PETITION FOR CLEMENCY

TO THE HONORABLE JAMES S. GILMORE, III,

GOVERNOR OF THE COMMONWEALTH OF VIRIGNIA

ON BEHALF OF

LANCE ANTONIO CHANDLER, JR.,

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PETITION FOR CLEMENCY OF LANCE ANTONIO CHANDLER

Lance Antonio Chandler, by counsel, hereby respectfully applies to the Honorable James S. Gilmore, III, Governor of the Commonwealth of Virginia, to exercise his power of clemency, pursuant to Article V, Section 12 of the Constitution of Virginia and Virginia Code Section 53.1-229, and to commute his sentence of death.

I. INTRODUCTION

In this case had the jurors been given the chance to impose a life sentence without parole and had they not been prevented from learning even a modicum of mitigating evidence about Lance Chandler, then they would not have imposed the death penalty. As we will demonstrate in this Petition, there is compelling evidence that eleven of the twelve jurors would have sentenced Chandler to life without parole had that option been available to them and at least two of the jurors would have sentenced him to life with parole had they known how long he actually would have served before he was parole eligible.

In addition, affidavits of two of the jurors show that they would have voted to sentence Chandler to life imprisonment had they been made aware of existing mitigating factors, including his depressive disorder, his suicide

attempt while awaiting trial, his troubled upbringing, and his substance abuse. None of this or any other mitigation evidence was presented to the jury because defense counsel had conducted no pretrial investigation, relying instead upon Chandler's uninformed and foolish decision to forgo any defense at the sentencing phase.

Consequently, the death penalty in this case was imposed by an uninformed sentencing body that would have acted differently had it been properly informed and had it had the option of a life sentence without parole. The Governor, of course, has the power to impose such a sentence. It falls, then, in the hands of the Governor to insure that the system works fairly, that the will of the jury is realized, and that the right sentence is imposed.

Finally, a life sentence is appropriate because Chandler has had the opportunity to prove that in a prison setting he is not a future danger to society. The only aggravating factor relied upon by the jury was future dangerousness. Yet, Chandler has had only minor infractions during his years on death row. He has been involved in no violence, no fights, and no threats to other inmates or prison guards.

II. A BRIEF HISTORY

Chandler was nineteen on February 7, 1993, the date of the offense. He confessed that on that date he was drinking beer and smoking marijuana

and crack cocaine with his friends, Geraldine Fernandez, Dwight Wyatt, and George Boyd. At some point during the evening, these youths discussed robbing Mother Hubbard's convenience store. Fernandez drove the three boys and Bernice Murphy (Chandler's girlfriend) to the home of Henry Chappell to retrieve a gun given to Chappell by Chandler. Chandler stated that he opened the gun and saw three empty shell casings and one that still had a slug in it. Chandler further testified that, because he believed that the first three shells were empty, he thought that the trigger could be pulled four times before the gun would actually fire.

On entering the store Wyatt carried the gun into the store, became nervous, and handed the gun to Chandler. Wyatt and Boyd went to the back of the store to steal some beer while Chandler asked the store clerk, William Dix, for money. When the clerk did not respond, Chandler pointed the gun at him, closed his eyes, and said "boom" as he pulled the trigger. The gun did not fire. Believing that there was only one live bullet in the gun, Chandler testified that he again closed his eyes and pulled the trigger. This time the gun fired and fatally struck the clerk, Mr. Dix. Mr. Chandler admitted shooting Mr. Dix although he stated he believed he could pull the trigger four times safely and he had not intended to shoot him. What started

as a bluff, resulted in a fatal shooting. The jury convicted Chandler of capital murder.

While awaiting trial for the murder, Chandler attempted suicide by hanging at the local jail in March, 1993. After the suicide attempt, he was sent to Central State Hospital for evaluation. The diagnosis stated that he suffered from "depressive disorder," alcohol dependence, and cocaine abuse. He was placed on medication to help him sleep. In September, 1993, just prior to his trial, Chandler's mother died of cancer at the age of 46 after a three to four year illness. However, the jury never learned these facts.

At the sentencing phase of the trial, defense counsel did not present any argument or defense to the death penalty. Chandler had directed counsel prior to trial that he did not want to introduce a case in mitigation of the death penalty. He then waived any defense at the beginning of the sentencing phase of the trial. Defense counsel did not request an adjournment, continuance, or a competency evaluation of Chandler. In fact, defense counsel had not conducted any investigation into sentencing issues, and he was wholly unprepared to present mitigating evidence at the sentencing phase, as he admitted at a subsequent proceeding. Thus, Chandler was not advised of substantial mitigating evidence and none was presented to the jury.

Evidence of counsel's failure to adequately inform Chandler about his case appears in counsel's notes prepared on November 27, 1993, roughly two weeks before trial. At that time, Chandler believed he was facing a sentence of 10 to 15 years. Defense counsel had been assigned to Chandler's case since February 1993, over nine months, but had had little communication with him.

During sentencing deliberations, the forewoman of the jury informed the judge that "the jury would like to know before they make a verdict, they want to know the extent of life in prison on a capital murder charge. They would like to know if this individual is ever allowed parole." Exhibit A. The Court refused to educate the jury on when, if ever, Chandler would be paroled. The jury then set Chandler's sentence at death based only on the aggravating factor of future dangerousness. Without any mitigating evidence concerning Mr. Chandler to temper its judgment and ignorant regarding the effect of parole on a life sentence, the jury sentenced Chandler to death.

Under the then operative statute, upon a conviction for capital murder, Chandler would not have been eligible for parole for 25 years. Chandler's additional offenses would have delayed parole consideration until he had served thirty years.

Three days after the trial one juror, Mrs. Parrett, sent a letter to the trial judge, saying that **eleven** of the twelve jurors would have voted for life without parole, rather than death. Two jurors had been inclined to impose life with parole. Exhibit B. Two jurors have confirmed Mrs. Parrett's information, and three jurors have submitted affidavits supporting this petition. Exhibits C, D, and E.

Furthermore, two of those jurors have stated that had they been aware of Chandler's deprived childhood and his depression caused by the shooting of Dix, they would have chosen a life sentence, rather than the death penalty. Exhibits C and E.

III. REASONS TO GRANT CLEMENCY

A. Eleven Jurors Would have Sentenced Chandler to Life Without Parole, a Sentence the Governor May Impose Now.

The first reason for granting clemency is that it would serve to impose the will of nearly all of the jurors who served in the case. As the Governor can see from Exhibit B, after the trial Mrs. Parrett informed the Court that eleven of the twelve jurors would have imposed life without parole. Her information is corroborated by the jury's question regarding the effect of parole on a life sentence, and the affidavits of Jurors L.G. Garner, Carl J. Sydnor, and David L. Carrington. Exhibits C, D, and E.

Since Mr. Chandler's trial, the law in Virginia has changed. There is no parole from a life sentence imposed after a capital murder conviction. The jury is now given a choice between a sentence of life without parole and a death sentence. Had this option been available to Mr. Chandler's jury in 1993, it is highly probable that a life sentence would have been imposed. As a death sentence must be unanimous, it cannot be said with any degree of certainty that all of the jurors would have voted for death.

While the jury was unable to give a sentence of life without parole, the Governor has the power to do so now. He should use that power to impose the will of the jury, a will that was circumvented by the law of the time that simply did not allow life without parole. It is patently unfair that the vagaries of the law within a period of only a few years would literally mean the difference between life and death for Lance Chandler. In order to avoid such an unfair result and the imposition of the death penalty in opposition to the actual wishes of the jury, the Governor should commute Mr. Chandler's sentence to life without parole.

B. The Death Sentence In This Case is Unreliable Because The Jury Was Provided No Mitigation Evidence And At Least Two of the Jurors Have Confirmed That They Would Have Sentenced Chandler To Life Imprisonment Had They Been Aware of the Compelling Mitigation Evidence .

Our criminal justice system clearly, and rightly, envisions a procedure whereby individuals are sentenced to death only after a jury has had the opportunity to hear and weigh all relevant evidence in aggravation and mitigation of the offense and the individual on trial.

In this case, the jury sentenced Chandler to death without the benefit of any mitigating evidence. Thus, the jurors did not have all the information they needed to make a reliable decision on the sentence. Two jurors have submitted affidavits that state that they would have imposed a life sentence if they had been made aware of the available mitigating evidence. Exhibits C and E.

The mitigating evidence which was available but which was not furnished to the jury included:

Chandler's Depression, Remorse, and Attempted Suicide

The jury was not told that subsequent to the shooting, Chandler became depressed to the point that he attempted suicide by hanging. According to the Southside Emergency Services notes, Chandler attempted to hang himself in a sincere attempt to commit suicide. In his evaluation, the nurse

noted that he presented as withdrawn, depressed, and confused, and he expressed regret that he was not allowed to hang himself. He reported that when he was alone, he saw William Dix standing at the foot of his bed and that he could not sleep. He was told and believed that it was his conscience haunting him. In addition, he suffered from nightmares in which Mr. Dix stood over him, hitting him, and that mental health professionals advised him that the dreams were aroused by his conscience. After the suicide attempt, he was sent to Central State Hospital for evaluation. He was diagnosed with depressive disorder with suicidal ideation, alcohol dependence, and cocaine abuse. Exhibit F. He was on medication to help him sleep.

Chandler's Upbringing

The jury was not told that Chandler grew up in a exceedingly dysfunctional family. He was the seventh of eight children raised by a single mother. Chandler's father played little or no role in his upbringing. Perhaps more devastating, his older brothers were drug dealers, convicted of felony distribution of cocaine and other misdemeanors. Thus, his closest male role models were criminals, in and out of trouble and prison. Tragically, the one person Chandler was close to, his mother, died of breast cancer while he was incarcerated, and he was not permitted to attend her

funeral. Due to Chandler's lack of guidance, he did not do well in school and he dropped out in the tenth grade at the age of eighteen.

Chandler's Substance Abuse

The jury was not told that Chandler suffered from significant alcohol and drug abuse, which contributed greatly to the offense. He started drinking beer at the age of thirteen and by sixteen he was drunk almost every day. His brothers were drug dealers, and they provided him with beer and liquor. He experienced alcohol blackouts on many occasions. Chandler abused marijuana and crack cocaine as well. His sister's boyfriend provided him with marijuana, which he used on a daily basis. In addition, he used crack cocaine two or three times per night. Chandler received some treatment for substance abuse in the summer of 1991 and he showed some improvement at the time. However, with that single exception he never received any mental health or rehabilitative treatment.

Thus, there was significant mitigating evidence which, along with the jury's desire to impose a life sentence without parole, certainly would have resulted in a life sentence. Unfortunately, this evidence never reached the jurors.

C. Defense Counsel Did Not Perform His Function In Ensuring the Reliability of the Death Sentence Because He Failed to Conduct a Pretrial Investigation for Mitigating Evidence.

Admittedly, Chandler told defense counsel several weeks before trial that he did not want to fight the death penalty if he were convicted of capital murder. Relying upon that statement, counsel conducted no mitigation investigation. Under accepted constitutional standards, Chandler's request did not relieve counsel of the duty to investigate potential sentencing evidence and to advise his client of the results.

"[C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Strickland v. Washington, 466 U.S. 668, 691 (1984). "[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable." Id. (emphasis added). "With respect to investigating mitigating evidence, counsel's performance is deficient if he fails to make a reasonable investigation for possible mitigating evidence." Matthews v. Evatt 105 F.3d 907, 919 (4th Cir. 1997). The American Bar Association standards, which provide guidance as to what constitutes "reasonable" professional conduct, see Nix v. Whiteside, 475 U.S. 157 (1986), Strickland, 466 U.S. at 688, also mandate counsel's duty to investigate all leads relevant to the merits of a case. ABA Standard for

Criminal Justice 4-4.1, 4.54-4.55 (1980). Counsel is not relieved of the duty to investigate even when the client is reluctant to cooperate. Matthews, 105 F.3d at 920.

Where the defendant specifically states that no mitigation evidence is to be offered, counsel is ineffective if he follows this directive out of ignorance and without knowing what evidence is available. Blanco v. Singletary, 943 F.2d 1477, 1501 (11th Cir. 1991). Counsel cannot fully advise his client of the consequences of his decision to waive a defense when counsel is unaware of the available mitigating evidence. Id.; see also Emerson v. Gramley, 91 F.3d 898, 906 (7th Cir. 1996) (counsel ineffective where he conducted no mitigation investigations, defendant waived presentation of evidence and argument, and available evidence could have resulted in a life sentence).

Based on Chandler's decision to forego a defense at the sentencing phase, Chandler's attorney, who was a public defender, conducted no mitigation investigation. Since counsel did not know what the investigation would have produced, he was unable to advise Chandler, then only nineteen years old, of any available, favorable evidence. When the sentencing phase commenced, counsel was totally unprepared and, in fact, had no evidence to present to the jurors or the court. Counsel advised the

court of Chandler's decision during the sentencing phase but did not request an adjournment, continuance, or a competency examination. As noted above, Chandler had a documented history of depression, alcohol abuse, a suicide attempt, and was on medication at the time of trial. Thus, further inquiry should have been made to assess his competence at the time.

The trial record contains no evidence that defense counsel ever advised Chandler of the mitigating evidence available in his case. Defense counsel made no proffer to the trial court that he had conducted any mitigation investigation and never stated the nature of the evidence counsel could present in mitigation.

Review of the entire trial record demonstrates that defense counsel had conducted no mitigation investigation. After the jury recommended death, the sentencing hearing was scheduled for March 22, 1994. On March 16, 1994, defense counsel moved for a continuance of the sentencing hearing. (The transcript of the hearing is contained in Exhibit G). Counsel, the county's public defender, stated that he was currently representing 160 clients in several different counties, that he had tried three capital cases in the last year, that he was working "seven days a week, sometimes as much as twelve or fourteen or sixteen hours a day and I'm not getting it done."

Given his workload, counsel had not prepared for Chandler's sentencing hearing:

> Basically I just haven't been able to get enough done. I'm not prepared to go to the sentencing hearing on Tuesday.
>
> Time is just a luxury I don't have enough of. And I just haven't been able to put into this sentencing what it needs.
>
> As you're well aware, this was an odd case at trial itself, and it was not until actually fairly recently that Mr. Chandler decided that he wanted me to do something. And so I've had to get back up from where I was months and months ago and try to get it all together. It's very time consuming.

(emphasis added).

Counsel continued, stating that he had just attended a capital case conference, and, as a result, he realized that further preparation was required:

> There are some other things that come out of the conference I was at that caused me to believe that I'd better made real sure that I know what I'm doing and that I've touched on all bases before going to sentencing on this case. I don't really want to get into any details, quite frankly.

As defense counsel was not ready to proceed, the sentencing hearing was rescheduled for April 8, 1994. Defense counsel later admitted on the record that he had not prepared for this phase. Strickland mandates "reasonable investigations" and failure to do so constitutes professionally unreasonable performance.

Counsel failed to present mitigation evidence that was readily available after a reasonable investigation. Thus, he did not perform his function in the criminal process and there is evidence that had he not failed in his duty, then the death sentence would not have been imposed. Exhibits C and E. In light of this evidence, the Governor should correct the sentence which was rendered as a result of ineffective assistance of counsel and which would have been different if only the jury had been properly advised.

D. Commuting Mr. Chandler's Sentence Would Not Create Any Danger to the Community.

The prediction that Chandler would be a future danger has proved to be unfounded. Chandler's records from Mecklenburg Correctional Cernter reveal only six, minor violations of prison regulations and **no violent incidents** of any kind. They include: (1) refused order to unlock door; (2) took shower when showers were prohibited; (3) delayed officer by talking and blocked cell door; (4) state trash bag in cell; (5) 15 minute delay in entering cell; and, (6) possession of homemade intoxicants. EXHIBIT H.

In addition, when the stress of prison life becomes difficult to handle, Mr. Chandler asks to be placed in voluntary lockdown or segregation. Exhibit I. In short, his overall record at Mecklenburg demonstrates that he presents no risk to others in the prison environment. He has also completed

an education program while incarcerated. Exhibit J. Thus, even given his current prospects, he is making every attempt to improve himself and to be as close to an ideal inmate as possible. This is not the behavior of an individual who is one of the select few who should be executed. Rather, this is the behavior of an individual who has some redeeming and mitigating qualities which should be considered favorably by the Governor particularly in light of the jury's inclination to spare Mr. Chandler from the death penalty.

IV. CONCLUSION

Lance Chandler is not same person who walked into Mother Hubbard's convenience store on February 7, 1993. On that night, he was a nineteen-year-old teenager who made a horrible and tragic mistake, precipitated by alcohol and drugs as well as emotional immaturity and a lack of any worthy male guidance.

Today, he is still young - only twenty-five - but his behavior and record indicate that he has matured and become a good candidate for rehabilitation. He has conducted himself well in the prison environment, and he has strived to better himself through education by obtaining a GED. The jury in this case saw Chandler's potential for rehabilitation, and it struggled with sentencing to death an individual who was so young. The

Governor has the opportunity to realize the jury's actual wishes and impose a life sentence without parole. In light of the all the circumstances, clemency in this case would serve the interests of justice, and Lance Chandler, through his attorneys, respectfully requests the Governor to exercise his power to grant clemency and to commute his death sentence to life without parole.

Respectfully submitted,

Lance Antonio Chandler

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