

**BEFORE THE GOVERNOR FOR THE STATE OF TEXAS
AND
THE BOARD OF PARDONS AND PAROLES**

In re

RICKY LEE GREEN

Petitioner

**APPLICATION FOR REPRIEVE
FROM EXECUTION OF DEATH SENTENCE AND
COMMUTATION OF SENTENCE TO LIFE IMPRISONMENT**

SUBMITTED BY:

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INTRODUCTION

The case of Mr. Ricky Lee Green forces any observant human being to face startling and seemingly irreconcilable contradictions. The crime for which he was convicted and sentenced to death was undoubtedly gruesome. The man who sits across from you in the visiting room of the Ellis Unit is pleasant, soft spoken, and kind, has reached out in profound ways to numerous people, and is a well-liked trustee on death row.¹ The child that he was suffered abuse and torment well beyond the most active imagination. How, then, did a child victim become a convicted murderer who became a mature, responsible adult in prison?

The answer to that question is central to our comprehension of the basis for some of the worst criminal conduct of our society. To execute Ricky Green would only inhibit efforts to further that understanding.² Mr. Green has, in many ways, come farther than many of his companions on death row, indeed farther than many of us in our own lives. To execute him would be to provide a disincentive to the growth and advancement of all incarcerated capital defendants. Petitioner pleads with this Board to consider the possibility that examination of his life will be more beneficial to preventing violence than any alleged deterrent that will be provided by his death. It is this Board's function to consider what could not be considered by the courts. Petitioner submits that precisely

¹ Letters in support of Ricky Green, written by friends and family members, are attached to this Petition as Exhibit B, and discussed in more detail, *infra*.

² Mr. Green recently asked his counsel to contact Robert Ressler, a nationally known criminologist and formerly with the Behavioral Science Unit of the F.B.I., who testified for the state at Petitioner's trial, to see if Mr. Ressler would like to speak with him in order to further his research. Mr. Ressler is extremely interested in doing so, but the time limitations are, of course, prohibitive.

offering
mind to
research

because he presents a case of extremes, and because he is willing and able to assist in the understanding of whom he is, this petition deserves the Board's serious consideration. Thus, Mr. Green is seeking a 30-day reprieve so that the Board of Pardons and Paroles may fully consider the merits of this Petition, and further requests that the Board recommend that the Honorable Governor Bush commute Mr. Green's sentence of death to life imprisonment.

STATEMENT OF THE CASE

A. *THE OFFENSE*

On December 29, 1986, Steven Fefferman failed to report to work. A concerned co-corker contacted Mr. Fefferman's landlord, Denis McCarty, later that afternoon. Mr. McCarty entered the condominium leased to Mr. Fefferman and discovered his body in the master bedroom under a mound of clothes and linen. McCarty summoned the police.

Mr. Green was arrested for the murder of Steven Fefferman on April 27, 1986, and gave a statement to the police confessing to the killing. He told them that he had met Mr. Fefferman at Casino Beach, an area known to be frequented by homosexuals. After engaging in sexual activity with Mr. Fefferman, Petitioner dropped off his car at his own home and then went home with Mr. Fefferman. Once there, they drank some beer and again engaged in sexual activity.

Mr. Fefferman permitted Petitioner to tie him to the bed with neckties, and Petitioner then stabbed him numerous times. He also gave three statements confessing to the murder of three previously unsolved homicides.

B. APPELLATE HISTORY

Ricky Lee Green was prosecuted for capital murder in the 167th District Court of Travis County, Texas on a change of venue from Tarrant County. A jury convicted him of capital murder and returned affirmative answers to the two special issues on September 21, 1990.³ The Texas Court of Criminal Appeals affirmed his conviction, *Green v. State*, unpub. slip op. No. 71,170 (Tex. Crim. App., December 9, 1992), and his Petition for a Writ of Certiorari to the United States Supreme Court was denied on June 21, 1993.

Mr. Green's first state application for a writ of habeas corpus was filed on January 20, 1994. On March 28, 1994, the district court entered a memorandum order recommending denial of relief, which Court of Criminal Appeals adopted on April 19, 1994. *Ex Parte Green*, unpub. slip op., No. 26,331-01 (Tex. Crim. App., April 19, 1994).

On September 19, 1994, under threat of an October 4, 1994 execution date, Applicant filed a pro se motion for appointment of counsel in the Northern District of Texas for purposes of filing a federal petition for a writ of habeas corpus and a motion for a stay of execution. On September 22, 1994, the district court denied the motion for a stay of execution, appointed counsel to represent Mr. Green, and further required that said

³ Pursuant to the requirements of §143.42 of the Texas Administrative Code, attached as Appendix A are certified copies of the jury verdict, the judgment and sentence, and the Order setting the current execution date. As undersigned counsel relayed to Mr Brett Hornsby, Executive Clemency Unit, Texas Board of Pardons and Paroles, on September 30, 1997, a certified copy of the indictment cannot be made available in time for the timely filing of this Petition. Mr. Hornsby indicated that an uncertified copy would suffice, and it is included in Appendix A.

counsel file a federal habeas petition within five days, on September 27, 1994.

On September 27, 1994, Mr. Green filed a notice of intent not to file a federal habeas petition until new claims had been exhausted in state court, and a motion seeking to withdraw his September 19, 1994 *pro se* pleading on the ground that jurisdiction properly lay in the Western District of Texas. The District Court ordered briefing on the matter.

In the meantime, still under threat of an October 4, 1994 execution date, Petitioner sought state post-conviction relief on two unexhausted constitutional claims via a state habeas petition filed September 30, 1994. It was denied by the trial court within four hours of being filed, and by the Court of Criminal Appeals on October 3, 1994. Both courts refused to grant Mr. Green's request for a stay of execution.

On Monday, October 3, 1994, Mr. Green filed a notice of dismissal of post-conviction proceeding in the Northern District of Texas and filed a petition for a writ of habeas corpus with the Austin Division of the Western District of Texas, along with a Motion for a Stay of Execution, which was granted. The matter was referred to Magistrate Judge Albright on January 13, 1995.

On March 9, 1995, Mr. Green filed a Motion for an Evidentiary Hearing. On November 13, 1995, Mr. Green's Motion for an Evidentiary Hearing was denied. That Order was reversed on January 22, 1996, and Magistrate Albright set the date for a hearing. On May 13, without warning, Magistrate Albright canceled the evidentiary hearing scheduled to begin the next day. He issued his Report and Recommendation of denial of relief on May 28, 1996. On July 3, 1996, the District Court adopted that Report and granted Respondent Johnson's Motion for Summary Judgment.

The United States Court of Appeals for the Fifth Circuit denied Mr. Green's Application for a Certificate of Probable Cause to Appeal on June 27, 1997. An Original Petition for a Writ of Habeas Corpus is currently pending in the United States Supreme Court. Mr. Green is scheduled to be executed on October 8,

1997, exactly one week from today.

C. STATEMENT OF THE LEGAL ISSUES RAISED ON APPEAL

Mr. Green has asserted a number of constitutional challenges to the validity of his conviction and death sentence. The major claims raised are as follows:

- ✓ 1) The profound and invidious conflict between Mr. Green's trial counsel rendered them ineffective at both stages of his capital trial.
- ✓ 2) Trial counsel was ineffective in failing to challenge the testimony of state witness Robert Ressler, and the District Court's resolution of this issue without an evidentiary hearing leaves numerous unresolved factual issues central to the claim raised.
- 3) Mr. Green's purposeful exclusion from an in chambers hearing on his trial counsel's motion to withdraw violated his constitutional rights.
- ✓ 4) Appellate counsel's failure to raise the issue of Mr. Green's absence from the in chambers hearing denied him the effective assistance of appellate counsel.
- ✓ 5) Mr. Green was denied effective assistance of appellate counsel when his attorney on appeal counsel failed to challenge venireperson Harren's exclusion from the jury.
- ✓ 6) The trial court precluded the jury from hearing crucial punishment phase evidence, in violation of the United States constitutional right recognized in *Lockett* and *Eddings*.

VICTIM IMPACT STATEMENT

Throughout his appeals, Mr. Green has expressed a desire to contact the families of his victims, but did not do so on the advice of counsel. In light of the pendency of his current execution date, he resolved to do what he felt compelled to do, and set about writing a letter to those families. A letter addressed to Jeff Davis' family reached Mr. Davis' sister, Tammy Howard, who visited with Petitioner at the Ellis Unit, and stated that she forgave him for what he had done. The letters intended for the remaining three families, including the Feffermans, were given to members of the Appellate Division of the Tarrant County Criminal District Attorney's Office, who stated that they would pass them on, thereby protecting the privacy of the families.⁴ To counsel's knowledge, they have not been delivered. The letters offered deeply felt sympathy for the families' grief and sadness, and expressed Mr. Green's profound remorse.⁵

Out of respect for each family's privacy, and in some instances their express wishes, undersigned counsel have not attempted to contact them directly, and thus cannot convey in any detail the undoubtedly profound impact of their losses.

⁴ This was done as a result of the Feffermans's wish that they not have direct contact with Mr. Green.

⁵ A copy is attached hereto as Appendix C.

REASONS WHY CLEMENCY OR 30 DAY REPRIEVE SHOULD BE GRANTED

* A. RICKY GREEN'S CHILDHOOD

Ricky Green has suffered tremendously throughout his lifetime. Dr. Rappaport, a psychiatrist who examined Mr. Green prior to trial discovered a remarkably tragic life history. In his report Dr. Rappaport concluded that Ricky Lee Green, along with his four siblings, was a victim of "a very powerful, sadistic, punitive and sick father." Specifically, he found that Ricky's father provided "unending experiences of inconsistency, brutality and violence, as well as illegal, immoral and unethical behavior," and that Ricky was exposed to "psychological abuse of tremendous proportions which included humiliation, teasing, ridicule, fear, shame and a lack of empathy and appreciation of any positive qualities."⁶

These findings were never presented to the jury that convicted Mr. Green.⁷ However, the jury did hear the facts that formed the basis of Dr. Rappaport's conclusions. At trial, two of Mr. Green's siblings described in terrifying detail the pervasive and chronic physical, emotional and psychological abuse that he suffered at the hand of Bill Green, his own father. The list of abuses inflicted on Mr. Green by his father, psychological, physical and sexual, is endless and incomprehensible.

The psychological abuses inflicted by Bill Green were seemingly calculated to

⁶ Dr. Rappaport's conclusions are detailed in a lengthy report that was provided to Mr. Green's trial attorneys, and included in the record on appeal. For purposes of brevity, it has not been attached to this Petition. Instead, pertinent provisions of the report are quoted herein.

⁷ One of the basis for Mr. Green's claim of ineffective assistance of trial counsel was their failure to raise an insanity defense, as Dr. Rappaport specifically found that Mr. Green was legally insane at the time of Mr. Fefferman's death.

humiliate and terrify. To "cure" his son of bed-wetting, Bill Green would run the dull blade of a ketchup-covered knife on Mr. Green's penis, telling him he would not wet the bed anymore, or would place his face down in the wet urine spots on the bed for as much as an hour. Once, he dressed Ricky in a dress and a wig and then photographed him because he would not fight at school. He publicly taunted him about the fact that he was blind in one eye. He terrorized his children at night by scratching on the door and making strange noises. A common form of punishment was to lock Ricky was in a closet for hours on end.

This psychological torture was complimented by equally gruesome physical torment. Bill Green whipped the bottom of his children's feet, and burned them with cigarettes. He made them hold the spark plug to the lawn mower and then engaged the mower, used the hand crank to shock them, and forced them to touch the electric fence at their grandfather's house. He gave Ricky beer at the age of nine to see how he would act if intoxicated, and forced him to eat cigarettes and smoke a cigar when he caught Ricky smoking. For fun, he shot his children in the buttocks with a BB gun, and held their heads under water when they went to the lake. For punishment, he made Ricky stand in the corner of the room, on tiptoes, for an hour or more. If he failed the task, he was beaten. He hit him in the face and stomach with his fists, and beat him with belts and rubber hoses. Ricky was forced to work in his father's fiberglass business, where his father intentionally caused him to be covered with fiberglass dust so that his skin would break out and itch.

Dr. Rappaport also disclosed that Ricky Green endured "numerous ongoing,

unrelenting and unresponded to sexual abuse situations" which left him "severely traumatized and forever scarred." As his father molested and raped the children, particularly Ricky's sister, she thought that incestuous sex was normal and induced her brothers, including Ricky, to have sex with her. Ricky was also raped and molested by four other men, including his grandfather, from the age of eleven to age sixteen.

As Dr. Rappaport concluded, Ricky's life was thus shaped by unrelenting trauma. Inevitably, this and a lack of nurturing led to lifelong depression, characterized by "basic sadness" about his life circumstances and repeated victimization, and his feelings of "worthlessness, low self-esteem, self reproach [and] excessive guilt . . ." eventually became sufficiently depressed to repeatedly attempt suicide.

Ricky's depression, compounded with a "genetic predilection for alcoholism," caused him to seek relief through drinking alcohol. He began drinking at age nine and his history shows long term use of alcohol, encouraged by a family history of similar abuse (grandfather, father, brothers). The early and long-term use caused brain damage and, particularly when other drugs were ingested at the same time, contributed to episodes of violent behavior "uncharacteristic of Ricky's usually passive easy going nature."⁸

⁸ Dr. Rappaport made a direct connection between Mr. Green's history of abuse, his use of mind-altering substances and his subsequent violent behavior, and concluded that he was insane at the time he killed Mr. Fefferman and the other victims:

Ricky's mental disorders ... were severe enough to render him incapable of controlling his violent outbursts or of knowing that what he was doing, when out of control, was wrong. Consequently, he was insane at the time of these murders, for he could not cognitively appreciate the wrongfulness of his acts, which were spontaneous, unconsciously and organically originated . . .

As noted *supra*, these findings were never presented to the jury, as his attorneys decided not to present the insanity defense. Instead, they argued to the jury that there was no proof of the underlying offense of robbery, despite the fact

B. RICKY GREEN TODAY

The structured prison environment of the Ellis Unit, devoid of drugs and alcohol, has been, in short, good for Ricky Green. While incarcerated, he has overcome the devastating effects of his horrific childhood, and has created a life of spirituality and charity toward the world around him. He consistently experiences feelings of great remorse regarding his past transgressions and the pain and suffering they have caused. Because Ricky does not have access to drugs or alcohol and is living in an institutional environment, he no longer has the ability or desire to use aggressive behavior. In the seven years Ricky has lived on death row, he has had no significant disciplinary cases and is recognized as a cooperative and well-behaved inmate. His model behavior has earned him the privileged position of trustee, which he has held for a period of years. As the name implies, a "trustee" has earned the confidence of authority figures, and with this status, Ricky enjoys a high level of freedom of movement within the death row wing.

One of Ricky's closest friends, Patricia Springer states:

Plan  Since living in a controlled environment, Ricky Green has flourished. He has had no disciplinary actions taken against him, he works well with officers and fellow inmates, and he is liked and respected by others. Ricky Green has finally experienced a "normal" life within the walls of prison. Ricky would continue to grow emotionally and spiritually if allowed to live.

Letter of Patricia Springer, September 28, 1997, attached hereto as Appendix B.

Through letters and in-person visits, Ricky Green has genuinely touched many lives. He has numerous pen-pals all over the world, and these relationships have grown

that jewelry and the cash out of Mr. Fefferman's wallet were missing from his apartment. This "decision" on the part of Petitioner's trial attorneys was the main basis for his claim of ineffective assistance of counsel.

and flourished to the benefit of all. In her letter, Cathy Sosa talks about the blessing Ricky has been in her life and in the meaningful role he has taken on for her son:

PH

He is a special, special man. He has been more of a father to my son than anyone else. He will write to him and talk to him about football and cheese pizzas. He encourages him with his dreams . . . he warns him against crime and against gangs. He tries to help him keep a good attitude about life and the different things my son may face while going through the natural things that life offers.

Her son Logan writes:

PH

He was really good to me, he was the only one I really had like a dad, I have never seen or talked to my real dad and Ricky was like a real dad to me, the only real dad that I've ever known.

Letters from Catherine and Logan Sosa, September 25, 1997, attached hereto as

Appendix B. Others share the opinion that Mr. Green has something to offer to society:

PH

I believe Ricky Green is a changed person and could be of great value in the fight against child abuse . . . It is my belief that we as a society and state owe Ricky intervention now. This is not only for him, but the valuable impact he can have on victims and abusers.

Letter from Nancy Brown, attached hereto as Appendix B. Clearly, Ricky Green is not the man he was in 1990.

Seven years can change a man very much - especially seven years in jail. In serving his prison sentence, Ricky has become transformed. He has never had a single disciplinary case in his seven years at the Ellis Unit, and is identified as a well-behaved prisoner. He has been introduced to the Lord and accepted Jesus as his Savior. . . Killing Ricky now would be punishing him for something he no longer is.

Letter from Katja and Dimitri Aivaliotis, attached hereto as Appendix C.

It is, perhaps, difficult to believe that the man convicted of the murder of Steven Fefferman is all of these things - kind, caring, a believer, someone who provides support to others, and who treats the guards and the other inmates on death row with decorum and

respect. It is, however, the reality of who Mr. Green is today. This does not change the exertion it requires to reconcile the two people.

C. *WHY THE IRRECONCILABLE LIVES OF MR. GREEN ARE COMPELLING REASONS TO ALLOW HIM TO LIVE*

The fact that there is a death penalty in Texas is due at least in part to the belief that it will provide a deterrent effect to others contemplating violent acts. However, this should not preclude other means by which we, as a society, may seek to comprehend the root causes of violence. Mr. Green presents a unique and ideal case to further this understanding. While many of the Petitioners that come before this Board and the Governor have compelling stories, often including distressing tales of child trauma and abuse, there are very few that were also convicted of crimes similar to those of Mr. Green, who confessed to others of equal magnitude, and who developed into model prisoners. His death will deprive us of a rare chance to educate ourselves about the very concerns we express when justifying the application of the death penalty. In this context, the well known phrase "dead men don't talk" acquires a new and profound significance.

It is inconceivable to most of us what it is to suffer a childhood such as that endured by Mr. Green. We cannot understand how it must feel, and do not understand why he is where he is while his siblings are not. We cannot fully reconcile how a man such as Mr. Green has managed to thrive and mature in prison, and has become in his own fashion a productive member of society. The answers to these questions and conflicts lie at the heart of our efforts to halt violence. However, we are rarely, if ever, provided the opportunity to examine these issues through the people who present them.

Mr. Green is willing to offer his life experience to enable us, as a society, to come to a better understanding of where and why he and others like him come to be. We should allow ourselves that opportunity.

The penalty of death is reserved for those individuals whom society cannot trust to respect the lives of others. Although Mr. Green was convicted of murder, the inquiry before this Board and the Governor does not end there, but must continue to contemplate issues such as those raised above. Our need as a state and a society to understand violence, and Mr. Green's ability to coexist peacefully with other prisoners, meaningful relationships with people in the outside world, and love of God, compels this Board's careful consideration of his request that he be allowed to live.⁹

**RECENT CHANGES IN THE LAW HAVE INCREASED THE DUTY
OF THIS BOARD TO GIVE GENUINE CONSIDERATION TO
APPLICATIONS FOR CLEMENCY.**

In the past eight months, the State of Texas has executed more than 28 individuals. Almost all of those men requested that this Board grant clemency. In not a single one of the cases did the Board even meet to discuss the application, much less hold a clemency hearing. In each and every one of the cases, the Board denied clemency by unanimous vote. The Board has a statutory and moral responsibility to fully consider the life of the person whose petition rests before it. Mr. Green respectfully requests that the Board not abdicate its responsibility, and fully evaluate the request presented.

⁹ By raising these issues, Mr. Green by no means intends to demean or diminish the pain and suffering of the victims' families. He contends, however, that what he can offer is insight into the means to prevent other families from experiencing the same torment.

With the recent changes in the habeas corpus laws, the Board and the Governor's Office must accept a heightened role in the administration of the death penalty. No longer do clemency petitions represent a last ditch effort to push aside the conclusions of endless courts that have heard, considered, and dismissed innumerable claims on the merits. Comparatively speaking, Mr. Green's case has hurtled towards next week's execution. Today, the Governor and the Board are the only forum able to fully consider the ramifications of Mr. Green's unique situation. In order to give the matter the consideration required, Mr. Green respectfully requests that the Governor grant a 30-day reprieve to allow the Board to conduct a hearing to consider the matters raised herein.

REQUEST FOR RELIEF

Ricky Lee Green respectfully petitions the Texas Board of Pardons and Paroles for a recommendation to the Honorable George Bush, Governor for the State of Texas, to commute Mr. Green's sentence of death to life imprisonment, and to convene a hearing to consider evidence and argument in support of this petition.

Ricky Lee Green respectfully requests that the Honorable George Bush, Governor for the State of Texas, ask the Board of Pardons and Paroles to consider Mr. Green's request for a 30-day reprieve of Mr. Green's October 8, 1997, execution date so that the Board of Pardons and Paroles can conduct a full and fair hearing on Mr. Green's petition for clemency.

Respectfully submitted,

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APPENDIX A

REQUIRED EXHIBITS

APPENDIX B

LETTERS IN SUPPORT

APPENDIX C

**LETTER FROM RICKY GREEN
TO THE VICTIMS' FAMILIES**