

EX-100-6/18/03



**State of Ohio
Adult Parole Authority
Columbus, Ohio**

CLEMENCY REPORT

**ERNEST MARTIN
MANCI #A174-878**

MARCH 6, 2003

Ernest Martin #A174-878
Death Penalty Clemency Report
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DATE TYPED: March 4, 2003
DATE PUBLISHED: March 6, 2003

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

Date of Meeting: February 28, 2003

Minutes of the SPECIAL MEETING of the Adult Parole Authority held at
1030 Alum Creek Drive, Columbus, Ohio 43205 on the above date.

IN RE: **ERNEST MARTIN #A174-878 MANCI**

SUBJECT: Death Sentence Clemency

CRIME, CONVICTION: Aggravated Murder with specification of
Aggravating Circumstances
Aggravated Robbery (2 Counts)

DATE, PLACE OF CRIME: January 21, 1983
2196 Fairhill Road Cleveland, Ohio;
December 20, 1982
East 93rd and Kinsman, Cleveland, Ohio.

COUNTY: Cuyahoga

CASE NUMBER: CR180038

VICTIM(s): Robert Robinson
Ernell Foster

INDICTMENT: Count. 1: Aggravated Robbery with Gun specification, (F1);
Count. 2: Aggravated Robbery with Gun Specification, (F1);
Count. 3: Receiving Stolen Property (Motor Vehicle);
Count. 4: Receiving Stolen Property;
Count. 5: Aggravated Murder with Specifications.

PLEA: Not Guilty

TRIAL: Jury

VERDICT: Guilty of Counts 1, 2 and 5;
Counts 3 and 4 severed from indictment

SENTENCE: Counts 1 and 2: 7-25 years
Count 5: Death

ADMITTED TO INSTITUTION: August 3, 1983

TIME SERVED: 235 months

AGE AT ADMISSION: 22 years old

DATE OF BIRTH: September 22, 1960

JAIL TIME CREDIT: 6 months

PAROLE ELIGIBILITY: N/A

PRESIDING JUDGE: Honorable Daniel O. Corrigan

PROSECUTING ATTORNEY: Carmen Marino

ACCOMPLICE: Josephine Pedro

FOREWORD:

Clemency in this case was initiated by the Honorable Bob Taft, Governor of the state of Ohio, and the Ohio Parole Board, pursuant to Section 2967.13 of the Ohio Revised Code, and Parole Board Policy 501-09.

A Death Row Clemency Review Hearing was conducted on February 28, 2003, with seven members of the Ohio Parole Board participating. Present at that hearing on behalf of Mr. Martin were Assistant State Public Defender Timothy R. Payne and Assistant State Public Defender Kyle Timken, as well as other representatives from the Ohio Public Defender's office. In addition, several family members appeared on Mr. Martin's behalf. His brother Erwin Martin, and his sisters Debbie Martin Reese and Rita Martin spoke on his behalf.

Present at the hearing on behalf of the State were Assistant Cuyahoga County Prosecutor Jon Oebker, Assistant Attorney General Tim Prichard, Assistant Attorney General Heather Gosselin, and Assistant Attorney General Jim Canepa.

After reviewing and deliberating the information provided, the Parole Board voted and reached a unanimous decision.

We now submit to the Honorable Bob Taft, Governor of the State of Ohio our report and recommendation.

OFFENSE:

The following account of the offense is obtained directly from the Ohio Supreme Court's review of this case and their 1985 decision:

On December 20, 1982, Emel Foster, a security guard, was robbed of his .38 caliber Smith & Wesson revolver, Model 10, Serial No. D431784, by a black male, while waiting at a bus stop on East 93rd Street and Kinsman Avenue. Foster testified that he chased the offender for a block and a half and was able to see his face. He further noted that the offender's hair was in small braids. On February 1, 1983, Foster was summoned to the police station to view a line-up composed of six black males. Foster was able to identify the defendant-appellant, Ernest Martin, noting that his hair was braided in the same manner as it appeared on December 20, 1982. Later, Foster identified Martin in the courtroom as the man who had taken his weapon.

Martin's girlfriend, Josephine Pedro, testified that he had threatened her with a gun earlier that year, telling her that he had stolen the weapon from a security guard at East 93rd and Kinsman. Pedro wrote down the serial number of the gun on the back of an envelope box. The number was identical to the serial number of Foster's weapon except that the letter "D" had been purposely transformed into a "9." Pedro testified that this was done to make the number sequence look like a telephone number in order to ward off any suspicion.

Pedro further testified that in the early hours of January 21, 1983, Martin revealed a plan to rob Robinson's Drug Store. She attempted to dissuade him but Martin threatened her if she did not cooperate in the robbery. Martin then left the apartment and returned approximately ten minutes later with the gun he had taken from Foster.

Martin devised a plan whereby Pedro was to go to the store and attempt to buy medicine for a cold. When Robert Robinson, owner of the store, unlocked the door to allow Pedro's entrance, Martin planned to follow her in and rob the premises. Martin wore gray pants, tennis shoes and a waist-length black leather jacket. He covered his face with a brown knit cap in which he cut holes for his eyes to avoid identification. At approximately 12:45 a.m., Pedro arrived at the store and knocked on the door. Upon recognizing Pedro, Robinson unlocked the door to let her in. However, he locked the door again before Martin had a chance to gain entrance. As Robinson stood in front of the door after locking it, two shots were fired through the door fatally wounding him. After firing the shots Martin allegedly went to the apartment to change his clothes and then returned to the store to finish the robbery.

Monty Parkey, an employee of Robinson, was in the back room at the time of the shooting. After hearing the shots and seeing what had occurred, Parkey called an ambulance and the police. He then instructed Pedro to go to Robinson's house to get Mrs. Robinson. Pedro complied and upon returning was interviewed by the police concerning the events. She gave them her name and address and stated she knew nothing about the shooting. Martin was also present at this time and talked to the police. Upon completing her interview, Pedro returned to her apartment.

When Pedro reached the apartment she called her neighbor, Larry Kidd. Martin returned approximately thirty-five minutes later. Pedro asked Martin whether the evening's events had been worth it. He showed her a pile of bills under a blanket, which he then took into the bathroom and explained that he had stolen between \$38 and \$39 from the store.

Martin then drove Kidd and Pedro to an "after hours" spot for drinks. After they sat down at the table, Martin took two spent cartridges from his pocket and placed them on the table. Kidd remarked: " Must be a night of the duces [*sic*], you got a duce [*sic*] and a quarter, and Mr. Robinson got shot twice, and you got two cartridges." Martin did not respond to this comment.

Several days after the shooting the police again questioned Pedro and Martin. By this time the two had put together a story for the police that Pedro had gone to the store to get cough medicine when the deceased was shot and that Martin only came to the store after she had been gone for an unusually long time. On January 29, 1983, the police returned and arrested Pedro and Martin for the murder of Robinson. After several days in jail, Pedro told the police that she had helped set up the robbery by going to the store and that Martin had shot the deceased.

Soon afterwards, Martin's father contacted Pedro asking her to change her statement. While visiting Martin in jail, Martin's father again asked Pedro to change her story. During the trial, the state introduced a letter dated February 13, 1983, wherein Martin asked Pedro to "tell the truth" and implicate a man named "Slim" for the murder-robbery of Robinson. An additional letter dated February 17, 1983, in which Martin again asked her to implicate "Slim," was also introduced into evidence. Pedro has continually denied that "Slim" had anything to do with these crimes.

The state also offered another letter into evidence, which had been written by Martin to Pedro when he was in jail in February 1981 for another offense. Pedro identified the letter and read it into the record. The letter asked Pedro to lie for Martin and to implicate someone else for the

commission of the offense for which he was charged. Pedro admitted lying for Martin pursuant to the letter in the previous trial for the other offense.

Finally, Antoinette Henderson testified that she lived with Pedro for about five or six months until the middle of December 1982. During December she heard Martin say he was going to rob Robinson's store. Martin threatened her with a gun, warning her that she had better not tell anyone of his plan.

During the trial the defense presented no witnesses, but sought to introduce into evidence written statements of Pedro and Henderson. The court denied this request finding the written statements were not inconsistent as alleged by the defense.

The jury found Martin guilty of the aggravated robbery of Ernel Foster and of the aggravated robbery and aggravated murder of Robert Robinson with the specification of being the principal offender of the aggravated murder while committing or attempting to commit aggravated robbery. After the mitigation hearing was conducted, the jury recommended that Martin receive the death penalty. On July 8, 1983, the trial court sentenced Martin to death.

PRIOR RECORD:

Juvenile

According to the Cuyahoga County Juvenile Court Record Department No. 78339, Mr. Martin has the following known juvenile criminal adjudications:

<u>Date</u>	<u>Place</u>	<u>Charge</u>	<u>Disposition</u>
10/23/74 (age 14)	Cleveland, Oh.	Physical Harm to Property (2 counts.)	Probation
Details: Broken Windows			
04/29/75 (age 15)	Cleveland, Oh.	Stealing	Probation
Details: The stolen property was a watch.			
12/02/76 (age 16)	Cleveland, Oh.	Driving without Permission of Owner	Committed to Ohio Youth Commission
Details: None available			

Adult

<u>Date</u>	<u>Place</u>	<u>Charge</u>	<u>Disposition</u>
09/18/79 (age 19)	Cleveland, Oh.	Receiving Stolen Property	Sentenced 1-5 years to the Ohio State Reformatory; Case #CR51892 concurrent with Case #CR51156; Paroled June 14, 1982.

Adult (Cont'd)

<u>Date</u>	<u>Place</u>	<u>Charge</u>	<u>Disposition</u>
10/23/79	Cleveland, Oh.	Felonious Assault; 2 counts	Plead to LIO of Assault; sentenced to 6 months Case #CR51156 concurrent with Case #CR51892; Paroled June 14, 1982.

Details: On October 17, 1979, Ernest Martin shot at victim Alvin Mitchell, with what was believed to be a .22 caliber rifle, and fired the same into Mitchell's residence at 1440 East 108th Street, three times. On October 18, 1979 and October 19, 1979, respectively, Martin threatened Mitchell and his companions, while armed with a deadly weapon, to do serious bodily harm to them. Specifically, Martin's threats were directed at Mitchell.

07/20/80	Cleveland, Ohio	Carrying a Concealed Weapon	Found guilty by jury and sentenced to 1½-10 years, Case # CR58721 consecutive to Case # CR51892; Paroled June 14, 1982.
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Details: On July 20, 1980, victim Clarence Bogan pointed out a car to police indicating that the two males contained in the car had robbed him, and were armed with a gun. Officers ordered the subjects out of the car, who were later identified as Ernest Martin and co-defendant Ronald Watkins. In searching the subjects, six live .357 rounds were found in Martin's pants pocket. A fully loaded .357 Magnum revolver was located under the front passenger seat. Found later in the police car was a crumpled ball of \$6.00 worth of food stamps. Clarence Bogan indicated that \$30.00 worth of food stamps was stolen from him. While at the jail, officers overheard Martin and Watkins call victim Bogan and threaten to have him killed if he did not call the police and tell police that he lied about their involvement in the offense.

Other Convictions:

Subject has received nominal fines for the following offenses:

- 09/19/79: Disobedience to a Police Officer, Wrong Side of the Road;
- 02/04/80: Failure to Stop at a Stop Sign, Driving on the Wrong Side of the Road.

INSTITUTIONAL ADJUSTMENT:

Martin was admitted to Ohio Department of Rehabilitation and Correction on August 3, 1983. His prison records are unremarkable. He can probably best be described as an average inmate.

PAROLE PLAN:

Not applicable.

COMMUNITY ATTITUDE:

None

PROPOSERS TO CLEMENCY:

A written application and documentation outlining the reasons Ernest Martin should receive Executive Clemency were filed with the Parole Board. On February 28, 2003, Assistant State Public Defender Timothy R. Payne presented oral testimony in support of the application. Reasons expressed in favor of the granting of Executive Clemency are as follows:

- The death sentence in this case constitutes disproportionate punishment. Mr. Martin's co-defendant, Josephine Pedro testified against him at trial, and was never prosecuted. Ms. Pedro had a crucial role in the offense and was more likely the planner of the robbery, and was not coerced. Ms. Pedro is equally guilty.
- The facts of this case do not constitute a death penalty case. This case was a basic liquor store robbery that went awry. Premeditation is lacking, because the plan was merely to rob the victim. There is also doubt of intention to kill the victim as evidenced by the fact that Martin shot through the door. It is likely that he was shooting at the door lock, or that he could not see the victim because it was dark.
- Mr. Martin is not among the "worst of the worst" offenders. He was only 22 years old at the time of the offense. His prior criminal record is relatively short and demonstrates very little history of violence. Mr. Martin has low intellectual functioning and suffers from a mental disability along the lines of mental retardation. In addition, there is strong indication that he likely suffers from some degree of mental illness that borders on an Axis I diagnosis.
- Mr. Martin's death sentence resulted from an unfair and unreliable process. Mr. Martin's case was one of the first prosecuted under the new death penalty statute. Both defense counsel and the trial court were inexperienced in handling death penalty cases, which resulted in poor representation and shoddy, unreliable proceedings.
- There are still lingering doubts as to Mr. Martin's guilt given the lack of a defense presented on his behalf, and a failure to investigate by defense counsel. Mr. Martin still claims his innocence.

Mr. Martin's brother Erwin Martin, and his sisters Debbie Martin Reese and Rita Martin all spoke on Mr. Martin's behalf. They indicated that their brother did not receive a fair trial and that Josephine Pedro is equally guilty and was never coerced by their brother. They stated that the system is unjust and that it was never established that their brother committed the crime, but his conviction was the result of hearsay only. They believe that Mr. Martin was not treated fairly because he is black and poor, and they believe that he has served enough time. They stated that Mr. Martin still has much to contribute to society and he remains an important part of their family.

OPPONENTS TO CLEMENCY:

Jon Obeker, Assistant Cuyahoga County Prosecutor, and Heather Gosselin and Tim Prichard of the Ohio Attorney General's Capital Crimes Unit represented the State of Ohio at the hearing before the Parole Board on February 28, 2003. Arguments offered in opposition to the granting of Executive Clemency included:

- The facts of this case clearly indicate that the death penalty was a proper punishment and was not unjustly imposed. A jury lawfully imposed the death penalty on Martin, and his conviction and sentence have not been disturbed after nearly twenty years of judicial scrutiny by every level of both the state and federal courts. The courts have all noted the substantial amount of evidence presented against Martin at trial. The courts have also reviewed the representation Martin received at both the trial and appellate level, and have steadfastly held that Martin received competent representation at every stage of the proceedings.
- Martin's culpability is not diminished by the state's decision not to prosecute his accomplice. In fact, it is likely that Martin would not have been prosecuted but for the assistance of Josephine Pedro. In addition, it would have been legally impossible to charge and prosecute Josephine Pedro for Capital Murder due to the fact that she was not the principal offender.
- The victim in this case was Robert Robinson, an elderly owner of a local drug store. He was known as a kind man who would allow his customers to purchase items on credit and pay later. He was survived by his wife Anna Robinson. Mrs. Robinson suffered greatly after the murder of her husband. She was forced to close the store, and after taxes and attorney's fees, she was left with nothing. She is now 85 years old, and has had to live in subsidized housing since her husband was killed. She still supports the execution of Martin.
- Martin had an extensive criminal record prior to this offense, which included offenses of violence. He was also on parole supervision at the time of the commission of this murder. Martin made numerous attempts throughout his criminal history to manipulate the judicial system by coercing witnesses to lie for him through threats and intimidation.

- Martin is not mentally retarded and does not suffer from a psychological disorder. Martin does not fit the legal criteria of “mentally retarded”, and has never been diagnosed with a mental illness.

CONCLUSION:

Ernest Martin is scheduled to be executed on March 26, 2003. Mr. Martin declined an interview by the Parole Board.

The Parole Board reviewed the documents and deliberated extensively on the information provided. During our deliberation we focused on the following facts:

- Mr. Martin has failed to accept responsibility for the crimes he committed and has expressed no remorse.
- The disparity of treatment between Martin and Josephine Pedro does not sufficiently mitigate against Martin’s guilt, and does not create a manifest injustice such that would warrant a favorable recommendation for clemency.
- All reviewing courts have agreed that Martin received proper representation at trial, and during subsequent appeals, and his conviction and death sentence have been upheld after 20 years of litigation.
- There was insufficient mitigation presented to outweigh all of the aggravating factors in this case.

RECOMMENDATION:

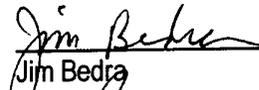
Following consideration of available information, the Ohio Parole Board, with seven (7) members participating, recommends to The Honorable Bob Taft, Governor of the State of Ohio, by a vote of seven (7) to zero (0), that Executive Clemency be denied in the case of Ernest Martin #A174-878.

Ernest Martin #A174-878
Death Row Clemency Report

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



Gary Croft



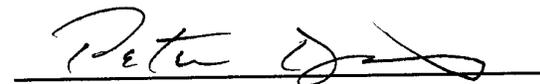
Jim Bedra



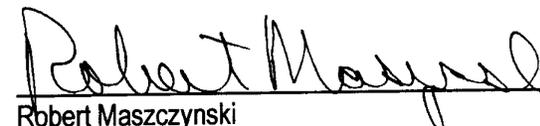
Dr. Sandra A. Mack



Cynthia Mausser



Peter Davis



Robert Maszczyński



Kathleen Kovach