
Case No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

TYRONE D. MORANT,

Petitioner,

vs.

**JASON LEWIS, SUPERINTENDENT
SOUTHEAST CORRECTIONAL CENTER,**

Respondent.

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

VOLUME I
**APPENDIX IN SUPPORT OF PETITION
FOR A WRIT OF CERTIORARI**

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PETITION FOR A WRIT OF CERTIORARI**

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In the Supreme Court of Missouri

May Session, 2018

State ex rel. Tyrone D. Morant,

Petitioner,

No. SC96919 HABEAS CORPUS
Mississippi County Circuit Court No. 17MI-CV00461
Southern District Court of Appeals No. SD35280

Jason Lewis,

Respondent.

Now at this day, on consideration of the petition for a writ of habeas corpus herein to the said respondent, it is ordered by the Court here that the said petition be, and the same is hereby denied.

STATE OF MISSOURI-Sct.

I, BETSY AUBUCHON, Clerk of the Supreme Court of the State of Missouri, certify that the foregoing is a full, true and complete transcript of the judgment of said Supreme Court, entered of record at the May Session thereof, 2018, and on the 3rd day of July, 2018, in the above-entitled cause.

WITNESS my hand and the Seal of the Supreme Court of Missouri, at my office in the City of Jefferson, this 3rd day of July, 2018.



Betsy Aubuchon, Clerk

Dee S. Knaebel, Deputy Clerk

IN THE
SUPREME COURT OF MISSOURI

TYRONE D. MORANT,)
Petitioner,)
v.) Case No. _____
JASON LEWIS,)
Respondent.)

WRIT SUMMARY

Identity of the parties and their attorneys in the underlying action, if any: Tyrone Morant represented by Kent E. Gipson, Law Office of Kent Gipson, LLC, 121 East Gregory Boulevard, Kansas City, Missouri 64114; Jason Lewis, Warden, represented by Assistant Attorney General Michael Spillane, the Office of the Attorney General, 207 West High Street, P.O. Box 899, Jefferson City, Missouri 65102.

Nature of underlying action, if any: N/A

Action of respondent being challenged, including date thereof: Judgment and sentence of Jackson County, Missouri, Case No. 93-2203, dated April 15, 1994.

Relief sought by relator or petitioner: Vacate petitioner's illegal and unconstitutional conviction and sentence of life without parole for one count of murder in the first degree and declare S.B. 590 unconstitutional.

Date case set for trial, if set, and date of any other event bearing upon relief sought (e.g., date of deposition and motion hearing): N/A.

Date, court, and disposition of previous writ proceedings: Circuit Court of Mississippi County, denied December 01, 2017, 17MI-CV00461; Missouri Court of Appeals, Southern District, denied January 18, 2018, SD3528.

IN THE
SUPREME COURT OF MISSOURI

TYRONE D. MORANT,)
)
Petitioner,)
)
v.) Case No. _____
)
)
JASON LEWIS,)
)
Respondent.)

PETITION FOR A WRIT OF HABEAS CORPUS

COMES NOW petitioner, Tyrone Morant, a Missouri prisoner in respondent's custody, and petitions this Court, pursuant to Rule 91, for a writ of habeas corpus vacating his conviction for the offense of first degree murder and his sentence of life without parole. In support of this petition, Mr. Morant states as follows:

I.

INTRODUCTION AND FACTUAL BACKGROUND

Petitioner Tyrone Morant is currently serving a sentence of life without parole, after being found guilty for his participation in a drive-by shooting which occurred on September 17, 1995 when petitioner was only seventeen years old. (See Exh. 7). Petitioner was indicted by a Saint Louis City grand jury on December 21, 1995 for one count of first degree murder in violation of § 565.020 R.S.Mo. (1994), three counts of armed criminal action in violation of § 571.015 R.S.Mo. (1994), and

two counts of first degree assault in violation of § 565.050 R.S.Mo. (1994). (See Exh. 8). Mr. Morant was represented by private counsel, Sandra Moore-Dyson.

The case proceeded to jury trial, Judge Floyd McBride presiding, on November 12, 1996 in the Circuit Court of Saint Louis City. Petitioner was found guilty as charged on November 22, 1996. (See Exh. 7). On January 10, 1997, petitioner received consecutive sentences of life without parole for the first degree murder charge, thirty years for each of the armed criminal action charges, and fifteen years for each of the assault charges. (*Id.*)

Petitioner, thereafter, filed a timely notice of appeal. The Court of Appeals affirmed his convictions and sentences on direct appeal. *State v. Morant*, 962 S.W.2d 461 (Mo. App. E.D. 1998). Petitioner filed a timely motion for post-conviction relief pursuant to Rule 29.15. Post-conviction relief was denied. *Morant v. State*, 19 S.W.3d 160 (Mo. App. E.D. 2000).

After the Supreme Court issued its opinion in *Miller v. Alabama*, 132 S. Ct. 2455 (2012), petitioner filed a writ of habeas corpus, pursuant to Mo. S. Ct. Rule 91, in this Court on March 22, 2013. Petitioner's state habeas corpus petition challenged his mandatory sentence of life without parole arguing that the Missouri law imposing his first degree murder conviction violated the Eighth Amendment under *Miller* and thus required that he receive a new sentencing hearing. *Id.*

In 2013, this Court issued opinions in *State v. Hart*, 404 S.W.3d 232 (Mo. banc 2013) and *State v. Nathan*, 404 S.W.3d 253 (Mo. banc 2013), both involving juveniles who were sentenced to mandatory sentences of life without parole and both advancing *Miller* violations in their direct appeals. This Court ordered that both men must be resentenced and then provided a procedural framework for trial courts to follow in light of the fact that the Missouri legislature had not acted to amend Missouri's first degree murder statute to comport with *Miller*'s requirement of individualized sentencing.

Petitioner's state habeas corpus petition and similar petitions filed by approximately eighty other Missouri juvenile prisoners who had unconstitutional life without parole sentences languished before this Court until the Supreme Court issued its decision in *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016). In *Montgomery*, the Supreme Court held that its decision in *Miller* is retroactive. On March 15, 2016, this Court issued blanket orders in this case and in the eighty other pending cases involving juveniles who received life without parole for first degree murder, granting habeas relief in part. Relying on a passage from the majority opinion in *Montgomery*, this Court held that a resentencing proceeding was not constitutionally required and that the proper remedy that Missouri prisoners could seek under *Miller* would be to petition for parole after serving twenty-five years

unless either the Governor of Missouri or the legislature took action to bring Missouri law in conformity with *Miller* and *Montgomery*.

Shortly thereafter, the Missouri General Assembly, on the last day of its 2016 session on May 13, 2016, passed S.B. 590. (See Exh. 6). The legislature adopted the same remedy judicially crafted by this Court in its March 15 order in this case that allowed juveniles who previously received life without parole for first degree murder to petition the parole board for a parole hearing after serving twenty-five years of their sentence. The legislation was signed into law by Governor Jay Nixon on July 13, 2016 and immediately went into effect due to an emergency clause contained within the law.

On July 19, 2016, this Court issued a superseding order in petitioner's state habeas proceeding vacating its previous order of March 15, 2016. The order, citing S.B. 590, summarily denied the habeas petition.

On September 28, 2016, petitioner sought leave to file a second petition for writ of habeas corpus in the United States District Court for the Eastern District of Missouri, pursuant to 28 U.S.C. § 2254, challenging the constitutionality of his sentence of life without parole. The Court of Appeals denied the motion on March 02, 2017.

Petitioner filed his present Rule 91 for a writ of habeas corpus in the Circuit Court of Mississippi County on August 07, 2017. The circuit court below denied

the petition on December 01, 2017 finding no violation of due process of law or equal protection. (See Exh. 9). Petitioner filed this petition in the Missouri Court of Appeals, Southern District on December 13, 2017. The petitioner was summarily denied in a two-sentence order. (See Exh. 10). The present petition is now before this Court for its consideration.

Since the enactment of S.B. 590, approximately twenty juveniles who were unconstitutionally sentenced to life without parole have petitioned the board for a parole hearing. Only three of these approximately twenty men received parole dates. Edward Ramsey received a parole date in 2021, Bradley Houston received a parole date in 2020, and Michael McRoberts received a parole date in 2022. (See Exh. 5). In every other case, the board denied parole and gave the individual inmate a four or five year setback. (See Exh. 4).

In the *James Hardy* case, Mr. Hardy was denied parole despite an exemplary prison record and the extraordinary efforts he made at rehabilitation. (See Exh.'s 1, 2, 3). As the documents attached to this petition regarding the *Hardy* case illustrate, the board has not departed from its usual practice in all cases of holding short hearings that focus almost solely on the circumstances of the crime and whether there is any opposition from the victim's family or the community. (See Exh.'s 1, 2). Thereafter, these parole denials in *Hardy* and several other cases primarily rely

on the seriousness of the offense to deny parole. The board has not made changes in its modus operandi to follow the provisions of S.B. 590. (See Exh.'s 2, 4).

In the *Hardy* case and in the other cases where parole was denied to juvenile offenders under S.B. 590, the parole board clearly did not address or weigh any of the *Miller* factors nor the criteria set forth in S.B. 590 in reaching its decision. (*Id.*) In reviewing a juvenile's sentence of life without parole in order to determine whether the offender should be released, S.B. 590 requires the parole board to consider the following factors: "(1) the nature and circumstances of the offense committed by the defendant; (2) the degree of the defendant's culpability in light of his or her age and role in the offense; (3) the defendant's age, maturity, intellectual capacity, and mental and emotional health and development at the time of the offense; (4) the defendant's background, including his or her family, home, and community environment; (5) the likelihood for rehabilitation of the defendant; (6) the extent of the defendant's participation in the offense; (7) the effect of familial pressure or peer pressure on the defendant's actions; (8) the nature and extent of the defendant's prior criminal history, including whether the offense was committed by a person with a prior record of conviction for murder in the first degree, or one or more serious assaultive criminal convictions; (9) the effect of characteristics attributable to defendant's youth on the defendant's judgment; and (10) a statement by the victim or the victim's family member..." S.B. 590, codified at § 563.033.2.

In addition to these youth-related mitigating factors, the parole board must consider other factors that relate not to the person's youth at the time of the offense, but have to do with circumstances during the person's incarceration.

It is clear that the board did not consider any of these statutory mitigating factors in reaching its parole decision in the *Hardy* case. (See Exh. 2). The only reasons listed for denying Mr. Hardy parole were circumstances relating to the crime itself and "community opposition." (*Id.*) By failing to follow the clear letter of the law regarding the appropriate procedures and criteria to be employed in considering juveniles such as petitioner for parole, the board's actions violated due process by depriving petitioner of his rights set forth under S.B. 590. *See Hicks v. Oklahoma*, 447 U.S. 343, 346 (1980).

Based on the foregoing facts and Missouri's legislative and legal response to the *Miller* decision, this petition will raise several interrelated Constitutional issues under the Sixth, Eighth, and Fourteenth Amendments challenging petitioner's unconstitutional conviction and unconstitutional and undisturbed mandatory sentence of life without parole. Petitioner is confident that the Court, after fully reviewing the facts and applicable law, will conclude that habeas relief is warranted.

II.

GROUNDS FOR RELIEF

CLAIM I

**PETITIONER'S FIRST DEGREE MURDER CONVICTION AND HIS
MANDATORY SENTENCE OF LIFE WITHOUT PAROLE VIOLATE THE
SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS TO THE UNITED
STATES CONSTITUTION, AND THE PROVISIONS OF S.B. 590 AND THIS
COURT'S JULY 19, 2016 ORDER WERE CONSTITUTIONALLY
INSUFFICIENT TO REMEDY PETITIONER'S RIGHT TO AN
ADVERSARIAL RESENTENCING PROCEEDING AND A MEANINGFUL
OPPORTUNITY FOR RELEASE.**

The Supreme Court, in a series of recent decisions, has held as unconstitutional sentences of life without parole (“LWOP”) for all juveniles, except in rare cases in which the crime reflects irreparable corruption. *Montgomery v. Louisiana*, 136 S. Ct. 718, 734 (2016), quoting *Miller v. Alabama*, 132 S. Ct. 2455, 2469 (2012); *see also Graham v. Florida*, 560 U.S. 48, 82 (2010). The court has further held that this substantive Eighth Amendment rule is retroactive. *Id.* The court found that juveniles are constitutionally different from adults for the purpose of sentencing due to three distinctive attributes that mitigate their culpability: transient immaturity, vulnerability to external forces, and character traits that are still being formed. *Montgomery*, 136 S. Ct. at 734.

The *Montgomery* decision also held that the “penological justifications for life without parole collapse in light of the distinctive attributes of youth, rendering life

without parole an unconstitutionally disproportionate punishment as to all but the rarest of juvenile offenders, whose crimes reflect permanent incorrigibility.” *Id.* at 734-735. In *Graham*, the court categorically forbid, under the Eighth Amendment, LWOP sentences for youth who have committed non-homicide offenses and LWOP sentences for any youth whose homicide crime reflects “unfortunate yet transient immaturity.” *Id.* at 734, quoting *Miller*, 132 S. Ct. at 2465.

These cases establish that only in a “rare case” of “irreparable corruption” will a LWOP sentence be constitutionally permissible for a juvenile. This series of Eighth Amendment cases defines LWOP as a sentence of life imprisonment that denies a juvenile a meaningful and realistic opportunity for release based upon demonstrated maturity and rehabilitation. *Miller*, 132 S. Ct. at 2469. These decisions establish that the Eighth Amendment forbids a statutory scheme that imposes life sentences upon minors without appropriate consideration of their distinctive attributes based upon their youth and fails to provide them with a meaningful and realistic opportunity for release. Missouri law, as modified by S.B. 590 in response to the *Miller* decision, which was explicitly and implicitly endorsed as a constitutionally adequate remedy by the decisions of this Court below, fails this constitutional test in both respects.

The decision in *Miller* made it clear that the Eighth Amendment requires resentencings to follow a certain process, considering an offender’s youth and

attendant characteristics in assessing the appropriate penalty. In *Montgomery*, the court clarified the substantive factors that *Miller* would require before a sentence of LWOP could be constitutionally imposed upon a juvenile convicted of murder. *Montgomery* made it clear that the Eighth Amendment precludes LWOP for juvenile offenders whose crimes reflect the transient immaturity of youth. *Montgomery*, 136 S. Ct. at 734. In addition, the court in *Montgomery* also clarified the fact that a LWOP sentence would be unconstitutional except in a very rare case where the circumstances of the crime indicate “irreparable corruption.” *Id.* at 734-735.

Both *Miller* and *Montgomery* clearly require that all juveniles in this country who are currently serving mandatory sentences of LWOP, like petitioner and the approximately eighty other men and women serving such sentences in the State of Missouri, receive an adversarial resentencing procedure with the assistance of counsel and the attendant constitutional rights that a trial requires, so that the sentencer can impose a constitutional sentence that provides the juvenile with a meaningful opportunity for future release in all but the most extraordinary and aggravated homicide cases. *Miller*, 132 S. Ct. at 2469-2470, 2475.

This interpretation of *Miller's* and *Montgomery's* substantive Eighth Amendment requirements is further bolstered by the Supreme Court's *per curium* opinion ~~issued last year~~ in *Adams v. Alabama*, 136 S. Ct. 1796 (2016). After remanding the case for a new sentencing hearing for an Alabama juvenile sentenced

to LWOP, two separate concurring opinions were issued in *Adams* that clarifies the scope of the substantive constitutional requirements of *Miller* and *Montgomery*.

Justice Alito, joined by Justice Thomas noted that: “As a result of *Montgomery* and *Miller*, states must now ensure that prisoners serving sentences of life without parole for offenses committed before the age of eighteen have the benefit of an individualized sentencing procedure that considers their youth and immaturity at the time of the offense.” *Id.* at 1797 (Alito, J., concurring). Justice Sotomayor’s opinion, joined by Justice Ginsburg, noted that *Miller*, in addition to imposing an individualized sentencing requirement, also imposed a substantive rule that LWOP is only appropriate in the rare case where the juvenile defendant’s crime reflects irreparable corruption. Justice Sotomayor also noted that such a sentence would violate the Eighth Amendment for a minor whose crime reflects “unfortunate yet transient immaturity.” *Id.* at 1799-1800. As a result, Justice Sotomayor noted that *Miller* and *Montgomery* require sentencers to determine whether the petitioner’s crimes reflected transient immaturity or irreparable corruption. *Id.* at 1800.

This interpretation of *Miller* and *Montgomery* is further bolstered by the Supreme Court’s decision in *Tatum v. Arizona*, 137 S. Ct. 11 (2016). In *Tatum*, the court granted, vacated, and remanded a handful of Arizona juvenile LWOP cases for resentencing in light of *Montgomery*. *Id.* The court took this course of action despite the fact that, in the aftermath of the *Miller* decision, resentencing proceedings were

conducted in each of these cases in which the sentencing courts considered the juvenile's age and other attributes as mitigating factors. *Id.* at 12.

Despite this fact, Justice Sotomayor reiterated that resentencing was necessary because *Montgomery* and *Miller* require sentencing courts to consider whether the juvenile in question is a rare offender whose crimes reflect "permanent incorrigibility" or "irretrievable depravity" such that rehabilitation is impossible and LWOP is justified. *Id.* (Sotomayor, J., concurring). As a result, the court held that the Eighth Amendment requires a sentencer to determine whether "the juvenile offender before it is a child whose crimes reflect transient immaturity or is one of those rare children whose crimes reflect irreparable corruption for whom a life without parole sentence may be appropriate." *Id.* at 13. Missouri's judicial and legislative response to *Miller* and *Montgomery* does not come close to fulfilling this constitutional requirement.

In initially crafting and later ratifying the same legislative remedy embodied in S.B. 590 in response to *Miller*, this Court improperly took a single passage of *dicta* from *Montgomery* out of context and also clearly misinterpreted the State of Wyoming's statutory response to *Miller* to support its view that a resentencing proceeding is not constitutionally required by *Miller*. The Wyoming statute, cited by the court in *Montgomery*, unlike the current Missouri law, did not eliminate resentencing of juveniles sentenced to LWOP in that state. After this statutory

amendment passed, the Wyoming Supreme Court held that remands for individualized resentencing proceedings were still constitutionally required by *Miller*. *Sen v. State*, 301 P.3d 106, 125-127 & n.4 (Wyo. 2014).

It appears that Missouri is the only state that does not require its juveniles, who previously received and continue to serve unconstitutional mandatory LWOP sentences, receive resentencing hearings before the trial court. Thus, the fact that petitioner's mandatory sentence of LWOP remains undisturbed establishes that he is still serving an unconstitutional sentence. In the aftermath of *Miller* and *Montgomery*, other states have recognized that the Eighth Amendment requires a resentencing proceeding be held at which the sentencer is precluded from imposing a LWOP sentence unless a finding is made that the juvenile defendant is irreparably corrupt or permanently incorrigible. *Veal v. State*, 784 S.E.2d 403, 411-412 (Ga. 2016).

In addressing a similar issue regarding Pennsylvania's sentencing and parole laws involving juveniles who had received sentences of LWOP, a federal district court in Pennsylvania, in two decisions issued on the same day, held that Pennsylvania's refusal to order individualized resentencing proceedings by "passing the buck" to the parole board does not comport with the *Miller* and *Montgomery* decisions. *Garnett v. Wetzel*, 2016 U.S. Dist. LEXIS 108936 (E.D. Pa. August 17, 2016); *Songster v. Beard*, 2016 U.S. Dist. LEXIS 108937 (E.D. Pa. August 17,

2016). The following passage from Judge Savage's opinion in *Songster* aptly describes the similar situation confronting this Court in this case.

A sentencing practice that results in every juvenile's sentence with a maximum term of life...does not reflect individualized sentencing. Placing the decision with the parole board, with its limited resources and lack of sentencing expertise, is not a substitute for a judicially imposed sentence. Passing off the ultimate decision to the parole board in every case reflects an abdication of judicial responsibility and ignores the *Miller* mandate...Fixing the maximum sentence at life permits the parole board to deny parole, effectively working to imprison the defendant for the duration of his life. As long as the parole board has the authority to refuse to grant parole, life without parole remains a possibility regardless of the individual's peculiar situation.

Id. at *7.

Based on the foregoing requirements of *Miller* and *Montgomery*, this Court's ruling that the procedures and provisions of S.B. 590, which give Missouri juvenile offenders the chance to petition for parole from their mandatory LWOP sentences after twenty-five years, does not comport with Eighth Amendment standards which require individualized resentencing procedures. Although S.B. 590 requires the Board of Probation and Parole to consider youth and the circumstances of the crime

in considering whether juveniles serving LWOP sentences can be paroled, it does not impose any substantive requirements that these offenders must receive a path to freedom if the crime was based upon transient immaturity or where the defendant is not irreparably incorrigible.

Apart from guaranteeing individualized sentencing and resentencing procedures for juveniles, the *Miller* line of cases also hold that the Eighth Amendment requires that juveniles sentenced to LWOP must be afforded a meaningful opportunity to obtain release. *Miller*, 132 S. Ct. at 2475. The court did not fully provide a definition of “meaningful opportunity” in this context and instead left it to the states to comply with this constitutional requirement. *Graham*, 560 U.S. at 75. However, the Supreme Court has made it clear that for a juvenile to receive a meaningful opportunity for release, the opportunity must also be realistic. *Id.* at 82. Although S.B. 590 modified Missouri law to require the parole board to consider several factors mentioned by the court in the *Miller* line of cases in considering juveniles sentenced to LWOP for release, it is clear that Missouri’s current parole laws, regulations, and procedures do not provide petitioner and those similarly-situated with any meaningful or realistic opportunity to be released from prison.

The requirement that juvenile offenders be given a meaningful opportunity for release based upon a demonstration of maturity and rehabilitation has been recognized by numerous courts around the country. *See Greiman v. Hodges*, 79 F.

Supp. 3d 933, 943-44 (S.D. Iowa 2015) (denying motion to dismiss claim that parole review procedures were not compliant with *Graham* where plaintiff alleged that the parole board “failed to take account of plaintiff’s youth and demonstrated maturity and rehabilitation” and relied solely on the “seriousness of the offense in denying parole”); *Maryland Restorative Justice Initiative v. Hogan*, No. 16-1021, 2017 WL 467731, at *27 (D. Md. Feb. 3, 2017) (denying motion to dismiss because plaintiffs sufficiently alleged that Maryland’s parole system provided only “remote,” rather than “meaningful” and “realistic,” opportunities for release, including by “den[y]ing parole due to the nature of their offense or their status as lifers”); *Hayden v. Keller*, 134 F. Supp. 3d 1000, 1009 (E.D. N.C. 2015) (denying defendants’ motion for summary judgment and granting plaintiff’s motion for summary judgment in part after finding that the North Carolina parole system failed to provide a meaningful opportunity for parole because the commissioners and case analysts did not “distinguish parole reviews for juvenile offenders from adult offenders, and thus fail[ed] to consider ‘children’s diminished culpability and heightened capacity for change’”) (citing *Miller*, 567 U.S. 479); *Wershe v. Combs*, No. 12-1375, 2016 WL 1253036, at **3-4 (W.D. Mich. Mar. 31, 2016) (finding the reasoning in *Greiman*, *Maryland Restorative Justice*, and *Hayden* “persuasive,” and noting that the Supreme Court’s discussion of a meaningful opportunity to obtain release...suggests that the decision imposes some requirements after sentencing as

well,” but concluding that the evidence in that case indicated that the parole board did not consider the plaintiff’s maturity and rehabilitation.”).

Further, S.B. 590 did not amend or alter any of the other Missouri parole laws, under which the parole board is never required to grant any prisoner parole regardless of the circumstances, which makes a Missouri prisoner’s parole entitlement, like the commutation procedure, purely an act of grace. (See Exh. 6). The current Missouri parole statutes and guidelines gives the board unlimited discretion whether or not to grant an offender parole. *See* § 217.690.1 R.S.Mo. (2010). Based on the language of this statute, Missouri courts have repeatedly held that, because it creates no justifiable expectation of release, a prisoner has no constitutional right or protected liberty interest in parole release. *See, e.g., State ex rel. Cavallaro v. Groose*, 908 S.W.2d 133, 135 (Mo. banc 1995).

Section 217.690.1.2 does not comport with *Miller* because parole decisions are ultimately based solely upon “whether an offender can be released without detriment to the community or himself...and if release is in the best interest of society.” Even the additional factors set forth in S.B. 590 do not require the board to grant parole even in cases where the circumstances of the crime are not particularly aggravating and the defendant’s rehabilitative efforts both weigh heavily in favor of release. (See Exh. 6). Because the parole board has unlimited discretion to deny release to juveniles sentenced to life imprisonment without parole and there

is no meaningful judicial review permitted of such decisions, resentencing is the only mechanism to provide petitioner a meaningful opportunity for release. *Lute v. Mo. Board of Probation and Parole*, 218 S.W.3d 431 (Mo. banc 2007).

S.B. 590 also did not alter any of Missouri's parole regulations concerning the manner in which parole hearings are conducted. Under Missouri's current parole regulations, there is nothing to suggest that the current practice of giving a prisoner a short hearing of approximately thirty to forty-five minutes in duration before a single member of the board and two hearing officers will be changed in any manner in the foreseeable future. *See* 14 CSR 80-2.010(5)(A)(1). Petitioner has no right to counsel at his parole hearing or any ability to call or present witnesses on his behalf. *Id.* Instead, Missouri's parole regulations only allow a prisoner to have one representative at the parole hearing who can give a statement on his behalf. *Id.*

Parole hearings, although recorded, are considered closed records and prisoners are denied access to any record of the proceedings, thus preventing them from seeking any meaningful judicial review of the constitutional adequacy of a parole hearing in this context. *See* 14 CSR 80-2.010(5)(F).

In addition, the decisions of the parole board are often arbitrary. A report by the American Civil Liberties Union found that "one parole board staff member in Missouri explained to a reporter that some members never read the files at all and instead based their decision on how the reviewing board member before them

voted.” *False Hope: How Parole Systems Fail Youth Serving Extreme Sentences*, AMERICAN CIVIL LIBERTIES UNION (Nov. 2016). Since parole hearings are not before all seven board members, but rather one board member and two corrections staff members, the individual responsible for deciding whether a prisoner will receive parole may not even be present at the parole hearing.

In denying parole to offenders, adult and juvenile alike, the board almost always cites to the “circumstances surrounding the offense.” In this way, the parole determinations for juvenile offenders does not differ from the board’s standard procedures and customs. In fact, it appears that every single parole denial under S.B. 590 has focused on the circumstances of the present offense as a reason for denial. (See Exh. 4). Further, Janet Barton, who worked as an operations manager for the Missouri Board of Probation and Parole for thirty years, has admitted that:

Their forms would always say the same thing: “Release at this time would depreciate the seriousness of the present offense.” But that was “not always the truth. Sometimes I’d make that crap up. The real reason [was] we don’t believe in parole for people like you.”

Life Without Parole, THE MARSHALL PROJECT (July 10, 2015).

Yet the circumstances of the offense are not to foreclose a juvenile offender’s entitlement to release from prison. See *Montgomery*, 136 S. Ct. at 736 (“The opportunity for release [on parole] 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.”).

As indicated above, a petitioner being reviewed by the Missouri Board of Probation and Parole is only able to have one representative present at the meeting and there is no record made of the proceeding. As a result, the review process is shrouded in secrecy and review is nearly impossible. The problem with this approach is evident in the recent investigation of the conduct of a board member and a parole analyst. An investigation by the Roderick & Solange MacArthur Justice Center, and subsequently by the Missouri Department of Corrections, uncovered several witnesses who recounted incidents of misconduct by board members, including board members having contests to name song titles during parole hearings and contests to earn points by saying unusual words and getting the prisoner to say the word. In response to the investigation, as well as the advocacy of Mae Quinn of the MacArthur Justice Center, Board Member Donald Ruzicka resigned from the board. The other individual implicated in the misconduct remains employed as a parole analyst.

Upon a review of case precedent in juvenile LWOP cases as well as concerns regarding the Missouri parole board similar to those described above, the United States District Court for the Western District of Missouri, in a pending § 1983 action against the parole board, found that the plaintiffs raised colorable claims of due

process and Eighth Amendment violations and denied the defendants' motion to dismiss. *Brown v. Precythe*, 2017 WL 4980872 (10-31-2017). Further, in light of the "serious constitutional issues at stake", the court ordered the defendants to produce "(1) recordings of Plaintiffs' parole hearings, (2) Plaintiffs' parole files, including notes and memoranda created by the Board or parole staff; and (3) information regarding who participated in Plaintiffs' parole hearings and parole-related decisions, and in what capacity." *Id.* at *15. In doing so, the court held that "[i]nformation concerning the parole hearings, parole files, and board members involved in parole hearings and decisions for each of the named plaintiffs is relevant to the question of whether the plaintiffs were afforded a meaningful opportunity to secure release upon demonstrated maturity and rehabilitation." *Id.* at *14.

While this misconduct is troubling for all prisoners facing the board, it has even more dire consequences for juvenile offenders who were first denied their right to have a jury determination of irreparable incorrigibility and then denied their right to any opportunity for release for twenty-five years. The conduct of the board provides further evidence that even after serving twenty-five years parole hearings fail to provide juvenile offenders with a meaningful opportunity for release.

A state's parole process, like Missouri's, that does no more than give a juvenile offender serving a LWOP sentence the possibility of parole or a hope for parole violates due process because the decisions in *Graham*, *Miller*, and

Montgomery created a liberty interest in a meaningful and realistic opportunity for release. *See Greiman v. Hodes*, 79 F.Supp.3d 933, 944-945 (S.D. Iowa 2015). When viewed in conjunction with the fact that petitioner and those similarly situated have also been denied an individualized and adversarial resentencing procedure before the trial court, Missouri's current parole system does not comport with the fundamental requirement of due process, the right to be heard at a meaningful time and in a meaningful manner. *See Matthews v. Eldridge*, 424 U.S. 319, 333 (1976).

In addressing a similar problem, the Massachusetts Supreme Court ruled that Massachusetts's parole system for considering juvenile defendants for parole was inadequate to give them a meaningful opportunity for release because the prisoners had no access to counsel, funds for counsel or expert witnesses, or the opportunity for judicial review of the parole board's ruling on their applications for parole. *Diatchenko v. District Attorney*, 27 N.E.3d 349, 357-359 (Mass. 2015). The court held that these additional procedural protections were required to ensure that a juvenile receives his procedural due process right to a meaningful opportunity to obtain release required by *Graham*. *Id.*

In petitioner's case, the denial of a meaningful opportunity for release is compounded by the fact that the trial court ordered that all of petitioner's sentences be served consecutively. Although the board has not modified petitioner's face sheet nor informed him of his parole eligibility, it appears that due to his consecutive

sentences, he will have to serve at least sixty-eight years before he is eligible for parole. Under § 558.019(3) R.S.Mo., petitioner is required to serve eighty-five percent of his two fifteen year sentences for first degree assault. Additionally, petitioner is required to serve a minimum period of eighteen years for his three armed criminal action convictions under § 571.015 R.S.Mo. As a result, petitioner will still be unable to petition the parole board for a parole hearing after serving twenty-five years of his mandatory LWOP sentence as authorized by S.B. 590. These consecutive sentences deny petitioner a meaningful opportunity for parole consideration “based on demonstrated maturity and rehabilitation” as mandated by the United States Supreme Court in *Graham*. *Graham*, 560 U.S. at 75.

The court in *Graham* aptly noted that a sentence of LWOP “means denial of hope; it means that good behavior and character improvement are immaterial; it means that whatever the future might hold in store for the mind and spirit of [the convict], he will remain in prison for the rest of his days.” *Graham*, 560 U.S. at 70 (quoting *Naovarath v. State*, 105 Nev. 525, 526, 779 P.2d 944 (1989)). Here, petitioner, a minor at the time of the offense, has no hopes of being released from prison despite all efforts towards rehabilitation and personal growth. The clear denial of a meaningful opportunity for release is a violation under the Eighth Amendment.

S.B. 590's revisions to Missouri's parole laws, because this law was so hastily and poorly written, are also not clear as to whether a juvenile can petition for release a second time or whether he will ever be considered for parole again if he is initially denied parole after serving twenty-five years of imprisonment. (See Exh. 6). S.B. 590, however, makes it clear that juveniles receiving LWOP in the future would not be eligible to petition for parole a second time, if parole is denied after twenty-five years have been served, until the juvenile has served thirty-five years. (*Id.*) Although a challenge to this aspect of S.B. 590 is not before the Court in this case, this provision adds further support to petitioner's argument that this legislation is inadequate to provide Missouri prisoners a meaningful and realistic opportunity for release that the Eighth Amendment requires.

The constitutional infirmities and flaws in Missouri's legislative response to *Miller* and *Montgomery* are apparent when examining a recent parole hearing of one of the eighty other Missouri juvenile prisoners who had been given an unconstitutional LWOP sentence. In the *James Hardy* case,¹ the board denied Mr. Hardy parole despite his extraordinary efforts at rehabilitation and the fact that he

¹ The undersigned also represents Mr. Hardy, who has a pending federal habeas petition in the Western District of Missouri. *See Hardy v. Bowersox*, No. 2:16-CV-4248.

met all of the *Miller* and statutory criteria for release. (See Exh.'s 1, 2, 3). The board denied parole citing only the circumstances surrounding the offense and community opposition. (See Exh. 2). The board failed to follow the statutory criteria that it was required to employ in considering Mr. Hardy and others for parole, thus violating the due process clause of the Fourteenth Amendment. *See Hicks v. Oklahoma*, 447 U.S. 343, 346 (1980). As in the *Hardy* case, a due process violation under *Hicks* occurs when a state “arbitrarily deprives the defendant of a state law entitlement.” *See Laboa v. Calderon*, 224 F.3d 972, 979 (9th Cir. 2000). Furthermore, the result in *Hardy* was not an aberration. In the last few months, the board has conducted approximately twenty parole hearings under S.B. 590. It has granted parole in only three of these cases. (See Exh.'s 4, 5). Therefore, juvenile offenders with unconstitutional LWOP sentences face a board with a denial rate of 90%.

As noted above, the *Montgomery* and *Miller* decisions set an Eighth Amendment ceiling on the punishment that may be imposed in the vast majority of juvenile murder cases. Absent a finding by the sentencer of irreparable corruption, a juvenile convicted of murder may not be exposed to a LWOP sentence. *Miller* and *Montgomery* also preclude a juvenile from receiving a LWOP sentence unless the sentencer finds that the murders were not the result of transient immaturity. Unless both of these threshold findings are made adversely to the youthful offender, the maximum possible sentence that a juvenile could receive would be a parole eligible

sentence that provides him with a meaningful opportunity for release based on demonstrated maturity and rehabilitation.

Under the Supreme Court's Sixth Amendment cases, a judge may not make a factual finding, such as the "irreparable incorrigibility" finding required by *Montgomery* to enhance a juvenile defendant's sentence to LWOP. *See, e.g., Ring v. Arizona*, 536 U.S. 584, 605 (2002). Thus, a juvenile sentenced to LWOP has a Sixth Amendment right to have a jury determine the irreparable corrigibility factor required by *Montgomery* to justify the imposition of a LWOP sentence. *See* Sarah French Russell, *Jury Sentencing and Juveniles: Eighth Amendment Limits and Sixth Amendment Rights*, 56 B.C.L. Rev. 553 (2015).

At first blush, petitioner's argument, that the Sixth Amendment requires jury findings to support a sentence of LWOP, appears at odds with the decision issued thirty years ago in *Cabana v. Bullock*, 474 U.S. 376 (1986). *Cabana* rejected the prisoner's argument that a jury must make a culpability finding regarding whether a capital defendant convicted as an accomplice is eligible for a death sentence under the court's prior decision in *Enmund v. Florida*, 458 U.S. 782 (1982). In reaching this result in *Cabana*, the court concluded that Eighth Amendment limits differ from statutory provisions for Sixth Amendment purposes and that the *Enmund* requirements establish no new elements of the crime of murder that must be found by a jury. *Enmund*, 474 U.S at 384-386. Instead of an enhancement provision, the

court characterized the *Enmund* rule as a substantive limitation on sentencing that need not be found by the jury. *Id.* at 386.

However, the decision in *Cabana* did not survive the Supreme Court's recent Sixth Amendment jurisprudence. *Cabana*'s holding has been supplanted by the holding in *Ring* that whether a fact finding is labeled as a sentencing factor rather than an element of the offense is irrelevant for Sixth Amendment purposes. *Ring*, 536 U.S. at 605. Instead, the relevant Sixth Amendment inquiry requires the court to determine whether the law makes a fact essential to allow the imposition of an enhanced punishment. In light of the *Ring* line of cases, it is no longer accurate to say that a substantive limitation on sentencing need not be found by a jury because *Miller* and *Montgomery* make factual findings of irreparable corruption and the absence of transient immaturity essential elements to imposition of LWOP upon a juvenile defendant. *Ring* and the Supreme Court's other Sixth Amendment decisions would trigger the right to jury findings on these issues.

Finally, three other constitutional infirmities in petitioner's conviction and sentence exist. At the time of petitioner's offense, § 565.020 R.S.Mo. authorized only two forms of punishment; death or mandatory life without probation and parole. It is clear that both of these sentences, as applied to juveniles, violate the Eighth Amendment. Because this Court and the legislature have refused to grant petitioner a new sentencing hearing, petitioner's conviction is therefore void. It is clear that,

absent a constitutionally valid punishment, a criminal conviction cannot stand. *See Weems v. United States*, 217 U.S. 349 (1910). In *Weems*, the court held that where the only statutory punishments permitted for a crime violate the Eighth Amendment, the underlying conviction is void. *Id.* at 381. *Montgomery* also found that a conviction under an unconstitutional law is not merely erroneous, but is illegal and void. *Montgomery*, 136 S. Ct. at 730.

S.B. 590 is also unconstitutional on its face because it is a bill of attainder. Article I, Section 10 of the United States Constitution states that “No state shall pass any bill of attainder.” A bill of attainder is defined as a legislative act which inflicts punishment on named individuals or members of an easily ascertainable group without a judicial trial. *United States v. Lovett*, 328 U.S. 303, 315-316 (1946). By singling out juveniles convicted of first degree murder for special treatment and by inflicting an unconstitutional punishment on this group without a trial or judicial action, S.B. 590 is unconstitutional.

Finally, S.B. 590 is unconstitutional because it violates the Fourteenth Amendment in that it fails to provide equal protection of the law to juvenile defendants. The Fourteenth Amendment imposes upon a state the requirement that all similarly situated persons be treated alike. *Plyler v. Doe*, 457 U.S. 202, 216 (1982). Generally, legislation or a court decision will be presumed to be valid if the disparate treatment of a class of citizens is rationally related to a legitimate state

interest. *See Vance v. Bradley*, 440 U.S. 93, 97 (1979). However, strict scrutiny is required if a suspect class is involved or “when state laws impinge on personal rights protected by the Constitution.” *Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 440 (1985). Under either of these standards of review, Missouri’s legal and legislative response to *Miller* does not pass constitutional muster and is, therefore, contrary to clearly established equal protection principles.

Under S.B. 590, juvenile defendants convicted of first degree murder after August 28, 2016 will receive a full and fair adversarial sentencing. Following the sentencing, juveniles could be sentenced to as little as thirty years of imprisonment. Since § 558.019 R.S.Mo. was not amended in conjunction with S.B. 590, juveniles who receive a sentence of less than LWOP on a first degree murder conviction will be eligible for release after fifteen years. In contrast, as detailed above, juveniles sentenced to LWOP prior to August 28, 2016 are denied their constitutional right to a full and fair adversarial sentencing and are not eligible for a parole hearing until they have served twenty-five years of their sentence. The differential treatment of juvenile offenders convicted prior to and after August 28, 2016 results in a violation of equal protection under the Fourteenth Amendment.

There is also unjustified disparate treatment of juveniles sentenced to LWOP compared to juveniles sentenced to LWOP for fifty years under the old capital murder statute which was in place until 1984, in light of *State ex rel. Carr v. Wallace*,

2017 WL 2952314 (07-11-2017). In *Carr*, this Court held that the Eighth Amendment is violated when a juvenile defendant is sentenced to LWOP for fifty years without the jury having any opportunity to consider the mitigating and attendant circumstances of youth. *Id.* The court held that “by their very nature, mandatory penalties ‘preclude a sentencer from taking account of an offender’s age and the wealth of characteristics and circumstances attendant to it’” and that “judges and juries must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles.” *Id.* at 4. In granting the resentencing of juveniles given LWOP for fifty years and failing to provide similar relief to juveniles given LWOP sentences, equal protection of the law is violated under the Fourteenth Amendment. Further, under the reasoning of this Court in *Carr*, juveniles who have received even harsher sentences than those juveniles in *Carr* must be entitled to resentencing hearings under the protections of the Eighth Amendment as well.

The resentencing remedy ordered in *Carr* significantly strengthens petitioner’s claim that this Court’s March and July 2016 orders and the legislative response to the March order that culminated with the passage of S.B. 590, violated the equal protection clause of the Fourteenth Amendment by treating similarly situated juveniles differently without any rational basis for doing so. *See Bush v. Gore*, 531 U.S. 98, 105-106 (2000).

Lastly, there is disparate treatment between this case and the *Hart* and *Nathan* cases cited above. Both of those men, unlike petitioner, received a resentencing hearing. There is simply no rational basis for affording resentencing hearings to some prisoners who received unconstitutional sentences under *Miller* and not affording the same remedy to the other eighty-one men and women.

Because it is clear that petitioner is being held in custody in violation of the Constitution for numerous reasons, this Court must issue a writ of habeas corpus and order a resentencing proceeding before the trial court that conforms with *Miller* and *Montgomery*.

CLAIM II

S.B. 590 VIOLATES THE SEPARATION OF POWERS CLAUSE OF THE MISSOURI CONSTITUTION AND § 1.160 R.S.Mo.

Apart from the federal constitutional infirmities of S.B. 590, set forth in Claim I, there are two separate state law grounds for granting the writ of habeas corpus in this case. First, by vesting resentencing power in the parole board, S.B. 590 violates the separation of powers clause embodied in Article II, Section 1 of the Missouri Constitution. Second, S.B. 590 conflicts with another statute that is not referenced in this legislation, § 1.160 R.S.Mo. (2010). Petitioner will address each of these issues in turn.

At the time petitioner's crime was committed, state law mandated LWOP and the death penalty as the only possible punishments for any individual convicted of first degree murder. In accordance with this law, petitioner was sentenced by the trial court to LWOP.

It is clear that a sentence of LWOP for twenty-five years for this offense has not been legislatively mandated. The separation of powers clause of the Missouri Constitution prohibits the legislature from amending a previously imposed sentence. S.B. 590 is unconstitutional because it authorizes the parole board, a part of the executive branch of state government, to revise a sentence imposed by the judiciary.

S.B. 590 also clearly violates the plain language of § 1.160 R.S.Mo. This statute prohibits the legislature from changing a sentence after the crime was committed. *See State v. Nash*, 339 S.W.3d 500, 507-8 (Mo. banc 2011) (§ 1.160 is intended to require that a crime be prosecuted pursuant to the laws in effect at the time of its commission, not those enacted later.).

There is no way to harmonize S.B. 590 and § 1.160. In fact, there is no mention of § 1.160 in S.B. 590. As a result, S.B. 590 is unenforceable because it is in fundamental conflict with § 1.160 that expressly prohibits the legislature from amending the law to change a sentence validly imposed under the laws that exist at the time of the offense. Habeas relief is warranted.

CONCLUSION

WHEREFORE, for all the foregoing reasons, petitioner respectfully requests that this Court require the State of Missouri to show cause as to why habeas relief should not be granted and thereafter, after a thorough review of the facts and law, enter an order granting a writ of habeas corpus vacating petitioner's conviction for the offense of murder in the first degree or, grant such other and further relief that the Court deems fair and just under the circumstances.

Respectfully submitted,

/s/ Kent E. Gipson
KENT E. GIPSON, #34524
Law Office of Kent Gipson, LLC
121 East Gregory Boulevard
Kansas City, Missouri 64114
816-363-4400 • Fax 816-363-4300
Kent.Gipson@kentgipsonlaw.com

COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of January, 2018, the foregoing was filed via case.net. A copy of this petition and exhibits thereto were sent via U.S. Mail to Jason Lewis, Warden, Southeast Correctional Center, 300 East Pedro Simmons Drive, Charleston, Missouri 63834.

/s/ Kent E. Gipson
Kent E. Gipson

IN THE
SUPREME COURT OF MISSOURI

TYRONE D. MORANT,)
)
Petitioner,)
)
v.) Case No. _____
)
JASON LEWIS,)
)
Respondent.)

EXHIBITS IN SUPPORT OF PETITION FOR A WRIT OF HABEAS

CORPUS

EXHIBIT 1	Affidavit of James Hardy
EXHIBIT 2	Order Denying Parole to James Hardy
EXHIBIT 3	James Hardy's Parole Application Package
EXHIBIT 4	Parole Denial in Other Juvenile LWOP Cases
EXHIBIT 5	Ramsey Parole Order
EXHIBIT 6	S.B. 590
EXHIBIT 7	Judgment and Sentence
EXHIBIT 8	Indictment
EXHIBIT 9	Decision, Judgment, and Order from Mississippi County
EXHIBIT 10	Order from the Missouri Court of Appeals

SWORN AFFIDAVIT
OF
JAMES HARDY

I, James Hardy, after being duly sworn on my oath state as follows:

1. My name is James Hardy. I am a prisoner currently serving a sentence of life without parole in the South Central Correctional Center in Licking, Missouri. This sentence was imposed for a murder I committed when I was a juvenile.

2. In the aftermath of the Supreme Court's decision in *Miller v. Alabama* and the passage of S.B. 590 by the Missouri legislature, I was scheduled for a parole hearing on December 20, 2016 because I had served over twenty-five years of my sentence.

3. In preparation for the hearing, I put together, with the assistance of my attorney, a lengthy parole package that was submitted to the Board detailing my efforts at rehabilitation during my incarceration. This packet included the fact that I had completed thousands of hours of restorative justice and volunteer programs while imprisoned.

4. Under the Parole Board guidelines, I was allowed to have one person appear before the Board with me at my hearing as a "representative." I elected to have my father appear before the Board with me as my representative. My father is a well-respected certified public accountant in the Joplin, Missouri area who has, among other things, testified in court numerous times as an expert witness primarily on financial issues in civil litigation.

5. At my parole hearing myself, my father, and the institutional parole officer were present in the parole room at the prison and appeared before one member of the Board and a parole analyst via closed circuit TV. The Board member and parole analyst, I assume, were in Jefferson City. The Board member who presided over my hearing was Mr. Reznik. The entire hearing lasted approximately forty-five minutes.

6. At the outset of the hearing, Mr. Reznik asked me to give an account of the crime. I gave a detailed and full account of what I did and accepted full responsibility for my actions. Mr. Reznik's follow-up questions appeared to focus

EXHIBIT

tables

1

almost exclusively on the circumstances of my crime. Among other things, he asked me if I was a devil worshiper and whether I ever called myself "The Devil" while I was in prison. Mr. Reznik also asked me about whether I used drugs and about my relationship with my family when I was teenager.

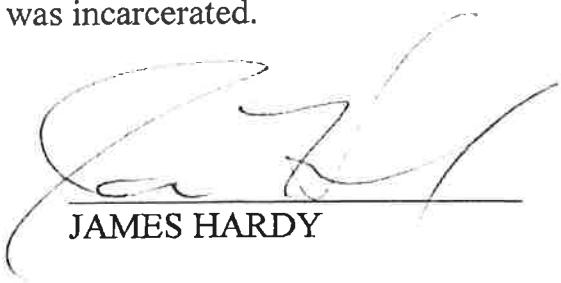
7. The only mention Mr. Reznik made of my participation in volunteer and restorative justice programs at the prison was a mention of the fact that I had completed the Intensive Therapeutic Community (ITC) program and he gave his opinion that the program was very highly regarded.

8. After Mr. Reznik finished questioning me, he allowed my father to briefly speak on my behalf. At the outset, Mr. Reznik made it clear that my father's statements would be limited to the issue of family support, should the Board elect to parole me. After my father gave a very brief statement that could have only lasted a minute or two about what family support could be provided to me, he asked Mr. Reznik if he could say more. At that point, Mr. Reznik cut my father off and he was not allowed to speak on any other issues pertaining to my maturity and growth as a person during the time I have spent in prison.

9. At the very end of the hearing, the institutional parole officer asked me a question regarding why I believed I would be a good candidate for parole under the new guidelines and provisions of S.B. 590. I responded by saying that, while I did not want to make the hearing a formal legal proceeding, that I met all the criteria of S.B. 590 to be released. I also mentioned that I had worked very hard since 1998 to become a better person and avail myself of all available self-help programs. In response, Mr. Reznik admitted that I did meet all of the criteria of S.B. 590 but that I had committed a horrible crime by my own admission. Shortly thereafter, the hearing concluded.

10. At the hearing, it appeared that Mr. Reznik seemed to focus on whether or not I was a devil worshiper, which I emphatically denied, and hardly mentioned my list of accomplishments while I was incarcerated.

Affiant further saith naught.



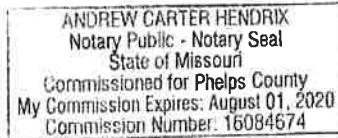
JAMES HARDY

STATE OF Missouri)
) ss
COUNTY OF Texcs)

On this day of , 2017, before me, the undersigned notary public, personally appeared James Hardy, known to me to be the person whose name is subscribed to within the instrument and acknowledged that he executed the same for the purposes therein contained. In witness whereof, I hereunto set my hand and official seal.

Dated: 3-14-17


Andrew Carter Hendrix
Notary Public



DOC ID: 164676 Cycle: 19880525
DOC Name: HARDY, JAMES M 36-228

Institution/Housing Unit SCCC/003

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 12/20/2016. 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.

B: Use of excessive force or violence.

C: Community opposition.

EXHIBIT

tabbed

2

AKU032A-OPN
Time - 15:47:23

Missouri Department of Corrections
BOARD OF PROBATION AND PAROLE

Page - 2
Date - 1/27/17

DOC ID: 164676 Cycle: 19880525
DOC Name: HARDY, JAMES M

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

md /MKF (Date* Created: 01/12/17)

Parole Application

James M. Hardy

164676

A-43



Pursuant to RSMo 558.047, petitioner attests to being sentenced to a term of imprisonment for life without eligibility for parole, and that said sentence was imposed prior to August 28, 2016. Petitioner further attests to being under eighteen years of age at the time of the commission of the offense or offenses, and to having served twenty-five years of incarceration on the sentence of life without parole.

Petitioner requests that the Parole Board conduct a review of said sentence to determine whether parole should be granted.

James M. Hazy

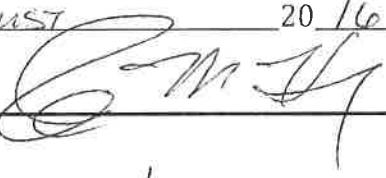
164676

Name (Please Print)

DOC #

I hereby attest that a copy of this petition has been served upon the office of the prosecuting attorney of JASPER County, this 19 day of AUGUST 20 16.

Signature


Andrew Carter Hendrix

Notary:

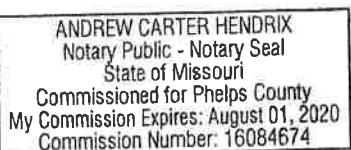


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Section 1

Statement to the Parole Board

Statement of Challenges

Violations

Summary of Certificates and Achievements

Outreach to Law Enforcement

Mr. Ellis McSwain, Jr., Chairman
Missouri Board of Probation and Parole
3400 Knapp Drive
Jefferson City, MO 65109

Dear Mr. McSwain and Members of the Parole Board;

On December 6, 1987 I committed a deplorable act of violence that took the life of Steven Newberry, an innocent man. This act devastated Steve's Family, the lives of countless members of the community, and left a deep wound on society.

The first several years of my incarceration found me taking zero accountability for this act, and my negative behaviors. I placed blame on those around me, my upbringing, imagined unfair treatment and drug abuse. I looked for excuses, and refused to take responsibility for my actions.

In April of 1997 I held my then 4 month old nephew in my hands during a visit. I returned to my cell and wept. For the first time in my life the incredible value of life crashed in on me. The immediate depth of my remorse was overwhelming - and the understanding of the great harm I had caused so many good people crushed me.

That same year I used drugs for the last time.

Being sober allowed me to think beyond myself. Of how I could be a better son, brother and uncle. How I could hopefully become a worthwhile father to my then 10 year old daughter.

Struggling to be a responsible, accountable adult took a great deal of effort in the beginning - and I knew that I would need support. I began taking self help and recovery programs in 1998, and have continued that effort since. I quickly discovered that program participation required absolute honesty and self examination. These classes take sacrifice of self interests, and most importantly they take a continual realization that I committed a great harm for which I will forever owe amends. I am profoundly ashamed.

I have learned more about myself and what it takes to live a responsible, accountable life than could be written in this statement. ICVC, ICTC and the ITC programs truly imparted to me the greatest of humility, and a set of tools for being a wholesome

person. I have learned and experienced more about the devastating ripple effect of my selfish acts than I ever wanted to face. My selfishness, lack of appreciation, low self esteem, dishonesty, fear and the blaming of others were the root of all my poor choices.

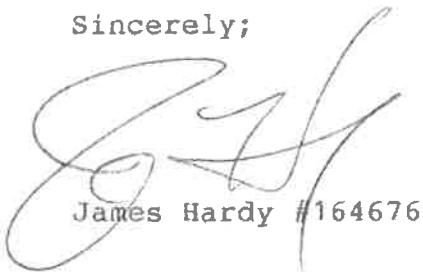
Because of my actions Steven Newberry lost his life. Steve's family was incredibly harmed. My community was wounded. My family was crushed. I am responsible for this.

I have grown into a mature man. I am always willing to give of myself, always ready to admit when I have made a mistake and able to live a lifestyle sworn to cause no harm.

I want to build and contribute. I want to help and to heal. To be productive and an inspiration. I will always endeavor to treat others with understanding, dignity, honor and respect for the remainder of my life.

I have enclosed a summary of my achievements and rehabilitative efforts. I hope that you will consider the work I have done to become a responsible person, and allow me to return to the home of my family where I can become a positive, contributing member of the community.

Sincerely;



James Hardy #164676

STATEMENT OF CHALLENGES

1) Live a responsible life

I acknowledge that living responsibly is a daily challenge that must be faced with empathy and awareness. I must continue to think beyond myself and consider how my actions will affect others. I must stay centered in the present to protect myself from being overwhelmed. I must be brutally honest and realistic with myself and those around me. I must confront my fears and remain willing to accept accountability for any mistake I make, no matter how small.

2) Maintain and build a family foundation

I am open with my family. They know my past and my present, and I look forward to building a positive future with them. I know that I must remain open to them, their critiques, admonitions and advice. I must be willing to sacrifice my desires for the betterment of my family bonds. I will strive to build a deeper trust with my family so they know they can always depend on me.

I hope to build and maintain a meaningful relationship with my daughter, her husband and my 4 year old granddaughter. To be a good role model for my nieces and nephews, to impart on them that there is no mistake too big to overcome; to show by example that you are never too old to make the next right choice, or achieve a goal through hard work, focus and the love of your family.

3) Enter the Community

I will secure employment, a driver's license, a social security card, and savings/checking accounts. I will strive to build a healthy relationship with my parole officer through a willingness to do whatever is asked of me. I will open every aspect of my life to him/her and earnestly seek their advice and criticisms. I will do my best to be a good friend, neighbor, employee and student.

4) Extend myself

There is a great deal in life that I always wanted to be a part of. Fears of possible failure and living in the negative opinions of others prevented me from partaking in much of life. I know, too, that it is impossible to recapture lost time. With these things in mind, it is my intention to extend my services to the law enforcement community in which I reside. I will serve in any capacity that my skill set would allow. I certainly desire to reach out to troubled youth at the crossroads of their lives; using the knowledge and experience I've gained to guide them in making the next right choice. I would like to be involved in the betterment of my community, helping to organize events and beautification projects. Most importantly, I want to be an active part of keeping my community drug free.

5) Stay Realistic

I know there are a great many hurdles I will face as a parolee. I will remain patient and do my best to not become frustrated. I will have much to prove to my community, and this will not happen overnight.

I will be steady and consistent. If I become overwhelmed I will immediately reach out to my support network, my family, my parole officer and to local law enforcement for advice and a safe hand to hold onto in times of crisis. I will take any difficulties seriously, no matter how small or trivial they seem.

I will remain sober at all times.

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		ILICIT 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		DISOBEYING AN ORDER
07/13/1998	PCC	20		DISOBEYING 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		DISOBEYING AN ORDER
01/25/1997	PCC	20		DISOBEYING 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		DISOBEYING 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		DISOBEYING 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 Rule</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	DISOBEYING AN ORDER
11/08/1989	MSP		37	VIOLATION OF INSTITUTIONAL RUL
06/18/1988	FRDC		02	ASSAULT

END OF REPORT FOR CYCLE: 19880525

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
SCCC
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:



A-54

James M. Hardy #164676
SCOC
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;



A-55

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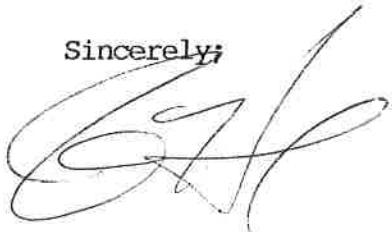
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If you would be interested in meeting/working with me upon my potential release, and could utilize my skill set to aid the local law enforcement community, please contact me and let me know.

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

Sincerely;



A-56

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

A-60

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-63

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,



**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

A-lolo

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-67

To Whom It May Concern,

I had the privilege of working with James Hardys for two years starting in 2010 until May 2012. He was the clerk for the Institutional 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

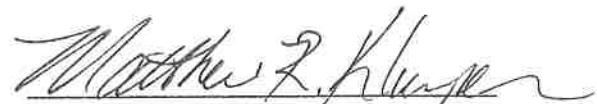
From: Matthew Klumper, CST
Re: Letter of Appreciation

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

Matt Klumper, CST



A-69



Restorative Justice Office
JCCC
Memorandum
October 5, 2007

To: Whom It May Concern:

Tanya K
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.

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*



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,

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

A-75

February 2, 2004

Re: James Hardy 164676

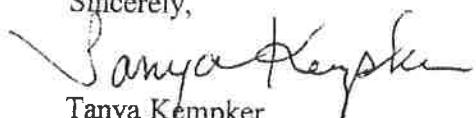
To Whom It May Concern:

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

A-76