



PENNSYLVANIA INNOCENCE PROJECT

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Pennsylvania Board of Pardons
333 Market Street
Harrisburg, PA 17126

Via E-Mail (bflood@pa.gov)

Dear Members of the Board:

In advance of the upcoming public hearings on commutation applications, we write to urge the Board of Pardons to fulfill its responsibility to recognize and remedy unjust punishments, to recommend clemency to deserving individuals going forward, and to reconsider applications for deserving individuals whose applications have previously been denied.

Given Pennsylvania's mandatory life without parole sentences for first- and second-degree murder, the Board is the only body in the Commonwealth with the authority to prevent incarcerated individuals with these severe sentences from dying in Pennsylvania's prisons. Many, if not most, commutation applicants have served decades in prison. Many are aging and suffering from poor health. Many were very young when the crimes for which they were convicted occurred but just old enough to be ineligible for juvenile lifer re-sentencing. Many have excellent prison conduct records and institutional adjustment; indeed many, as demonstrated at the December 2019 public hearings, have full and forceful support from the Department of Corrections. Many have no opposition from the victims in their cases. Many are people of color, who, as recent events in our nation have starkly shown, are over-represented in our criminal justice system and prison population. And, of particular interest to our office, some are actually innocent.

Allowing these individuals, innocent or guilty, to languish in prison does not increase public safety or serve the interests or principles of our Commonwealth. The risk of recidivism for aging prisoners is low, and those

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whose sentences are commuted will remain under state parole supervision. There is thus minimal risk to public safety in recommending commutations to the Governor. By contrast, however, there are high costs to denying applications and continuing incarceration, particularly in providing appropriate healthcare for this aging population through the Department of Corrections, at Pennsylvania taxpayer expense.

The need for a strong clemency process is particularly acute for the incarcerated innocent. Many of these men and women face significant impediments such as narrow procedural requirements that substantially delay or foreclose the merits of their cases ever being heard in the courts, despite having well-founded claims of actual innocence. Even for wrongly convicted individuals who ultimately succeed in their post-conviction litigation, the process can take years; in one case we are currently litigating, our client's post-conviction petition has been pending since 2010.

The current COVID-19 pandemic only underscores the need for action by the Board. As already noted, lifers applying for clemency are often elderly or otherwise particularly at-risk of serious illness or death from the virus; indeed, one prisoner whose case our office had taken on and who was planning to apply for clemency was the first in the Pennsylvania state prison system to die of COVID-19. *See* Jeremy Roebuck, "He died in prison from the coronavirus – three days before a breakthrough in his 30-year fight to clear his name," *The Philadelphia Inquirer* (Apr. 15, 2020), available at <https://www.inquirer.com/news/sci-phoenix-coronavirus-death-rudolph-sutton-pennsylvania-innocence-project-20200415.html>. We therefore now face the tragic reality that innocent Pennsylvanians deserving of commutation may die in prison if the Board does not act.

Recommending commutation for the incarcerated innocent and other deserving individuals does not require the Board to circumvent the courts; rather, it allows these individuals the chance at parole, the chance to preserve their health, and the chance to continue pursuing their cases from home. Indeed, the United States Supreme Court has recognized a role for the executive in innocence cases: "Executive clemency has provided the 'fail safe' in our criminal justice system." *Herrera v. Collins*, 506 U.S. 390, 415 (1993). In *Herrera*, the Supreme Court left open the question of whether to allow habeas

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petitioners challenging state court convictions to litigate actual innocence claims precisely because of the availability of clemency as a mechanism for relief.

The power to grant clemency is enshrined in our Constitution, *see* Art. IV, § 9, and has been, in some form, a part of every state constitution since the first one in 1776. Even before that, the Charter of Pennsylvania granted to William Penn in 1681 included the power to pardon. Emblazoned upon Pennsylvania’s coat of arms is “Virtue, Liberty, and Independence,” a constant reminder of the values most treasured by our Commonwealth. There is no greater official body with the capacity to act on these values than the Board of Pardons. We urge the Board to exercise its power to extend mercy and grace to people who have demonstrated their ability to contribute to our society outside prison walls and for whom clemency would be consistent with Pennsylvania’s core values.

We appreciate the Board’s consideration of this letter and look forward to an active and thoughtful commutation process in the months and years to come.

Sincerely,

/s/ Samuel W. Silver
Samuel W. Silver
Board President

/s/ Nan Feyler
Nan Feyler
Executive Director

/s/ Nilam A. Sanghvi
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