my father's firearms in an act of

¹ Certified copies of Indictment, Order of Guilt and Sentencing Order are included in the Appendix to this document.

vandalism. I shot up a rival's truck. I served about two years' total (that was with an additional 12-month sentence for escape when I walked away from a DOT work squad.) A few months after my release I stopped by to see if Pat was around. It had been at least three years since Pat and I had any contact with each other. Pat was in jail at that time. I spoke with Theresa Porrey, Pat's mom and Felicia, Pat's girlfriend. I went to the jail that night and saw Pat. He was going to be entering a plea in the next few days and would be sentenced to a few years in prison. I told him I would look him up when he was out.

In early January 1989, I went to Chicago to work for my sister, Lisa, in her tile business. In late June, I returned to Florida with my girlfriend, Michelle. Once in Florida, I was staying in a hotel in Clearwater. One afternoon I was looking through a phonebook and came across Theresa's phone number. I thought Pat should be out of prison by then so I called. Pat answered and after a few minutes of speaking, he decided to come pick me up. Pat and I went out to lunch. When he learned I was staying in a hotel, he invited me to stay with him and Theresa in their triplex. We went there and spoke to Theresa who was happy to see me and was willing to accommodate me until I could get reestablished with a job and a place to stay. This was in the last week of June 1989.

While staying with the Porreys, I did things around the triplex like cutting the grass and some yard work. I tried to be useful as Theresa was not charging me rent. Through being outside, I met the neighbors in the right-side triplex apartment, Daren Scott Barfield and his girlfriend, Cheryl Hagan. They had a newborn baby. After some conversation, Scott offered to smoke some marijuana with me. I accepted. On a number of occasions over the next two weeks, Scott, Cheryl and I smoked together. This happened both inside and

outside their apartment.

On the night of July 13, 1989, Pat and I ended up at Cheryl's apartment where we watched a video with her on her TV. Scott was not home. He was at a bachelor party. Cheryl specifically told us that Scott would be gone all night. While we watched the movie, all three of us smoked. After the movie, Pat and I left, returning to our apartment. (This is crucial information as it clearly shows that if I was going to attack Cheryl, I had the perfect opportunity to do it that night when I knew Scott would not be coming home rather than the next night when I would have no idea where he was or when he would return to the apartment.)

On Friday, July 14, 1989, Pat asked me if I wanted to go to Tampa with him. I declined. I did not want to go out and party. I had plans to see my girlfriend, Michelle, the next day. She was staying with her parents in Clearwater. Around 5:30 or so I went over to Scott and Cheryl's apartment to see what they were up to. Cheryl answered the door and said Scott wasn't home yet. She invited me in and we sat around for a few minutes talking. They had a chess board and we ended up playing chess. Scott came home within half an hour. He arrived with two friends of theirs, Darryl and Tammy. All of us smoked marijuana that Scott provided. After a while, Scott said they were going out to get something to eat. I said my goodbyes and returned to the Porrey's apartment.

Theresa was home. Theresa Porrey was probably in her early to mid-60s. She was on oxygen due to emphysema. She had enough cord to allow her to travel all around her home and even outside some distance.

I cooked a little dinner of hamburger helper and sat down to watch TV. I watched an episode of The A Team and then a movie with Rodney Dangerfield, either Back to School or Easy Money. At 11:00 p.m., I told Theresa I was going to bed. I went to my room. I laid down and read for about 20 minutes from a book titled “The Rest of Our Lives” before I fell asleep.

I awoke to Theresa shaking me and yelling that the girl next door was being attacked. I jumped out of bed, pulled on my shorts and ran to the front door of the triplex. I went out into the courtyard area. Cheryl was standing there with her baby in her arms crying and saying “don’t leave me” over and over again. At the same time, I came outside the other neighbor, David Stewart came out of his front door. This was the first time I met him. Within a minute, Scott came running up the walkway from the parking area of the triplex. He was screaming a license plate number and for us to write it down. I asked Scott what happened. He said he chased the guy to a white car and got the tag number as it drove away. I told David to call the police. I could see Scott had been cut in the chest area. He was bleeding. I asked him if he was okay. He said yes. Cheryl was standing there with us as well as Theresa. Everyone was pretty hysterical. I told Scott to make sure he went in and put his marijuana and smoking paraphernalia away. He kept that stuff in plain sight on the coffee table and it wouldn’t look good for the police to see it. He went inside to deal with that and David and I went to the parking area to await the police arrival.

When the police arrived, I stayed out of the way and watched what was going on from the front door of Porrey’s apartment. Throughout the investigation, David and I spoke a bit as he was also standing in the courtyard area by his door. At one point, Officer

Howard Crosby came over and asked us who we were and what we knew about the situation. I told him about Theresa waking me up and what I found when I came outside. I don't recall what David said. At some point, Cheryl was again outside with us. She spoke to all of us. Eventually, Scott was taken by the EMTs to the hospital for treatment. David did ask me if we should go to the hospital. I told him I could not leave Theresa alone. Her daughter, Sandy, had called during the investigation. Sandy worked at the local hospital and heard the EMT rescue unit dispatched to her mother's address and thought something had happened to Theresa. When Sandy called, I assured her Theresa was fine and that I would be there. Eventually, Theresa's sister, who lived a few triplexes down the road, came over. However, at the time there was no way I could leave her there by herself. She was pretty worked up and upset.

The investigation wrapped up and the police left. Once Theresa's sister arrives, I eventually went back to bed. I was awakened by Pat jumping on my bed. He was saying "How could you do this, we let you stay here..." I woke up and realized he was accusing me of whatever had happened. Theresa and David Stewart were also in the room. I pushed Pat off me and said he was crazy. I told him his mom woke me up and asked what the heck he was talking about. Pat was confused at that point. His mother confirmed that she woke me up within a minute or so of hearing Cheryl screaming. Theresa said she heard Cheryl, went to the door and saw her and came to my room to get me. This was all extremely quick.

I was highly agitated that Pat was accusing me. I asked him what was going on. He said he spoke to Scott and Scott said he thought I was the guy who attacked Cheryl. This got me seriously pissed off and I demanded to go see Scott. It was obvious that doing

that would not end well. Pat asked me to calm down. He said he and David would go talk to Scott. I let myself be talked out of going with them. All of us went to the front of our apartment. Pat and David left in David's car. This left Theresa and me at the triplex by ourselves. (This is crucial information as Pat and David did not return for at least a half hour. When they came back, I was still there. I did not leave. If I was guilty, and now knew that Scott had seen me and was accusing me, I would have run at the first opportunity, which happened when David and Pat left to go speak with Scott again. However, I am not guilty and did not have any reason to run.)

When Pat and David returned, Pat said to come with him. We went back to my room. He asked me if Cheryl and I had been fooling around and were caught. I told him absolutely not. I again told him I was in bed sleeping and that his mom knows this as she woke me up. I told him I didn't know what happened to Scott and Cheryl, and I didn't have anything to do with it. Pat looked at me for a long time in the eyes and finally said that Scott had said he thought it could have been me, but wasn't sure. I again said I wanted to go talk to him. Pat talked me out of doing that. We went out front. David, Pat and I went outside to the parking area so we could smoke. We discussed what might have happened. We went back inside. David went to his apartment. About five minutes later, there was a knock at our door. I opened it. There were about seven to 10 Largo police officers standing there. They asked if they could talk to me. I said yes and stepped outside. As I did so I was grabbed and handcuffed. One officer specifically said to me "you have been convicted of burglary before, your fingerprints were on that door (he pointed to Scott and Cheryl's door) and you are the one who did this tonight." I was rushed to a police cruiser and driven to the Largo police station.

At the police station, I was put in a cell. About 20 minutes later, Officer Crosby and Officer Joiner moved me to an interrogation room. They read me my rights and asked me if I was willing to talk to them. I explained that I had been advised by an attorney that if I was ever arrested to have an attorney present when answering questions. I asked if there was an attorney there who could witness the conversation. When they said no, I would get one at the jail, I said that while I was willing to answer any questions, I would not do so without an attorney present.

They were a bit frustrated. Officer Crosby got pretty agitated and started telling me that they had two eyewitnesses that said I was the one who did this. I was stunned. I said, under those circumstances, I certainly needed to have an attorney witness the conversation. They took me back to the cell. About a half hour later, Officers Crosby and Joiner came and asked if I would be willing to submit hair samples. Officer Crosby said if I did so voluntarily and stated “it may prove my innocence”. After Officer Joiner took head and pubic hair samples from me, I was taken to the Pinellas County Jail. I was booked in under the charges of Sexual Battery, Armed Burglary, Attempted Homicide, Kidnapping and Convicted Felon in Possession of a Firearm.

IV. BIOGRAPHICAL PROFILE

Kevin Richard Herrick was born on October 3, 1966, in Chicago, Illinois to Jeremiah Thomas McCarthy, deceased, and Rita Jane, whose address is 142 Jacaranda Drive, Leesburg, Florida 34748. His stepfather, Arthur Richard Herrick, is also deceased. He is not married and has no children.

Mr. Herrick remembers a decent childhood. His mother and father were great parents. He grew up with one older brother and five older sisters. In his preteen years, he was a cub scout and played PeeWee Football as well as Little League Baseball. As is the case with some teenagers, he began to suffer from an extreme lack of self-esteem and had not fully developed the social skills necessary to join and participate in positive activities that would encourage educational ambition.

When Kevin was 13, he began smoking cigarettes which eventually led to smoking marijuana. In retrospect, Kevin believes these decisions impacted any chance of a normal childhood and led to his isolation from all that was positive and helpful. After numerous attempts by his parents to impart discipline, Kevin repeatedly ran away from home. His parents would always accept him back into their home, but Kevin continued to struggle.

These behaviors led to missing a great deal of school and he ended up failing eighth grade. His second try was much improved but school was never a pleasant experience for Kevin. He changed schools frequently that resulted in more disruption in his life.

He started high school in Clearwater, Florida, and by the 10th grade, Kevin was tired of starting over again and decided to quit school at the age of 15. Kevin attributes his troubles in life to a failure to accept responsibility and grow up. When he turned 18, he had no ambitions, no motivation and no plan for his life. He just

wanted to party all the time. This life he allowed himself to fall into led to an incident where he vandalized an associate's vehicle. He and a friend shot up a vehicle in retaliation for this person destroying his friend's car. He used two of his father's firearms which resulted in his father allowing criminal charges of burglary and grand theft to be brought against him. He was placed on house arrest probation and quickly violated that by leaving his parents' home. Eventually, he was sentenced to 30 months' incarceration. While in prison, he was assigned to the Department of Transportation outside work detail. Another unwise decision to walk away from the detail resulted in an additional charge of escape and an additional 12 months' incarceration. Kevin was released from prison on March 5, 1987.

Following his release from prison, Kevin began to mature as he entered adulthood. He worked as a tile mechanic for his father's tile business, Empire Tile. In 1989, he relocated to Chicago, Illinois and worked two jobs – one with his sister in her tile business and another at a grocery store. He also enrolled in the Columbia School of Broadcasting with a goal of achieving a career in radio broadcasting.

Unable to make it work in Chicago, Kevin returned to Florida in late June 1989. While trying to rebuild his life, he ended up at the Porreys because they were willing to help him get on his feet when he returned to Florida.

V. INSTITUTIONAL HISTORY AND ACCOMPLISHMENTS

Overall, Kevin has been an exemplary inmate. He has made excellent institutional adjustment, and gives due respect to staff, officers, and his fellow inmates. He has demonstrated that he is capable of entering society and again becoming a productive citizen. His conduct has been impeccable. **He has not received any disciplinary infractions during his entire 30 years of incarceration.**

Throughout his prison experience, Mr. Herrick has been determined to take advantage of every possible opportunity to improve himself and to be of help to the other inmates. He has participated in numerous programs designed for continuing education, spiritual growth, self-improvement, and character building. He has volunteered his time and talents whenever an opportunity presented itself. His achievement history is most commendable. A detailed list of the accomplishments of Mr. Herrick while incarcerated are as follows:²

1986:

- Department of Education High School Diploma dated September 17, 1986
- Blackstone School of Law Legal Assistant/Paralegal certification dated April 20, 1994

2 Copies of certificates for all cited accomplishments are included in the Appendix to this Memorandum.

- Laubach Literacy Action Tutor Certificate – 15-hour Workshop dated February 10, 1995
- Gospel Express Evangelistic Team Certificate for “The Gavel Falls” of the Roman’s Bible Study Course Series dated May 30, 1999
- Prison Fellowship Ministries Certificate of Participation dated June 4, 1999
- Gospel Express Evangelistic Team Certificate for “The Sentence Lifted” of the Roman’s Bible Study Course Series dated July 7, 1999
- Prison Fellowship Ministries Certificate of Participation in Knowing God dated July 23, 1999
- Kairos Prison Ministry Attendance Certificate for Kairos Number One dated October 19 through October 22, 2000
- Certificate of Training for completing eight-hour training for Course I of the Agape Workshop dated February 4, 2001
- Certificate of Training for completing eight-hour training for Course I of the Keys to Loving Relationships Marriage Seminar dated February 11, 2001
- Certificate of Training for completing eight-hour training for Course II of the Keys to Loving Relationships Marriage Seminar dated February 18, 2001
- Certificate of Appreciation for effort put forth in presenting the Gospel of Our Lord and Savior Jesus Christ through the Watcher’s Music Ministry dated October 25, 2001
- Certificate of Completion for the seminar on Transforming Trials and Hurts into Life Changing Benefits, Changing Unwanted Behavior and Habits dated March 4, 2001
- Certificate of Completion of the 44-hour training requirements of the Keys to Loving Relationships dated March 11, 2001

- Certificate of Completion for studying to be a hearer and a door as the epistle of James presented January 25, 2005
- Certificate of Completion for studying the Covenant presented on May 17, 2005
- Certificate of Completion for studying the 1st John presented on August 30, 2005
- Certificate of Completion for studying the Spiritual Giftedness presented on January 10, 2006
- Certificate of Completion for studying Amos presented on March 1, 2006
- Certificate of Completion for studying Hebrews I & II presented on December 19, 2006
- Certificate of Completion for successful completion of the study of the book of Ephesians presented August 28, 2007
- Certificate of Completion of the Intermediate One Music Theory Class presented October 9, 2007
- Certificate of Completion of the Intermediate II Music Theory Class presented November 20, 2007
- Certificate of Appreciation for participation and support during Black History Month presented February 2008
- Certificate of Completion for the Building Relationships Course presented in 2008
- Certificate of Completion of “Metanoia Retreat” presented on March 19 and 20, 2012
- Certificate of Recognition for participation in the Labor Day Fun Race presented September 1, 2013

- Certificate of Recognition for participation in the Labor Day Fun Race presented September 2, 2013
- Certificate of Completion presented by The LifePath Group Project on February 7, 2014
- Certificate of Completion presented by the LifePath Group Project for having completed running 100 miles presented on February 28, 2014
- Certificate of Completion presented by Jesus Only Way Ministries on May 1, 2014
- Certificate of Participation presented by LifePath Group Project Free Eagles Runner's Club for participation in the 4th of July Firecracker Blitz Race presented on July 4, 2014
- Certificate of Participation presented by LifePath Group Project for completion of the 16-hour Phase Focus presented on July 29, 2014
- Certificate of Achievement presented by LifePath Group Project for CAPS on July 29, 2014
- Certificate of Achievement presented by LifePath Group Project for completing running 250 miles presented on July 31, 2014
- Certificate of Achievement presented for Direct Program Graduate for learning to identify, deter and correct criminal thinking errors presented on August 20, 2014
- Certificate of Achievement presented by Free Eagle Runners' Club for running 500 miles presented on February 18, 2015
- Certificate of Completion presented by LifePoint Church on March 7, 2015
- Certificate of Completion for outstanding achievement as a Keys 4 Successful Re-Entry Program Graduate presented on April 28, 2015

- Certificate of Recognition for completion of “Uprooting Anger: Destroying the Monster Within” presented June 18, 2015
- Certificate of Completion presented by The LifePath Group Project for Mentor Training presented on June 22, 2015
- Certificate of Completion presented by The LifePath Group Project for Effective Communication presented July 22, 2015
- Certificate of Completion of the 32 hours Hood Series Cass presented on November 4, 2015
- Certificate of Completion presented by The LifePath Group Project on November 5, 2015
- Certificate off Facilitator Training presented by The LifePath Group Project on January 12, 2016
- Certificate of Achievement presented by Free Eagles Runners’ Club for running 750 miles presented on March 31, 2016
- Certificate of Appreciation presented by God Behind Bars for service facilitating quest for authentic manhood presented May 5, 2016
- Certificate of Participation for completing of “The Quest for Authentic Manhood” presented by GodBehindBars on May 5, 2016
- Certificate of Completion of a 12 week/30-hour Anger Management/Domestic Violence “A Cognitive Behavior Approach” Program presented on June 1, 2016
- Certificate of Appreciation presented by LifePath Group Project for LifePath Facilitator presented September 6, 2016
- Certificate of Achievement presented by LifePath Group Project for Mentor Appreciation presented September 14, 2016

- Certificate of Appreciation presented by God Behind Bars on September 16, 2016
- Certificate of Completion presented by Real Life Discipleship for completing the twelve-week course in disciplining on October 14, 2016
- Certificate of Achievement presented by The LifePath Group Project for completing the 24-hour LifePath Developing Leadership class on November 1, 2016
- Certificate of Appreciation presented by The Peyton Tuthill Foundation for contribution to the Hearts of Hope Scholarship Program on November 28, 2016
- Certificate of Achievement presented by LifePath Hood Circle Class on January 16, 2017
- Certificate of Completion presented by God Behind Bars as Psalm I Facilitator on March 15, 2017
- Certificate of Completion presented by God Behind Bars as Psalm I – Walking in Righteousness on March 15, 2017
- Certificate of Recognition presented by Free Eagle Runners' Club for running 1000 miles presented on March 31, 2017
- Certificate of Completion presented by LifePath Group Project for the completion of Basic Instruction on General Maintenance and Ownership of Motorcycles presented April 4, 2017
- Certificate of Completion presented by LifePath Group Project for completing 32 points of Community Servant-1 (Internal) presented on April 25, 2017
- Certificate of Achievement presented by LifePath Group Project for Parliamentary Law on April 28, 2017

- Certificate of Completion presented by Toastmaster International for Speech Contest Judges Training Program presented July 13, 2017
- Certificate as Best New Speaker of the Year presented by Gavel Clubs of the Toastmaster International on July 26, 2017
- Certificate by Toastmasters International as Mentor presented on September 30, 2017
- Certificate of Achievement presented by Free Eagle Runners' Club for having completed running 13 miles in the All is Bright Charity Run/Walk Marathon on November 14, 2017
- Certificate of Completion presented by LifePath Group Project for successful completion of the Motorcycle Maintenance and Ownership Class on December 10, 2017
- Certificate of Facilitator Appreciation presented by LifePath Group Project presented on December 20, 2017
- Certificate of Appreciation presented by LifePath Group Project on December 27, 2017
- Certificate of Recognition as a Competent Gavelier Leader presented by Toastmasters International Leadership Program on January 9, 2018
- Certificate of Completion of the Leadership Academy presented by God Behind Bars on January 11, 2018
- Certificate of Completion presented by LifePath Group Project for successfully completing 32 hours of Community Servant-2 (External) presented on February 18, 2018
- Certificate of Appreciation presented by The Peyton Tuthill Foundation for contribution to Hearts of Hope-A-Thon on March 2, 2018

- Certificate of Achievement for Parliamentary Law presented by The LifePath Groups Project on April 9, 2018
- Certificate of Completion presented by God Behind Bars for the Laws of Leadership 1 – 7 on May 3, 2018
- Certificate of Recognition as First Place in the Hardee Talkers Gavel Club on June 14, 2018
- Certificate of Completion presented by The LifePath Group Project on August 3, 2018
- Certificate of Completion of “Victim Impact-Listen and Learn Program” presented by Hardee Correctional Institution on August 9, 2018
- Certificate of Achievement of Etiquette and Manners for Successful Living presented by LifePath Group Project on August 24, 2018
- Certificate of Completion of The History of the Vietnam War and How it has Affected American Society presented by LifePath Group Project on November 5, 2018
- Certificate of Achievement presented by LifePath Runners’ Club for having completed 13 miles in the St. Jude Children’s Research Hospital Run/Walk Charity Fundraiser Marathon on November 9, 2018
- Certificate of Milestone Award for running 1,250 miles presented by LifePath Runners’ Club presented on November 21, 2018
- Certificate of Award as First Place presented by the Hardee Talkers Gavel Club
- Certificate of Achievement for satisfactorily completing occupational competencies in Automotive Transmission Trans/Axle Service – Automotive Mechanics 0647.062400 presented by State of Florida Department of Education

- Certificate of Achievement for satisfactorily completing occupational competencies in Automotive Engine Analysis – Automotive Mechanics 0647-062400 presented by the State of Florida Department of Education
- Certificate of Achievement for satisfactorily completing occupational competencies in Automotive Air Conditioning, Air Cooling & Heating – Automotive Mechanics 0647-062400 presented by the State of Florida Department of Education

VI. REASONS FOR GRANTING CLEMENCY

A. Maturity, Remorse, and Amendment of Life

In his own letter, Mr. Herrick expresses his heartfelt emotions for all that happened over 30 years ago. But the stark and unyielding reality that weighs on Mr. Herrick is, of course, that he is powerless to change what happened years ago. In recompense, he does all he can do to value and protect life around him. This extends to his fellow inmates, who he lives peacefully with every day. This commitment envelops everyone he comes into contact with on a daily basis, including the men and women the State of Florida have placed in authority over him.

There can be no doubt but that he is not the man who entered the prison system over 30 years ago. His character and values transformation have been remarkable. From listening to his words, conveyed through his letter from the heart, it is clear that he realized he could not go back and write a new beginning to his life story, or change the subsequent events that led to his incarceration, so he steadfastly

determined to start from behind his prison walls and begin to write a new and honorable ending to it. Once he found his direction, he has never veered from his course.

B. Institutional Adjustment and Achievement as Evidence of Ability To Act as a Responsible Person

Favorable consideration should be given to individuals who present proof of ability to act as a responsible person. Such proof may be offered through evidence of significant institutional achievement, such as work history, program participation, and educational accomplishments or by providing evidence of good institutional citizenship. Mr. Herrick has certainly provided such proof. His outstanding institutional history and conduct exemplify the development of maturity, responsibility, and a peaceful disposition.

Kevin has made an excellent institutional adjustment and is a model inmate. He gives due respect to staff, officers, and his fellow inmates. He is following all rules and regulations to the letter, and demonstrating that he is capable of entering society as a productive citizen.

C. Family and Community Support

Kevin has a large and extended support group consisting of family members and friends eager to welcome him back to his community. They have pledged their help and assistance in any way needed as he reintegrates into free society.

D. Relevant Facts to Support Clemency

Mr. Herrick also understands this Petition is no place to argue law or facts. However, his case is not the usual case that comes before the Executive Board or the Honorable Ron DeSantis. While it is noted and understood the parameters for being considered for clemency, there are mitigating and extenuating facts that must be brought to the attention of the decision makers in this case.

1. Actual Innocence: From the first interview by the Largo Police officers, Mr. Herrick has proclaimed his innocence. He was offered a plea by the State Attorney for five years' imprisonment. However, being a man of high morals and truth, he could not bring himself to plead guilty to something he knew full well that he did not do.

2. Eyewitness Compromised: This conviction rested on the identification decision of Scott Barfield. Not only does Mr. Barfield's description of who he saw conflict in totality to the description that Cheryl (the victim) gave of the same person, according to Dr. John Brigham, Professor of Psychology at Florida State University, and highly recognized expert in the field of eyewitness identification, Mr. Barfield's ability to make an accurate identification was fatally compromised.

3. Excessive Sentencing/Prior Record: Mr. Herrick's prior record, which resulted in 42 months' incarceration when he was 18 years old, was used to enhance the sentence from a recommended 17 to 22-year sentence to a life sentence. The prior conviction was simply the result of his parents trying to teach him a lesson by allowing charges to be brought against him for taking two of his father's firearms. It is clear that if his parents had any idea that those charges could or would be used to enhance any future potential sentence, not to mention enhancing it to the point of life imprisonment, they have made it clear they would never have agreed to allow the charges to be brought against him.

4. Innocence Project: Audrey B. Swank, an attorney with Dibble & Miller, P.C., who previously worked as a Staff Attorney for the United States District Court for the Middle District of Florida, Tampa Division, reviewed Mr. Herrick's Petition for Writ of Habeas Corpus. She writes in her letter of full support of Mr. Herrick's petition for clemency:

"Of the myriad cases I handled over the six years I was Staff Attorney, only once was I convinced that Petitioner was due the relief he sought; not only for that, but the petitioner also demonstrated that he was innocent of the charges for which he was convicted and sentenced to life

imprisonment. The unique case was Kevin Herrick's. After a thorough review of the case file, I believed Kevin to be factually innocent. However, innocence is not a basis for the grant of a writ of habeas corpus. But I also believed Kevin was entitled to the writ because, among other reasons, he was deprived of a fair trial, evidence was ignored/lost/misinterpreted/untested, and perhaps most significant, his counsel was horrifyingly ineffective.

Everything that could have gone wrong in Kevin's case did go wrong – beginning with Kevin being at the wrong place at the wrong time, the questionable police investigation and their suggestive and damning “questioning” of the victims (including law enforcement's completely false statement about having discovered the blood-covered weapon in Kevin's room). Kevin's having been in trouble as a teen with the local police and being known to them as a trouble-maker, Kevin's hiring of a defense attorney who would later be revealed to be a drug-addicted alcoholic who was not capable of providing and did not provide the defense Kevin deserved, the procedural

miss-steps of the defense attorney during and after trial, sentencing calculation errors, and Kevin's inability to adequately represent himself, pro se, in trying to prove his innocence and exhaust his remedies at the state level."

Further, Ms. Swank elicited the help of the Innocence Project. The Innocence Project represented Kevin in post-conviction proceedings that sought to have hairs recovered from the victim's bedsheets DNA tested for the specific purpose of identifying the actual assailant in this case. Hair strands that were recovered from the victim's bedsheets were microscopically analyzed by the Florida Department of Law Enforcement, which conclusively established the hairs did not match Kevin or either victim, Cheryl Hagan or Scott Barfield. The microanalysis conclusively established that an unidentified person's hairs were found in the victim's bedsheets. This information was not presented to Kevin's jury in 1990. Additionally, this information was not known to Kevin, his attorney or the courts until 2001 when Senior FDLE micro analyst, Mariana Hildreth, testified to the results of her analysis during a Federal evidentiary hearing.

Based on the facts that the hairs did not match Kevin or either victim, and after consideration of a complete lack of any physical evidence indicative of Kevin's guilt, as well as the complete unreliability of Scott Barfield's fatally compromised

identification, The Innocence Project decided to represent Kevin in a post-conviction motion for DNA testing of the hairs.

When the motion for post-conviction DNA testing was inexplicably denied, the Innocence Project had no option except to conclude their representation of Kevin. Remarkably, the hairs are still available for testing. However, without judicial approval, the Innocence Project or Kevin, the hairs cannot be tested. Kevin is being denied the opportunity to have the only physical evidence in this case DNA tested and the constitutional right to the proper justice he is entitled.

VII. MR. HERRICK'S OWN WORDS

Mr. Herrick sincerely regrets that he will not be able to appear in person before the Clemency and Pardons Board to speak on his own behalf. He has submitted a letter, which is included in full in the Appendix.³ His thoughtful, insightful words provide reflective background to his own story. He is a man of passion and of great hope. The following excerpt aptly illustrates his heartfelt remorse:

“Sir, I am 52 years old. While I am not guilty of the offenses I was convicted of, neither am I the same young irresponsible man I was in 1989. I recognize that the

³ The original of Mr. Herrick's entire letter is included in the Appendix.

situation I find myself in today is a direct result of my failure to accept responsibly for myself and my actions growing up. I made terrible choices as a teenager that led me to rebel against my parents, who were the people who loved me most and had my best interest at heart. My rebellion resulted in my father agreeing to allow formal criminal charges to be brought against me when I used his firearms in a senseless act of vandalism a few months after I turned 18 years old...Sir, I am asking for mercy from you. I am no more guilty now than I was in 1989. You have the power and authority to correct a grave injustice. I can never get the past 30 years back but you can give me the future with my family.

VIII. CONCLUSION

In the words of Audrey Swank, the attorney who reviewed Mr. Herrick's Petition for Habeas Corpus which are stated in her attached letter of support.

“Clemency is defined as “an act of mercy that absolves an individual from all or any part of the punishment that the law imposes.” Kevin is deserving of

that mercy, because he did not receive a fair trial, did not receive effective assistance of counsel, and was subjected to improper police conduct that led to his being charged with and convicted of crimes he did not commit, for which he was improperly sentenced to life imprisonment. He also is deserving of mercy because he has been an exemplary prisoner, has strived to be and is a good man, has dedicated his life to God and helping others, and has never stopped believing that the truth would one day set him free. Because our justice system has guaranteed that the truth will never set Kevin free, he, his family, his friends, and those like me whose lives he impacted, ask for your mercy.”

Even if Kevin had committed the crimes for which he was convicted, a life sentence is a punishment that does not fit this crime. He has proven time and time again that he is a safe and proper candidate to be readmitted to free society at this time. We urge each member of this Executive Committee and the Honorable Ron DeSantis to read each and every letter in support of Kevin’s clemency, his accomplishments while incarcerated over 30 years, and review his exemplary record during his incarceration. The ends of justice would in no way be compromised if the

Governor of Florida orders a commutation. Over the last 30 years, Kevin has developed into a mature and respectable man his family can be most proud of, and a solid citizen his community can wholeheartedly embrace the law.

Joined by his family members and others interested in his cause, he sincerely and respectfully requests your utmost consideration of his application for commutation of sentence, and prays the relief sought will be granted.

Respectfully submitted,

Kevin Richard Herrick

IN THE MATTER OF:

KEVIN RICHARD HERRICK

DOC NO. 240583

APPENDIX

- 1) Certified copies of Plea Agreement, Order of Guilty and Sentencing Order in
The State of Florida vs. Kevin Richard Herrick, Case No. CRC-89-1145-
CFANO
- 2) Copies of Certificates of Accomplishments
- 3) Letter from Audrey B. Swank, Esq., of Dibble & Miller, P.C., who previously
reviewed Mr. Herrick's Petition for Habeas Corpus
- 4) Support Letters:

Ross J. Russo
Melanie Torres
Bayrd Philliips
Carol Carter
Joseph G. Ach
Debra A. Bowles
Luke S. Torres, First Lieutenant, U.S. Army
Shelley L. Miele
Madison Miele
Lori L. Russo
Lisa Torres
Corporal Anthony Russo
Coleen McCarthy Stoike
Rita Ach

Mark P. Torres
Jonathan Miele
Nicholas Russo

- 5) Mr. Herrick's original letter to Governor DeSantis