

**BEFORE THE GOVERNOR FOR THE STATE OF TEXAS
AND
THE BOARD OF PARDONS AND PAROLES**

In re

RICKY DON BLACKMON,

Petitioner

**APPLICATION FOR
COMMUTATION OF DEATH SENTENCE**

**REQUEST FOR HEARING PURSUANT TO
37 Texas Administrative Code §143.43(b)(3) and
Administrative Procedures Act §2001.001 *et seq***

**REQUEST FOR COMPLIANCE WITH
Texas Open Meetings Act
Texas Government Code §551.001 *et seq***

**REQUEST FOR COMPLIANCE WITH
Texas Constitution
Article 4, §11**

**APPLICATION FOR CLEMENCY
and
MEMORANDUM IN SUPPORT THEREOF**

Ricky Don Blackmon respectfully submits this application for clemency, requesting that this Board of Pardons and Paroles recommend, and that the Governor grant, a commutation of his sentence of death to life imprisonment.

STATEMENTS REQUIRED BY 37 TAC §143.42

1. **Name of Applicant:** Ricky Don Blackmon
2. **Identification of Agents Presenting Application:**

Rita J. Radostitz, Attorney for Mr. Blackmon

*3. **Copies of Indictment, Judgment, Verdict, Sentence and Execution Date:** Attached as Exhibits to Application. The current execution date is set for August 4, 1999. Counsel is not aware of when the date was set. Neither the District Attorney nor the Trial Court notified Mr. Blackmon or his counsel of the date setting. Instead, on July 5, 1999, a staff person at the Ellis Unit, TDCJ-ID, informed Mr. Blackmon that he had received notice that an execution date had been scheduled. Counsel still

has not received any official notice or a copy of the date setting order from either the District Attorney or Trial Court. Accordingly, no copy of the order setting the execution date is attached.

4. Statement of the Offense

Mr. Blackmon was convicted of the murder of Carl Rinkle during the course of a burglary. In March, 1987, Ricky Don Blackmon and his girlfriend, Donna Mae Rogers, were unemployed and nearly destitute, living just outside Dallas, Texas. Ms. Rogers told Mr. Blackmon she knew people in Joaquin, Texas, and thought she could obtain money from them. Mr. Blackmon was unfamiliar with the Joaquin area, so Ms. Rogers drove them there. Ms. Rogers told Mr. Blackmon she would lure an old acquaintance, Carl Rinkle, from a bar to his house, where she would knock him unconscious and steal his cash. Mr. Blackmon was to wait outside with the car.

Mr. Blackmon went with Ms. Rogers to the bar, and waited outside as she suggested. He then saw Ms. Rogers leave with a

man he did not know, but later learned was Carl Rinkle. He followed as Ms. Rogers went with Mr. Rinkle in his truck to his home.

Ms. Rogers spoke with Mr. Blackmon outside Mr. Rinkle's home, and said that she was going to go inside with Mr. Rinkle, and thought she probably could convince Mr. Rinkle to give her money if she just had a few more beers with him. Mr. Blackmon agreed and waited outside. Apparently Ms. Rogers and Mr. Rinkle then smoked marijuana, and Ms. Rogers then apparently agreed to sexual relations with Mr. Rinkle in return for money. She went into Mr. Rinkle's bedroom, laid down on the bed and removed all her clothing except her panties.

After waiting for almost an hour and a half, Mr. Blackmon became suspicious and started walking around Mr. Rinkle's house, looking into the windows. Through the bedroom window, he saw Ms. Rogers with only her panties on, engaging in sexual foreplay with Mr. Rinkle, who was naked.

Mr. Blackmon was obsessed with Ms. Rogers and had previously revealed his jealous nature. In response to the sight of Ms. Rogers in bed with another man, Mr. Blackmon got extremely angry and jealous. He went to his car and got a sword. He entered the house; a struggle ensued during which Mr. Blackmon panicked and killed Mr. Rinkle. Mr. Blackmon and Ms. Rogers then left the scene with Mr. Rinkle's truck, money, jewelry and other possessions. Several weeks later, Mr. Blackmon was arrested, and gave a taped statement and signed a written confession, both of which were admitted at trial.

Ms. Rogers also gave a taped statement and signed a confession. In exchange for her testimony against Mr. Blackmon, she was offered a plea bargain and pled guilty to murder and received a life sentence. The capital murder charges against her were dismissed. She was eligible for parole in July, 1994, but remains in prison in the Gatesville Unit.

5. Statement of Appellate History

Mr. Blackmon was arrested on April 10, 1987, and was indicted for capital murder on June 5, 1987. The guilt/innocence phase of the trial began on November 4th, and on November 9, 1987 the jury returned a verdict finding Mr. Blackmon guilty of capital murder. On November 11, 1987 the jury returned a verdict answering the special issues in the affirmative. On December 2, 1987 the Hon. J. L. Smith sentenced Mr. Blackmon to death in compliance with the statutory mandate. On direct appeal, the Texas Court of Criminal Appeals affirmed in an unpublished opinion. *Blackmon v. State*, No. 70,001 (Tex. Crim. App. Sept. 13, 1989). Rehearing was sought and denied. Mr. Blackmon then filed a petition for writ of certiorari, and the Supreme Court denied review. *Blackmon v. Texas*, 496 U.S. 931 (1990). On October 31, 1990, Mr. Blackmon filed an Application for post-conviction Writ of Habeas Corpus with the 273rd Judicial District Court of Shelby

County, Texas, and with the Texas Court of Criminal Appeals. On August 26, 1991, the State District Court forwarded to the Texas Court of Criminal Appeals its recommendation that relief be denied on all of Mr. Blackmon's claims. The Texas Court of Criminal Appeals adopted the recommendation, and denied relief. *Ex Parte Blackmon*, No. 21,554-03 (Tex. Crim. App., Nov. 6, 1991)(unpublished).

Mr. Blackmon filed a Petition for Writ of Habeas Corpus with the United States District Court for the Eastern District of Texas on December 24, 1991. Without holding a hearing, the district court denied relief on July 14, 1992, and final judgment was entered on July 29, 1992. The Fifth Circuit Court of Appeals reviewed Mr. Blackmon's claims, and on May 26, 1994 issued an order vacating the judgment and remanding to the district court for further proceedings. *Blackmon v. Scott*, 22 F.3d 560 (5th Cir.) cert. denied 115 S.Ct. 671 (1994).

The district court held a hearing on April 5-6, 1995. The

Court entered Findings of Fact and Conclusions of Law and a final order denying relief on March 28, 1996.

Mr. Blackmon filed an appeal, and after oral argument, on June 22, 1998, the Fifth Circuit affirmed the District Court's order denying relief. Mr. Blackmon's Petition for Rehearing was denied on July 24, 1998. Mr. Blackmon filed a petition for writ of certiorari with the United States Supreme Court. Review was denied in March, 1999.

An Application for Post Conviction Writ of Habeas Corpus will be filed in the Court of Criminal Appeals forthwith, asserting grounds for relief that were discovered during the federal habeas process and have not been reviewed by any state court.

6. The Legal Issues Raised

See attached Exhibit B.

7. Requested Length of Reprieve

Not applicable

8. Effect of the Crime on the Victim's Family

Undersigned counsel has had no direct contact with any of Mr. Rinkle's family members and therefore cannot comment accurately regarding the impact of this crime on the family. However, there can be no doubt that the impact of the crime on Mr. Rinkle's family must have been devastating, as it would be for any family. Mr. Blackmon understands and deeply regrets that for all members of Mr. Rinkle's family, his death has created a void that cannot be filled and that nothing can truly ameliorate their deep sadness and suffering over their loss.

BASIS OF CLEMENCY REQUEST

RICKY DON BLACKMON'S SENTENCE SHOULD BE COMMUTED TO A LIFE SENTENCE BECAUSE THE JURY THAT SENTENCED HIM WAS DECEIVED BY THE PROSECUTORS' PRESENTATION OF FALSE AND MISLEADING EVIDENCE IN SUPPORT OF THE SENTENCE OF DEATH.

A sentence of death is supposed to be our society's way of asserting that there are some people who are so beyond hope and rehabilitation, and whose crime is so heinous that we, as a community, can no longer tolerate their presence among us — even in a prison setting. But the process of making that decision rests on, and relies upon, the notion that the representatives of the people, the prosecutors, will present to the jury competent evidence in order to assist the jury in making this monumental decision. When the prosecutors lie, cheat and distort the fact finding process, like they did at the penalty phase of Mr. Blackmon's trial, the jury's verdict can have no support by the larger society. When the court's recognize that due process has been violated, but fail to render relief, clemency becomes not only the fail safe of our system of justice, but the

only mechanism by which society as a whole can review and correct a miscarriage of justice. This is one of those rare cases in which the misdeeds of the prosecution require that this Board review and revise the sentence imposed by the jury because it was not made on the basis of fact, but rather on the distortions of misrepresentation.

At the Penalty Phase of Trial, the Prosecution Presented False and Misleading Evidence Regarding the Allegations That Mr. Blackmon Was Involved in a Double Homicide in Enid, Oklahoma.

Mr. Blackmon was arrested in connection with the murder of Carl Rinkle on April 11, 1987. He was transported to the Shelby County Jail. Investigation by the Shelby County Sheriff's office continued after Mr. Blackmon's arrest. On April 13, 1987 the State became aware that Mr. Blackmon was alleged to have been involved in the double homicide of Carl Singer and Bobby Bickham in Enid, Oklahoma in 1985. Then Shelby County Sheriff Paul Ross received three packets of materials regarding the Singer-Bickham homicide in late April 1987. He provided the documents to the District Attorney's office. Then Shelby County District Attorney John S. Walker spoke with the District Attorney for Enid, OK on June 1, 1987

regarding whether there was evidence that Mr. Blackmon was involved in the Oklahoma murders. A month later, in a hearing regarding numerous pretrial motions on July 6, 1987, the prosecutor gave no indication of its intent to use extraneous offense evidence, such as the Oklahoma homicides, as required.

Defense counsel filed a formal motion for disclosure of all extraneous offense evidence on September 24, 1987. A hearing was held on pre-trial motions on October 5, 1987, and the motion was granted. In response to the defense request, District Attorney Walker stated:

As of this date, there are no extraneous offenses, which the State can prove with certainty that the law requires. If and when that information were to come to the State's attention, we would certainly reveal it to the defense but *at this time it doesn't exist.*

This statement is in direct conflict with later statements by Mr. Walker admitting that they knew of the information on October 3, 1987. It is also untrue. The District Attorney had all the reports regarding the Oklahoma homicide as early as June of 1987. They had the statements of inmate witnesses Gary Hall and Raymond Smith by mid September at the very latest. On September 14, 1978, a deputy from Shelby County made

arrangements with the investigating officer in Oklahoma, Sgt. Madison, regarding coming to Texas to testify, and the State placed his name on their witness list. Assistant District Attorney Goodwin then went to Oklahoma to further investigate Mr. Blackmon's involvement in the Singer/Bickham homicides sometime the week of October 19, 1987. The State filed a "Petition to Secure Attendance of Witness from Without State" for Mr. Sittig on October 22, 1987. Mr. Goodwin met with Mr. Sittig the day following that request.

On October 26, 1987, in the midst of trial, defense counsel was finally given notice of the State's intent to offer extraneous offense evidence. The nature of the evidence to be presented was not disclosed, other than information that inmate witnesses named Smith and Hall would testify that Mr. Blackmon made statements regarding his involvement in the Oklahoma homicides.

When defense counsel was notified that Mr. Smith and Mr. Hall would testify, he requested to be notified when they arrived in Shelby County, and his request was granted. The trial court ordered the State to inform

defense counsel when Smith and Hall arrived in Shelby County. Bench warrants were issued for each of them on October 29, 1987 and Hall and Smith were booked into Shelby County Jail the next day.

Defense counsel contacted the jail on numerous occasions between November 1 and November 8, 1987 and was informed that Smith and Hall were not at the Jail. Defense counsel was not informed that Smith and Hall were in Shelby County until 10:00 p.m. on November 8, 1987. Defense counsel was never afforded an opportunity to interview Smith or Hall prior to their testimony due to the lack of timely notice, and the demands of the ongoing capital murder trial. He was not provided criminal history information on Smith, Hall or Sittig, nor information regarding their agreements with the State regarding letters to be written to their respective parole boards. The State provided statements by Smith and Hall just a day prior to their testimony, and a statement by Sittig just minutes prior to his testimony.

Terry Sittig was brought to Texas on October 7, 1987. He requested permission to meet with Ricky Don Blackmon or defense counsel. His

request was not honored. He intended to provide helpful information to defense counsel, but was precluded by the prosecutors from doing so.

Defense counsel was not notified until the next day, just as the State called Mr. Sittig as their next witness, that Mr. Sittig was in Texas and prepared to testify. Defense counsel requested a continuance of the trial to interview and prepare to cross examine Mr. Sittig and to subpoena other relevant witnesses and evidence. His requests were denied.¹

Undisclosed to defense counsel at trial was the fact that inmates Smith and Hall had been approached by Jailor Phillip Lynch and given details of the allegations against Mr. Blackmon, both in Texas and Oklahoma. Jailor Lynch suggested to Smith and Hall that if they could get information from Mr. Blackmon, it might help them with their cases. Jailor Lynch made the same suggestion to inmate Darel Clark, and Mr. Clark questioned Mr. Blackmon regarding the crimes and reported information to Jailor Lynch. Mr. Clark later decided he did not want to testify against Mr. Blackmon, and

¹Defense counsel testified in Federal Court that if he had been able to inform the trial court that the State knew of the extraneous offense evidence at least by June, he was confident that the trial court would have either excluded the information for lack of notice, or granted a continuance.

was not called at trial. Smith and Hall each testified in Federal Court that they had provided information to the Sheriff through Jailor Lynch, and had been rewarded both with extra privileges, and later with promises of a letter to the parole board. Hall testified that he elicited information from Mr. Blackmon during an argument over a card game. He taunted Mr. Blackmon by saying something like "I know what you did to those people in Oklahoma." Mr. Blackmon then asked how they knew about the allegations in Oklahoma, and a conversation ensued. Smith and Hall were later brought back from the Texas Department of Corrections where they each were serving sentences, and while meeting with Assistant District Attorney Goodwin, were assured that if they testified against Mr. Blackmon, the District Attorney would write a letter to the parole board on their behalf. The District Attorney did in fact write letters to the Parole Board, and Mr. Smith was released on his first parole eligibility date.

Through the deceitful conduct of the prosecutors, and the tainted evidence they presented, the State attempted to show that Mr. Blackmon committed a double homicide in Oklahoma when they knew that the evidence

in the Oklahoma police department and court files was completely inconsistent with any allegation that Mr. Blackmon was involved. However, after trial, undersigned counsel and her colleagues were finally able to do those things that trial counsel did not do because he was hoodwinked into believing that the State had determined — as they should have — that there was insufficient evidence of Mr. Blackmon's involvement in the Oklahoma homicides to present such evidence to a jury in a capital case.

For example, the investigation in Oklahoma contained reports with the following information which was inconsistent with, contrary to, or simply not included in the testimony of the State's star witness, Sgt. Madison, the investigator from Oklahoma:

- a. A letter in which David Hammer confesses to the double homicide in Enid that the State was alleging that Mr. Blackmon had committed. EX 38²
- b. Statements of Linda Hoffland indicating that Mr. Blackmon had not been involved in the homicides. EX 28

²EX refers to the exhibit number assigned in Federal Court. Each of these documents is attached to the Application as Exhibit C, and presented in numerical order.

- c. The eye-witness, James Sherfield, indicated that the assailant in the Oklahoma double homicide had a mole on his right cheek. Mr. Blackmon does not have a mole on his right cheek. EX 39
- d. James Sherfield indicated that the assailant in the Oklahoma double homicide was between 250 and 270 pounds, and Mr. Blackmon weighted about 185 lbs. EX 39
- e. Julie Stockwell, a State witness against Mr. Sittig at his trial, was seeking to receive a reward for her assistance in the prosecution of Mr. Sittig. EX 41
- f. One of the witnesses to the crime, Ms. Hartzell's, statements to the police regarding the yellow Camero indicated that she did not see the tag number of the vehicle. EX 42
- g. Another witness to the crime, Mr. Suttmiller's statement to the police that indicated there were four males in the yellow Camero. EX 43
- h. Joe Blackmon provided an alibi for Mr. Blackmon for the time of the crime. EX 27
- i. No witness that observed a yellow car at the home of Mr. Singer recognized it as a Camero, and no witness identified the car at the home of Mr. Singer as having Texas license plates. EX 42, 43, 54, 55, 56
- j. The eye-witness, James Sherfield indicated that the assailant in the Oklahoma double homicide might have been Indian. EX 39
- k. There were numerous other suspects in the homicide including Tammy Deanne Enloe (EX 60) Devin Bill Demand (EX 63) and Todd Ging (EX 66).

- I. Mr. Sittig told his probation officer that Mr. Blackmon was not involved in the Singer-Bickham murder. EX 44.

Additionally the testimony presented at the Oklahoma trial of Mr

Sittig reveals that:

- a. Mr. Sherfield was unable to identify Mr. Blackmon as being involved in the Singer-Bickham homicide despite his viewing of a photo line-up which included Mr. Blackmon's photograph.
- b. Mr. Sherfield testified that there were 5 or 6 persons involved, including a woman.
- c. No witness identified Mr. Blackmon's car as being at the scene - no mention was made of the vehicle having Texas tags (This is in direct contrast to Sgt. Madison's testimony that the vehicle involved had Texas tags.)
- d. The hair evidence did not conclusively support an inference that Mr. Blackmon was present during the Singer-Bickham homicide.

The majority of this evidence, which conclusively showed that Mr.

Blackmon was not involved in the Oklahoma homicide, was not only not presented to the jury, but was hidden from defense counsel by the prosecution. Thus the story told at trial, and used by the State to obtain a sentence of death, was not a true story, not a complete story, and was

instead a story which unfairly denied the jury that which they needed to render a true and fair verdict — the comprehensive story including all the evidence showing that the witnesses who testified against Mr. Blackmon were biased and the evidence they presented was not accurate.

Because the jury that sentenced Mr. Blackmon to death was misled by the prosecutors, and because the verdict therefore is not worthy of confidence, it is the role of this Board to further investigate the allegations by holding a hearing. Mr. Blackmon is confident that after such review, Board members will conclude that he is undeserving of a sentence of death.

REQUEST FOR RELIEF

On behalf of Ricky Don Blackmon undersigned counsel respectfully petitions the Texas Board of Pardons and Paroles for a recommendation to the Honorable George W. Bush, Governor for the State of Texas, to commute Mr. Blackmon's sentence of death to life imprisonment. Mr. Blackmon requests that a hearing be held to present all the information contained within this clemency application to the individual Board members so that they may more fully examine the issues.

Respectfully submitted,

RITA RADOSTITZ

P.O. Box 296
Austin, Texas 78767-0296
TEL (512) 320-8300
FAX (512) 477-2153

EXHIBIT A

COPIES REQUIRED BY TAC §143.32

EXHIBIT B

Legal Issues Raised

EXHIBIT C

Documents showing evidence that Mr. Blackmon was not involved in the double homicide in Enid, Oklahoma.

