

DATE TYPED: August 26, 2009
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IN RE: ROMELL BROOM, OSP #A187-343

**STATE OF OHIO
ADULT PAROLE AUTHORITY
COLUMBUS, OHIO**

Date of Meeting: August 20, 2009

Minutes of the **SPECIAL MEETING** of the
Adult Parole Authority held at 770 West Broad Street,
Columbus, Ohio 43222 on the above date.

IN RE: ROMELL BROOM, OSP #A187-343

SUBJECT: Supplemental Death Sentence Clemency

CRIME, CONVICTION: Aggravated Murder with two (2) Felony Murder Specifications & Aggravated Felony Specification; Rape with Aggravated Felony Specification; Kidnapping with Aggravated Felony Specification; Attempted Kidnapping with Aggravated Felony Specification (2 counts)

Kidnapping with Aggravated Felony Specification

DATE, PLACE OF CRIME: September 21, 1984 in Cleveland, Ohio
December 6 & 18, 1984 in Cleveland, Ohio

COUNTY: Cuyahoga

CASE NUMBER: CR196643, CR196020

VICTIMS: Tryna Middleton, 14 years old (deceased)
Tammie Sims, 13 years old
Bonita Collier, 13 years old
Melinda Grissom, 11 years old
Venita McKenney, 12 years old

INDICTMENT: CR196643: January 10, 1985: Count 1: Aggravated Murder with two (2) Felony Murder Specifications & Aggravated Felony Specification; Count 2: Rape with Aggravated Felony Specification; Count 3 - 7: Kidnapping with Aggravated Felony Specification; Count 8: Felonious Assault.

September 10, 1985: Counts 6-8 severed;
April 24, 1986: Counts 6-8 nolle.

CR196020: January 11, 1985: Count 1: Kidnapping with Aggravated Felony Specification; Count 2: Felonious Assault with Aggravated Felony Specification

FINDING: CR196643: October 3, 1985: Found guilty by Jury of Counts 1-3 as indicted and guilty of the lesser included offenses in Counts 4-5, Attempted Kidnapping with Aggravated Felony Specification.

CR196020: Found guilty by Jury of Count 1 as indicted; Not guilty Count 2.

SENTENCE: CR196643: October 16, 1985: Count 1: DEATH; Count 2: 15-25 years (with 15 years actual incarceration); Count 3: 12-15 years (with 12 years actual incarceration); Count 4: 12-15 years (with 12 years actual incarceration); Count 5: 12-15 years (with 12 years actual incarceration). All terms to run consecutively.

CR196020: April 24, 1986: 15-25 years (with 15 years actual incarceration) and costs.

ADMITTED TO INSTITUTION: October 24, 1985

TIME SERVED: 24 years, 10 months

AGE AT CONVICTION: 29 years old

CURRENT AGE: 53 years old

DATE OF BIRTH: June 4, 1956

PRESIDING JUDGE: Honorable Paul R. Matia

PROSECUTING ATTORNEY: John T. Corrigan

FOREWORD:

Clemency in the case of Romell Broom #187-343 was initiated by the Ohio Parole Board, pursuant to Section 2967.03 and 2967.07 of the Ohio Revised Code and Parole Board Policy #105-PBD-01. A Clemency hearing was previously held in this case on September 7, 2007, after which the Parole Board submitted a unanimous (7-0) unfavorable recommendation to Governor Strickland. Mr. Broom received a stay of the October 18, 2007 execution date due to his attachment to the litigation surrounding

Ohio's method of lethal injection. The Ohio Supreme Court has now set a new execution date of September 15, 2009.

On July 30, 2009, Romell Broom was interviewed via video-conference by the Parole Board at the Ohio State Penitentiary. Mr. Broom's counsel, Adele Shank and Timothy Sweeney were present at the institution to observe the interview. Representatives from the Attorney General's office, the Cuyahoga County Prosecutor's Office, and the Governor's Office observed through video conferencing, but were separate from the Board Members. Board Members participating in the interview included Chairperson Mausser and Parole Board Members Mr. Bedra, Mr. Bogan, Ms. Kovach, Dr. Mack, Mr. Maszczyński, and Ms. Venters.

A Supplemental Clemency Hearing was then held on August 20, 2009 with eight (8) members of the Ohio Parole Board participating to consider information gathered since the initial clemency hearing. Arguments in support of clemency were presented by Mr. Broom's counsel, Adele Shank and Timothy Sweeney. Arguments in opposition to clemency were presented by Cuyahoga County Assistant Prosecutor Matthew Myers and Assistant Attorney General Adam VanHo. Bessye Middleton, mother of the victim, also testified in opposition to clemency.

The Parole Board considered all of the arguments, all of the supplemental materials, the information disseminated by presenters at the hearing, materials and testimony disseminated during the Clemency Hearing of September 7, 2007, and any investigative findings as well as judicial decisions as they deliberated upon the propriety of clemency in this case. With eight (8) members participating, the Board came to a unanimous agreement and voted to provide an unfavorable recommendation for clemency to the Honorable Ted Strickland, Governor of the State of Ohio.

DETAILS OF THE OFFENSE / PRIOR RECORD: Please refer to the Death Penalty Clemency Report published on September 14, 2007.

INSTITUTIONAL ADJUSTMENT:

Please refer to the Death Penalty Clemency Report published on September 14, 2007. Mr. Broom's job assignment continues to be that of a porter. His disciplinary record remains unchanged, with no new rule infractions incurred.

APPLICANT'S STATEMENT:

Romell Broom was interviewed on July 30, 2009, at the Ohio State Penitentiary. Mr. Broom stated that clemency should be granted because of his recent success in the courts regarding the Brady issue. In addition, Mr. Broom stated that he did not commit the crime and he maintains the same statement that he gave when interviewed before the 2007 clemency hearing. He stated that he is innocent, but he does not have the funds to hire a good enough attorney to prove his innocence. He stated that his father is 77 years

old and is the only person who believes him. Mr. Broom stated that if he is executed, it will kill his father.

ARGUMENTS IN SUPPORT OF CLEMENCY:

At the clemency hearing conducted on August 20, 2009, counsel for Broom, Ms. Adele Shank and Mr. Timothy Sweeney appeared on his behalf and presented the following arguments in support of executive clemency:

- At the time of trial, Broom made a request for discovery. He had a right to receive all documents of an exculpatory nature. The prosecutor indicated that they had turned everything over to him. However, after trial Broom discovered that the state did not turn over police reports that were potentially exculpatory. Broom has spent years litigating this matter and attempting to obtain these documents. Some of the documents were obtained through a public record request, which resulted in further lengthy litigation regarding whether Broom had a right to use the documents obtained in this matter. Ultimately, a recent decision (July 30, 2009) from the Cuyahoga County Court of Appeals has sent the matter back to the trial court for an explanation as to why the withheld documents would not have made a difference in the outcome of either the guilt or sentencing phase of Broom's trial. After many years of attempting to have the courts review the withheld documents and answer that question, Broom has finally received the opportunity to do so. However, there may not be enough time for the trial court to answer this question prior to the execution date, given that the state has requested reconsideration by the Court of Appeals and intends to appeal its decision. Only the Ohio Supreme Court can grant a stay of the execution date, and although a stay will be requested to that court, a reprieve would ensure that the courts receive time to finally resolve the issue.
- The information contained in the withheld documents would have made a difference in Broom's trial at either the guilt or sentencing phase as it contains information relating to identification and the aggravating circumstances that qualified this case as suitable for the death penalty. Defense counsel could have used this information to cross-examine the victim's friends who testified at trial and identified Broom as the perpetrator. These girls were portrayed at trial as innocent, young girls. However, information contained in the withheld documents indicates that they were likely intoxicated on the night of the offense. In addition, the withheld information also indicates that the victim and her friends had the propensity to enter cars driven by strangers and were sexually active. This information could have been utilized by defense counsel to attack the aggravating circumstances of kidnapping and rape, and could have called into question the eye-witness identification by the victim's friends.
- The "other acts" evidence utilized at trial was not fair and did not meet the legal standard for permissible submission to the jury.
- The DNA test results should be ignored by the Parole Board as they did not meet lab standards and cannot be submitted in court.

- The Parole Board and the Governor should not consider Broom's request for a reprieve as a delay tactic as the state will contend. The state withheld documents for 10 years and misled the courts regarding their relevance. The state violated its constitutional duty to ensure that Broom had a fair trial, and it is unbelievable that they now have the audacity to claim that Broom is using a delay tactic. It is the fault of the government that this case has been litigated as long as it has because they did not do what they were supposed to do at the time of trial.
- Clemency is enshrined in the Ohio Constitution and its application is appropriate in this case. It has been applied in previous cases where time was needed and should be exercised in this case.

ARGUMENTS IN OPPOSITION TO CLEMENCY:

Assistant Cuyahoga County Prosecutor Matt Myers and Assistant Attorney General Adam VanHo presented the following arguments in opposition to clemency:

- Mr. Broom's arguments in support of clemency remain the same as in his original 2007 clemency application. The Parole Board made an unfavorable recommendation to the Governor after considering that application and should again make an unfavorable recommendation. The request for a reprieve is inappropriate. The Ohio Supreme Court is the only appropriate body that should consider and potentially give the courts more time to review matters before the trial court.
- The only new information before the Parole Board is Mr. Broom's recent interview, where he continued to deny the offense and expressed no remorse.
- Regarding the recent Court of Appeals decision to have the trial court hold a hearing on Broom's Brady claims, the Parole Board should refer to page 96 of Judge O'Malley's opinion in the Federal District Court. Despite the procedural bars, Judge O'Malley permitted Broom to submit all the evidence he wanted considered. She ultimately determined that Broom was procedurally barred from proceeding, but she also indicated in her opinion that the evidence Broom submitted would have made no difference at trial. Most of what Broom would like to characterize as exculpatory is hearsay, rumor or inadmissible. Mr. Myers indicated that he believes the recent Court of Appeals decision is wrong, but his office respects the process and will continue to litigate the matter if necessary.
- No alcohol was found in the victim's body and even if it had been, the fact that the victim consumed alcohol is irrelevant as she had defensive wounds on her body. Any implication that the victim deserved her fate is shameful.
- The DNA results should be considered. If there was not enough of a sample for Cellmark to report on, they would not have issued a report. The report does not indicate an exact match, but does indicate that the likelihood of Broom being the donor is 1 in 2.3 million. Otherwise stated, eight or nine other black males in the country would have the same profile.
- Mr. Broom stated at his interview on July 30, 2009 that the Innocence Project was working on his case. This was not an accurate statement. The Innocence Project received the DNA results and declined to become involved in the matter.
- Clemency in this matter is neither appropriate nor warranted.

VICTIM'S REPRESENTATIVES:

Tryna Middleton's mother Bessye Middleton stated to the Parole Board that the past 25 years have been very painful for her and her family and that September 21, 2009 will mark the 25th anniversary of her daughter's death. Ms. Middleton went on to state that she resents defense counsel's assessment that Ms. Middleton and her friends were under the influence of drugs and alcohol on the day of Tryna's murder. Ms. Middleton stated that Federal Bureau of Investigation officials brought Ms. Collier and Ms. Sims to her home on the night of her daughter's murder, and neither was under the influence of drugs or alcohol. Ms. Middleton also advised that she feels Mr. Broom has won if he is not executed for the death of her daughter. She and her family remain opposed to clemency and asked the Parole Board to recommend a denial of Mr. Broom's request for executive clemency.

PAROLE BOARD'S POSITION AND CONCLUSION:

Following careful review of all available information in this case, the Parole Board has determined that a change in its previous unfavorable recommendation is not warranted. The Parole Board maintains the conclusions indicated in its previous report and further concludes that a reprieve is not appropriate. A request for a stay to the Ohio Supreme Court is pending and is the most appropriate body to decide whether additional time is warranted to further litigate the issues pending in the state courts.

RECOMMENDATION:

The Ohio Parole Board with eight (8) members participating, by a vote of eight (8) to zero (0), recommends to the Honorable Ted Strickland, Governor of the State of Ohio, that executive clemency be **denied** in the case of Romell Broom, A187-343.

Romell Broom A187-343
Death Penalty Clemency Report

Adult Parole Authority
Ohio Parole Board Members
Voting **Favorable**

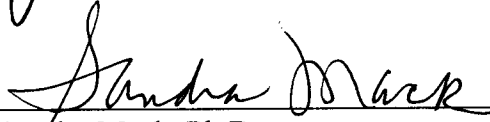
Ohio Parole Board Members
Voting **Unfavorable**



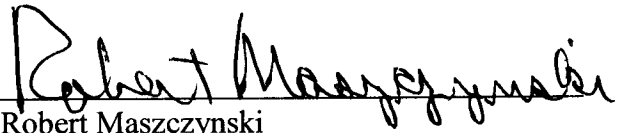
Cynthia Mausser, Chair



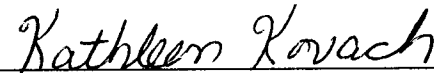
Jim Bedra



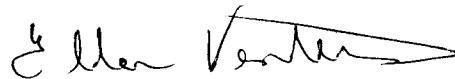
Sandra Mack, Ph.D.



Robert Maszczyński



Kathleen Kovach



Ellen Venters



R. F. Rauschenberg



Bobby J. Bogan, Jr.