

**APPLICATION FOR EXECUTIVE CLEMENCY**

**MARCEL WAYNE WILLIAMS, No. SK943**

APPLICATION FOR EXECUTIVE CLEMENCY  
(Death Penalty or Life Imprisonment Without Parole)

NAME \_\_\_\_\_ ADC# \_\_\_\_\_

Sentence:     Death  
               Life Imprisonment Without Parole

I hereby apply for executive clemency according to the laws and Constitution of the State of Arkansas and rules established by the Governor and the Arkansas Board of Parole.

The specific grounds or reasons upon which clemency is asked are as follows:

A.

B.

C.

D.

(Continue on plain white bond paper)

All exhibits and supporting material to be considered are attached to this application.

Signed: M. J. Williams

Date: 3/14/2017

Send application with supporting material to:

Arkansas Community Correction  
Institutional Release Services  
2801 South Olive, Suite 6D  
Pine Bluff, Arkansas 71611

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## INTRODUCTION

The sentence of death is without question the most serious form of punishment known to modern society. Once carried out it cannot be undone, amended or modified. It is final. For this reason, our state's Parole Board has the immense power to recommend that the Governor halt an impending execution and commute a sentence of death to a lifetime of imprisonment, without the possibility of parole. This power should be engaged when the other parts of our justice system have failed to work properly together to produce a fair and reliable outcome – an outcome we can all be confident in. This is certainly true in the case of Marcel Williams, who has never had a fair opportunity to tell the story of his deeply troubled upbringing. The facts set out below show how the justice system managed to fail Marcel and kept him from presenting the evidence of his tragic life. He now humbly asks this Board to consider this evidence and make a recommendation of mercy to the Governor.

## GROUND FOR CLEMENCY

### I. MARCEL WILLIAMS ACCEPTS RESPONSIBILITY FOR HIS CRIMES

To be clear, Marcel accepts full responsibility for his crimes, and he does not deny the ongoing pain and suffering he caused to the families and friends of his victims. Indeed, if he were granted clemency he would suffer the heavy pain of remorse and regret

for every day he continues to live. He accepts and welcomes such punishment for his actions. He is not trying to make excuses in front of this Board. However, in the context of clemency it is important that he too was victimized as a child, and that he was part of a cause-and-effect cycle of victimization that is ugly and often unending. Marcel realized this fact when he learned that one of his previous victims did not want to see him put to death. He was shocked to hear of this victim's compassion – to learn that a person who he harmed in a most devastating way could believe that Marcel was too a victim in some way. This victim, who Marcel expects will address this Board in person, believes that Marcel's life should be spared, and that the cycle of victimization should end here. This victim hopes to explain her experience to this Board, and call for a compassionate outcome for Marcel.

Marcel does not want anyone to believe that his past should excuse his crimes. He does not want anyone to feel sorry for him or think that he doesn't acknowledge full accountability for his crimes. He does not deny that he should spend his life in prison for what he did. However he does not believe, considering the abuse he suffered as a young person, that his level of culpability warrants death. He now faces the penalty of death (instead of life without parole) because the jury who gave him that sentence never had a chance to consider Marcel's compelling story of childhood trauma. This Board now has the unique opportunity to consider everything about Marcel's upbringing and make an informed decision about his punishment. More importantly, it has the power and

authority to recognize the injustice in his pending execution, and recommend just relief to the Governor.

## II. MARCEL WILLIAMS WAS THE VICTIM OF SEVERE CHILDHOOD TRAUMA

Marcel Williams was born to an unwed, teenage mother, Sarah, and he never knew his father. His childhood was marked by profound violence, sexual abuse, and deprivation. He lacked all the supports that are necessary for the normal, healthy development of a child.

Marcel was raised in squalid conditions in violent housing projects. His cousin described their home as full of trash, dirty clothes, dirty dishes. It was infested with roaches and rodents and with an intolerable stench of urine. Frequently the lights, water, or gas would be turned off. Outside the walls of the apartment, the environment was dangerous. Drugs, gang activity, weapons, and gambling abounded. Gunfire could be heard at all times of night. Marcel was stabbed and chased by an older man who accused him of cheating at craps while he lived in the Eastgate projects.

For a period of Marcel's childhood, his mother was married to James Riggs. Sarah and James had two children together: Marcel's younger sister, Peggy, and brother, James. Mr. Riggs emotionally and physically abused Marcel. He rejected any fatherhood role over Marcel and refused to spend money on his care. He would buy Christmas presents for his children, but none for Marcel. Sarah and James had frequent, violent fights.

Marcel tried to intervene on behalf of his mother and became a target of James's violence.

Marcel's mother has been described as "catastrophically unfit." She failed to provide for the family and was frequently absent at bars or would leave for days with different men. The family never had enough food. Without an involved mother, Marcel took on a parental role for his younger siblings. Even though he was a child himself, he attempted to provide for and protect them with the limited tools he had. His sister recalled that he took care of them like he was their Daddy. He walked them to and from the bus at the Eastgate projects to protect them from the violent environment. When Marcel saw his sister and brother without shoes, food, or medicine, he did whatever he could to provide for them, including stealing. He and his sister bore a hole in the thin wall of their apartment so they could sneak into the neighbor's apartment and take food out of her refrigerator while she was away. He shoplifted from grocery stores to bring home food for his family. His mother began to coach him to steal and would give him orders on what she needed.

Marcel was sexually abused by a multitude of perpetrators throughout his adolescence. Older women sexually abused him and paid him in food stamps or covered his mother's electric bill in return. Marcel's mother facilitated the arrangement, offering his sexual services to women that were in their twenties, thirties, and forties, while he was only a child. At one point the family was evicted and lived in the home of one of

these abusers, Diane, as a quid pro quo in exchange for Diane's free access to sexually abuse the ten-year-old Marcel. Marcel's mother thought nothing of facilitating this arrangement as she too earned money for the family by prostituting and stealing. Marcel was also sexually abused by two of the men that Sarah brought into the family home. David Lisak, a psychologist who specializes in the study of the effects of sexual abuse, characterized the involvement of Marcel's mother in his sexual abuse as a form of incest that is extreme and profoundly damaging.

Marcel's mother was also violently abusive. Dr. Lisak described the abuse as "extremely severe." Sarah beat Marcel with belt buckles, switches, or extension cords. She was a large woman and as a child Marcel was skinny. She would sit astride him and pummel him with her fists. At the age of 13, Marcel's mother doused him with a pot of boiling water leaving burns up and down his arm. She burned him with a curling iron. On at least one occasion, Marcel's mother put a pot of water on to boil, heated up extension cords in the water, and then beat him, naked, with the cords until he was covered in gashes. His cousins watched in horror as he fled the house, still naked and bleeding. Marcel was never safe at home. His mother would wake him up while he was sleeping to beat him. One time she beat him so fiercely in bed that the bunk bed he was sleeping in collapsed.

Marcel's stealing landed him in juvenile custody, which was actually the first stable environment he had ever lived in. Marcel was sent to the Pine Bluff Boys Training



School, where he lived in a dormitory unit with Elbert “Pop” Moore as his house parent. As Leroy Brownlee described, “Everyone loved Pop. He was a strong disciplinarian, but he was also a strong, positive role model for the kids.”<sup>1</sup> In the structured environment of the training school “[h]e thrived. He did well. He was happy.”<sup>2</sup> But as Mr. Brownlee described, once released he had none of the support systems necessary to turn his life around:

The downfall for Marcel was the environment that he was released to go back to. Marcel did not have any support groups to promote his well-being or keep him on track. Marcel’s family life and the neighborhood that he was from lacked all of the support systems that could nurture him, but had all the negative elements to contribute to bad choices. Marcel’s family structure was extremely weak. Marcel’s mother was a single parent with several children. Marcel’s father was not in the picture. The Silver City Court Housing Project is the particular area of North Little Rock that Marcel was from. That area was well known for gang activity and drug infestation. Marcel was released right back into that crime infested environment. Marcel acted as if he was reluctant to leave the training school when his time was up.<sup>3</sup>

After being released from the Training School, Marcel was sent back to his mother’s home in the projects. Marcel immediately committed a robbery in hope that he would be sent back to juvenile detention, which had been the happiest time of his life. Instead he was sent to adult prison. At 17, Marcel was still a skinny, scrawny kid. He began being groomed by an older prisoner who expected sex in return for the help he was providing the naïve Marcel. When Marcel refused to engage in sex, this inmate and two others violently gang raped him. Marcel tried to report the rapes to an officer but was told “if you’re not dead, you weren’t raped.” As Marcel’s prison records show, he began

committing infractions so he could be placed in solitary confinement as a way of protecting himself. This was Marcel's turning point. He was angry and frustrated from years of being neglected, beaten, and victimized, and he was ready to take his pain out on the world.

The fact that this tragic history was never presented to Marcel's jury is a miscarriage of justice. According to the Supreme Court of the United States, "[i]t is precisely because the punishment should be directly related to the personal culpability of the defendant that the jury must be allowed to consider and give full effect to mitigating evidence relevant to a defendant's character or record or the circumstances of the offense."<sup>4</sup> This Board now has the chance to consider and give full effect to this mitigating evidence.

### III. THE ONLY COURT TO EVER CONSIDER EVIDENCE OF MARCEL'S CHILDHOOD FOUND THAT HE DID NOT DESERVE THE DEATH PENALTY

In Marcel's case, many technical errors occurred which were outside of his control. These errors should not happen within our sophisticated system of justice, but sometimes they do. For the reasons set out in more detail below, these errors have clouded the sentence of death now hanging over Marcel's head, as well as the process by which it was handed down. His other legal remedies have been unsuccessfully exhausted and used up, again for reasons outside of his control. Therefore, this Board will truly have the final say in correcting the injustices that have placed Marcel under sentence of death.

- a) Marcel’s trial lawyers failed to ensure that the jury which sentenced him to death heard crucial information about his upbringing and tragic life circumstances

To be blunt, Marcel’s trial attorneys dropped the ball in his case. His jury heard essentially no mitigating evidence on his behalf. The evidence which was presented to his jury consisted solely of testimony from a prisoner who was at the time serving a sentence of life without parole in the Arkansas Department of Correction. This prisoner had never met Marcel Williams and knew nothing about him or his family. He was not an expert in any field of social science or childhood development. In fact, he could offer nothing more than his opinion that serving a sentence of life without parole was not preferable to living on death row – and was perhaps worse than being put to death. One of Marcel’s trial attorneys, Bill James, admitted that there was “evidence that we never looked at because we didn’t really understand what the true meaning of what mitigation was. We thought mitigation was awards, cub scouts’ merits, things like that.” James went on to acknowledge, “[h]ad [Marcel] had attorneys who truly knew what they were doing at the time, it might have been a completely different result.”<sup>5</sup>

- b) Egregious omissions made by Marcel’s post-conviction lawyers cost him any chance of having a jury consider the facts of his tragic life

In Arkansas, a convicted person can seek a new trial by way of a process commonly referred to as “Rule 37”, which requires a convicted person to file a petition for relief under Rule 37 of the Arkansas Rules of Criminal Procedure. Marcel was

appointed attorney Bill McLean to represent him through his Rule 37 proceedings, and he sought to get Marcel a new trial. The primary allegation asserted on Marcel's behalf was that his trial attorneys provided ineffective assistance of counsel by failing to investigate mitigating evidence and present it to the jury during sentencing. In order to prove this allegation, Marcel's attorney would have had to present the evidence that his trial attorneys should have put forth in the first place, so that the post-conviction judge can make a determination as to whether that evidence would have made a difference at sentencing. Mr. McLean did not present any evidence at the Rule 37 hearing. As explained below, the Eighth Circuit Court of Appeals determined that Marcel's right to present this evidence had been waived because he did not present it at the Rule 37 hearing, and that his right to present it in court had been forever lost.

c) Marcel was granted the right to a new sentencing hearing but that right was overturned because of his attorneys' errors

Attorneys who took over Marcel's case in 2006 finally did the work that his previous lawyers had failed to do, and uncovered the evidence of his horrendous upbringing. After being denied at the Rule 37 stage in state court, Marcel's new defense team went to Chief Judge Holmes in the United States District Court and filed a petition for writ of habeas corpus in order to obtain a new trial and present this evidence. Chief Judge Holmes set a hearing specifically for the purpose of considering this new evidence and determining whether it would have in fact made a difference at Marcel's sentencing.

Based upon this evidence, Judge Holmes found that Marcel had not received a fair sentencing hearing and that his sentence should be commuted to life without parole or that a new jury should sentence him only after having an opportunity to hear this evidence. Specifically, Judge Holmes made the following observations:

Marcel Wayne Williams was subject to every category of traumatic experience that is generally used to describe childhood trauma. He was sexually abused by multiple perpetrators. He was physically abused by his mother and stepfather, who were his primary caretakers. He was psychologically abused by both of his primary caretakers. He was subject to gross neglect in all categories of neglect: medical, nutritional, educational. He was a witness to violence in the home and in his neighborhood throughout his childhood. As an adolescent, he was violently gang-raped in prison . . . . . it is reasonably probable that but for the errors and omissions of his lawyers the jury would have returned a verdict to impose a sentence of life imprisonment without parole rather than a sentence of death . . . . [t]he State must afford Williams a new trial at the penalty phase within 120 days of the entry of this Opinion or change his penalty to life imprisonment without parole. <sup>6</sup>

This was a victory in Marcel's case – he'd obtained the right to a new, fair sentencing hearing.

The State of Arkansas appealed Judge Holmes's ruling to the Eighth Circuit Court of Appeals in St. Louis. The Court of Appeals overruled Judge Holmes decision, citing a legal technicality on which the facts and details of Marcel's life had no bearing. Marcel's new attorneys asked the United States Supreme Court to review the decision made by the federal court of appeals. However, the Supreme Court refused to review the appeals court's determination that, because of this legal technicality, new evidence cannot be presented for the first time with a habeas petition; federal courts that hear habeas corpus

cases are limited to reviewing only what happened in state court.<sup>7</sup> Not every member of the United States Supreme Court agreed with this refusal, however. Two dissenting Justices said what happened in Marcel’s case was a “miscarriage of justice.”<sup>8</sup> Marcel now implores this Board to agree and find that what happened throughout the span of his capital case has been a miscarriage of justice. The system failed. Now is the time to set aside legal technicalities, put common sense to use, and provide Marcel with a fair outcome that we can all be confident in.

d) Competent counsel would have made a significant difference in the outcome of Marcel’s sentencing procedure

It is not difficult to understand how and why the outcome of Marcel’s sentencing would have been different had he been able to present mitigation evidence to the sentencing jury. Both the United States Supreme Court and the Arkansas Supreme Court have consistently made it clear that evidence of extreme childhood trauma and the demoralizing consequences of such trauma is just the sort of evidence that can persuade the jury to spare the life of an offender convicted of capital murder.<sup>9</sup> The United States Supreme Court has also said that jurors often have mercy on offenders who have a “history of childhood abuse” because they conclude that such defendants are “less morally culpable than defendants who have no such excuse.”<sup>10</sup> This Board can, however, consider this evidence now and do what Marcel’s jury was not able to do – make an informed, reasoned decision about his punishment.

## CONCLUSION

Marcel Williams's case is rather unique. On the surface, it may appear to be the same as many appeals for clemency that have come in front of this Honorable Board. However, Marcel's crimes are not a reflection of the person he is, or the person he can be. His crimes, and the person he was when he committed them, were truly the result of a cycle of violence and victimization that began long before he was born. The jury who sentenced him to death back in 1997 was completely unaware of this. Should the Board fail to halt his execution, this cycle will be allowed to continue - unregulated by human compassion or discretion. As Marcel's own victim now explains, such an outcome accomplishes nothing. This Board is capable of far greater than that.

Respectfully Submitted,

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Jason P. Kearney

Counsel for Marcel Wayne Williams

## REFERENCES

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<sup>1</sup> Declaration of Leroy Brownlee at 2.

<sup>2</sup> Testimony of Leroy Brownlee, Exhibit C

<sup>3</sup> Testimony of Leroy Brownlee, Exhibit C

<sup>4</sup> *Penry v. Lynaugh*, 492 U.S. 302, 327-328 (1989).

<sup>5</sup> Bill James Interview, Exhibit M

<sup>6</sup> *Marcel Williams v. Norris*, 5:02CV00450-JLH, (E.D. Ark. Apr. 4, 2007) (Exhibit I), pg. 4. Chief Judge Holmes's findings of Marcel Williams's background are based on sworn testimony attached as Exhibits to this Application: the testimony of Dr. David Lisak (Exhibit A), the testimony of Joseph Carthron (Exhibit B), the testimony of Leroy Brownlee (Exhibit C), the testimony of Peggy O'Neal (Exhibit D), the testimony of Rodney Carthron (Exhibit E), the testimony of Shannon Carthron (Exhibit F), and the testimony of Tyrone Williams (Exhibit G). Copies of the 18 exhibits introduced in federal court in connection with this testimony are attached as Exhibit L to this Application.

<sup>7</sup> The Supreme Court, which hears very few cases, decided not to review Mr. Williams's case. However, they did hear a very similar case raising the same issue and, in doing so, made clear why they decided not to reinstate Chief Judge Holmes's decision. The High Court said that a federal court's review of a state death penalty case "is limited to the record that was before the state court." See *Cullen v. Pinholster*, 563 U.S. 170, No. 09-1088 (Apr. 4, 2011).

<sup>8</sup> *Marcel Williams*, 131 S. Ct. 558 (Sotomayor, J., dissenting from the denial of certiorari).

<sup>9</sup> *Sears v. Upton*, 130 S. Ct. 3259 (2010); *Wiggins v. Smith*, 539 U.S. 510 (2003); *Terry Williams v. Taylor*, 529 U.S. 362 (2000); *Wooten v. State*, 2010 Ark. 467 (Brown, J., concurring); *Sanford v. State*, 342 Ark. 22 (2000).

<sup>10</sup> *Penry v. Lynaugh*, 492 U.S. 302 (1989).