

In re capital execution of Ricky Grubbs

APPLICATION FOR GRANT OF REPRIEVE OR COMMUTATION OF SENTENCE

To The Honorable John Ashcroft, Governor  
State of Missouri

The undersigned religious and civic leaders of the State of Missouri for their Application state.

I

EXECUTION SET

The death of Ricky Grubbs by execution is set by order of the Supreme Court for October 21, 1992.

2. Appeal has been filed in the 8th Circuit Court but no stay has been granted.

II.

PARDON POWER IS INHERENT TO THE PEOPLE

CITIZENS HAVE STANDING TO APPLY.

3. The power to pardon, reprieve or commute is inherent in the sovereignty of the people of the State who have conferred the exercise of this power on the Governor by virtue of Article IV, Section 7 of the

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Constitution of Missouri. The power exists to serve the common good and not merely the individual under sentence

4. The exercise of the pardon power is not dependent upon (the offender) who, on no sound principle, ought to have any voice in what the law should do for the welfare of the whole." Biddle v. Perovich, 2,74 US 479. 487 (Justice Holmes).

"A pardon in our days is not a private act of grace From an individual happening to possess the power. It- is a part of the Constitutional scheme. When granted, it is the determination of the ultimate authority that the public welfare will be better served b y inflicting less than the iudgment fixed. The public welfare, not his (the prisoner's) consent, determines what shall be done." Biddle, supra p. 466.

5. Precedent has been established for the right of Applicants as citizens of the State to apply for reprieve or commutation in behalf of the common good and to have the Board of Probation and Parole review such application pursuant to Section 217.800, RSMo. On October 31, religious leaders and others, including some of the present applicants, filed an Application for Reprieve or Commutation relating to the capital execution of Gerald Smith with then Gov. Christopher S. Bond. Gov. Bond accepted the Application, referred it to the Board of Probation and Parole for review. Prior to the action of the Board on the Application a federal stay order intervened and subsequently Gerald Smith resumed his legal appeals thus making the Application moot. The clemency process was subsequently used in relation to George Mercer, Leonard Laws, Bobby Lewis Shaw, Leonard Laws, George Gilmore and Maurice Byrd. Such "citizen" applications have been presented and acted upon since the earliest Years

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of Missouri statehood. One of the earliest women prisoners was pardoned upon the application of her neighbors.

III.

REVIEW UNDER SECTION 217.8090, RSMo., REQUESTED

6. The undersigned invoke the requirements of Section 217.800, RSMo, which requires that "all applications for pardon, commutation of sentence or reprieve shall be referred to the Board (of Probation and Parole) for investigation." Further we request timely notice of the Board's proceedings and an opportunity to be heard prior to the completion of their investigation. The undersigned respectfully request an opportunity to be heard prior to the completion of their

investigation. We request that the reasons for mercy and commutation outlined in this application be considered in granting commutation, not simply the prior conviction records and related parole material of Ricky Grubbs. We request a written response to this Application.

IV.

COMMUTATION SHOULD BE GRANTED BECAUSE INCOMPETENCY

7. Prior to trial, and pursuant to Chapter 552, RSMO, Dr. A.E. Daniel examined Ricky Grubbs and found him competent to stand trial. However, he was not informed of many factors which would have changed his determination of competency. (See Dr. Daniel's Affidavit, attached.) Dr. Daniel subsequently has determined that Ricky Grubbs was not competent to stand trial. Dr. Daniel is a licensed psychiatrist

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practicing in Missouri. Dr. Daniel indicates that due to Ricky Grubbs' low mental function, he was not able to think through the consequences of his actions. He would have had less ability to work through the thought processes and to come to a responsible resolution of the situation which led to the death of Jerry Thornton. Also, his intoxication affected his conscious control, and combined, these two factors rendered Ricky Grubbs incapable of forming the necessary intent to deliberate. Dr. Daniel also concluded that Ricky Grubbs was incapable of forming the necessary mental intent for capital murder as defined in Section 565.020, RSMo.

V.

## EXECUTION WOULD VIOLATE MISSOURI'S STATUTORY

### REQUIREMENT FOR PROPORTIONALITY

8. In Ricky Grubbs' direct appeal to the Missouri Supreme Court, Judge Blackmar concurred with the majority of the court, however, he pointed out that there is little in the way of proportionality review carried out by the Missouri Supreme Court, although this review is provided statutorily in death penalty cases. Specifically, Judge Blackmar indicated that this case could not be distinguished from other first degree murder cases for which life in prison without parole was given as opposed to the death penalty. State v. Grubbs, Mo., 724.S.W. 2d 494, 501-502; (3/17/87) Judge Blackmar indicates that this case "seems to have arisen out of a drinking session. The killing was shocking and senseless, but numerous life sentence cases are reported in which the ultimate punishment is much more appropriate than in this case. . . ."

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9 Judge Blackmar was also concerned about the statutory aggravating circumstances found by the jury. Although it was listed as a reason for execution, there is nothing in the record to support the finding that the defendant was killed "for the purpose of preventing his lawful arrest." Nor does the fact that "money and food stamps were missing (but not found on the defendant), provide support for the allegation that the killing was committed for "the purpose of receiving money or other things of value."

VI.

COMMUTATION SHOULD BE GRANTED  
BECAUSE THE DEATH PENALTY IS NOT A DETERRENT

10. A recent study concluded the following.:

"During the 1950's there is no evidence that executions had even the slightest deterrent effect on murder. In addition, based upon our analysis of this decade, we find no support for the argument that a return to past execution practices will provide an effective solution to the murder problem. Rather, if executions are to again receive a prominent role in the criminal justice system, their use will have to be justified on grounds other than deterrence."

-This study compared murder and executions in death penalty states in the 1950's. (William C. Bailey, "The Deterrent Effect of Capital Punishment During the 1950's," Suicide and Life Threatening Behavior Vol. 13, #2, Summer, 1983, pp. 95-109.)

VII.

THE COMMON GOOD

11. The common good requires the state, through the governor, to weigh justice, assess responsibility, and mete out punishment and rewards. Humanly speaking, we cannot achieve justice perfectly, nor assess perfectly the responsibility of each offender. We need, especially regarding capital punishment, to be careful that punishment given is fair to each person involved, based on proportion; based on deliberation of the facts, aggravating and mitigating; and fits the offense. We cannot say that these apply in Mr. Grubb's case.

12 The common good would Be violated if our punishment responds with something other than balance, fairness, and all the facts.

13. Executions must be tempered by tolerance, the presumption of humanity, and all that we are to one another as brothers and sisters loved by God. We are all in need of His saving power.

14. Society abhors violence. Violence begets more violence The death penalty is clearly no more of a deterrent than imprisonment; in fact, it appears to be an incentive to more murders. Execution destroys human life, a gift of our Creator, Redeemer God. It debases humanity, encourages revenge, precludes repentance and sanctions violence as a solution. It is in the interest of the common good of the people of our state that the chain of violence be broken.

FOR THE FOREGOING REASONS, a reprieve staying the carrying out of the death penalty pending further actions as hereinabove described should

be granted or in the alternative the death sentence should be commuted to

life without parole.

Respectfully Submitted

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Eastern Mo. ACLU, St. Louis

Benedictine Sisters

Our Lady oil Peace Community, Columbia, Missouri

Right Rev. John Buchanan

As Bishop of the Episcopal Diocese of West Missouri

Ruth Barrett

Amnesty International - USA Midwest Region

Rev. Dr. Charles H. Maahs

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Peter DeSimone

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Most Reverend John Leibrecht

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Presbyterian Synods of Mid-America

Eugene P. Schwartz

Ethical Action Committee

Ethical Society of St. Louis

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Dominican Sisters

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Dated October 20, 1992

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