

DATE TYPED: February 17, 1998
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STATE OF OHIO
ADULT PAROLE AUTHORITY
COLUMBUS, OHIO

Date of Meeting: February 13, 1998

Minutes of the **SPECIAL MEETING** of the Adult
Parole Authority held at 1050 Freeway Drive North
Columbus, Ohio 43229, on the date indicated above.

IN RE: **WILFORD BERRY Jr., #228-607 MANCI**
(AKA, EDWARD THOMPSON)

SUBJECT:

**Re-examination of Death
Sentence Clemency**

CRIME, CONVICTION:

Aggravated Robbery cc/w
Aggravated Burglary cc/w
Aggravated Murder

DATE OF CRIME:
PLACE OF CRIME:

November 30, 1989
Cleveland, Ohio

COUNTY:
CASE NUMBER:

Cuyahoga
CR247418B

VICTIM(S):
INDICTMENT:

Charles Mitroff (Age 53 years)
Aggravated Murder (W/Felony
Murder and Gun Specifications)
Armed Robbery (W/Gun

VERDICT:

Specifications) Aggravated Burglary
(W/Gun Specifications)
Found Guilty of Aggravated Murder
and Armed Robbery as indicted;
Found Guilty of Aggravated Burglary
(Without Gun Specification)

SENTENCE:

Sentenced to Death, 10-25 Years
(With 3 Years Actual) 10-25 Years
(With 3 Years Actual)

ADMITTED TO INSTITUTION:

August 28, 1990

JAIL TIME CREDIT:

253 Days

PAROLE ELIGIBILITY:

N/A

PRESIDING JUDGE:

Honorable Carolyn Friedland

PROSECUTING ATTORNEY:

Attorneys, Lonjak and Wetzel

ACCOMPLICE(S):

Anthony Lozar

FOREWORD:

The Honorable George V. Voinovich, Governor of the State of Ohio, requested via correspondence dated January 27, 1998, that the Parole Board re-visit its earlier report and recommendation regarding clemency in the case of Wilford Berry, Jr., MANCI #228-607. Mr. Berry is currently scheduled for execution on March 3, 1998.

The board re-convened on this matter February 13, 1998. Herein are the Parole Board's report and recommendation.

RESOURCES:

In its re-examination of this case, the board thoroughly reviewed and considered the following:

Application for Clemency filed by the Catholic Conference of Ohio and Presentation

Adult Parole Authority records

Wilford Berry's institutional files

Cuyahoga County Court of Appeals opinion

Ohio Supreme Court opinion

Sentencing Judge Carolyn B. Friedland's recommendation dated February 2, 1998

Cuyahoga County Prosecutor Stephanie Tubbs Jones' correspondence dated February 6, 1998

Information submitted by the Office of Victim services dated February 5, 1998

Medical Update of February 9, 1998

Mental Health Update of February 12, 1998

OFFICE OF VICTIM SERVICES:

In a memorandum to the Parole Board dated February 5, 1998 from Karin Ho, Administrator for the Office of Victim Services, the victim's widow, Barbara Mitroff, recently related that she and her family remain too emotionally distraught to offer any opinion in this case. It is their expressed wish to never be contacted again regarding this matter.

MEDICAL UPDATE OF FEBRUARY 9, 1998:

This report makes reference to the MANCI disturbance in September, 1997, at which time Mr. Berry sustained "two significant fractures and numerous contusions" from other inmates under similar sentence who resented his continuous requests to have his death penalty expedited.

Presently, his injuries are healed and he is not experiencing any medical concerns.

MENTAL HEALTH UPDATE OF FEBRUARY 12, 1998:

Currently, Mr. Berry is described as alert, well-oriented, able to concentrate, competent to speak spontaneously and converse relevantly. At this time, he is not deemed to be suffering any serious mental illness or disorder.

CATHOLIC CONFERENCE OF OHIO-APPLICATION FOR CLEMENCY AND PRESENTATION:

Persons appearing before the Parole Board in support of clemency:

Tim Luckhaupt, Executive Director
Catholic Conference of Ohio

Scott Marrah, Legal Counsel
Catholic Conference of Ohio

S. Adele Shank, Co-Counsel

Jim Tobin, Social Concerns
Catholic Conference of Ohio

Father Frank Smith, Staff Member
Catholic Conference of Ohio

Attorney Marrah focused his remarks on the psychiatric findings of:

Philip J. Resnick, M.D., diagnosed Mr. Berry in 1996-
Mixed Personality Disorder with Schizotypal, Borderline and Antisocial
Features.

Robert W. Alcorn, M.D., evaluated Mr. Berry in April, 1997-
Mixed Personality Disorder with Schizotypal, Borderline and Antisocial
Features.

Sharon L. Pearson, Psy. D., examined Mr. Berry in 1995-
Schizotypal Personality Disorder with Antisocial Features.

The aforementioned diagnoses and accompanying reports are included in the Application for Clemency. They were also displayed on three large posters with the aid of easels to emphasize that, subsequent to Mr. Berry's trial and sentencing, all three examiners found him to be competent but mentally ill. Therefore, while the court found him competent to stand trial, it was contended that Mr. Berry was and remains mentally ill.

Attorney Marrah explained that persons suffering from a Schizotypal Personality Disorder are predisposed to suicide and such has been the ideation of Mr. Berry all his life. Attorney Marrah stated that Mr. Berry attempted suicide at ages 9, 11, 17 and on three occasions while incarcerated in Texas. In the context of these three psychiatric evaluations previously outlined, Attorney Marrah concluded that the court looked at Mr. Berry's cognitive process to waive post-conviction remedies and not at his repeated suicide attempts. Attorney Marrah further related that, given Mr. Berry's Schizotypal Mental Illness, he is 900 times more prone to commit suicide than the general population. Attorney Marrah concluded that Mr. Berry's pending execution is tantamount to the State of Ohio assisting a mentally ill offender to commit suicide.

Attorney Shank reiterated that the aforementioned diagnoses comprise new information which the Parole Board did not have at the time this case was considered for clemency in 1995. She maintained that Mr. Berry's illness has always prevented his attorneys from making a thorough review of his case.

Attorney Shank brought to the board's attention that Mr. Berry's sister, Elaine Quigley, claims that the victim, Charles Mitroff, nearly hit her and her niece with the bakery van prior to Mr. Berry's arrival in Cleveland in November, 1989. Mr. Berry's sister told him (Mr. Berry) about this incident prior to the commission of the crime. Attorney Shank stated that Mr. Berry's mental illness prompted him to interpret this information as a threat towards his family. It is Attorney Shank's expressed opinion that the sister's account of said near-accident is true. Hence, it is the only explanation that gives the instant offense validity. Attorney Shank related that the sister's story did not surface until the mitigation phase at trial.

Attorney Shank cited Dr. Robert W. Goldberg's psychological assessment of Mr. Berry in July, 1990 (also included in the Application for Clemency) in which he also found mental illness.

Attorney Shank related that the coroner's report confirms that the first gunshot received by the victim destroyed the liver and killed Charles Mitroff. She pointed out that Mr. Berry's accomplice, Anthony Lozar, fired the first shot. However, Mr. Lozar received "a significantly lesser sentence."

Attorney Shank contended there was no prior plan clearly indicated that Mr. Berry intended to kill the victim.

During the presentation, Attorney Shank related that the accomplice, Anthony Lozar, had just been released from a mental institution prior to meeting Mr. Berry. At his trial, according to Attorney Shank, Mr. Lozar never gave a reason why he committed the instant offense.

In summary, Attorney Shank cited four persuasive reasons why clemency should be afforded Mr. Berry:

- 1.) Mr. Berry suffers a serious mental illness.

- 2.) There is a disparity in the sentences received by Mr. Berry and Mr. Lozar. It was Mr. Lozar's gunshot which killed the victim.
- 3.) As a result of his mental illness, Mr. Berry has truncated the adversarial process and thorough review of his case.
- 4.) Mr. Berry deserves to have mercy based upon the mental, emotional, physical, economic and social deprivations and injustices to which he has been subjected all his life.

Attorney Shank tearfully concluded: "All of us should be moved to grant mercy."

CONCLUSION:

Following perusal of all available documentation and thoughtful deliberation in this case, the eight members in attendance ultimately found:

- A) that the instant offense was not a "spur of the moment" crime but rather a well-planned murder in which intentional steps were taken to avoid detection.
- B) that Mr. Berry was the most culpable and that the accomplice, Mr. Lozar, would not have shot the victim had Mr. Berry not initiated the idea and procured the two guns.
- C) that Mr. Berry was functionally able to perform aggravated murder.
- D) that a current psychological evaluation does not find Mr. Berry mentally ill.

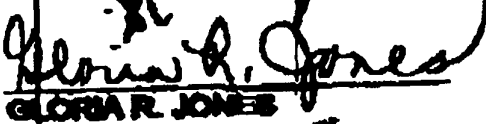
RECOMMENDATION:

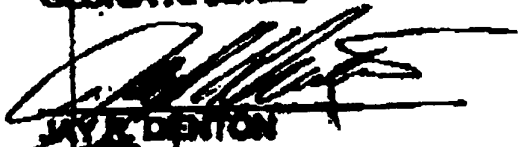
Upon careful re-examination of this case, the Ohio Parole Board, with eight (8) members participating, recommends to the Honorable George V. Voinovich, Governor of the State of Ohio, by a unanimous vote of eight (8) to zero (0), that clemency be denied to Wilford Berry, Jr., #228-607 MANCI.

Willard Denny Jr., #229-007
Death Row Commutation
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**O-80 ADULT PAROLE AUTHORITY
PAROLE BOARD MEMBERS VOTING "YES"**


RAYMOND E. GIBBS

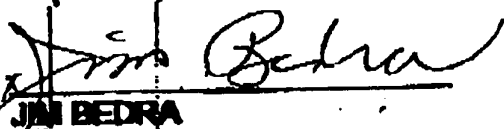

GLORIA R. JONES


JAY R. DENTON


CONSTANCE M. UPPER


LARRY D. MATHEWS


HENRY R. GRIMMER


JIM BEDRA


PATRICK L. MILLIGAN

CAJLH