

IN THE MATTER OF:)
)
RICKY LEE GRUBBS, CP-46)
Potosi Correctional Center)
Mineral Point, Missouri 63660)
_____)

APPLICATION FOR COMMUTATION OF A SENTENCE OF DEATH

TO : HONORABLE JOHN D. ASHCROFT
Governor of the State of Missouri

INTRODUCTION

Ricky Lee Grubbs, by and through his attorney, respectfully submits this application, pursuant to art. IV, § 7 of the Missouri Constitution, and §§ 217.800 and 552.070 RSMo., to the Honorable Governor John D. Ashcroft, requesting that he exercise his constitutional and statutory power to commute Mr. Grubbs' death sentence to the alternative sentence of life without the possibility of parole for 50 years.

Mr. Grubbs' execution is presently set for 12:01 a.m., on October 21, 1992. He respectfully requests an opportunity to present this application to Governor Ashcroft or the Board of Probation and Parole, or to a Board of Inquiry. Counsel also respectfully requests Governor Ashcroft to stay the execution of Ricky Lee Grubbs, as contemplated by Rule 30.30, Missouri Rules of Court, so this application will receive the full and fair review which it deserves. See e.g., Miller v. State, 473 S.W.2d 413, 414-15 (Mo. 1972) (stay of execution ordered by governor pending psychiatric review); Potts v. Zant, 638 F.2d 727, 730 (5th Cir. 1981) (Georgia governor granted 90-day stay of execution pending clemency consideration).

I. BACKGROUND AND PROCEDURAL HISTORY

Ricky Lee Grubbs was convicted of capital murder and sentenced to death on May 1, 1986, in St. Francois County for causing the death of Jerry Thornton. Mr. Grubbs was originally charged in the Circuit Court of Scott County. Eventually the case was transferred to Perry County. In petitioner's first trial, the jury returned a verdict of guilty of capital murder and the defence requested the jury be polled. One of the jurors stated the verdict of guilty of capital murder was not his and a mistrial was declared. A second trial was had after a change of venue was requested from Perry County to St. Francois County.

The Supreme Court of Missouri affirmed Mr. Grubbs' conviction and sentence on direct appeal on February 17, 1987. State v. Grubbs, 724 S.W.2d 494 (Mo. banc 1987). Mr. Grubbs' request for *certiorari* to the Supreme Court of Missouri was denied by the United States Supreme Court on June 15, 1987. Grubbs v. Missouri, 482 U.S. 931 (1987).

Mr. Grubbs subsequently filed a motion for post-conviction relief under Missouri Supreme Court Rule 27.26 (repealed effective January 1, 1988) in the Circuit Court of St. Francois County, Missouri, which was denied on January 26, 1988. Mr. Grubbs appealed the denial of his Rule 27.26 motion to the Missouri Court of Appeals, which was transferred to the Missouri Supreme Court. On November 15, 1988, the Missouri Supreme Court affirmed the denial of Mr. Grubbs Rule 27.26 motion. Grubbs v. State, 760 S.W.2d 115 (Mo. banc 1988). Mr. Grubbs sought a *writ of certiorari*

to the Missouri Supreme Court which the United States Supreme Court denied on May 22, 1989. Grubbs v. Missouri, 109 S. Ct. 2111 (1989).

The Missouri Supreme Court issued a warrant of execution setting an execution date of June 9, 1989. On June 1, 1989, Mr. Grubbs filed a petition for writ of *habeas corpus* and Application for Stay of Execution in the United States District Court, Eastern District of Missouri. On July 11, 1989, Mr. Grubbs, by appointed counsel, filed an amended petition for writ of *habeas corpus*. On April 2, 1990, the Honorable John F. Nangle denied the writ. The district court granted Mr. Grubbs a certificate of probable cause to appeal. Mr. Grubbs filed notice of appeal to the United States Court of Appeals for the Eighth Circuit on April 20, 1990, which was denied on November 8, 1991. Grubbs v. Delo, 948 F.2d 1459 (8th Cir. 1991), and Petition for rehearing on January 31, 1992. The United States Supreme Court denied Mr. Grubbs' Petition for *Writ of Certiorari* on October 5, 1992.

Although Ricky Grubbs has been afforded a trial and review of his claims of constitutional error by the courts of this state and the federal courts, there has never been a full and fair disclosure of the facts and circumstances surrounding the life of Ricky Grubbs and the circumstances that lead to the death of Jerry Russell Thornton.

First, Ricky Grubbs trial counsel was in possession of information which should have been the basis for a defense of diminished capacity. Trial counsel choose not to use this

information including a psychiatric evaluation which found Ricky to be suffering from a severe emotional disturbance at the time of the murder. Trial counsel failed to present any evidence in Ricky's defense even though there was a wealth of information available. Counsel in effect conceded guilt, when in fact, Ricky had a viable defense and expert opinion to substantiate the defense. Trial counsel also choose not to put Ricky on as a witness in the second trial, after he testified in his first trial and had one hold out juror causing a mistrial.

Second, trial counsel failed to adequately investigate mitigating evidence and presented almost nothing in the way of life history or background information which was mitigating in nature that could have resulted in the jury returning a verdict of life imprisonment.

Third, trial counsel failed to call Michael Hazel, prosecuting attorney from Pemiscot County, who was prepared to testify that Ricky alerted him to a murder plot on his life with substantial risk to his own safety and Ricky testified in the murder trial of the individual who devised the murder plot.

Fourth, in Ricky's direct appeal to the Missouri Supreme Court, Justice Blackmar concurred with the majority of the court, however, he pointed out there is little in the way of proportionality review carried out by the Missouri Supreme Court, although this review is statutorily provided for in death penalty cases. Justice Blackmar also points out that the United States is the sole western industrialized nation with a death penalty. In

reviewing the facts of the case, Justice Blackmar found that the aggravating circumstances submitted to the jury in the penalty phase were not supported by the evidence.

Fifth, Ricky Grubbs has adjusted well to prison life, works in the chapel and is not a disciplinary problem or a threat to guards or other inmates.

Finally, the state has no real interest in the execution of Ricky Grubbs. On numerous occasions it has been shown statistically that the death penalty is not deterrent and in fact, the death penalty may have the opposite effect. The State of Missouri should not revert to violence in order to dissuade the use of violence, and the State of Missouri should follow the presumption that all life is precious and sacred and should be preserved.

In an imperfect world, it is unrealistic to expect a perfect trial. However, in a civilized society we should not stand idly by while one is convicted of a crime, simply by reason of the poor performance of counsel, and the failure of the legal system to provide adequate safeguards so that such occurrences do not happen.

"The penalty of death differs from all other forms of criminal punishment not in degree but in kind. It is unique in its total irrevocability, it is unique in its rejection of rehabilitation of the convict as a basic purpose of criminal justice and it is unique finally, in its absolute renunciation of all that is embodied in our concept of humanity."

Harmelin v. Michigan, 499 U.S. ____, 111 S. Ct. 2702 (1991); (quoting Furman v. Georgia, 408 U.S. 238, 306, 92 S. Ct. 2726, 2760, 33 L. Ed. 2d 346 (1972)) (Stewart, J., concurring). No one

was done a service by wrongfully convicting Ricky Grubbs of capital murder. Ricky failed to receive legal representation that would have afforded him a possibility of being found not guilty or receiving a lesser degree of homicide than capital murder. Therefore, Ricky Grubbs must request executive action to bring about a just result.

Trial counsel's performance was no better in the penalty phase of the trial, and without intervention by commutation a greater miscarriage of justice will take place. The execution of one who is not deserving of such a penalty, is fundamentally unfair and is a miscarriage of justice and does all of the citizens of the State of Missouri a disservice.

II. REASONS FOR COMMUTATION OF SENTENCE

A. Trial Counsel Was In Possession of Information Which Should Have Been The Basis For The Defense Of Diminished Capacity.

On August 17, 1985, Dr. Gary L. Bassett performed a psychiatric evaluation on Ricky Grubbs at the request of trial counsel. This evaluation consisted of a psychiatric interview and the administering of a Shifley Vocabulary Test and a Modified Visual Motor Perception Test. Dr. Bassett found Ricky to have been suffering from an extreme emotional disturbance at the time of the death of Jerry Thornton.

Ricky's mother died unexpectedly on January 17, 1984. Ricky blamed himself for his mother's death because she had complained about not feeling well and he did not insist that she go and see her doctor. Ricky drank constantly from the time of his mother's

death until the court date for his divorce on February 14, 1984. After the court appearance, Ricky drank steadily through the 16th of February. Ricky went completely without sleep on the night of the 14th of February, and does not remember all of the details of how Mr. Thornton was killed on February 15, 1984.

Dr. Bassett made a diagnosis under DSM III Axis I 303.93 Alcohol Dependence in Remission while incarcerated; Axis II 301.70 Antisocial Personality Disorder, primary diagnosis; Axis III, no diagnosis; Axis IV Severity of Psychosocial Stressors Code 6, extreme; Axis V Highest Level of Adaptive Functioning Pass Year Code 5, poor. In his discussion, Dr. Bassett found:

"The antisocial personality is recognized by the American Psychiatric Association as a diagnosable mental disorder. This disorder is almost unbearably associated with a marked impaired capacity to sustain lasting, close, warm and responsible relationships with family, friends or sexual partners. Mr. Grubbs verbalized past history supports the notion that he did have and continues to have difficulty with interpersonal relationships. The only apparent lasting relationship he ever had with another person was with his mother. The only other relationship Mr. Grubbs had with any sense of warm, close feeling was with his ex-spouse, though his marital relationship was clearly not lasting. The concept of psychosocial stresses is not new, but provisions for including the severity of these stresses as a part of a psychiatric diagnosis appear for the first time in the diagnostic and statistical manual of mental disorders in its third edition. A guide to rate the severity of these stresses is contained in DSM III. Such stresses may be judged to have contributed to the development or exacerbation of certain disorders including personality disorders as particular vulnerable to psychosocial stresses may exists in persons suffering from those and other disorders. Severity ratings of psychosocial stressors are based on assessment of the stress an average person with a similar circumstance and a similar background would experience. Examples of extreme stresses for an adult or given as death of a close relative, divorce in the DSM III guidelines. In view of the marked impairments of Mr. Grubbs, interpersonal

relationships was a verbalized desire to establish and maintain a meaningful relationship in the severity of the psychosocial stresses related to his mother's death and his divorce, the resulting emotional disturbance was extreme in my opinion."

Report of Dr. Gary Bassett dated August 19, 1985.

While Dr. Bassett was informed of some of the background information on Ricky's life, he was not aware that Ricky Grubbs was administered a Language IQ Test on January 25, 1966, while in the first grade. Ricky received a score of 72 on that examination. In 1967, he was administered the Stanford-Binet IQ Test and received a score of 74. Ricky did poorly in school receiving D's and F's primarily in first and second grade and was recommended for special education classes. While in special education classes, his grades improved slightly and by 5th grade he was again receiving mostly D's and by 7th grade was failing all his classes and subsequently dropped out of school. This information was not reported to Dr. Bassett and the jury never had the opportunity to hear this information or to know what affect it may have had on Ricky's abilities, or how alcohol could have affect one who had such a low IQ at this early age. Had Ricky's trial counsel adequately prepared and presented the evidence of the extreme emotional disturbance based upon the death of Ricky's mother within four weeks of the murder of Jerry Thornton, his divorce proceedings the day before, the four week long drinking binge and background of low IQ and poor performance in school there is a great likelihood that the jury would have returned a different verdict.

Trial counsel also choose not to put Ricky on as a witness in his second trial, which had an effect on the outcome of his trial. Ricky Grubbs was first tried for capital murder in the Circuit Court of Perry County on December 9-10, 1985. The trial resulted in the jury foreman signing the verdict form indicating that petitioner was guilty of capital murder. Upon motion of petitioner's counsel, the jury was polled at the end of the trial and a mistrial was declared when one juror indicated that the verdict was not his verdict. Ricky Grubbs testified on his own behalf in the guilt phase of that trial, and at least one juror was not persuaded that he was guilty of capital murder. It was trial counsel's decision not to call Ricky Grubbs as a witness in his own defense in the second trial, although Ricky wanted to testify in his own behalf. The second trial was moved to St. Francois County on a change of venue, and Ricky Grubbs in fact did not testify. Had trial counsel presented testimony in the second trial, there is a reasonable likelihood that Ricky Grubbs would not have been found guilty of capital murder.

Dr. A.E. Daniel examined Ricky prior to trial pursuant Mo. Rev. Stat. § 552 and determine Ricky was competent to stand trial. Dr. Daniel was not informed of many relevant factors which would have, brought about a much different outcome in the trial of Ricky Lee Grubbs. Dr. Daniel was not informed of the low IQ scores and failing performance of Ricky during his formal education in the public schools of the State of Missouri. Dr. Daniel was also not informed of the month-long drinking binge Ricky was engaged in

directly proceeding the death of his mother up to and after the murder of Jerry Thornton. Recently, this new information was brought to Dr. Daniel's attention. Based upon this new information and new evidence, Dr. Daniel has rendered the opinion that Ricky did not have the ability to deliberate or coolly reflect at the time of the murder.

At trial, the prosecution could not put on any direct evidence showing Ricky deliberated or coolly reflected in the murder of Jerry Thornton. The only information that was presented at trial of premeditation and deliberation was the confession of Ricky Grubbs and the condition of Mr. Thornton's body after the murder. There were no expert opinions rendered, nor was there anything in Mr. Grubbs' confession that stated he intended to kill Mr. Thornton or thought about in any way doing so. Had trial counsel investigated and adequately prepared, there is a distinct possibility the prosecutor would not have been able to file the case as a capital offense based upon Dr. Daniel's finding of the lack of ability on the part of Ricky to deliberate and coolly reflect. Had the prosecution been able to charge Mr. Grubbs with a capital offense, the defense would have had unrefuted testimony by one if not two experts that Ricky did not have the ability to meet the requisite intent for the crime of capital murder or deliberate and coolly reflect upon his actions at the time of the murder. It is a certainty that Mr. Grubbs would not be facing the death penalty at this time had he been given adequate representation. This information has never been fully presented to

any court in the State of Missouri or in the federal courts of the United States of America.

Unfortunately, the rules of procedure in capital litigation have precluded a full and fair review of this claim, and Mr. Grubbs is left with the distinct possibility of being executed for a crime for which he is not legally eligible. Our system of justice cries out for Ricky's life to be spared. The only recourse he has left is to look to the authority of the highest Executive Officer of the State of Missouri to see that justice in this case is done.

III. TRIAL COUNSEL FAILED TO ADEQUATELY INVESTIGATE MITIGATING EVIDENCE AND PRESENTED ALMOST NOTHING IN THE WAY OF LIFE HISTORY OR BACKGROUND INFORMATION WHICH WAS MITIGATING IN NATURE WHICH COULD HAVE RESULTED IN THE RETURN OF A VERDICT OF LIFE IMPRISONMENT.

Ricky Grubbs second trial for the murder of Jerry Thornton was held on March 24-26, 1986. The jury returned a guilty verdict in the guilt phase of the trial and after little, if any mitigating evidence was presented, the jury returned a verdict of death in the penalty phase. Had trial counsel investigated and prepared the mitigation phase of the trial, Ricky Grubbs life would not be in the balance now.

Mr. Grubbs is the seventh of twelve children born to Silas and Bonnie Grubbs. It is reported that Silas Grubbs had a fourth grade education and Bonnie had no formal education. The family was quite poor. Silas Grubbs was the sole provider for the family, working for minimum wage at a box factory in Caruthersville, Missouri. Silas Grubbs was an alcoholic, who was physically and sexually abusive toward his spouse and his children, Ricky included. It is

report that Ricky's mother was also abusive toward the children. Gary Grubbs, Ricky's older brother reports Ricky was beaten by his father, often times in the head. Gary remembers Silas Grubbs beating the children with his fists, coat hangers, fan belts and switches. Silas and Bonnie Grubbs would not allow Ricky or the other children to speak when others were present in the house. Bonnie Grubbs would often require Ricky to sit in a corner for long periods of time, and at times all day without being able to speak. Ricky and the other children would have to ask permission to use the bathroom. It is reported in the winters, the family's only source of heat was a wood burning stove and often times Ricky would not have shoes or socks, and was only given cutoff pants to wear with no shirt or other clothing.

Bertha Moyers, a friend of the family, was interviewed and gave the following information concerning Ricky and the deplorable environment in which he was raised. Bertha was present when Ricky was born in the Grubbs' family home. She was very close to Bonnie Grubbs. Mrs. Moyers would visit the home a number of times during the day. Almost everyday, Bonnie would beat the children and the girls had to hide from their father to avoid his sexual advances. Bonnie would dress Ricky and his brother, Randy like girls and take pictures of them dressed like this. The children were often left alone in the house during the day and often at night. Bonnie would carry as much as \$250 on her person at any given time, but the children were not provided adequate food and clothing. On one occasion, Bertha remember the children being alone in the house

crying and hungry. She cooked a meal for the children with her own food, but the children, including Ricky, were reluctant to accept any of the food for fear of being beaten by Bonnie if she were to find out. Bertha recalls there being plenty of food in the house, but the children were not allowed to have any of it. The food was locked away in a room which was actually an unusable bathroom. Bonnie fed the children biscuits and grits in the morning, and beans mixed with hot sauce at night. Bonnie carried large sums of money. She received this money from her husband Silas, from babysitting neighborhood children and from welfare and at times ordering the children to steal. Bonnie would have her sons, including Ricky, steal certain items from neighbors and bring them home. She would often go to churches and charitable organizations to get free clothes and food, but instead of taking the clothes and food home, she would sell the goods on her way and hoard the money.

Mrs. Moyers was not contacted or called to testify in Ricky's murder trial, although she was willing and available to testify in his behalf. It is her hope that something can be done to prevent Ricky from being executed.

Nellie Brown, was a neighbor of the Grubbs family and has known the family since September of 1962. Nellie visited quite often with Bonnie Grubbs. At the time Nellie became acquainted with the family, Ricky was not yet four years old. Nellie recalls Bonnie and Silas Grubbs were both physical abusive to the children. Bonnie would beat the children with switches and tree limbs. Silas would beat the children at Bonnie's request without knowing or

asking why. Ms. Brown knows of at least one sister that told her that she had been sexually abused by Silas from the age of 7 or 8 years old. Ricky's older brothers, Robert and Gary, would also beat Ricky. Bonnie at times would witness these beatings but would do nothing to stop them. Bonnie obtained money by babysitting and through state welfare assistance programs. However, she did not provide adequate food and clothing for Ricky or the other children. Although Bonnie received food stamps, there were days when the children went without food. When they were feed, it was only twice a day. The meals consisted of biscuits and grits in the morning and beans at nights. Nellie recalls one winter that Ricky had only short pants and no shoes or socks, even though the house was very cold and was heated only by a single wood burning stove. Clothing was donated for the children by people in the community, however, Bonnie would not allow the children to wear these clothes. Silas Grubbs would not allow the children to keep school books. If the children were caught with books, the books were taken, the children were beaten and the books were burned. The children were also subjected to strict rules. They were not allowed out of the house except for church and school, and they had to ask permission to use the bathroom. The smaller children were made to sit in the corner all day and were not allowed to play. The children were never allowed to be in the public and were not taught manners or how to conduct themselves in public. Nellie was contacted by counsel sometime before Ricky's trial, but was never called upon to testify.

Vicky Long, Ricky's older sister by 11 months, had information concerning Ricky's childhood and the deplorable conditions that she and the other children lived under, but was never called as a witness in Ricky's behalf. She lived in the family home until age 12 and then went to live and care for an aunt. Vicky returned home at age 14 and stayed with the family until age 16. Vicky recalls her mother would sometimes have her steal money from Silas' trousers and/or car, and give her the money. Vicky recalls the only meals she had growing up consisted of beans and tators of which they ate everyday.

Verna Hamm, a neighbor of the Grubbs' family, had information concerning Ricky but was not contacted by counsel. She recalls all the Grubbs children including Ricky being subjected to abuse and negligent. She remembers that the children often had nothing to eat and when they were fed, it was biscuits in the morning and beans at night. On occasion, the children would come to her house at night and ask for a place to stay. They would tell Ms. Hamm that Silas would not let them in the house. The children told Ms. Hamm of severe beatings inflicted by their father. She was also informed of these beatings by neighbors of the family that had witnessed the abuse of the children.

Pete Hanson, a neighbor of the Grubbs family for two or three years in the early '70's, recalls observing Silas Grubbs beating Ricky and the other children with tree branches over minor violations of rules and regulations. He was aware that the family had plenty of food, but the children often complained of being

hungry. He thinks it was because Bonnie Grubbs refused to cook for the children. Mr. Hanson hopes Ricky will not be executed because he never had a chance to grow up and have a normal life.

Jim Stackhouse has known the Grubbs family for a number of years. He is aware of physical abuse suffered by Ricky and his brothers and sisters while they were growing up. By Mr. Stackhouse's account, Bonnie would beat the children with switches and belts. Mr. Stackhouse knew Ricky at the time of the murder of Jerry Thornton. He believes that Don Shipman had some role in this murder. He believes Shipman was with or near Ricky and Randy Grubbs at the time of the murder. Shipman had a fascination with knives. On one occasion, Mr. Stackhouse allowed Don Shipman to stay at his house and all the kitchen knives disappeared. He later found the knives hidden throughout the house and asked Shipman to leave. Mr. Stackhouse is aware of Jerry Thornton being killed and that a knife was used in perpetration of the crime. Mr. Stackhouse believes that Mr. Shipman was crazy and paranoid, and that Shipman used and dealt drugs. He believes that Ricky Grubbs did not have the ability to kill Jerry Thornton, and is in hopes that someone will look into the matter.

Ricky's older sister, Patricia Ann King, born September 3, 1953, recalls Bonnie and Silas Grubbs beating the children often, using tree limbs and belts. The beatings were of the severity that bruises were often left on their bodies. Silas Grubbs made several attempts to have sex with the girls in the family. He would whip the girls including Patricia, with belts while they were taking

baths in order to get them to stand up so he could look at them. He would also watch the girls bathe through a window. This occurred up until the girls were in their teenage years. Silas had been molesting two of the sisters, one since age 7 or 8. The children were fed beans and tators; however, there were plenty of groceries in the house. The children were made to clean the house before they were allowed to go to school and when they got home from school and before they were allowed to do their homework. They were not allowed to leave the house and go outside or play at all. Patricia King is convinced that Robert Freeman had a role in the murder of Jerry Thornton. Freeman was a dealer of cocaine and angel dust. Patricia believes that Freeman put some type of drug in Ricky's drink on the day of the murder. Patricia was available for trial, but was not contacted or called as a witness.

Melissa Sue Butler, a younger sister of Ricky's, was born on April 27, 1965. She recalls Silas and Bonnie as being extremely abusive. She recalls there being plenty of food in the house, but Bonnie Grubbs would hide it from the children and only fed them biscuits and beans. There were never any celebrations for birthdays or holidays, including Christmas. Melissa was available to testify, but was not contacted or called as a witness.

Eldon Brown has known the Grubbs family since the mid '60's and would accompany his mother, Nellie Brown to the house for visits. Eldon recalls visiting the Grubbs home on a very cold day during the winter. He remembers the Grubbs home being very cold as it was heated only by a single wood stove. Ricky was made to sit

in a corner wearing only short pants with no shirt, socks, coat or blanket. Ricky was not allowed to speak and he had to ask permission to use the bathroom. Mr. Brown recalls witnessing Ricky being beaten on his bare back with a switch. The Grubbs children would often have to go without food and when they were fed, it was only two meals a day and generally the meals consisted of beans. Bonnie and Silas would beat the children for little or no reason. Eldon recalls seeing Ricky hit so hard by Silas, that Ricky was knocked to the floor. The Grubbs children were not allowed to play, and the toys that the children had were kept up on a wall out of their reach. During the winter months, the children were required to walk to school wearing short pants and ordinary shirts without any coats or shoes. Eldon was never contacted or asked to testify, although he available and willing.

Upon entering school, Ricky received mostly D's and F's on his report card. In 1966 in first grade, Ricky received a language IQ score of 72. In 1967 in the second grade, Ricky received an IQ score of 74. This information was readily available, however, trial counsel did not take the time to request Ricky's grade school records.

James L. Moore, the principal at Caruthersville Junior High School, remembered Ricky as a student in grade school in Caruthersville in the mid-60's. He relayed that Ricky had many problems growing up and that Silas and Bonnie Grubbs lacked any parenting skills whatsoever and had little if any formal education. While he does not have any direct evidence of physical abuse, he

feels that Silas Grubbs was the type of man who, because of his lack of education, would probably only know how to deal with problems with his children by physical violence. Ricky continued to have difficulty in school and was placed in special education classes. By the time he dropped out of the seventh grade, he was receiving all failing grades and did not return to school after that time.

It is also reported that Ricky's older brothers, Robert and Gary, were abusive to Ricky while he was a child. Ricky reports that alcoholism was rampant in the family. Silas Grubbs by all accounts was an alcoholic. It is reported that the older brothers were also alcoholics.

In April of 1980, Ricky married Patty Jones. Things seemed to be going fairly well for Ricky at this point. In December of 1980, Ricky was employed by U.S. Agri-Chemicals and his job performance was good, except for occasional tardiness. By March of 1981, Ricky caught his father and wife embracing and was left with the impression that his father was having an affair with his wife.

In March of 1981, Ricky left Patty and a divorce ensued culminating February 14, 1984, the day before Jerry Russell Thornton was killed. Ricky continued to have drinking problems all through this period, and possibly the biggest blow was January 17, 1984, when his mother died. Ricky became depressed and went on a drinking binge for the next month and was not drinking only on the 14th of February, when he had to appear in court for the hearing on

his divorce. Ricky did not sleep that night and drank the entire time, leading up to the incident with Mr. Thornton.

None of this information was revealed to the jury. The first mitigation witness was an aunt, Martha Grubbs, who during her testimony stated she did not know the children that well, and basically could only tell the court Ricky loved his mother and was very upset when she died. The other mitigation witness was Wanda O'Donald, Ricky's older sister, who testified that the children were beaten, that Ricky loved his mother and was upset at her death, and that he was married to Patty Jones and divorced. That in essence is the extent of the mitigation evidence that was presented. The great travesty is there was such a wealth of information which truly would have made a difference in the jury's perception of Ricky, his circumstances and in all likelihood would have caused a different outcome in his trial.

Trial counsel failed to call Michael Hazel, prosecuting attorney from Pemiscot County, who was prepared to testified that Ricky alerted him to a murder plot on his life. Ricky also testified in the murder trial of the individual who devised the murder plot.

Bud Cook lived in Caruthersville and enlisted the help of two young men to engage in murder for hire. One of Mr. Cook's targeted victims was killed and the two men responsible were apprehended and incarcerated. Bud Cook then contacted Ricky Grubbs, and Ricky met with Cook on at least two occasions. On these two occasions, Mr. Cook attempted to hire Ricky to kill Michael Hazel. Mr. Hazel

reports that Ricky came personally to him and informed him of Mr. Cook's attempts to hire him for this particular act. Ricky was in fear of his life because Bud Cook had not been arrested, however he agreed to go to Mr. Cook's home, while wearing a wire, to enable the police to be tape record his conversation with Mr. Cook. Ricky also agreed to call Mr. Cook from Mr. Hazel's office so that conversation could be tape recorded. Ricky then went to Dyersburg, Dire County, Tennessee, and testified for the prosecution against Bud Cook. Mr. Cook was convicted and received a sentence of at least thirty years. Michael Hazel was present at the trial in Tennessee, and saw and heard the testimony of Ricky Grubbs in that trial. While trial counsel was well aware of this information, they did not present it in the penalty phase of Ricky's trial. Michael Hazel was available and willing to testify on Ricky's behalf.

IV. JUSTICE BLACKMAR OF THE MISSOURI SUPREME COURT WAS NOT CONVINCED RICKY GRUBBS WAS A CANDIDATE FOR THE DEATH SENTENCE

Missouri Supreme Court Justice Blackmar concurred with the majority of the court in the direct appeal of Ricky's conviction and sentence. Justice Blackmar pointed out there is little proportionality review conducted by the Missouri Supreme Court although this review is statutorily provided for in death penalty cases. Justice Blackmar also points out that the United States is the only western industrialized nation with the death penalty, and he further went on to say in his concurrence:

"I am also concerned about the statutory aggravating circumstances found by the jury. I am aware of nothing in the record to support the finding that the defendant

killed 'for the purpose of preventing his lawful arrest.' The fact that the defendant and his brother wore gloves in February, and the fact that money and food stamps were missing but not found on the defendant, provide, for the most, scanty support for the assertion that the killing was committed 'for the purpose of receiving money or other thing of value' the only 'outrageously or wantonly vile' circumstance seems supported by the decision of this court. Were the point an open one, I would hold that it is prejudicial error to submit to the jury an aggravating circumstance which is not supported by the record."

Justice Blackmar sums this case up best in finding that the killing was one that arose out of a drinking sessions, and that there are numerous life sentence cases which the ultimate punishment is more appropriate than in this case. Clearly, Justice Blackmar feels this is a case that is not worthy of the death of the penalty and it is urged that Governor Ashcroft follow Justice Blackmar's lead.

V. THE STATE OF MISSOURI HAS NO REAL INTEREST IN EXECUTING RICKY GRUBBS.

On numerous occasions it has been statistically proven that the death penalty is not a deterrent. In fact, the death penalty may have the opposition effect. The empirical evidence shows that it is in the states best interest to spare the life of Ricky Grubbs. The State of Missouri also should not resort to violence in order to dissuade the use of violence. The state of Missouri should embrace the presumption that all life is precious and sacred and should be preserved.

VI. RICKY GRUBBS HAS ADJUSTED TO INSTITUTIONAL LIFE AND WILL POSE NO THREAT TO OTHER INMATES OR PRISON PERSONNEL IF HIS SENTENCE IS COMMUTED TO LIFE WITHOUT PAROLE FOR FIFTY YEARS.

Ricky Grubbs has been incarcerated for approximately eight years on death row while appealing his conviction and sentence. In that time Mr. Grubbs has adjusted well to prison life, has not been a threat or had any institutional problems to speak of. Mr. Grubbs is currently working in the chapel at Potosi Correctional Center and is a model prisoner. In fact Ricky is now actively involved in a ministry and preaches and counsels individuals inside the wall of Potosi Correctional Center and corresponds with individuals outside of the correctional institution. People who have come to know Ricky Grubbs have grown to respect and love him, and see him as a contributing member of society. Mr. O. Smith, a minister and retired postal worker from St. Louis, Missouri, has known Ricky since 1989 and has seen dramatic changes in Ricky over the years he has known Ricky. Mr. Smith has seen Ricky become a helpful and positive person with a purpose in life. Ricky has dedicated his life to helping mankind through his ministry. Ricky works with inmates at the prison as well as corresponding members of the outside community. Mr. Smith believes Ricky's motives are genuine and his purpose is to preach the Word to all who will listen. Mr. Smith has made this assessment in the context of being a minister for twenty years working in the prison system of the State of Missouri. Mr. Smith has witnessed the high degree of respect with which Ricky's peers afford him. This level of respect is truly

rare in the hostile environment of the correctional institutions in this state.

Should Governor Ashcroft see fit to commute Mr. Grubbs sentence to life without parole, counsel is confident that Ricky Grubbs will live out his life in prison peacefully and will not be a threat to other inmates or prison personnel.

VII. CONCLUSION

Ricky Grubbs' case is a testament to what is wrong with capital punishment in the State of Missouri and across this county. "The fundamental respect for humanity and the Eighth Amendment's prohibition against cruel and unusual punishment gives rise to a special need for reliability in the determination that death is the appropriate punishment in any capital case. Woodson v. North Carolina, 428 U.S. 280, 305, 96 S2. Ct. 2978, 2991, 49 L. Ed. 2d 944 (1976). Because no defense was put on for Mr. Grubbs in the guilt phase of his trial while there was overwhelming evidence to show diminished capacity, along with the fact that Mr. Grubbs testified in his first trial resulting in a hold out juror causing a mistrial, and the fact that while Mr. Grubbs wanted to testify in his second trial, his counsel refused to allow him to do so and he was found guilty of capital murder. Based upon the sentencing phase of the trial in which no true mitigating evidence was presented, while in fact there was overwhelming evidence of physical and mental abuse, borderline intellectual functioning as a child, alcohol abuse, psychosocial stressors and Mr. Grubbs participation in saving the life of a prosecuting attorney and none

of this information was presented to the jury, it seems most unfair that Mr. Grubbs now faces the ultimate penalty.

Counsel respectfully requests The Board of Probation and Parole to recommend a commutation of Ricky Grubbs' death sentence to life imprisonment and for Governor Ashcroft to follow the recommendation of the Probation and Parole Board and exercise his executive power pursuant to RSMo. Sections 217.800 and 552.070 and commute Ricky Grubbs' sentence of death to life without the possibility of parole for 50 years.

Respectfully submitted,

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ATTORNEY FOR RICKY LEE GRUBBS

CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of October, 1992, I deposited in the U.S. mail, postage prepaid at Kansas City, Missouri, a true and correct copy of the above and foregoing, addressed to:

Cedric D. Brown