

PETITION FOR EXECUTIVE COMMUTATION
OF A SENTENCE OF DEATH

Pursuant to Article V, § 12 of the Constitution of Virginia, Buddy Earl Justus, a prisoner awaiting execution in the Commonwealth of Virginia, hereby petitions the Honorable L. Douglas, Wilder, Governor of the Commonwealth, to commute his death sentence to one of life imprisonment.

Mr. Justus has been incarcerated continuously since his arrest for the instant offense on October 11, 1978. During his incarceration, he has conducted himself in a peaceful manner and has concentrated on his own growth. His conduct in prison demonstrates that he could serve a life sentence without posing a danger to prison personnel. In view of 1) the fact that he suffers from damage to the frontal lobe of his brain, an injury associated with behavior which is impulsive, violent, and reckless, 2) the devastating abuse to which he was subjected as a child, and 3) his adjustment since his incarceration, commutation of his sentence to life imprisonment is appropriate.

I. Organic Brain Damage to the Frontal Lobe

On December 7 and 8, 1990, Mr. Justus was given an intensive neuropsychological examination by Dr. James Wade, an Assistant Professor of Psychiatry and the Director of the Psychological Assessment Center at the Medical College of Virginia. The evaluation consisted of approximately 7 1/2 hours of testing, including the Halstead-Reitan Neuropsychological Battery, the Benton Controlled Oral Word Association Test, the Developmental

Test of Visual-Motor Integration, the Trail Making Test, the Aphasia Screening Examination, the Wechsler Memory Scale-Revised, the Wisconsin Card Sorting Test, the Minnesota Multiphasic Personality Inventory, and the Wechsler Adult Intelligence Scale-Revised.

Dr. Wade's testing revealed that Mr. Justus was born with developmental weaknesses in brain function. In addition, two closed head injuries at age twenty specifically caused damage to both the frontal and temporal lobe structures of the brain. Dr. Wade indicated that the frontal lobe damage is particularly important because the frontal lobe serves to inhibit aggressive behavior and allows the individual to understand the social impact of his behavior. He indicated that injuries to the frontal lobe are quite often associated with behavior which is impulsive, reckless, and violent. Frontal lobe damage, therefore, will result in difficulty in controlling anger and in unusual behavior. Dr. Wade indicated that Mr. Justus's lack of violent behavior before the age of 28¹ is consistent with the frontal lobe dysfunction from head injury in his early twenties. Dr. Wade stated that while Mr. Justus certainly has a personality disorder², the brain damage in his twenties contributed to "the

¹ Prior to the instant offense, Mr. Justus had been convicted of numerous traffic offenses, two counts of grand larceny, one count of petit larceny, and statutory burglary.

² Dr. Wade diagnosed Mr. Justus as suffering from anti-social personality, a diagnosis which is consistent with past evaluations from Southwestern State Hospital.

volume being turned up on the aggression," leading to the commission of the instant offense.

This evidence of organic brain damage is newly discovered evidence which has never been presented to any court. Dr. Wade's testing clearly shows that brain damage contributed significantly to Mr. Justus's inability to control aggressive behavior and thus was an important factor leading to the instant offense. Mr. Justus may simply have been unable to control his behavior not because of meanness or viciousness, but because of physical damage to his brain. This information constitutes "heretofore unknown evidence or circumstances favorable to Mr. Justus," and therefore constitutes grounds to commute his sentence to life imprisonment.

II. Background and Abuse

Mr. Justus was born on December 25, 1952, and was raised in the town of Grundy, Virginia. Both of his parents abused alcohol to excess, and from a very early age, Buddy was beaten savagely by his father. Because he was the oldest, he was the focus of his father's rage and physical attacks. Affidavits from family members, submitted with petitioner's state habeas corpus petition, detailed the brutality of his upbringing. Billy Justus, petitioner's brother, stated that from as early as he could remember, his father used to beat petitioner and the other children. He described his father as a "mean man with a quick

temper" who beat Buddy with his belt, with switches, with his hands, kicked him with steel-toed shoes, and once threw a fork at him. He described how his father used to tie Buddy to the bed and beat him with a belt, and he stated: "There didn't ever seem to be any reason for the beatings." He stated that Buddy "hated our father because of all the beatings for no reason. . . . Buddy just didn't want to be at home because of it." He also indicated, "My father never hugged me or Buddy or any of the kids. He never took us to the movies or did anything that I can remember to show that he cared for us."

Patricia Justus Cheney, petitioner's sister, stated that her father was drunk almost every night and that he would beat Buddy whenever he was drunk "for no reason, or for little things like spilling milk or taking food before we were supposed to." She stated that the children never knew what would make their father lose his temper, and that she remembered her father throwing a fork, and a tricycle at Buddy when he lost his temper. She stated: "My father was just extremely mean and cruel to Buddy and to all of us. . . . I don't ever remember him showing any kindness or telling Buddy or any of us that he loved us." Mary Walker, petitioner's sister stated: "I do remember that my father was very mean to Buddy and all the kids. He was drunk almost every night. He beat us regularly and for no reason. He was never nice to any of us."

Records from the time also document the extent of the abuse. These records also clearly state that the father "has beaten

Buddy unmercifully for the last few years." The records indicate that his mother reported that the father "is mistreating him quite heavily. She states this has been going on about 10 years and her husband's attitude is becoming worse all the time. She states when her husband comes in angry he takes it out on the whole family. She says when her husband and Buddy begin to fight that she tries to jump between them but she is afraid he would hurt her."

The abuse and neglect led to several traumatic home changes during Buddy's early years. In 1958-1959, when Buddy was six years old, his mother left the home to live with another man. Buddy and his siblings were placed in the Mountain Mission School, the local orphanage, where they remained until she returned home some eighteen months later. Even then, the neglectful parenting continued, and at the age of ten Buddy would reside with various people in the community and would beg for food.

On Christmas day, 1965, Buddy stole a pistol, a bicycle, and a truck, and he was removed from his home and committed to the State Department of Public Welfare on January 12, 1965. It is abundantly clear from the records that he intentionally committed the crime in order to be removed from the home:

The outstanding developmental characteristic of this boy is the family from which he comes. He has been mistreated continuously and does want to leave home at this time. The traumatic experiences which he has suffered has been beatings, mistreatment, mistrust, and completely dominated by his father and the boy at this time is rebelling against this type of treatment. . . . It is apparent to this worker at this time that this

boy will definitely have to leave his home if he is to develop normally in the future. . . . His teacher stated to worker that she feels like that he thinks that if he got into enough mischief that he would get out of this home and this is what he is attempting to do. (sic) Report, 3/30/65

The records further reveal:

It was extremely hard for the boy to tell the caseworker that his father abused him and he almost completely refused to discuss this in any detail. Buddy realized that his former behavior was wrong, but he insisted that most of his getting into trouble was done so that he would be removed from his home. . . . He was relieved to be away from his home and never showed signs of missing his parents. Report, 3/30/65.

When Buddy was informed that he would be going to a foster home, he was very accepting of the placement. "This is a little boy who has gotten into trouble specifically to get away from his home environment. He has been abused and neglected by his family and I feel was so determined to get away from home that he would go to any means to reach this end." Id.

A psychological evaluation conducted shortly after his removal from his home at age twelve corroborates this evaluation:

Judging from the feelings of ineptitude and ineffectiveness that pervade Buddy's tests (sic) results, particularly in his vaguely defined, deflated, and innocuous self image, this disfunctioning vividly reflects the effect that his emotionally, socially, and culturally destitute environment has had on his development. Reinforced by parental rejection and neglect including physical abuse, it is not surprising that he is an emotionally labile child who is angry at the world and completely defenseless to cope with threats from within and without.

Mr. Justus was placed in a foster home in the home of Mr. and Mrs. William Aldredge on March 22, 1965. He remained there until February 9, 1966, when he was transferred to the Hanover

School for Boys. He performed well at the Hanover School: "This youngster has progressed very favorably in our program, and this placement appears to have been of substantial benefit to him."

Letter, July 28, 1966 from James Lee Loyd. When he was ready for discharge, the professionals specifically recommended that he not be returned home, due to the poor home environment which resulted in his removal in the first place:

A destitute home environment has done much to leave this child with pronounced feelings of insecurity, feelings of damage and feelings of unmet dependency needs which have promoted anxiety and some hostility toward the environment. . . . Inasmuch as this youngster has suffered so much abuse from the parents, we are concerned about the feasibility of a return to the same. Buddy is understandably (sic) ambivalent concerning his feelings towards his parents. . . . We feel that a return home would only destroy what progress he has made and that a placement elsewhere is in order. Id.

Despite this recommendation, Buddy was returned home on October 4, 1966, rather than placed with his grandmother as suggested because of intense opposition from his mother to such a placement. See Letter from James M. Lambert, September 22, 1966.

After several disagreements with his parents, Buddy broke into a home and stole sixty cents in change. His social worker commented that "[h]e freely admitted breaking into the house and probably wanted to be recommitted to the State Department."

Letter, March 20, 1967, from James M. Lambert. He was recommitted to Hanover School for Boys on March 17, 1967.

Buddy once again adjusted satisfactorily at Hanover, and the school recommended his return home in view of that adjustment on November 27, 1967. School officials in Grundy refused to admit

him to school. His mother expressed reservations about taking him back, and his social worker in Grundy indicated that there was no treatment facility and no job available in Grundy. See Letter from James M. Lambert, December 13, 1967. Despite these reservations, he was returned home on December 20, 1967.

Buddy was returned home at the age of sixteen; he was not enrolled in school, and he received no assistance whatsoever adjusting to the community. He was on his own and reportedly began to drink regularly. He was subsequently recommitted to the State as beyond the control of his parents. See Letter from Larry Mason, November 8, 1968. Reports at that time once again detailed the devastating impact of the home environment: Buddy "doesn't want to stay home and even State care is preferable to being at home." Psychological Report, 2/10/69. Similarly, another psychological report stated: "In the future, he said he would like to get a job and stay with somebody besides my mommy and daddy. When Buddy said that, he was close to tears." Psychological Report, 11/27/68. Buddy was then placed at Beaumont Vocational School.

He seemed to adjust well at Beaumont until June of 1967 when plans were being made to return him to his parents' home. See Letter, May 13, 1969 from W. Terry Jones. Medical records from June 17, 1969, indicate that Buddy sought medical attention because he was "[w]orried over prospect of having to go home where he is not wanted. Depressed." Similarly, a July 2, 1969 counseling note states: "This boy has been referred because of

his depressed state and suicidal threat. Buddy will be up for placement in the near future, and his depressed state seems to be a reaction to leaving Beaumont. . . . Buddy is obviously antagonistic to the idea of going home."

Buddy was transferred to Woodrow Wilson Rehabilitation Center on July 2, 1969 for further vocational training. Reports indicate that he became unstable and disoriented and made two suicide attempts in two weeks. He was placed on medication and terminated from Woodrow Wilson on September 30, 1969.

Buddy enrolled in the Marine Corps when he was eighteen years old, and after two months he received a General Discharge Under Honorable Conditions on February 1, 1971. Upon his discharge, he returned to live with his foster parents, Mr. and Mrs. William Aldredge, in February, 1971. A romantic relationship developed between him and his former foster mother, and in the Spring of 1973 they moved to Florida to reside together, after which they were married in December of 1973.

The marital relationship was characterized by almost constant strife and turmoil. His wife frequently accused him of infidelity, and Buddy consumed alcohol to excess. There were frequent separations which were traumatic for him. During one such separation, he tried to commit suicide twice and indicated he would try again if his wife did not return to him.

Petitioner's mother was murdered in July, 1975. Buddy was unaware of the murder when he visited his sister, Pat, at the Mountain Mission school shortly thereafter. His sister indicates

that he discussed his recent conversion to Christianity. When informed of his mother's murder, "he became very upset, heartbroken. I can't explain it. You could see the pain in his face. He said he had to go to be with her, and left almost immediately." See Affidavit of Patricia Cheney.

In 1978 petitioner and his wife moved to Georgia, where the conflict and strife continued. In June of 1978, Buddy left for the last time, after an argument concerning infidelity and alcohol. He was drinking heavily and abusing drugs. He committed the instant crime shortly thereafter.

III. Mr. Justus's Adjustment Since His Incarceration

Since his incarceration, Mr. Justus has attempted to use his time constructively and to continue his personal growth. He has obtained his Graduate Equivalency Degree (G.E.D.), and he has taken college level correspondence courses in history and psychology. More importantly, however, Mr. Justus's acceptance of responsibility for his criminal acts and his acceptance of God in his life has changed his life in very concrete ways. Mr. Robert West, the director of Prison Christian Ministries, has seen Mr. Justus weekly for over six months, in both group and individual counselling sessions. Mr. West stated that Mr. Justus's true remorse and his faith have allowed him to face his impending execution with a profound sense of peace which is extraordinary. He also indicated that Mr. Justus has come to have a keen insight into his past behavior and has worked extremely hard to grow toward being a more peaceful person.

Dr. Gary Hawk, a psychologist at the Institute for Law and Psychiatry at the University of Virginia Law School who examined Mr. Justus on November 30, 1990, expressed similar sentiments. Dr. Hawk also remarked upon Mr. Justus's sense of remorse and indicated that Justus had asked him about the wisdom of making a videotape expressing that remorse to the decedent's family. Dr. Hawk indicated that Mr. Justus seems to have found peace and stated that he left the evaluation with a profound sense of sadness.

Along with this petition, as Exhibit 1, Mr. Justus submits an unedited videotaped interview which was aired on "Ken Wright and Friends," a Christian television station in Roanoke. This interview vividly depicts Mr. Justus's struggle and his growth.

Conclusion

Mr. Justus submits that his brain damage and his horrific childhood abuse are factors which contributed in a major way to the present crime. Since they are factors which are clearly beyond his control, and since he can live in prison without posing any additional threat to any person, he asks that his death sentence be commuted to one of life imprisonment.

Respectfully submitted,



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