

In re capital execution of Winford L. Stokes

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

1. The death of Winford L. Stokes by execution is set by order of the Supreme Court for May 11, 1990.
2. Court appeals have apparently been exhausted.

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

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4. The exercise of the pardon power is not dependent upon "one (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, 274 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 by inflicting less than the judgment fixed. The public welfare, not his (the prisoner's) consent, determines what shall be done." Biddle, supra p. 486.

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, 1984 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, Maurice Byrd and Bobby Lewis Shaw. Such applications have been presented and acted upon since the earliest years of Missouri statehood.

III.

REVIEW UNDER SECTION 217.800, RSMo. REQUESTED

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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 materials of Winford L. Stokes. We request a written response to this Application.

IV.

COMMUTATION SHOULD BE GRANTED
BECAUSE OF SERIOUS FACTS AND QUESTIONS REGARDING THE USE
OF CAPITAL PUNISHMENT IN THE CASE OF WINFORD L. STOKES

7. While capital punishment is a part of our law, commutation is also provided. To commute a sentence does not mean the law is not being upheld. It is merely to say that the punishment might not be appropriately applied in this case. It exists to correct imperfections in the criminal justice system.

8. Commutation means, according to Black's Law Dictionary, "a change of punishment from a greater to a less."

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9. In Winford L. Stokes' case, the undersigned are asking for commutation to life in prison without parole.

10. The undersigned believe that, because of serious facts and questions in Winford L. Stokes' case, there is cause for mercy and the public interest would best be served by commutation.

V.

BACKGROUND INFORMATION

11. Winford Stokes was born and raised in St. Louis, Missouri. He was one of ten children born to Louise Stokes who was married to Winford's father from 1950 and divorced in 1955. According to pre-sentence documents, his early home environment was described as "dreary, disorganized, overcrowded; and located in a blighted area of St. Louis." No father was present in the home during most of his childhood and his mother, due to employment as a domestic worker, provided little or no control or supervision in the home.

12. Stokes' educational and employment experience is very limited. He has an 8th grade education and a low-average IQ. He was a slow learner in school.

13. Stokes was admitted to the Job Corps in St. Louis in May, 1967. But he resigned after a few months because he could not get along with staff and got into frequent fights with fellow workers. He received vocational training in auto body repair while he was in the Missouri

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Department of Corrections. For a time he worked at Andy's Auto Body Shop in St. Louis. He was married in 1970 and divorced in 1974. He had one child. At times he was supported by his common-law wife while unemployed.

14. Psychiatric examinations were conducted at Fulton State Hospital in 1978, as ordered by the Circuit Court of St. Louis City. This evaluation revealed a long history of drug and alcohol abuse. He claimed periods of amnesia and headaches. There was no evidences of mental disease or defect within the meaning of the law -- actions were not a product of any known psychotic illness, non-alcoholic organic brainsyndrome or epilsytic disorder. He stated that he had an eye injury in an auto accident nine months prior to admission to the hospital and that he had been told by other physicians that he had a blood clot or growth in his brain. He stated that he had headaches. (No attempt has been made to examine this.) He claimed during the interview that amnesia began as a result of a drinking episode. He also claims that he can remember nothing of the events for which he was tried. He described himself as feeling depressed since the head injury and indicated he had attempted suicide on at least three occasions over the past year. He also stated that he had been hospitalized on two or three occasions forsuicide attempts. No attempts have been made to verify these allegations. It was also stated in the evaluation that there was "only borderline evidence of minimal neurological impairment." No attempt was made to describe or explore these in detail and the sychiatrist examining him stated "the tests were not felt to reflect pathology other than those associated with a character defect." It further stated that

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the circumscribed period of amnesia could be due to his allegedly severe state of alcoholic intoxication. However, according to the same psychiatric report, "these are not considered mitigating circumstances within the meaning of Sec. 552, RSMo."

15. He first became involved with the law in April, 1966 and was placed under supervision of the juvenile court. He was described by juvenile authorities as generally uncontrollable in detention. His relationships with peers was a major problem, indifferent, and defiant. He was committed to the Missouri State Training School for Boys in November, 1966, followed by an assault and armed robbery. Two years later, in 1968, he was arrested as an adult in St. Louis City for a homicide and was subsequently sentenced to nine years for manslaughter. He was released in 1976 from the Department of Corrections but continued to have trouble with the law and was arrested for and subsequently convicted of robbery Ist and armed criminal action in December, 1977.

16. Stokes was arrested in April, 1978, for escaping from custody, murder Ist degree, and robbery for an incident which took place on December 12, 1977 during which an elderly woman was robbed and killed by a firearm. For that offense, he pled guilty on September 10, 1979 and was sentenced to 50 years in prison. The offense for which he was given the death penalty occurred two months later on February 19, 1978 and for which he was arrested in March, 1978. So, he was in jail pending disposition of two cases in September, 1979, one which occurred in December, 1977 and the other which occurred in February, 1978. For the

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December, 1977 offense, he was given life and 50 years without parole, for the felony, 1978 offense, he was given the death penalty.

VI.

COMMUTATION SHOULD BE GRANTED
BECAUSE OF POSSIBLE RACIAL PREJUDICE

17. It is in the interest of the common good that no penalty be imposed upon a person unless it can be shown that he has received a fair and impartial trial. Since the death penalty is a supreme penalty, it becomes of supreme importance that it be administered without prejudice. Questions and facts raised about prejudice in this case indicate that it should not be used in the case of Winford L. Stokes.

18. Winford L. Stokes contended throughout the investigation, the trial, and his appeals, that he is innocent. There was much pretrial publicity, according to numerous court documents.

19. Court documents, also, indicate serious facts which demand consideration. Winford Stokes is black. The victim in this case was white, a white female. He was tried and convicted by an all white jury.

20. We request that he be provided at least a commutation of sentence to life and no parole. Given the racial composition of the defendant, the victim and the jury, there is occasion for prejudice of facts and process against him such that it would be extremely difficult if not impossible to determine guilt or innocence in an impartial manner.

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The same would be true regarding the imposition of the death penalty as a sentence.

21. Prejudice is a serious and likely possibility in this type of situation, given what studies show about the way the death penalty is applied in the United States today.

22. In February, 1990, the U.S. General Accounting Office filed a report to the Senate and House Committees on the Judiciary entitled, Death Penalty Sentencing: Research Indicates Pattern of Racial Disparities. The Office researchers found a pattern indicating racial disparities in the charging, sentencing, and imposition of the death penalty. In 82 percent of the empirical studies examined, the race of the victim was found to influence the likelihood of being charged with capital murder or receiving the death penalty, i.e., those who murdered whites were found to be more likely sentenced to death than those who murdered blacks. The studies found that the "race of victim influence" was found at all stages of the criminal justice process. Three-fourths of the studies examined found that black defendants were more likely to receive the death penalty than white defendants.

VII.
COMMUTATION SHOULD BE GRANTED BECAUSE
OF PROBLEMS IN DETERMINING THE ORIGINAL CHARGE

23. In September, 1970, Winford L. Stokes was in jail for allegedly committing two murders, one in St. Louis City and the other, the subject

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of this Application, in St. Louis County. (For detail, please refer to paragraph #16 above.) As Winford L. Stokes city trial drew near, he, his counsel and the State's attorney reached an agreement with the city prosecutor whereby Stokes would plead guilty to second degree murder in both City and County courts, and

the State in both cases would recommend 50 year sentences to be served concurrently. On September 10, 1970, Stokes pled guilty in the City to second degree murder, and other charges as well. In keeping with the plea agreement, the City prosecutor recommended 50 years and the City judge gave sentences for all the charges totalling 50 years. At the same time, Stokes maintained he was innocent of the crime for which he was charged in the County, the case subject of this Application. However, a local newspaper incorrectly reported that Stokes had received a 70 year sentence and this message came to him in the jail and he was convinced that this was his sentence.

24. Ten days after the trial he was transferred to St. Louis County and at the second plea proceeding, on September 20, 1979, after a two or three minute discussion with counsel, Stokes told his attorney that the State was "lying on" him. According to legal documents, there was difficulty between Stokes and his counsel and the judge was not aware of this. The plea session broke down and the prosecutor withdrew the amended indictment for second degree murder and reinstated the original indictment. After a session with his attorney later the same day, Stokes understood that the paper had made a mistake. The next morning, when approached with the situation, the County prosecutor would not re-extend the murder second degree charge and the punishment of 50 years. So, Stokes was tried for the crime of capital murder and was convicted.

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25. The purpose of raising the issue of plea bargaining is not to contest the legal actions involved in the plea as these were addressed in the courts. (See U.S. Court of Appeals, for the Eighth Circuit, No. 86-2598, July 13, 1988.) It is to contend, however, that in early stages of this process at least two responsible people in their official capacities, the defense attorney and the state's attorney, thought that what Stokes was alleged to have done merited 50 years in prison, not the death penalty. In rejecting the offer, Stokes was using imprudent, rash and impulsive judgment, characteristic of his life as a whole. That, in this case, was the line between 50 years in prison and the death penalty. We believe that clemency should remedy imprudent judgment by using reasonableness and fairness and placing the punishment at 50 years in prison.

VIII.

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

26. 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

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Punishment During the 1950's," Suicide and Life Threatening Behavior, Vol. 13, #2, Summer, 1983, pp. 95-109.)

27. Regarding deterrence, it is significant to note that there have been two executions in Missouri, one in

January, 1989 and one in January, 1990. However, county crime statistics for St. Louis County January to arch, 1990 indicate that reports of murder have increased by 80 percent from 1989 to 1990. This increase contrasts with reports of property crimes which have decreased. (See County Crime Statistics for this period released May 4, 1990.)

IX.
THE COMMON GOOD

28. The common good requires the state, and ultimately 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 Stokes' case.

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

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30. 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.

31. 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 of Peace Community, Columbia, Missouri

Right Rev. John Buchanan
As Bishop of the Episcopal Diocese of West Missouri

Marjorie Byler
Amnesty International - USA, Midwest Region

Michele Coleman
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The Rev. Norm Dake
Church in Society Commission
Missouri-Kansas Synod
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Peter DeSimone
Missouri Association for Social Welfare

Fellowship of Reconciliation
Columbia, Missouri Chapter

Bishop W. T. Handy, Jr.
Missouri Area United Methodist Church

The Rt. Rev. William A. Jones, Jr.
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Most Reverend John Leibrecht
Bishop of the Catholic Diocese of Springfield-Cape Girardeau

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Most Reverend John O. Sullivan
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Dated May 9, 1990

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