
Case No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

DAMON L. CALDWELL,

Petitioner,

vs.

STANLEY PAYNE, Superintendent,
Eastern Reception, Diagnostic, and Correctional Center

Respondent.

On Petition For A Writ Of Certiorari
From The Supreme Court of Missouri

VOLUME II

APPENDIX IN SUPPORT OF PETITION
FOR A WRIT OF CERTIORARI

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COUNSEL FOR PETITIONER

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PETITION FOR A WRIT OF CERTIORARI**

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DOC Number: 164676
DOC Name: HARDY, JAMES, M

Cycle: 19880525

TOTAL VIOLATIONS HEARD: 40

Current Housing: SCCC 003-03B-00228-01T

Date	Tracking Number	Rule	Sec Rule	Violation Description
05/01/2012	JCCC12-01052	30.1		IN UNAUTHORIZED AREA
		30.2		IN AREA WHERE NOT ASSIGNED
		41.1		FAIL TO ABIDE BY ANY RULE
03/02/2009	JCCC09-00692	19.4	19.5	CONDUCT INTERFERES WITH OPERATIONS MAKE A LOUD NOISE
04/17/2008	JCCC08-01301	41.1		FAIL TO ABIDE BY ANY RULE
03/13/2008	JCCC08-00910	37.1		ILLICIT RELATIONSHIP WITH STAFF
11/01/2007	JCCC07-03642	18.1	20.1	FAIL TO ABIDE BY COUNT PROCEDURES FAIL TO COMPLY WITH AN ORDER
06/17/2003	MSP	24		CONTRABAND
08/23/2002	MSP	24		CONTRABAND
12/26/1999	PCC	24		CONTRABAND
12/21/1998	PCC	20		DISOBEDIING AN ORDER
07/13/1998	PCC	20		DISOBEDIING AN ORDER
04/09/1998	PCC	24		CONTRABAND
01/07/1998	PCC	24		CONTRABAND
11/29/1997	PCC	16		TATTOOING
04/17/1997	PCC	30		OUT OF BOUNDS
03/24/1997	PCC	20		DISOBEDIING AN ORDER
01/25/1997	PCC	20		DISOBEDIING AN ORDER
04/09/1996	PCC	11		POSS/USE OF INTOXICATING SUBST
03/21/1996	PCC	37		VIOLATION OF INSTITUTIONAL RUL
04/30/1995	PCC	16		TATTOOING
01/05/1995	PCC	16		TATTOOING
10/28/1994	PCC	20		DISOBEDIING AN ORDER
09/07/1994	PCC	16		TATTOOING
04/20/1994	PCC	21		INSULTING BEHAVIOR
03/17/1994	PCC	16		TATTOOING
01/03/1994	PCC	16		TATTOOING
12/15/1993	PCC	16		TATTOOING
10/26/1993	PCC	24		CONTRABAND
10/25/1993	PCC	24		CONTRABAND
09/01/1993	PCC	19		CREATING A DISTURBANCE
08/12/1993	PCC	19		CREATING A DISTURBANCE
11/24/1992	PCC	24		CONTRABAND
02/21/1992	PCC	20		DISOBEDIING AN ORDER

AKPCVL
Time - 9:21:01

Missouri Department of Corrections
INSTITUTIONAL VIOLATION SUMMARY
Offender Management Information System

Page - 2
Date - 06/14/2016

<u>Date</u>	<u>Tracking Number</u>	<u>Sec</u>	<u>Rule</u>	<u>Violation Description</u>
01/14/1992	PCC		37	VIOLATION OF INSTITUTIONAL RUL
05/29/1991	PCC		30	OUT OF BOUNDS
08/11/1990	MSP		30	OUT OF BOUNDS
06/18/1990	MSP		16	TATTOOING
04/30/1990	MSP		37	VIOLATION OF INSTITUTIONAL RUL
12/24/1989	MSP		20	DISOBEDIING AN ORDER
11/08/1989	MSP		37	VIOLATION OF INSTITUTIONAL RUL
06/18/1988	FRDC		02	ASSAULT

END OF REPORT FOR CYCLE: 19880525

DOC Name: HARDY, JAMES, M

DOC Number: 164676

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Certificates and Achievements

Substance Abuse	PCC	01/98
Anger Management	PCC	02/98
Stress Management	PCC	04/98
Substance Abuse	PCC	05/98
Criminal Thinking	PCC	09/98
Insight Meditation	PCC	11/98
Insight Meditation	PCC	01/00
Insight Meditation	PCC	05/00
ICVC	PCC	07/00
Certificate of Service	PCC	07/00
Insight Meditation	PCC	08/00
Meditation Retreat	PCC	12/00
Positive Mental Attitude	PCC	02/01
Restorative Justice	PCC	06/01
ICVC	MSP	02/02
Hospice	MSP	05/02
ITC	MSP	06/02
Criminality	MSP	07/02
Self Esteem	MSP	07/02
Anger Management	MSP	09/02
Alternatives to Violence	MSP	09/02
ICVC Facilitator Training	MSP	11/02
Vocational Training	MSP	12/02
Alternatives to Violence	MSP	12/02
ICVC Facilitator Training	MSP	02/03
ICVC Facilitating	MSP	03/03
ICVC Facilitating	MSP	06/03
Myths/Criminal Lifestyle	MSP	07/03
Governor's Award	MSP	07/03
Intensive Substance Abuse	MSP	10/03
Victims Service Award	MSP	04/04
Service Award/Can Crew	MSP	04/04
Victims' Memorial Award	MSP	08/04
Work Excellence	JCCC	10/04
ICVC Trainer	JCCC	02/05
Certificate/Acknowledgment	JCCC	02/05
ICTC	JCCC	09/05
ICTC Facilitator Training	JCCC	09/05
Work Excellence	JCCC	10/05
Work Excellence	JCCC	10/06
Hospice Training	JCCC	11/06
ICTC	JCCC	07/08
Grace For Living	JCCC	07/09
V.I.C. Training Seminar	JCCC	12/10
Restorative Justice Hours	JCCC	2000 to Present
Outstanding Performance Award	SCCC	08/16

James M. Hardy #164676
SOCOC
255 West Highway 32
Licking, MO 65542-9069

Matt Stewart, Chief of Police
Joplin Police Dept.
303 East 3rd
Joplin, MO 64801

May 23, 2016

Dear Chief Stewart;

My name is James Hardy, reg. No. 164676, and I am currently incarcerated for a crime committed in Jasper County in 1987.

Recent Supreme Court rulings and law changes in Missouri have caused me to become parole eligible. If I am granted a parole release it is my immediate intention to meet with the Sheriff of the community in which I reside. I would introduce myself, answer any questions of concern local law enforcement may have surrounding my residency and most importantly, find out how I can be of any service to law enforcement and the community.

I believe that working with the local police community can serve many purposes. I would lend whatever insight I could provide to help keep my neighborhood drug and crime free, serve in any capacity I was able to outreach to at-risk youth, and help with any community events/projects which needed my service.

By being beholden to local law enforcement I hope to place myself in a position of continued accountability, continuing to make amends through service.

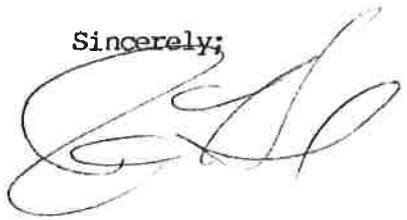
I am completely willing to submit to drug testing, or search of vehicle and home at any time, day or night. In short, it is my desire to surround myself with responsible citizens to whom I would be entirely answerable.

I have enclosed a list of the programs I have attended, the training I have received, as well as a printout of the Restorative Justice (community service) hours I have accumulated during the past 18 years. As you will notice, I have logged hundreds of hours facilitating both Impact of Crime on Victims Classes, and Impact of Criminal Thinking Classes. These courses, coupled with the other programs give me a wealth of knowledge and experience I would gladly share to help reach at-risk youth, and to reduce the incidence of crime where I was able.

If you would be interested in meeting/working with me upon my potential release, and could utilize my skill set to aid the local law enforcement community, please contact me and let me know.

Thank you so much for your time and consideration. I am at your service.

Sincerely;



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James M. Hardy #164676
SCCC
255 West Highway 32
Licking, MO 65542-9069

Randee Kaiser, Sheriff
Jasper County Police Dept.
231 South Main
Carthage, MO 64836

May 23, 2016

Dear Sheriff;

My name is James Hardy, reg. No. 164676, and I am currently incarcerated for a crime committed in Jasper County in 1987.

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If you would be interested in meeting/working with me upon my potential release, and could utilize my skill set to aid the local law enforcement community, please contact me and let me know.

Thank you so much for your time and consideration. I am at your service.

Sincerely;

James M. Hardy #164676
SCCC
255 West Highway 32
Licking, MO 65542-9069

Kenneth Copeland, Sheriff
Newton County Police Dept.
208 West Coler
Neosho, MO 64850

May 23, 2016

Dear Sheriff;

My name is James Hardy, reg. No. 164676, and I am currently incarcerated for a crime committed in Jasper County in 1987.

Recent Supreme Court rulings and law changes in Missouri have caused me to become parole eligible. If I am granted a parole release it is my immediate intention to meet with the Sheriff of the community in which I reside. I would introduce myself, answer any questions of concern local law enforcement may have surrounding my residency and most importantly, find out how I can be of any service to law enforcement and the community.

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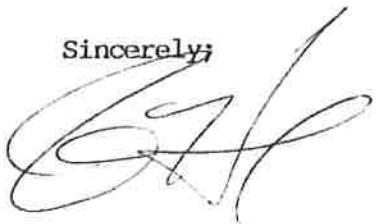
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If you would be interested in meeting/working with me upon my potential release, and could utilize my skill set to aid the local law enforcement community, please contact me and let me know.

Thank you so much for your time and consideration. I am at your service.

Sincerely;



A-54

Section 2

Letters of Support

August 18, 2016

My name is Nancy Hardy and my son, James M. Hardy, is currently serving a sentence of life without parole for a charge of First Degree Murder in 1987 when he was 17 years old. In 1988 we asked him to take the plea bargain of life without parole to avoid going to trial and taking the chance of getting the death penalty. This was a very difficult time of our life knowing that he had committed the crime and dealing with our teenage son going to prison for the rest of his life. At the time we were not aware of any other options except the death penalty or life without parole.

Since the time he has been in prison he has turned his life around and has contributed his knowledge and talents to better himself and help other people, both in the prison system and victim's families. He has matured into a responsible young man during his almost 30 years of being incarcerated instead of the immature 17 year old when he committed the crime.

When you review his file you will see the many accomplishments he has made. He has served on a victim's impact panel to help families of victims, worked in the prison hospital taking care of inmates with cancer, worked in several office positions and has many certificates of classes that he has completed. I feel he has had a very good productive life during this time in helping other people and to better himself.

I know without a doubt that if he were able to get out of prison he would lead a very meaningful and productive life. He would have the support of his father and myself, together with his brother and sisters and all of his other family and friends. We would most definitely welcome our son home and help him in any way possible. I feel he could help other kids if given the opportunity to understand the importance of doing good with your life instead of making bad decisions. He made one that cannot be taken away, but given the opportunity, he could have a better life for himself.

We pray every day that he will be able to come home. I ask that when you review his file you keep an open mind and see the accomplishments he has made to become a better person. We will support him and help him in whatever way we can when he is able to come home. He has the desire in his heart to be a good person and to work hard at everything in life.

It is hard for me to put everything into words of how I feel. I just know that I would love to have my son come home. Please take everything into consideration the good he has done while incarcerated, that he would be able to carry out if released from prison. He is smart, talented, funny, a hard worker, caring and compassionate and would contribute to daily living if he were to be granted parole.

With all of this said, I hope and pray that you find it in your hearts to grant him parole. If you have any questions, please do not hesitate to contact me.

Thank you,

Nancy Hardy (417-629-6298 or 417-781-6994

Nancy Hardy

June, 2016

To Whom It May Concern:

I am writing on behalf of my brother, James M. Hardy. I am his older sister and have watched Jimmy (that's what we call him) grow up. During his teenage years, especially his seventeenth year, he was rebellious, spending a lot of time out very late and doing drugs. He was not at all on a good path. He made some very bad choices and the WORST CHOICE he could ever make was to participate in taking the life of another. He was a just a kid....making bad choices that had the most devastating end. I will never understand how he could have done such a thing and I know in talking with Jimmy if there was ever anything he could undo, taking Steven's life would be undone! He regrets that day more than anything!

Unfortunately, what has happened cannot be undone. Knowing that bringing Steven back was impossible, Jimmy focused his life on helping others. He has spent his time in prison working tirelessly on ways to help rehabilitate people and I know one of his proudest accomplishments is the work he has done with the families of victims. He started a victim impact panel to help the families of victims. He did so much wonderfully positive work in this area. He has worked and worked on so many things to make a positive impact on others' lives. There is a very long list of positive things Jimmy has devoted his life in prison to. He did all of these things with the knowledge that he was serving a life in prison without parole sentence. This is a clear indication of his heart. He genuinely wants to better this world. I know if Jimmy were to be released from prison, he would continue to make a positive impact in this world.

I am sure that if you are reading this letter, that you also have access to the very long list of positive things that Jimmy has spent his time doing. He is a different person than the 17 year old boy that made the worst mistake of his life. He will do all he can do to work on helping others and changing the world in a positive way. I pray that you will carefully look at all the wonderful things that Jimmy has worked on and pursued in consideration of parole for him. If I can answer any questions or help in any way, please contact me.

Sincerely,

Paula Wolf
417-437-4800

May 13th, 2016

To whom it may concern

My name is Gabriela Kauling Bisol Eilon, born in Brazil and living in Orlando, Florida now with my husband Danny and daughter Sarah.

I first came to the United States in 1994 to be an exchange student in Joplin, Missouri at the Hardy's residence.

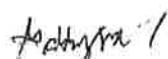
The Hardy family literally became my second family, with all their principles and treating me as I was one of their own, made me feel special. Jimmy, by the time I was there, was already gone so I didn't have the pleasure to meet him in person. At that time there was no internet and I felt lonely because it was very expensive to talk to my family and friends back home. That was when I started talking to Jimmy by phone. I will never forget that and at the same time I could not believe that such a nice guy was in prison... Jimmy helped me so much, we spend so many hours on the phone and back then my English was terrible (still need lots to learn) but he would always talk to me slowly and every single time he would share what he was going through and I would do the same thing. Jimmy became since than one of my best friends. It's been almost 22 years that I know him now, and our friendship grows everyday. Sometimes we don't talk for awhile, but the next time we talk it seems I just spoke to him. That is what friendship is in my opinion.

I was not living in Joplin when Jimmy got locked up but I know everyone one makes mistakes, specially teenagers, that think they are the king of the world and that they are always right. Lots and lots of years passed by and I truly believe my great friend/brother deserves a second chance. He paid for his actions already and now is the time that he can prove to the society how good of a person he is in his heart. I can say from my own experience when I had no one friends and he became my friend. With little behaviors like that he proves to me that he is a good person. I remember having no one to talk to, and I always could talk to him. From the bottom of my heart, I know people make mistakes, as I said earlier, but it's time for Jimmy to have a second chance and I know he is not just gonna be good but better than we all can expect.

I really appreciate you taking your time to read my letter, and if there is anything I can do to help Jimmy, please let me know. My number is (407) 668-1700 and email: gabbykb@gmail.com.

Sincerely,

Gabby Eilon



May 4, 2016

Re: Mr. James M. Hardy DOC ID #164676

To Whom It May Concern:

Please accept this letter of approbation for offender, Mr. James Hardy.

My name is Jane Schaeperkoetter. I have been a VIC for the last 10 years. I am a retired secondary math teacher and continue to teach in the all-volunteer GED program at the Jefferson City Correctional Center in Jefferson City, MO. I have served under two IAC supervisors – Mr. Marvin Cundiff (until 2011), and Mr. Daniel Krachey (presently). In addition to my duties in the regular general population GED classroom, I also was involved with the start-up and 3 ½-year maintenance of a PCU GED program. From December 2008 until May 2012 when this program was terminated, I worked as the sole teacher for this program along with the assistance of a PC tutor. Most of the PC students' work was done via in-cell assignment sheets. I personally met with these students and their tutor one day a week for review and testing purposes.

During this period of time, Mr. James Hardy had been hired as clerk to the IAC and was assigned to assist me with the week-to-week organization and implementation of this PCU GED program. I worked closely with him on a weekly basis for approximately 2 years. During this time his assigned duties were: preparing computerized weekly assignment sheets, continued updating of files on PC student progress and generally, any other classroom managerial assistance that I needed for this specific PC class. All of these jobs were in addition to his normal work load assigned to him by the IAC in charge. I was aware that he also assisted in the computer work necessary to meet the needs of the implementation of the regular GED program that fell under the auspices of the IAC office.

In another regard, I attended VIC training sessions that included inmate panel presentations, some in which James Hardy was a participant.

There are many things about Mr. Hardy and his competencies that I am pleased to address within this letter. Mr. Hardy was extremely proficient in his job as the IAC clerk. From week to week, I knew I could count on him to faithfully carry out his responsibilities to have needed computer work requisites to me in a timely fashion. He saved me hours and hours of work during the two years that he assisted me. Rarely, if ever, was there a mistake in the assignment sheets. His efforts helped keep that program running as it needed to be run. Many times he offered much-welcomed suggestions to me of how best to format various educational forms and files for the office. He was very organized and extremely competent in his work. His presence and work ethic was very much appreciated, not only by myself, but by everyone else working in the IAC office during that time. Besides his job performance, I must tell you that Mr. Hardy exhibited a very professional attitude when I worked with him. He had a positive and humorous personality and was always quite respectful with regard to his position in the education office. It was a loss to our department when he left the JCCC facility.

Of all the in-house VIC yearly training sessions, the most productive and effective ones were those that involved inmate presentations. I believe that I attended two of these during which Mr. Hardy had been a chosen participant. These sessions involved Q and A between the DOC's VIC's and the JCCC offenders with respect to any number of topics, most in regard to personal safety issues within the prison. These sessions always had an impact on me because I came to see prison life and my presence within those confines, from a completely different point of view. These participating chosen inmates gave us insights on how we were perceived and how we could best protect ourselves while we were volunteering in their world. In this capacity, Mr. Hardy gave very genuine and helpful advice to those VIC's in attendance. In both honest and sensitive ways, he made us see how best to work within our individual ministries and/or volunteer positions in a prison setting. As a member of this panel, he conveyed a very mature and insightful awareness that he could contribute something of value and expediency to those of us who needed to hear his attestations.

Please consider my words regarding Mr. James Hardy to bear witness to how I experienced his attitude, personality and work ethic during the two years that I knew and worked with him at JCCC. He seemed to me to be a model worker in our office and a real role model for his fellow inmates.

I am hopeful that your board will strongly consider my testimony to what I see as Mr. Hardy's rehabilitative growth in maturity, dependability and integrity. It seems to me that he has focused on becoming an honorable person in a less than favorable environment.

Thank you,

Mrs. Jane Schaeperkoetter

Mrs. Jane Schaeperkoetter
(JCCC VIC GED Teacher)
320 Nishodse Bluff
Jefferson City, MO 65101

Date 4/19/2015

To whom it may concern

Honorable members of the parole board.

My name is Daniel Eilon I am 37 years old I own an import/export company and I live in Orlando, Florida. First of all I want to thank you for the time you are dedicating to convict Jimmy Hardy's parole.

My relationship with Jimmy became through my wife Gabriela Eilon. She was an exchange student in the Hardy's family as a teenager. The Hardy family is an "A" grade family with values and respect, personally for me they are a role model that I respect and will follow to lead my family in their path.

The truth is that I'm not aware of the small details of the "event" that got Jimmy incarcerated as you have in front of you, but I believe that everybody deserve a second chance, we were all in the teen age at some point and as we know there are a lot of things that can easy influence/pursue a teen to not do the right things. What Jimmy have done has no excuse and the hurt he caused will never be overcome to the victim family but I believe that Jimmy is really truly a changed man and that he can do much more good in the outside than in the inside.

The Hardy family is well structured, I am sure they have all the needs to support Jimmy and lead him in the right path.

I have been in contact with Jimmy and I have learned that he is a really simple guy that follows his heart. I would be more than happy to assist in every way I can to anything that may lead to Jimmy's release. I would love to see his family smiling back again after all the suffer they have been through. My phone number is 407 557 6050 and my email address is danielon123@hotmail.com. Once again whatever your respectful decision may be I value your work that makes people like me feel safe and the time you dedicate for reading this letter.

Sincerely,

Daniel Eilon



A-61

Marvin A Singleton
Retired Rancher, Physician,
State Senator

PO Box 9268
Fayetteville, Arkansas
72703
479-445-6427
417-850-8882
DoctorSingleton@yahoo.com
SenatorSingleton@gmail.com



To Whom It May Concern:

I would like to submit this letter in support of the Petition by James Michael Hardy, a Missouri Inmate.

I have known the family and of the petitioner for 30 years. His parents are not only business associates but also personal friends. This was not only during the 13 years that I represented McDonald, Newton, Jasper, Barton and Dade counties in the Missouri Senate, but including before and after this period. I have nothing but the highest regard for the family and all of the children.

I am aware of the extensive and sincere rehabilitation of the petitioner including completion of many classes, participation in many group activities and assistance with other inmates. I believe he has shown compassion and giving while helping with the Hospice Service. He has developed his artistic outlet and helps others. I would not hesitate to recommend Compassion and Clemency for this young man and believe he would be an asset to his community and State having learned lessons so hard but committed to helping others.

Sincerely,

A handwritten signature in black ink, appearing to read "Marvin A. Singleton".

**Hon. Marvin A Singleton, M.D.
Former State Senator-MO32**

March 29, 2016

Florianópolis, Brazil 03\29\2016

To whom it may concern:

I hope these humble words can be usefull to those who have the power to decide about the future of Jim Hardy.

My name is Gilberto Kauling Bisol, I am an Orthodontist, 39 years old, married and father of 2 boys. I live in the southern part of Brazil. Unfortunately, I never had the chance to meet Jim personally. However, my sister, Gabriela Kauling Bisol Eilon, lived with the Hardy's as an exchange student, back in 1994. That's how I got to meet them very well.

During the entire period of time that my sister spent with the Hardy's family, which was about one full year, Jim's actions spoke for themselves. Gabriela always mentioned his phone calls and letters as an attempt to make her feel right at home, when she needed it the most. I believe these simple things show he is a man of good character, who is kind enough to worry about the others. I do know the Hardy's very well, and I don't believe Jim is any different from his family in that matter.

I'm fully aware he's made mistakes in the past, that is a fact. But I also understand Jim has already paid a high price for it. I think he deserves to have his life back. I think his family deserves to have him back, for they have also paid a high price for his debts. And I say that as a father.

I really appreciate the opportunity to give my opinion and the time spent to read this simple letter. It is very important to me to do anything whithin my reach to help Jim and the Hardy's family. If it becomes necessary, for any reason whatsoever, to get in touch with me for additional information, please do it so by accessing my e-mail adress, as it follows:

Sincerely,



Dr. Gilberto Kauling Bisol

March 23, 2016

To Whom it May Concern:

I am writing on behalf of my brother, James M. Hardy (Jimmy). I know that Jimmy committed a heinous crime. I know that a 17 year old child committed that crime. Jimmy was on drugs and making bad choices. And like most teenagers, he thought he knew best. If whomever is reading this has ever had a teenager, you understand clearly how a teenager can be. It is a hard thing to get them to adult hood and pray they have learned enough to get by.

I want to tell you this. Jimmy is not the 17 year old child that entered prison. Jimmy has grown into a wonderful man. Jimmy did not choose to continue to live the same way. Instead, he rose above all of the bad. He started a victim impact panel to help families of victims. He served the prison and families in this way for years. Jimmy had jobs in office settings so that he could try to better himself and help others. Jimmy tutored other prisoners to help them get their GED. Jimmy has contributed beautiful artwork to the prison.

I feel certain, beyond doubt, that if Jimmy is released from prison today, he would become a successful tax paying citizen. Jimmy has a large family that would most certainly welcome him to live with any of them as he built a life and saved the money to buy a home or rent an apartment. He would have support both monetarily but most importantly – emotionally.

You see, a 17 year old child did a horrible thing that cannot be undone. But a 46 year old, James M. Hardy, has worked for nearly 30 years to try and rebuild himself into something and someone good. Jimmy takes great pride in his accomplishments, as he should. And I think it is worth noting that Jimmy did all of those things to become better and help others. At the time of him doing all of his charitable work, the chance of parole was not an option. He wasn't doing charitable work to get something in return. Jimmy was doing it to become better and help others.

I cannot imagine the weight of the decision a parole board has. And while I have known Jimmy my entire life, you do not know him at all. You see a murderer. And I understand that. And that 17 year old child did in fact commit a murder that he cannot undo. But Jimmy – a 46 year old man, is not a murderer. He is a hard worker. He is smart. He has support. He is not a criminal. He is a brother and a son. He is a father and a grandfather.

I feel certain that James M. Hardy would come home and work hard and be an upstanding citizen. It is so hard to put into words what I already know. I feel so much needs said. I feel responsible for my words to help your decision. And I don't know if I have the words to show you my certainty.

I can tell you that I readily invite you to spend time with me or my family; to listen to stories of Jimmy. To see the support system he has.

Please contact me if I can be of any help or answer questions.

Lisa Chapman
417-850-7107

A-65

To Whom It May Concern,

I had the privilege of working with James Hardy for two years starting in 2010 until May 2012. He was the clerk for the Constitutional Activities Coordinator and I was the secretary for that office. James had many duties as the clerk and he did an excellent job. He even came up with new ways of performing those duties which were more efficient. Another outstanding job he did for our office was facilitate our volunteer training. He provided our volunteers with knowledge on how to interact with offenders and possible scenarios that could happen.

There is no doubt in my mind that he should be released and made a contributing member of our society.

James was a total asset to our office and I know that he will have no problem adjusting and becoming a positive influence for those around him. All you need is to talk to him and spend time around him to know this to be true.

Thank you for your time,
Jennifer Hopkins

Jefferson City Correctional Center
Complex One

April 28, 2011

To: James Hardy #164676

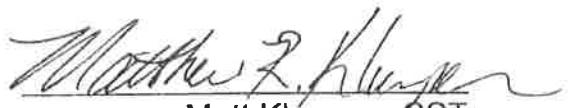
From: Matthew Klumper, CST
Re: Letter of Appreciation

Dear Mr. Hardy;

I'm taking this opportunity to thank you for your exemplary service during the recent Incentive Meal Food Project, of February 2011. Your attention to detail, the sacrifice of your time and your ability to turn a chaotic situation into an ordered, workable event did not go unnoticed.

Your work is appreciated; and, again, thank you for your spirit of teamwork, altruism, and for your professional attitude.

Sincerely,



Matt Klumper, CST



A-67



Restorative Justice Office
JCCC
Memorandum
October 5, 2007

To: Whom It May Concern:

Tanya Kempker
From: Tanya Kempker JJC

RE: James Hardy #164676

James Hardy has been involved with Restorative Justice since its inception in Mo. Doc., and at JCCC since 3/4/02. He has accumulated 2543 hours of reparative activities.



Restorative Justice Office
Page Nichols, PLPC, IRJC
June 22, 2005

To Whom It May Concern:

I am writing this letter to serve as a witness of character for one James Hardy #164676 in regards to his request for a reduction of sentence. I hold the position of Restorative Justice Coordinator at the Jefferson City Correctional Center and have had the opportunity to work with Mr. Hardy. I have a provisional license with the state of Missouri as I am working toward being a Licensed Professional Counselor and have spoke with Mr. Hardy on a therapeutic level several times. I feel confident that I can serve as a reference for James Hardy in the realm of work ethic as well as rehabilitation.

James and I have spoke of several occasions about the devastation he caused for many people in making the decision to take a life. James is aware of the irreversible damage he caused for the victim, victims family, himself, and his own family. He is remorseful and has taken many steps toward doing what he can to give back to the people and the community he has taken so much from.

James is aware that it is impossible to reverse the act of murder however; he has been working diligently since 1998 to ensure that he takes no more victims and has begun serving as a teacher and role model to other offenders. James has completed several programs including the Intensive Therapeutic Community, Impact of Crime on Victims Class, Restorative Justice reparative activities, Anger Management, Alternatives to Violence, Substance Abuse education classes, and Criminal Thinking. Mr. Hardy currently serves as an Inmate Facilitator for Restorative Justice and served as an Inmate Facilitator for the Intensive Substance Abuse Education class. James has been on the committee for the Special Olympics, Restorative Justice Committee, and is a Housing Unit Offender Representative to coordinate peaceful interventions between staff and offenders. Most impressively James Hardy served as a pioneer in implementing the first Victims Panel in Potosi Correctional Center to give victims a voice.

I have the opportunity to work along side James on a daily basis. Mr. Hardy has an excellent work ethic and has a passion for helping others. I have never witnessed James to have part in any negative activities in the work place or on the yard of the prison. This is impressive to me due to the fact that James has been raised in prison and by all rights should show signs of mental anguish and symptoms of being institutionalized. From a therapeutic level James Hardy has defeated the odds and I have no doubt that if awarded the opportunity to return to society he will be an asset to any community. James should be given the opportunity to serve as an example of the successfulness of Missouri Department of Corrections ability to rehabilitate.

A-69

As a counselor I follow standards set by the American Psychological Association and take much pride in the values I am held to. I do not often offer letters of character, as my standards are hard for most offenders to meet however; in the case of James Hardy I feel confident in my approbation.

If I may be of any further assistance in this situation or serve as a verbal witness please feel free to contact me at (573) 751-3224 ext. 1154.

Sincerely,

A handwritten signature in black ink, appearing to read "Page Nichols PLPC, IRJC".

Page Nichols, PLPC, IRJC

**Marvin A. Singleton, M.D.
1637 W. Swain Road
Stockton, CA 95207**

June 12, 2005

**Matt Blunt, Governor
State Capitol
Jefferson City, MO 65102**

Dear Governor Blunt,

I would like to convey my support for an Executive Clemency for inmate James Michael Hardy. I understand that he has submitted a request for a commute from life without the possibility of parole to life.

I have known this inmate's parents since moving to Joplin both professionally and personally. The entire family is solid individuals. A teenager's momentary poor judgment has had a tremendous toil on everyone. I believe compassion is warranted at this time. I have supported his request for clemency since representing five counties in Southwest Missouri in the Missouri Senate. I am familiar with the case, trial, as they occurred in the counties I represented for over twelve years.

Thanking you in advance for your consideration,

With warmest personal regards,

Marvin Singleton

let me know if I can do anything more.

M

A-71



Citizen's Advisory Board of Greater Kansas City
Providing a Direct Link between Community and Missouri Probation and Parole

August 3, 2004

Mr. James Hardy
Missouri State Penitentiary
Jefferson City, Missouri

Dear Mr. Hardy:

Enclosed is a picture of the poster you drew for us, after it was matted and framed. The picture does not do justice to how wonderful it really looks, and we are very grateful to you for your work.

It has been placed in the reception area of the Probation and Parole office located at 1330 Brush Creek in Kansas City. Visitors, clients and staff appreciate it, and the message it imparts has great impact on everyone.

We cannot thank you enough for helping on this project. The response has been great, and you can very well feel proud of your role in getting the important message of "No More Victims" shared.

Very truly yours,

A handwritten signature in black ink, appearing to read "Bridgette Brooks".

Bridgette Brooks
President, Citizens' Advisory Board-
Probation and Parole, Greater Kansas City area

Marvin Singleton, M.D.
1637 W. Swain Road
Stockton, CA 95307

209-951-7273

February 23, 2004

Denis Agniel, Chair
Board of Probation and Parole
1511 Christy
Jefferson City, MO 65101

Dear Mr. Agniel,

I would like to ask that you and the Board consider a sentence of James Michael Hardy, #164676, and a resident in the Jefferson City Institution.

The crime, which he committed, certainly cannot be defended, however since 1987, I understand that he has become a model inmate. Going from a 17 year old to a 33 year old young man. I have personally known his family on a personal and professional level. They are very solid, moral citizens with a real tragedy that can never be changed. I believe his record for the most part shows a true effort to become a moral, educated, employable young man. At this point I cannot justify a Life without Parole sentence. I would support an effort to see that this conviction be given dispensation by the Governor to Life. I believe this would serve the crime, the individuals involved and society in general in a good light. Compassion with penalties.

Thanking you in advance for your considerations in this regard.

Sincerely,



Marvin A. Singleton, M.D.

Cc. Gary B. Kempker, Director
MO Department of Corrections
P.O. Box 236
Jefferson City, MO 65102

February 2, 2004

Re: James Hardy 164676

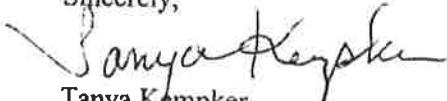
To Whom It May Concern:

I have had the opportunity to work with and get to know Mr. Hardy because of his involvement with restorative justice. Mr. Hardy works in the restorative justice office and is a facilitator for the, "Impact of Crime On Victims" classes. Mr. Hardy is clearly remorseful for his crime and is dedicated to never taking another victim.

Mr. Hardy is a very intelligent, creative and compassionate man who has grown up in prison. He was one of the first offenders in the Department of Corrections to become involved with the victim panels at the Potosi Correctional Center. He has remained committed to the practices and principals of restorative justice since his transfer to the Missouri State Penitentiary. Mr. Hardy is a role model for other offenders and an inspiration to the victims. It is not easy for an offender to live by the principles of restorative justice in prison but Mr. Hardy does so because he believes it is a small price to pay for the crime he committed.

I was a police officer for 4 years and have worked in corrections for the past 15 years. I have only written a letter of recommendation one other time for an offender although it has been requested of me many times. Mr. Hardy did not request this letter. I volunteered because I believe he is a person who has changed. I am so confident of this that I would be comfortable with him as a neighbor. I am convinced that he would never be a danger to society again and would be a productive and law abiding citizen.

Sincerely,



Tanya Kempker

Restorative Justice Coordinator - MSP

Section 3

Certificates of Achievement
Restorative Justice and Reparative Activities

MISSOURI STATE PENITENTIARY
GENERAL POPULATION
SUBSTANCE ABUSE EDUCATION PROGRAM

AUGUST 5, 2003

TO: James Hardy
Lisa J. Hayes, SAC III

RE: SOBER SUMMER GAMES

I just wanted to take this time to let you know how much the Substance Abuse Advisory Council appreciated the time you gave to helping us have another successfull Sober Summer Games Tournament. You volunteered your time to help officiate the games that provided fun and comradery to hundreds of offenders and for that, we are truly grateful.

Your continued support to our Organization and dedication to Recovery and it's goals do not go unnoticed. We just wanted to let you know that we are thankful for your help. I hope we can look for your continued support in October when we have our Red Ribbon Week Games.

cc:
Class. file

Thank you so much
for all your hard work
during the games - you helped
make it a success -
LJH

A-76



Intensive Therapeutic Community

Jefferson City Correctional Center, P.O. Box 900
Jefferson City, MO 65102

August 27, 2002

Successful Discharge

To Whom It May Concern:

This letter is to confirm that Inmate Hardy, James #164676 completed the Jefferson City Correctional Center one (1) year *Intensive Therapeutic Community* drug intervention program on May 24, 2002.

During the first six (6) months of this treatment Mr. Hardy criminality and addiction were intensely addressed with a series of classes, groups, one-on-one counseling sessions and peer confrontation. The second six (6) months were in the *ITC Winner's Circle Aftercare Unit*, where a continuum of classes based on relapse prevention were provided along with groups, one-on-one counseling and peer confrontation were conducted to further strengthen client's ability to maintain abstinence, cultivate coping skills, and re-frain from criminal thinking behaviors.

In addition, Mr. Hardy participated in Self-Esteem, Anger Management and Advanced Criminality and significant progress has been made in addressing these issues. Mr. Hardy was more than willing to serve the community in whatever capacity was asked of him.

Mr. Hardy responded well to the treatment methods utilized by staff and the I.T.C. Program. Mr. Hardy made the decision to remain living in the *Winner's Circle Aftercare Community* upon his graduation to serve as an "elder" by consistently role modeling proper behavior and recovery principles for the new comers. If Mr. Hardy continues to consistently role model pro-social behavior and recovery principles this will enable him to live a responsible drug free and crime free life style.

If additional information is needed regarding this resident, please feel free to contact me at 573-751-3224 ext. 162

Sincerely,

James Kimbro, CSACII

BOB HOLDEN
Governor

GARY B. KEMPKER
Director



2729 Plaza Drive
P.O. Box 236
Jefferson City, Missouri 65102
Telephone: 573-751-2389
Fax: 573-751-4099
TDD Available

State of Missouri
DEPARTMENT OF CORRECTIONS
Ad Excelleum Conamur - "We Strive Towards Excellence"

January 29, 2002

Mr. James Hardy #164676
16-ITC-DO1P3-002
Jefferson City Correctional Center
P.O. Box 597
Jefferson City, Mo. 65102

Dear Mr. Hardy:

On January 24, 2002, I sent the Mother of your victim a letter informing her of your letter of apology. On January 28, 2002, I received a request from Mrs. Horn to forward your letter to her.

Your letter of apology has been sent to Mrs. Horn and a copy placed in the Probation and Parole file.

If I may be of further assistance to you kindly contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Crockett".

Kay Crockett
Victim Service Coordinator

Cc: File

An Equal Opportunity Employer

A-78

August 14, 2001

Dear Uncle Gary:

Sorry it has taken my so long to respond to your letter. I wanted to ask some members of POMC about first time offenders getting the flat 20 years. Unfortunately, I'm not alone in my opinion that anyone who commits murder whether it's the first time or the tenth time, they should get life without. The reasoning and justification behind this is that that this offender took someone's life and they are gone *forever*. It's so final. Once their life has been taken, you should have to give up yours for taking theirs. At least their families can visit them in jail. We have to go the cemetery to visit Denny and she doesn't even have a head stone.

I'm adamant about the way I feel on the subject. But, when I meet some of these guys at the prisons that I know are truly and sincerely remorseful, I feel so sad for them because I know if they could do it over again, the outcome would be very different. Some of them would readily give their life to bring back their victim. Unfortunately, that is not possible. One of the guys that I truly believe is remorseful from Potosi is James Hardy. Do you know him?

I am devastated by Denny's death and miss her terribly. I cannot imagine how I would feel if this happened to my child. I can only imagine that I would want the person dead and to die a brutal and painful death, which is what I wish for Larry.

I see what this has done to my mom and dad. I've never seen my dad or mom cry until this happened. When I look into their eyes, I see and feel PAIN. I never knew the pain of a heart ache was the worst pain in the world. Many people want to know why we're not all right. It's already been 4 years. Aren't we over it yet? Just because we don't wear a bandage over our heart, we're suppose to be o.k. But no one can truly see the pain of a broken heart. But we feel it every day.

I am sorry I didn't give you any good news. I wish I were able to feel differently, but I'm not. I feel like a hypocrite sometimes because I feel that you don't belong in prison for the rest of your life. I know what you're in there for but I also know that you're a good person.

Well, we're going on vacation to the Tennessee Smoky Mountains on August 18th. I have so many things to do to get ready so I better let you go for now.

Please keep in touch. I'm sending a picture of my girls. The big one is Zoe' and the little one is Paige. They are the apple of my eye.

Love,
Sue
Sue

Department of Corrections
Potosi Correctional Center

* * STAFF-TO-OPFINDER CORRESPONDENCE * *

DATE: May 31, 2001

TO: James Hardy #164676 HU: 5-A-38
Darry Taylor #508227 HU: JCCC 5-A-333
Tracy Jones #512932 HU: 5-B-28
Patrick Ford #508975 HU: 6-A-04
Randall Knese #990139 HU: 5-A-26
David Ware #165270 HU: 5-B-20
Ronald Clements #179852 HU: 5-B-12

FROM: *C. Carl*
for Pat Smith, Supt. I
SUBJECT: LETTER FROM VICTIM PANEL MEMBER

Mata, from Parents of Murdered Children, asked that the enclosed letter be shared with you.

PS/cmc

c: File

Enclosure

Dear Friends,

Isn't it strange I feel in my heart I can call all of you my friends. My heart is overwhelmed with so many different emotions. Saturday night I could not sleep, all of your faces bombarded me over and over. I can't begin to explain what took place, but I am glad it happened. As I stood in that room and looked into all of your faces, I saw the pain and sorrow that has brought us together. You all have touched my heart, and the sorrow I feel is for the instant you made that terrible decision that brought you to where you are today. I cannot forgive you, ^{But} I know in my heart you are sorry for what you have done. I also want to tell you how courageous you all were to wear our "Victims Rights" ribbons. We are supposed to be on opposite sides, but it hasn't turned out that way. You all will remain in my heart forever and in my prayers also. The program must be working, or we all wouldn't feel the way we do.

Mata
Parents of Murdered Children

APRIL 22-28 2001

**NATIONAL
CRIME
VICTIMS'
RIGHTS
WEEK**

REACH FOR THE STARS

DATE: April 18, 2001

TO: THOSE INDICATED

FROM: *Brenda K. Ross* BREND A. K. ROSS, LITIGATIONS COORDINATOR
SUBJECT: VICTIMS' RIGHTS WEEK RIBBONS

Ms. Mata Weber, President of the St. Louis Chapter of Parents of Murdered Children, has arranged for a small number of Victims' Rights Ribbons to be sent to PCC. I would like to offer them to you on a first come, first served basis. Those who attended the follow-up session on March 24, 2001, will receive first consideration:

Mark Still, 515072	Tracy Jones, #512932
Christopher Santillan, #535405	Michael Lester, #1005060
Patrick Ford, #508975	Jerry Tracy, #511819
Ronald Clements, #179852	Allen Price, #29222
James Hardy, #164676	Ricky Kidd, #528343
Michael Silas, #186769	

Please let me know ASAP if you want one to wear during the week of April 22-28.

Anyone else who has completed the ICVC program and would like a ribbon acknowledging Victims' Rights Week, please contact me, and I'll send them out until we run out.

Mark Ball, #167655	Jason Carr, #48871	Larry Emerson, #40466
Donald Jones, #990110	Randall Knese, #990139	Keith Linhardt, #260672
Julius Nickerson, #171713	Clifton Powell, #163798	Richard Roe, #177524
McKinley Robinson, #34076	Christopher Simmons, #990111	
Darry Taylor, #508227	Ronnie Walker, #45051	David Ware, #165270
Danny Wolfe, #32078	Anthony Wooten, #516568	

Pat Smith, FYI

POTOSI CORRECTIONAL CENTER
STAFF TO OFFENDER CORRESPONDENCE

DATE : April 13, 2001

TO : THOSE INDICATED

Brenda K. Ross
FROM : BRENDA K. (GIBSON) ROSS, LITIGATIONS COORDINATOR

SUBJECT : ICVC FOLLOW UP SESSION

I've been out of the office for awhile, but I wanted to follow up with everyone involved in the session on March 24, 2001. I got some information from each of you prior to the session, but I'd like to find out what your reactions were after the fact. On a personal note, I'd like to offer my congratulations to each of you on how well you handled yourselves.

So, if you would, please take a couple of moments to complete the attached evaluation. And please feel free to be open and honest; if there's something we need to know about the program, please tell us.

Department of Corrections
Potosi Correctional Center

* * STAFF-TO-OFFENDER CORRESPONDENCE * *

DATE: March 7, 2001

TO: James Hardy #164676 HU: 5A-35
Darry Taylor #508227 HU: 6A-42

FROM: 
Pat Smith, Asst. Supt. I

SUBJECT: ICVC Visitors

I would like to thank you for your willingness to meet with the staff from Marion, Illinois, on 3/3/01 to discuss the ICVC program and the Impact Panel. Your attitudes and honesty were appreciated and they reflected positively on the program and PCC.

PS/cmc

c: Brenda K. Gibson, ICVC Coordinator (for file)
File

Department of Corrections
Potosi Correctional Center

* * STAFF-TO-OFFENDER CORRESPONDENCE * *

DATE: March 1, 2001

TO: James Hardy #164676 HU: 5-A-38
Darry Taylor ##508227 HU: 6-A-42

FROM: *For/Charles R. Dwyer*
Pat Smith, Asst. Supt. I

SUBJECT: Meeting on Saturday 3/3/01

Please be advised that you are requested to report to the Education Building on Saturday, March 3, 2001, at 12:00 noon to meet with visitors from an Illinois Federal Prison prior to the ICVC Victim's Panel.

/cmc

c: Brenda K. Gibson, ICVC Coordinator
Brenda D. Gibson, ICVC Facilitator
Jim Reed, ICVC Facilitator
Ian Wallace, ICVC Facilitator
Housing Unit 5 Control Bubble Staff - 2nd shift
Housing Unit 6 Control Bubble Staff - 2nd shift
Education Officer's Desk
Shift Commander
File

Department of Corrections
Potosi Correctional Center

* M E M O R A N D U M *

DATE: August 14, 2000

TO: JAMES HARDY, #164676 5A-38
DARRY TAYLOR, #508227 6A-07
DAVID WARE, #165270 5B-20
DANNY WOLFE, #32078 5B-08

FROM: BRENDAL K. GIBSON, LITIGATIONS COORDINATOR

SUBJECT: LETTER OF APPRECIATION

I just wanted to take a minute to say thank you for your assistance on Saturday. The two ladies who toured the institution and spoke with the four of you have indicated that they do want to participate in the Impact of Crime on Victim Classes. I believe that their decisions were, in a large part, directly due to their conversations with you.

I would also like to share with you a statement that Mr. Phillips made on his way out. He told me that he believed that the opportunity to meet with offenders prior to becoming involved with the program was of the utmost importance. He went on to say that it would be good for offenders to meet with some pre-selected and negative people to see what offenders would be like. At the end of the meeting, Mr. Phillips said that he had no more notifications to give.

So, again, thank you. I think that we are steadily moving towards what we all want the program to be, with a good base of guest speakers and facilitators, and a great deal of interest from the offenders. Your contributions have been invaluable in getting the program off the ground, both in recruiting offenders, and guest speakers.

CJ Offender Files
Pat Smith

A-86

OC ID: 191078 Cycle: 19930305
OC Name: COLLIER, JOHNATHAN L 40-259

Institution/Housing Unit SCCC/004

Minimum Mandatory Release Date N/A

RECEIVED

JAN 30 2017

SCCC Parole Office

RELATING TO RELEASE CONSIDERATION

- 1. You have been scheduled for a parole hearing .
- 2. At your request, your case has been closed to further parole consideration.
- 3. You have been given parole consideration in a parole hearing 12/19/2016. You will be scheduled for a reconsideration hearing 12/00/2021.
- 4. You have been scheduled for release from confinement on .

Actual release depends upon continued record of good conduct and an acceptable release plan. The release decision is:

Guideline Below Guideline Above Guideline

Special Conditions of release are:

Strategy Stipulation Date:

- 5. Your previously set release date has been cancelled.
- 6. Your conditional release date has been extended to .
- 7. The Board has reviewed your appeal. It is the decision of the Board to your appeal.
- 8. You have been scheduled for a Conditional Release Extension hearing on .

Reasons for the action taken are:

THIS DECISION IS NOT SUBJECT TO APPEAL.

Please at this time would depreciate the seriousness of the present offense
sed on:

- A) Circumstances surrounding the present offense.
- B) Community opposition.

ere does not appear to be a reasonable probability at this time that the
fender would live and remain at liberty without again violating the law
sed on:

- A) Poor institutional adjustment.

EXHIBIT

4

KU032A-OPN
ime - 14:01:59

Missouri Department of Corrections
BOARD OF PROBATION AND PAROLE

Page - 2
Date - 1/27/17

DC ID: 191078 Cycle: 19930305
DC Name: COLLIER, JOHNATHAN L

If you have any questions regarding this decision, please contact your Institutional Parole Officer.

'G _____ /RMP (Date Created: 01/24/17)

DOC ID: 191128 Cycle: 19930308
DOC Name: MINKS, JASON E

Institution/Housing Unit ERDCC/001 *70*

Minimum Mandatory Release Date N/A

RELATING TO RELEASE CONSIDERATION

- 1. You have been scheduled for a parole hearing .
- 2. At your request, your case has been closed to further parole consideration.
- 3. You have been given parole consideration in a parole hearing 01/24/2017. You will be scheduled for a reconsideration hearing 01/00/2022.
- 4. You have been scheduled for release from confinement on .

Actual release depends upon continued record of good conduct and an acceptable release plan. The release decision is:

Guideline Below Guideline Above Guideline

Special Conditions of release are:

Strategy Stipulation Date:

- 5. Your previously set release date has been cancelled.
- 6. Your conditional release date has been extended to .
- 7. The Board has reviewed your appeal. It is the decision of the Board to your appeal.
- 8. You have been scheduled for a Conditional Release Extension hearing on .

The reasons for the action taken are:

*THIS DECISION IS NOT SUBJECT TO APPEAL.

Release at this time would depreciate the seriousness of the present offense based on:

- A. Circumstances surrounding the present offense.
- B. Use of a weapon.

RECEIVED	
FEB 10 2017	
MISSOURI DEPARTMENT OF CORRECTIONS BOARD OF PROBATION & PAROLE	

DOC ID: 177760 Cycle: 19910116
DOC Name: WEDLOW, TINO R

Institution/Housing Unit CRCC/004

Minimum Mandatory Release Date N/A

INMATE COPY

RELATING TO RELEASE CONSIDERATION

- 1. You have been scheduled for a parole hearing .
- 2. At your request, your case has been closed to further parole consideration.
- 3. You have been given parole consideration in a parole hearing 02/07/2017. You will be scheduled for a reconsideration hearing 02/00/2022.
- 4. You have been scheduled for release from confinement on .

Actual release depends upon continued record of good conduct and an acceptable release plan. The release decision is:

Guideline Below Guideline Above Guideline

Special Conditions of release are:

Strategy Stipulation Date:

- 5. Your previously set release date has been cancelled.
- 6. Your conditional release date has been extended to .
- 7. The Board has reviewed your appeal. It is the decision of the Board to your appeal.
- 8. You have been scheduled for a Conditional Release Extension hearing on .

The reasons for the action taken are:

**THIS DECISION IS NOT SUBJECT TO APPEAL.

Release at this time would depreciate the seriousness of the present offense based on:

A. Circumstances surrounding the present offense.

There does not appear to be a reasonable probability at this time that the offender would live and remain at liberty without again violating the law based on:

A. Poor institutional adjustment.

DOC ID: 169637 Cycle: 19890626
DOC Name: MCELROY, RALPH

Institution/Housing Unit ERDCC/003 C 201

RECEIVED
1/23/17

Minimum Mandatory Release Date N/A

RELATING TO RELEASE CONSIDERATION

- 1. You have been scheduled for a parole hearing .
- 2. At your request, your case has been closed to further parole consideration.
- 3. You have been given parole consideration in a parole hearing 12/13/2016. You will be scheduled for a reconsideration hearing 12/00/2021.
- 4. You have been scheduled for release from confinement on .

Actual release depends upon continued record of good conduct and an acceptable release plan. The release decision is:

Guideline Below Guideline Above Guideline

Special Conditions of release are:

Strategy Stipulation Date:

- 5. Your previously set release date has been cancelled.
- 6. Your conditional release date has been extended to .
- 7. The Board has reviewed your appeal. It is the decision of the Board to your appeal.
- 8. You have been scheduled for a Conditional Release Extension hearing on .

The reasons for the action taken are:

*THIS DECISION IS NOT SUBJECT TO APPEAL.

Release at this time would depreciate the seriousness of the present offense based on:

A. Circumstances surrounding the present offense.

There does not appear to be a reasonable probability at this time that you would live and remain at liberty without again violating the law based on:

A. Poor institutional adjustment.

RECEIVED

JAN 24 2017

A-91

Time - 8:38:48

BOARD OF PROBATION AND PAROLE

Date - 1/23/17

DOC ID: 169637 Cycle: 19890626
DOC Name: MCELROY, RALPH

Institution/Housing Unit ERDCC/003 C 201

RECEIVED 1/23/17

Minimum Mandatory Release Date N/A

RELATING TO RELEASE CONSIDERATION

- 1. You have been scheduled for a parole hearing .
- 2. At your request, your case has been closed to further parole consideration.
- 3. You have been given parole consideration in a parole hearing 12/13/2016. You will be scheduled for a reconsideration hearing 12/00/2021.
- 4. You have been scheduled for release from confinement on .

Actual release depends upon continued record of good conduct and an acceptable release plan. The release decision is:

Guideline Below Guideline Above Guideline

Special Conditions of release are:

Strategy Stipulation Date:

- 5. Your previously set release date has been cancelled.
- 6. Your conditional release date has been extended to .
- 7. The Board has reviewed your appeal. It is the decision of the Board to your appeal.
- 8. You have been scheduled for a Conditional Release Extension hearing on .

he reasons for the action taken are:

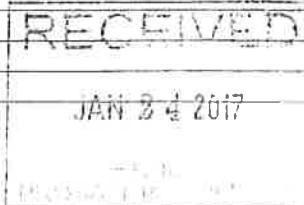
*THIS DECISION IS NOT SUBJECT TO APPEAL.

Release at this time would depreciate the seriousness of the present offense based on:

A. Circumstances surrounding the present offense.

There does not appear to be a reasonable probability at this time that you would live and remain at liberty without again violating the law based on:

A. Poor institutional adjustment.



A-92

AKU032A-OPN
Time - 7:56:54

Missouri Department of Corrections
BOARD OF PROBATION AND PAROLE

Page - 1
Date - 4/11/17

DOC ID: 171590 Cycle: 19891121
DOC Name: ROBERTS, SIDNEY JR

4D-208

Institution/Housing Unit JCCC/004

Minimum Mandatory Release Date N/A

RELATING TO RELEASE CONSIDERATION

- 1. You have been scheduled for a parole hearing .
- 2. At your request, your case has been closed to further parole consideration.
- 3. You have been given parole consideration in a parole hearing 03/09/2017. You will be scheduled for a reconsideration hearing 03/00/2021.
- 4. You have been scheduled for release from confinement on .

Actual release depends upon continued record of good conduct and an acceptable release plan. The release decision is:

Guideline Below Guideline Above Guideline

Special Conditions of release are:

Strategy Stipulation Date:

- 5. Your previously set release date has been cancelled.
- 6. Your conditional release date has been extended to .
- 7. The Board has reviewed your appeal. It is the decision of the Board to your appeal.
- 8. You have been scheduled for a Conditional Release Extension hearing on .

The reasons for the action taken are:

**THIS DECISION IS NOT SUBJECT TO APPEAL.

*Release at this time would depreciate the seriousness of the present offense based on:

A. Circumstances surrounding the present offense.

DOC ID: 165253 Cycle: 19880712
DOC Name: ROLAND, THERON R II

Institution/Housing Unit CRCC/003 B RCB

Minimum Mandatory Release Date N/A

INMATE COPY

RELATING TO RELEASE CONSIDERATION

- 1. You have been scheduled for a parole hearing .
- 2. At your request, your case has been closed to further parole consideration.
- 3. You have been given parole consideration in a parole hearing 01/03/2017. You will be scheduled for a reconsideration hearing 01/00/2022.
- 4. You have been scheduled for release from confinement on .

Actual release depends upon continued record of good conduct and an acceptable release plan. The release decision is:

Guideline Below Guideline Above Guideline

Special Conditions of release are:

Strategy Stipulation Date:

- 5. Your previously set release date has been cancelled.
- 6. Your conditional release date has been extended to .
- 7. The Board has reviewed your appeal. It is the decision of the Board to your appeal.
- 8. You have been scheduled for a Conditional Release Extension hearing on .

The reasons for the action taken are:

****THIS DECISION IS NOT SUBJECT TO APPEAL.**

Release at this time would depreciate the seriousness of the present offense based upon:

A. Circumstances Surrounding the Present Offense

DOC ID: 164545 Cycle: 19880517
DOC Name: BRADSHAW, KEVIN C

Hu 6A-47

Pentec-MEDICAL

Institution/Housing Unit PCC/006

Minimum Mandatory Release Date N/A

RELATING TO RELEASE CONSIDERATION

1. You have been scheduled for a parole hearing .

2. At your request, your case has been closed to further parole consideration.

3. You have been given parole consideration in a parole hearing 03/01/2017. You will be scheduled for a reconsideration hearing 03/00/2021.

4. You have been scheduled for release from confinement on .

Actual release depends upon continued record of good conduct and an acceptable release plan. The release decision is:

Guideline Below Guideline Above Guideline

Special Conditions of release are:

Strategy Stipulation Date:

5. Your previously set release date has been cancelled.

6. Your conditional release date has been extended to .

7. The Board has reviewed your appeal. It is the decision of the Board to your appeal.

8. You have been scheduled for a Conditional Release Extension hearing on .

The reasons for the action taken are:

****THIS DECISION IS NOT SUBJECT TO APPEAL.**

Release at this time would depreciate the seriousness of the present offense based on:

A) Circumstances surrounding the present offense.

DOC ID: 181041 Cycle: 19900214
DOC Name: EDEN, WALTER

Institution/Housing Unit CRCC/003 D 109B

Minimum Mandatory Release Date N/A

RELATING TO RELEASE CONSIDERATION

- 1. You have been scheduled for a parole hearing .
- 2. At your request, your case has been closed to further parole consideration.
- 3. You have been given parole consideration in a parole hearing 01/03/2017. You will be scheduled for a reconsideration hearing 01/00/2022.
- 4. You have been scheduled for release from confinement on .

Actual release depends upon continued record of good conduct and an acceptable release plan. The release decision is:

Guideline Below Guideline Above Guideline

Special Conditions of release are:

Strategy Stipulation Date:

- 5. Your previously set release date has been cancelled.
- 6. Your conditional release date has been extended to .
- 7. The Board has reviewed your appeal. It is the decision of the Board to your appeal.
- 8. You have been scheduled for a Conditional Release Extension hearing on .

The reasons for the action taken are:

**THIS DECISION IS NOT SUBJECT TO APPEAL.

Release at this time would depreciate the seriousness of the present offense based on:

A: Circumstances surrounding the present offense.
There does not appear to be a reasonable probability at this time that you would live and remain at liberty without again violating the law based upon:
A: Poor institutional adjustment.

DOC ID: 164041 Cycle: 19880331
DOC Name: WILSON, LIDDELL

OFFENDER
COPY

Institution/Housing Unit ERDCC/003 C 114

APR 27 2017

Minimum Mandatory Release Date 06/01/2018

RELATING TO RELEASE CONSIDERATION

- 1. You have been scheduled for a parole hearing .
- 2. At your request, your case has been closed to further parole consideration.
- 3. You have been given parole consideration in a parole hearing 04/12/2017. You will be scheduled for a reconsideration hearing 04/00/2022.
- 4. You have been scheduled for release from confinement on .

Actual release depends upon continued record of good conduct and an acceptable release plan. The release decision is:

Guideline Below Guideline Above Guideline

Special Conditions of release are:

Strategy Stipulation Date:

- 5. Your previously set release date has been cancelled.
- 6. Your conditional release date has been extended to .
- 7. The Board has reviewed your appeal. It is the decision of the Board to your appeal.
- 8. You have been scheduled for a Conditional Release Extension hearing on .

The reasons for the action taken are:

****THIS DECISION IS NOT SUBJECT TO APPEAL.**

Release at this time would depreciate the seriousness of the present offense based on:

- A. Circumstances surrounding the present offense.
- B. Use of a weapon.
- C. Community opposition.

DOC ID: 182817 Cycle: 19911120
DOC Name: RAMSEY, EDWARD L

Institution/Housing Unit CRCC/005

Minimum Mandatory Release Date N/A

RELATING TO RELEASE CONSIDERATION

- 1. You have been scheduled for a parole hearing .
- 2. At your request, your case has been closed to further parole consideration.
- 3. You have been given parole consideration in a parole hearing . You will be scheduled for a reconsideration hearing .
- 4. You have been scheduled for release from confinement on 12/06/2021.

Actual release depends upon continued record of good conduct and an acceptable release plan. The release decision is:

Guideline Below Guideline Above Guideline

Special Conditions of release are:
Anger Management, No Contact With Victims Family,
No Drinking, Substance Abuse Program

Strategy Stipulation Date:

- 5. Your previously set release date has been cancelled.
- 6. Your conditional release date has been extended to .
- 7. The Board has reviewed your appeal. It is the decision of the Board to your appeal.
- 8. You have been scheduled for a Conditional Release Extension hearing on .

The reasons for the action taken are:

**THIS DECISION 'S NOT SUBJECT TO APPEAL.

Release at this time would depreciate the seriousness of the present offense based upon:

- A. Circumstances surrounding the present offense
- B. Community opposition

EXHIBIT

tables

5

A-98

SECOND REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE SUBSTITUTE NO. 2 FOR
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 590

98TH GENERAL ASSEMBLY

2016

4323H.061

AN ACT

To repeal sections 565.020, 565.030, 565.032, and 565.040, RSMo, and to enact in lieu thereof seven new sections relating to crime, with penalty provisions, an emergency clause for certain sections, and an effective date for a certain section.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 565.020, 565.030, 565.032, and 565.040, RSMo, are 2 repealed and seven new sections enacted in lieu thereof, to be known as sections 3 558.047, 565.020, 565.030, 565.032, 565.033, 565.034, and 565.040, to read as 4 follows:

558.047. 1. (1) Any person sentenced to a term of imprisonment 2 for life without eligibility for parole before August 28, 2016, who was 3 under eighteen years of age at the time of the commission of the offense 4 or offenses, may submit to the parole board a petition for a review of 5 his or her sentence, regardless of whether the case is final for purposes 6 of appeal, after serving twenty-five years of incarceration on the 7 sentence of life without parole.

8 (2) Any person found guilty of murder in the first degree who 9 was sentenced on or after August 28, 2016, to a term of life 10 imprisonment with eligibility for parole or a term of imprisonment of 11 not less than thirty years and not to exceed forty years, who was under 12 eighteen years of age at the time of the commission of the offense or

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

Case 2:17-cv-04082-NKL Document 1-2 Filed 05/18/17 Page 1 of 11

EXHIBIT

6

13 offenses may submit to the parole board a petition for a review of his
14 or her sentence, regardless of whether the case is final for purposes of
15 appeal, after serving twenty-five years of incarceration, and a
16 subsequent petition after serving thirty-five years of incarceration.

17 2. A copy of the petition shall be served on the office of the
18 prosecutor in the judicial circuit of original jurisdiction. The petition
19 shall include the person's statement that he or she was under eighteen
20 years of age at the time of the offense, is eligible to petition under this
21 section, and requests that his or her sentence be reviewed.

22 3. If any of the information required in subsection 2 of
23 this section is missing from the petition, or if proof of service on
24 the prosecuting or circuit attorney is not provided, the parole board
25 shall return the petition to the person and advise him or her that the
26 matter cannot be considered without the missing information.

27 4. The parole board shall hold a hearing and determine if the
28 defendant shall be granted parole. At such a hearing, the victim or
29 victim's family members shall retain their rights under section 595.209.

30 5. In a parole review hearing under this section, the board shall
31 consider, in addition to the factors listed in section 565.033:

32 (1) Efforts made toward rehabilitation since the offense or
33 offenses occurred, including participation in educational, vocational,
34 or other programs during incarceration, when available;

35 (2) The subsequent growth and increased maturity of the person
36 since the offense or offenses occurred;

37 (3) Evidence that the person has accepted accountability for the
38 offense or offenses, except in cases where the person has maintained
39 his or her innocence;

40 (4) The person's institutional record during incarceration; and

41 (5) Whether the person remains the same risk to society as he or
42 she did at the time of the initial sentencing.

565.020. 1. A person commits the [crime] offense of murder in the first
2 degree if he or she knowingly causes the death of another person after
3 deliberation upon the matter.

4 2. The offense of murder in the first degree is a class A felony, and, if
5 a person is eighteen years of age or older at the time of the offense, the
6 punishment shall be either death or imprisonment for life without eligibility for
7 probation or parole, or release except by act of the governor[; except that,]. If a
Case 2:17-cv-04082-NKL Document 1-2 Filed 05/18/17 Page 2 of 11

8 person has not reached his [sixteenth] or her eighteenth birthday at the time
9 of the commission of the [crime] offense, the punishment shall be [imprisonment
10 for life without eligibility for probation or parole, or release except by act of the
11 governor] as provided under section 565.033.

565.030. 1. Where murder in the first degree is charged but not
2 submitted or where the state waives the death penalty, the submission to the
3 trier and all subsequent proceedings in the case shall proceed as in all other
4 criminal cases [with a single stage trial in which guilt and punishment are
5 submitted together].

6 2. Where murder in the first degree is submitted to the trier without a
7 waiver of the death penalty, the trial shall proceed in two stages before the same
8 trier. At the first stage the trier shall decide only whether the defendant is guilty
9 or not guilty of any submitted offense. The issue of punishment shall not be
10 submitted to the trier at the first stage. If an offense is charged other than
11 murder in the first degree in a count together with a count of murder in the first
12 degree, the trial judge shall assess punishment on any such offense according to
13 law, after the defendant is found guilty of such offense and after he finds the
14 defendant to be a prior offender pursuant to chapter 558.

15 3. If murder in the first degree is submitted and the death penalty was
16 not waived but the trier finds the defendant guilty of a lesser homicide, a second
17 stage of the trial shall proceed [at which the only issue shall be the punishment
18 to be assessed and declared. No further evidence shall be received. If the trier
19 is a jury it shall be instructed on the law] as in all other criminal cases. The
20 attorneys may then argue as in other criminal cases the issue of punishment,
21 after which the trier shall assess and declare the punishment as in all other
22 criminal cases.

23 4. If the trier at the first stage of a trial where the death penalty was not
24 waived finds the defendant guilty of murder in the first degree, a second stage of
25 the trial shall proceed at which the only issue shall be the punishment to be
26 assessed and declared. Evidence in aggravation and mitigation of punishment,
27 including but not limited to evidence supporting any of the aggravating or
28 mitigating circumstances listed in subsection 2 or 3 of section 565.032, may be
29 presented subject to the rules of evidence at criminal trials. Such evidence may
30 include, within the discretion of the court, evidence concerning the murder victim
31 and the impact of the [crime] offense upon the family of the victim and
32 others. Rebuttal and surrebuttal evidence may be presented. The state shall be

33 the first to proceed. If the trier is a jury it shall be instructed on the law. The
34 attorneys may then argue the issue of punishment to the jury, and the state shall
35 have the right to open and close the argument. The trier shall assess and declare
36 the punishment at life imprisonment without eligibility for probation, parole, or
37 release except by act of the governor:

38 (1) If the trier finds by a preponderance of the evidence that the
39 defendant is intellectually disabled; or

40 (2) If the trier does not find beyond a reasonable doubt at least one of the
41 statutory aggravating circumstances set out in subsection 2 of section 565.032;
42 or

43 (3) If the trier concludes that there is evidence in mitigation of
44 punishment, including but not limited to evidence supporting the statutory
45 mitigating circumstances listed in subsection 3 of section 565.032, which is
46 sufficient to outweigh the evidence in aggravation of punishment found by the
47 trier; or

48 (4) If the trier decides under all of the circumstances not to assess and
49 declare the punishment at death. If the trier is a jury it shall be so instructed.
50 If the trier assesses and declares the punishment at death it shall, in its findings
51 or verdict, set out in writing the aggravating circumstance or circumstances listed
52 in subsection 2 of section 565.032 which it found beyond a reasonable doubt.
53 If the trier is a jury it shall be instructed before the case is submitted that if it
54 is unable to decide or agree upon the punishment the court shall assess and
55 declare the punishment at life imprisonment without eligibility for probation,
56 parole, or release except by act of the governor or death. The court shall follow
57 the same procedure as set out in this section whenever it is required to determine
58 punishment for murder in the first degree.

59 5. Upon written agreement of the parties and with leave of the court, the
60 issue of the defendant's intellectual disability may be taken up by the court and
61 decided prior to trial without prejudicing the defendant's right to have the issue
62 submitted to the trier of fact as provided in subsection 4 of this section.

63 6. As used in this section, the terms "intellectual disability" or
64 "intellectually disabled" refer to a condition involving substantial limitations in
65 general functioning characterized by significantly subaverage intellectual
66 functioning with continual extensive related deficits and limitations in two or
67 more adaptive behaviors such as communication, self-care, home living, social
68 skills, community use, self-direction, health and safety, functional academics,

69 leisure and work, which conditions are manifested and documented before
70 eighteen years of age.

71 7. The provisions of this section shall only govern offenses committed on
72 or after August 28, 2001.

565.032. 1. In all cases of murder in the first degree for which the death
2 penalty is authorized, the judge in a jury-waived trial shall consider, or [he] shall
3 include in his **or her** instructions to the jury for it to consider:

4 (1) Whether a statutory aggravating circumstance or circumstances
5 enumerated in subsection 2 of this section is established by the evidence beyond
6 a reasonable doubt; and

7 (2) If a statutory aggravating circumstance or circumstances is proven
8 beyond a reasonable doubt, whether the evidence as a whole justifies a sentence
9 of death or a sentence of life imprisonment without eligibility for probation,
10 parole, or release except by act of the governor. In determining the issues
11 enumerated in subdivisions (1) and (2) of this subsection, the trier shall consider
12 all evidence which it finds to be in aggravation or mitigation of punishment,
13 including evidence received during the first stage of the trial and evidence
14 supporting any of the statutory aggravating or mitigating circumstances set out
15 in subsections 2 and 3 of this section. If the trier is a jury, it shall not be
16 instructed upon any specific evidence which may be in aggravation or mitigation
17 of punishment, but shall be instructed that each juror shall consider any evidence
18 which he **or she** considers to be aggravating or mitigating.

19 2. Statutory aggravating circumstances for a murder in the first degree
20 offense shall be limited to the following:

21 (1) The offense was committed by a person with a prior record of
22 conviction for murder in the first degree, or the offense was committed by a
23 person who has one or more serious assaultive criminal convictions;

24 (2) The murder in the first degree offense was committed while the
25 offender was engaged in the commission or attempted commission of another
26 unlawful homicide;

27 (3) The offender by his **or her** act of murder in the first degree knowingly
28 created a great risk of death to more than one person by means of a weapon or
29 device which would normally be hazardous to the lives of more than one person;

30 (4) The offender committed the offense of murder in the first degree for
31 himself **or herself** or another, for the purpose of receiving money or any other
32 thing of monetary value from the victim of the murder or another;

33 (5) The murder in the first degree was committed against a judicial
34 officer, former judicial officer, prosecuting attorney or former prosecuting
35 attorney, circuit attorney or former circuit attorney, assistant prosecuting
36 attorney or former assistant prosecuting attorney, assistant circuit attorney or
37 former assistant circuit attorney, peace officer or former peace officer, elected
38 official or former elected official during or because of the exercise of his official
39 duty;

40 (6) The offender caused or directed another to commit murder in the first
41 degree or committed murder in the first degree as an agent or employee of
42 another person;

43 (7) The murder in the first degree was outrageously or wantonly vile,
44 horrible or inhuman in that it involved torture, or depravity of mind;

45 (8) The murder in the first degree was committed against any peace
46 officer, or fireman while engaged in the performance of his **or her** official duty;

47 (9) The murder in the first degree was committed by a person in, or who
48 has escaped from, the lawful custody of a peace officer or place of lawful
49 confinement;

50 (10) The murder in the first degree was committed for the purpose of
51 avoiding, interfering with, or preventing a lawful arrest or custody in a place of
52 lawful confinement, of himself **or herself** or another;

53 (11) The murder in the first degree was committed while the defendant
54 was engaged in the perpetration or was aiding or encouraging another person to
55 perpetrate or attempt to perpetrate a felony of any degree of rape, sodomy,
56 burglary, robbery, kidnapping, or any felony offense in chapter 195 **or 579**;

57 (12) The murdered individual was a witness or potential witness in any
58 past or pending investigation or past or pending prosecution, and was killed as
59 a result of his **or her** status as a witness or potential witness;

60 (13) The murdered individual was an employee of an institution or facility
61 of the department of corrections of this state or local correction agency and was
62 killed in the course of performing his **or her** official duties, or the murdered
63 individual was an inmate of such institution or facility;

64 (14) The murdered individual was killed as a result of the hijacking of an
65 airplane, train, ship, bus or other public conveyance;

66 (15) The murder was committed for the purpose of concealing or
67 attempting to conceal any felony offense defined in chapter 195 **or 579**;

68 (16) The murder was committed for the purpose of causing or attempting

69 to cause a person to refrain from initiating or aiding in the prosecution of a felony
70 offense defined in chapter 195 or 579;

71 (17) The murder was committed during the commission of [a crime] an
72 offense which is part of a pattern of criminal street gang activity as defined in
73 section 578.421.

74 3. Statutory mitigating circumstances shall include the following:

75 (1) The defendant has no significant history of prior criminal activity;

76 (2) The murder in the first degree was committed while the defendant was
77 under the influence of extreme mental or emotional disturbance;

78 (3) The victim was a participant in the defendant's conduct or consented
79 to the act;

80 (4) The defendant was an accomplice in the murder in the first degree
81 committed by another person and his or her participation was relatively minor;

82 (5) The defendant acted under extreme duress or under the substantial
83 domination of another person;

84 (6) The capacity of the defendant to appreciate the criminality of his or
85 her conduct or to conform his or her conduct to the requirements of law was
86 substantially impaired;

87 (7) The age of the defendant at the time of the [crime] offense.

565.033. 1. A person found guilty of murder in the first degree
2 who was under the age of eighteen at the time of the commission of the
3 offense shall be sentenced to a term of life without eligibility for
4 probation or parole as provided in section 565.034, life imprisonment
5 with eligibility for parole, or not less than thirty years and not to
6 exceed forty years imprisonment.

7 2. When assessing punishment in all first degree murder cases in
8 which the defendant was under the age of eighteen at the time of the
9 commission of the offense or offenses, the judge in a jury-waived trial
10 shall consider, or the judge shall include in instructions to the jury for
11 it to consider, the following factors:

12 (1) The nature and circumstances of the offense committed by
13 the defendant;

14 (2) The degree of the defendant's culpability in light of his or her
15 age and role in the offense;

16 (3) The defendant's age, maturity, intellectual capacity, and
17 mental and emotional health and development at the time of the

18 offense;

19 (4) The defendant's background, including his or her family,
20 home, and community environment;

21 (5) The likelihood for rehabilitation of the defendant;

22 (6) The extent of the defendant's participation in the offense;

23 (7) The effect of familial pressure or peer pressure on the
24 defendant's actions;

25 (8) The nature and extent of the defendant's prior criminal
26 history, including whether the offense was committed by a person with
27 a prior record of conviction for murder in the first degree, or one or
28 more serious assaultive criminal convictions;

29 (9) The effect of characteristics attributable to the defendant's
30 youth on the defendant's judgment; and

31 (10) A statement by the victim or the victim's family member as
32 provided by section 557.041 until December 31, 2016, and beginning
33 January 1, 2017, section 595.229.

565.034. 1. If the state intends to seek a sentence of life without
2 eligibility for probation or parole for a person charged with murder in
3 the first degree who was under the age of eighteen at the time of the
4 commission of the offense, the state must file with the court and serve
5 upon the person a written notice of intent to seek life without
6 eligibility for probation or parole. This notice shall be provided within
7 one hundred twenty days of the person's arraignment upon an
8 indictment or information charging the person with murder in the first
9 degree. For good cause shown, the court may extend the period for
10 service and filing of the notice. Any notice of intent to seek life
11 without eligibility for probation or parole shall include a listing of the
12 statutory aggravating circumstances, as provided by subsection 6 of
13 this section, upon which the state will rely in seeking that sentence.

14 2. Notwithstanding any other provisions of law, where the state
15 files a notice of intent to seek life without eligibility for probation or
16 parole pursuant to this section, the defendant shall be entitled to an
17 additional sixty days for the purpose of filing new motions or
18 supplementing pending motions.

19 3. A notice of intent to seek life without eligibility for probation
20 or parole pursuant to this section may be withdrawn at any time by a
21 written notice of withdrawal filed with the court and served upon the

22 defendant. Once withdrawn, the notice of intent to seek life without
23 eligibility for probation or parole shall not be refiled.

24 4. After the state has filed a proper notice of intent to seek life
25 without eligibility for probation or parole pursuant to this section, the
26 trial shall proceed in two stages before the same trier. At the first
27 stage the trier shall decide only whether the person is guilty or not
28 guilty of any submitted offense. The issue of punishment shall not be
29 submitted to the trier at the first stage.

30 5. If the trier at the first stage of the trial finds the person guilty
31 of murder in the first degree, a second stage of the trial shall proceed
32 at which the only issue shall be the punishment to be assessed and
33 declared.

34 6. A person found guilty of murder in the first degree who was
35 under the age of eighteen at the time of the commission of the offense
36 is eligible for a sentence of life without eligibility for probation or
37 parole only if a unanimous jury, or a judge in a jury-waived sentencing,
38 finds beyond a reasonable doubt that:

39 (1) The victim received physical injuries personally inflicted by
40 the defendant and the physical injuries inflicted by the defendant
41 caused the death of the victim; and

42 (2) The defendant was found guilty of first degree murder and
43 one of the following aggravating factors was present:

44 (a) The defendant has a previous conviction for first degree
45 murder, assault in the first degree, rape in the first degree, or sodomy
46 in the first degree;

47 (b) The murder was committed during the perpetration of any
48 other first degree murder, assault in the first degree, rape in the first
49 degree, or sodomy in the first degree;

50 (c) The murder was committed as part of an agreement with a
51 third party that the defendant was to receive money or any other thing
52 of monetary value in exchange for the commission of the offense;

53 (d) The defendant inflicted severe pain on the victim for the
54 pleasure of the defendant or for the purpose of inflicting torture;

55 (e) The defendant killed the victim after he or she was bound or
56 otherwise rendered helpless by the defendant or another person;

57 (f) The defendant, while killing the victim or immediately
58 thereafter, purposely mutilated or grossly disfigured the body of the

59 victim by an act or acts beyond that necessary to cause his or her
60 death;

61 (g) The defendant, while killing the victim or immediately
62 thereafter, had sexual intercourse with the victim or sexually violated
63 him or her;

64 (h) The defendant killed the victim for the purposes of causing
65 suffering to a third person; or

66 (i) The first degree murder was committed against a current or
67 former: judicial officer, prosecuting attorney or assistant prosecuting
68 attorney, law enforcement officer, firefighter, state or local corrections
69 officer; or against a witness or potential witness to a past or pending
70 investigation or prosecution, during or because of the exercise of their
71 official duty or status as a witness.

565.040. 1. In the event that the death penalty provided in this chapter
2 is held to be unconstitutional, any person convicted of murder in the first degree
3 shall be sentenced by the court to life imprisonment without eligibility for
4 probation, parole, or release except by act of the governor, with the exception that
5 when a specific aggravating circumstance found in a case is held to be
6 unconstitutional or invalid for another reason, the supreme court of Missouri is
7 further authorized to remand the case for resentencing or retrial of the
8 punishment pursuant to subsection 5 of section [565.036] **565.035**.

9 2. In the event that any death sentence imposed pursuant to this chapter
10 is held to be unconstitutional, the trial court which previously sentenced the
11 defendant to death shall cause the defendant to be brought before the court and
12 shall sentence the defendant to life imprisonment without eligibility for
13 probation, parole, or release except by act of the governor, with the exception that
14 when a specific aggravating circumstance found in a case is held to be
15 inapplicable, unconstitutional or invalid for another reason, the supreme court
16 of Missouri is further authorized to remand the case for retrial of the punishment
17 pursuant to subsection 5 of section 565.035.

Section B. The repeal and reenactment of section 565.032 of this act shall
2 become effective on January 1, 2017.

Section C. Because of the need to adopt a punishment scheme for first
2 degree murderers of a certain age after the United States Supreme Court
3 declared as unconstitutional the only punishment available under Missouri law
4 for such offenders, the repeal and reenactment of section 565.020, and the

5 enactment of sections 558.047, 565.033, and 565.034 of this act is deemed
6 necessary for the immediate preservation of the public health, welfare, peace and
7 safety, and is hereby declared to be an emergency act within the meaning of the
8 constitution, and the repeal and reenactment of section 565.020, and the
9 enactment of sections 558.047, 565.033, and 565.034 of this act shall be in full
10 force and effect upon its passage and approval.

✓

STATE OF MISSOURI) IN THE CIRCUIT COURT OF ST. LOUIS COUNTY
) SS
COUNTY OF ST. LOUIS) MISSOURI. DIVISION: 1

MAY 13, 1996

STATE OF MISSOURI	PLAINTIFF)
vs 95CR-000570 (7)) JUDGMENT AND SENTENCE
DAMON CALDWELL	DEFENDANT)
488-80-7623	
09/23/77	
a/k/a Red	

Now at this day comes the State of Missouri by the Assistant Prosecuting Attorney, Daniel Edward Diemer, and the Defendant in person and by counsel, Gregory A. Oliphant. On March 8, 1996, Defendant was found Guilty by a Jury of the offense(s) charged, Count 1: Murder First Degree, a Class A Felony, committed on January 28, 1995; Count 2: Armed Criminal Action, a Felony, committed on January 28, 1995; Count 3: Assault First Degree, a Class A Felony, committed on January 28, 1995; and Count 4: Armed Criminal Action, a Felony, committed on January 28, 1995. Accordingly, the Defendant is adjudicated guilty of the offense(s) charged. The Defendant now comes before the Court for sentencing.

The Defendant having no legal cause to show why judgment and sentence of this Court should not now be pronounced, the Defendant is sentenced to serve a term of Life Imprisonment Without Probation or Parole in the custody of the Department of Corrections, for the offense(s) Count 1; and a concurrent term of Life Imprisonment, for the offense(s) Count 2; and a concurrent term of imprisonment of (30) Year(s), for the offense(s), Count 3; and a concurrent term of imprisonment of (30) Year(s), for the offense(s), Count 4.

Therefore, it is ordered and adjudged by the Court that said Defendant be and is hereby committed to the custody of the Department of Corrections, for a period of Life Imprisonment Without Probation or Parole, for the offense(s), Count 1; and a concurrent period of Life Imprisonment, for the offense(s), Count 2; and a concurrent period of imprisonment of (30) Year(s), for the offense(s), Count 3; and a concurrent period of imprisonment of (30) Year(s), for the offense(s), Count 4; and that Defendant stand so committed until this sentence is complied with or Defendant be otherwise discharged according to law. State ordered to pay Court costs. Defendant advised and examined pursuant to Rule 29.07.

Pursuant to the Crime Victims' Compensation Act, the Court orders, adjudges and decrees that a judgment in the amount of \$68.00 be entered against the Defendant in favor of the State of Missouri.



Judge Robert S. Cohen

I certify and attest that the above is a true copy of the original record of the Court in this case as it appears on file in my office.

ISSUED: _____ Gene Overall, Circuit Clerk

BY: _____ Deputy Clerk

(2)

95CR-000570 (7)

IN THE CIRCUIT COURT OF ST. FRANCOIS COUNTY, MISSOURI

DAMON CALDWELL,
Petitioner,

v.

No. 17SF-CC00153

TROY STEELE,
Respondent.

FILED
February 22, 2018
VICKI J. WEIBLE, CIRCUIT CLERK
ST. FRANCOIS COUNTY, MO

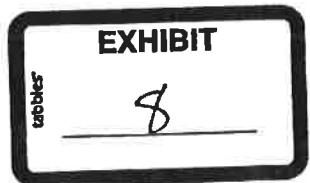
MEMORANDUM, ORDER, AND JUDGMENT

This matter is before the Court on the petition for a writ of habeas corpus, the response, the pleadings, exhibits, and the official file. Based upon the pleadings and argument, and the Court being duly advised, the petition is denied.

Introduction

Petitioner Damon Caldwell is an inmate at the Eastern Reception, Diagnostic and Correctional Center in Bonne, Terre, Missouri. Caldwell committed first-degree murder, first-degree assault, and two counts of armed criminal action before he turned eighteen-years-old. He was sentenced to life imprisonment without the possibility of parole.

In 2013, Caldwell filed a habeas corpus petition in the Missouri Supreme Court challenging his sentence to life without parole for a murder he committed while under age eighteen. *State ex rel. Damon Caldwell v. Ian Wallace*, case no. SC93398 (2016). Caldwell argued that the sentence violated the Eighth and Fourteenth Amendments. The Missouri Supreme Court initially issued an order granting Caldwell parole eligibility after serving twenty-five years on the murder sentence. But the Court withdrew its order and dismissed the petition in light of the legislature's passage of Section 558.047, RSMo. Section 558.047, in Senate Bill 590, made Caldwell and similarly situated offenders parole eligible on their life-without-parole sentences after serving twenty-five years, and



provided particular factors that must be considered by the Parole Board during parole hearings for those offenders.

Claims

Caldwell has now filed a petition in this Court alleging that the Missouri Supreme Court decision and Section 558.047, RSMo, violate the Sixth, Eighth, and Fourteenth Amendments. Caldwell believes he has an entitlement to adversarial resentencing. He alleges that his conviction and sentence are void. He also alleges that Section 558.047, RSMo, is a bill of attainder, and that it violates the Equal Protection Clause because it treats persons to be sentenced in the future differently than persons who already completed direct review of their convictions.

Respondent submitted, and this Court considered, Respondent's Exhibit A, which is a copy of the docket entries from Caldwell's Missouri Supreme Court habeas petition, case no. SC93398; and, Respondent's Exhibit B, a copy of a federal district court decision in *Ramirez v. Griffith*, case no. 16-CV-01058-W-DW.

Discussion

Constitutional Claims Under the Sixth, Eighth, and Fourteenth Amendments

In *Miller v. Alabama*, 132 S.Ct. 2455, 2460 (2012), the United States Supreme Court determined that the Eighth Amendment prohibits mandatory life without parole sentences for juvenile offenders (defined for federal Eighth Amendment purposes as those who were less than eighteen years old at the time of the offense). The offenders discussed in *Miller* had each been convicted of one count of murder and each was sentenced to life without parole. *Id.* at 2461-62. The Supreme Court determined that the length of the sentences did not violate the Constitution; thus, it did not announce a categorical bar on life-without-parole sentences. *Id.* at 2469. But the Court did hold that the "Eighth Amendment forbids a sentencing scheme that mandates life in

prison without possibility of parole for juvenile offenders.” *Id.* (citing *Graham v. Florida*, 560 U.S. 48, 75 (2010)). The Court emphasized that Eighth Amendment did not require a State to guarantee eventual freedom for the offender; instead, the State must provide some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation. *Id.*, citing *Graham*, 560 U.S. at 75.

Four years later, in *Montgomery v. Louisiana*, 136 S.Ct. 718 (2016), the United States Supreme Court determined that the *Miller* decision was a substantive constitutional rule that courts should apply retroactively to cases on collateral review. *Id.* at 726-32. In its discussion, the Court wrote that the decision’s impact on the states was minimal because a state did not have to relitigate the conviction and sentence if the state chose to extend to a juvenile homicide offender a chance for parole consideration.

Giving *Miller* retroactive effect, moreover, does not require States to relitigate sentences, let alone convictions, in every case where a juvenile offender received mandatory life without parole. A State may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them. … Allowing those offenders to be considered for parole ensures that juveniles whose crimes reflected only transient immaturity—and who have since matured—will not be forced to serve a disproportionate sentence in violation of the Eighth Amendment.

Id. at 736.

The Court emphasized that the juvenile offender did not have to be released. “Those prisoners who have shown an inability to reform will continue to serve life sentences. The opportunity for release will be afforded to those who demonstrate the truth of *Miller*’s central intuition—that children who commit even heinous crimes are capable of change.” *Id.*

Justice Scalia’s dissent emphasized the parole-opportunity alternative to resentencing. From Justice Scalia’s perspective, the language of the *Montgomery* majority decision was designed to effectively end life-without-parole sentences for those who committed murder as juveniles. And

one of the options given to the States was to end the sentencing practice themselves by providing for parole eligibility to affected offenders.

What the majority expects (and intends) to happen is set forth in the following not-so-subtle invitation: “A State may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them.”

Id. at 744 (Scalia, J. dissenting).

The United States Supreme Court recently rejected a similar habeas challenge. In *Virginia v. Leblanc*, 137 S.Ct. 1726 (2017), the Court found that Virginia reasonably applied United States Supreme Court precedent by making former juvenile offenders eligible for geriatric release on the same terms as other offenders.

In *Ramirez v. Griffith*, 16-cv-01058-DW (Resp. Ex. B), the United States District Court for the Western District of Missouri reached a similar result in a challenge brought by a Missouri offender. The district court denied habeas relief for three independent reasons: (1) that the petitioner’s challenge to the life without parole sentence originally imposed was moot in light of Section 558.047, RSMo, which adequately complies with constitutional requirements; (2) that the Missouri Supreme Court’s denial of habeas relief was not contrary to, nor an unreasonable application of, clearly established federal law, nor was it an unreasonable determination of the facts; and, (3) that the petitioner’s attacks on Section 558.047, RSMo, were unexhausted because the petitioner did not present them in state court. The Court of Appeals denied a certificate of appealability.

This Court agrees with the holding of the federal court in *Ramirez*, that Section 558.047, RSMo, is an adequate remedy to a *Miller* violation. That disposes of the core of Caldwell’s claims. He has no right to resentencing, and Section 558.047, RSMo, provides *more* relief than *Miller* and *Montgomery* require.

Adversarial Hearing Before the Parole Board Claim

Caldwell does not have the right to demand a mini-trial at his parole hearing. A parole hearing is not part of the prosecution of a defendant, and it is not a “critical stage” of a prosecution. *Couans v. South Dakota Bd. of Pardons and Parole*, 764 N.W.2d 501, 504-5 (S.D. 2009) (collecting cases). 14 CSR 80-2.010 describes the purpose and procedures for parole hearings. 14 CSR 80-2.010(3)(A) contains a nonexclusive list of items that an offender may present or discuss. Subsection 6 authorizes the offender to present and discuss any other matters that are appropriate for consideration. Caldwell has had ample opportunity to present what he wishes, and Section 558.047, RSMo, provides a framework for consideration of factors relevant to his youth at the time of the crime. There is no due process violation in Caldwell’s parole consideration under Section 558.047, RSMo.

Claim That Sentences are Void

Caldwell also alleges that his murder conviction and sentence are now void because neither death nor mandatory life without parole is now a permissible sentence for first-degree murder committed by a person under eighteen. But he has no real support for that position, and the Missouri Supreme Court already found that Caldwell’s challenges to his convictions and sentences did not merit habeas relief in light of Section 558.047, RSMo. In *Montgomery* the United States Supreme Court indicated that making offenders parole eligible after twenty-five years is a proper remedy for offenders sentenced to mandatory terms of life imprisonment without parole, and that it is not necessary to relitigate convictions or sentences. Therefore, the United States Supreme Court does not consider the underlying convictions to be void where the only available punishment was life without parole and that punishment was later found not to be constitutional.

Bill of Attainder

Caldwell contends that section 558.047, RSMo, is an unlawful bill of attainder. But it is not. “A bill of attainder is a legislative enactment that inflicts punishment on a specific person or group without trial or judicial action.” *Garozzo v. Missouri Dept. of Ins.*, 389 S.W.3d 660, 663 (Mo.banc 2013). It is unnecessary to resolve the specificity element because Section 558.047, RSMo, does not inflict punishment. *See id.* “There are three factors that determine whether a statute inflicts punishment: (1) whether the challenged statute falls within the historical meaning of legislative punishment, (2) whether the statute, viewed in a light of the severity of burdens it imposes, reasonably can be said to advance a non-punitive legislative purpose, and (3) whether the legislative record discloses an intent to punish.” *Id.*

“The historical meaning of legislative punishment generally includes statutes that bar a specific person or identifiable group from participating in a regulated business or profession.” *Id.* Section 558.047, RSMo, does not regulate commerce or a profession. Further, Section 558.047, RSMo, advances a non-punitive legislative purpose. *Id.* at 664-5. Once the Supreme Court decided *Montgomery*, then the legislature reasonably decided to cure any constitutional defect in the life-without-parole sentences for juveniles who commit first-degree murder by using the very same remedy suggested by the Supreme Court. Remedying a perceived constitutional violation is a non-punitive legislative purpose; neither is providing parole eligibility to formerly ineligible offenders. Finally, there is nothing record showing an intent to punish. *Id.* To the contrary, the legislature was following the suggestion provided in *State v. Hart*, 404 S.W.3d 232, 253 (Mo.banc 2013) (Fischer, J., concurring in part), that the legislature had the power and the responsibility to remedy the constitutional violation. *See* Resp. Ex. A Docket Entry March 15, 2016 (making a judicial remedy contingent on the lack of a legislative remedy).

Equal Protection Claim

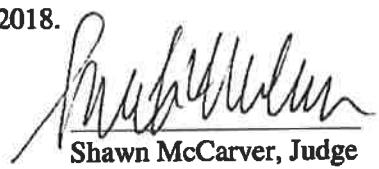
Caldwell alleges an equal protection violation because persons who have not completed direct review of their juvenile life without parole sentences were resentenced rather than becoming parole eligible. But those differences do not create a constitutional problem. It is reasonable not to resentence multiple dozens of offenders, who long since completed direct review of their cases, when an adequate remedy can be crafted by making them eligible for parole, and the passage of time makes resentencing proceedings more difficult. Those persons are distinguishable from persons whose cases are still on direct review and persons who have not yet been sentenced, because resentencing proceedings are more available and practical in such cases. The Missouri Supreme Court did not violate the Equal Protection Clause by drawing a reasonable distinction between offenders who are not similarly situated. *See Tyler v. Mitchell*, 853 S.W2d. 338, 341 (Mo. App. W.D. 1993) (the Equal Protection Clause does not prevent line drawing in the creation or application of laws, so long as the classifications created are not based on impermissible criteria or used to arbitrarily burden a group).

Caldwell also alleges an equal protection violation because an offender who was sentenced to life without parole for fifty years received resentencing although his case had completed direct review. But equal protection has nothing to do with whether a specific individual was placed on the wrong side of a classification. *Id.* Rather, it deals with the line drawing itself, and procedural due process deals with an individual challenging his allegedly erroneous placement in a classification. *Id.* Caldwell has no due process or equal protection claim because another inmate with a different sentence was classified differently and received a different remedy.

Conclusion

For the foregoing reasons, the petition for writ of habeas corpus is denied. Judgment is entered on behalf of Defendant. Any and all other pending matters are overruled, dismissed, and denied.

IT IS SO ORDERED on February 22, 2018.



A handwritten signature in black ink, appearing to read "Shawn McCarver". The signature is fluid and cursive, with a horizontal line underneath it.

Shawn McCarver, Judge



In the Missouri Court of Appeals Eastern District

DAMON L. CALDWELL, PETITIONER,) No. ED106416
)
) Writ of Habeas Corpus
)
)
vs.)
)
TROY STEELE, RESPONDENT.)
)
)
)
)
)

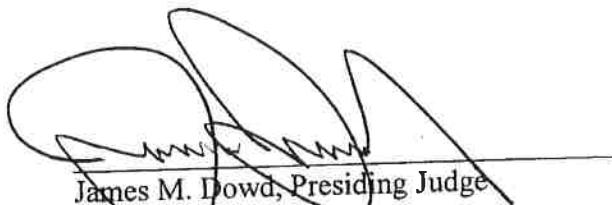
ORDER

Petitioner has filed a Petition for Writ of Habeas Corpus along with Suggestions in Support and Exhibits.

Being duly advised in the premises, the Court hereby DENIES Petitioner's Writ of Habeas Corpus.

SO ORDERED.

DATED: 2/28/18



James M. Dowd, Presiding Judge
Writ Division V
Missouri Court of Appeals, Eastern District

cc: Troy Steele
 Kent Gipson
 Stephen Hawke



A 120