

In re capital execution of George C. Gilmore

APPLICATION FOR GRANT OF REPRIEVE OR COMMUTATION OF SENTENCE

To: The Honorable John Ashcroft, Governor  
State of Missouri

The undersigned religious and civic leaders of the State of Missouri for their Application state:

I.  
EXECUTION SET

1. The death of George C. Gilmore by execution is set by order of the Supreme Court for August 31, 1990.
2. Court appeals have apparently been exhausted.

II.  
PARDON POWER IS INHERENT TO THE PEOPLE;  
CITIZENS HAVE STANDING TO APPLY.

3. The power to pardon, reprieve or commute is inherent in the sovereignty of the people of the State who have conferred the exercise of this power on the Governor by virtue of Article IV, Section 7 of the Constitution of Missouri. The power exists to serve the common good and not merely the individual under sentence.

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4. The exercise of the pardon power is not dependent upon "one(the offender) who, on no sound principle, ought to have any voice in what the law should do for the welfare of the whole." Biddle v. Perovich, 274 US 479, 487 (Justice Holmes).

"A pardon in our days is not a private act of grace from an individual happening to possess the power. It is a part of the Constitutional scheme. When granted, it is the determination of the ultimate authority that the public welfare will be better served by inflicting less than the judgment fixed. The public welfare, not his (the prisoner's) consent, determines what shall be done." Biddle, supra p. 486.

5. Precedent has been established for the right of applicants as citizens of the State to apply for reprieve or commutation in behalf of the common good and to have the Board of Probation and Parole review such application pursuant to Section 217.800, RSMo. On October 31, 1984 religious leaders and others, including some of the present applicants, filed an Application for Reprieve or Commutation relating to the capital execution of Gerald Smith with then Gov. Christopher S. Bond. Gov. Bond accepted the Application, referred it to the Board of Probation and Parole for review. Prior to the action of the Board on the Application, a federal stay order intervened and subsequently Gerald Smith resumed his legal appeals thus making the Application moot. The clemency process was subsequently used in relation to George Mercer, Leonard Laws, Maurice Byrd, Bobby Lewis Shaw and Winford Stokes. Such applications have been presented and acted upon since the earliest years of Missouri statehood.

III.

REVIEW UNDER SECTION 217.800, RSMo. REQUESTED

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6. The undersigned invoke the requirements of Section 217.800, RSMo, which requires that "all applications for pardon, commutation of sentence or reprieve shall be referred to the Board (of Probation and Parole) for investigation." Further we request timely notice of the Board's proceedings and an opportunity to be heard prior to the completion of their investigation. The undersigned respectfully request an opportunity to be heard prior to the completion of their investigation. We request that the reasons for mercy and commutation outlined in this application be considered in granting commutation, not simply the prior conviction records and related parole materials of George C. Gilmore. We request a written response to this Application.

IV.

COMMUTATION SHOULD BE GRANTED  
BECAUSE OF SERIOUS FACTS REGARDING THE USE  
OF CAPITAL PUNISHMENT IN THE CASE OF GEORGE C. GILMORE

7. While capital punishment is a part of our law, commutation is also provided. To commute a sentence does not mean the law is not being upheld. It is merely to say that the punishment might not be appropriately applied in this case. It exists to correct imperfections in the criminal justice system.

8. Commutation means, according to Black's Law Dictionary, "a change of punishment from a greater to a less."

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9. In George C. Gilmore's case, the undersigned are asking for commutation to life in prison without parole.

10. The undersigned believe that, because of serious facts in George C. Gilmore's case, there is cause for mercy and the public interest would best be served by commutation.

V.

BACKGROUND INFORMATION

11. George Gilmore was born in St. Louis County on August 6, 1946, one of seven children born to George F. and Pearl Garret Gilmore who were not divorced. George states in a pre-sentence investigation that his parents fought with each other continually, that both parents were alcoholics and that his father beat the children regularly. His mother died in 1967 of internal bleeding from a fall and his father died in 1969 of smoke inhalation from a rubbish fire. On one occasion his father knocked out four of George's front teeth in a fight. Reports also indicate that George did not recall "having very much fun," his peers shunned him and he usually found himself "threatened or abused" by people when he went out socially.

12. In 1957, when George was ten years old, a field officer reported that conditions in their home were "appalling and pitiful. There was no heat, no light and no food." School authorities reported to the juvenile authorities that the children of this home frequently came to school

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battered and bruised. The father had been hospitalized for post-traumatic epilepsy. The mother was seen by

a psychiatrist in 1957 and reported that she showed signs of depression." A psychiatric report of July 10, 1981 from Fulton State Hospital noted: "The family history is riddled with social problems such as alcoholism. His mother and father were both alcoholics. Home life was characterized by violence. Three of the six surviving children are incarcerated."

13. George began school in Eureka, Missouri and was there briefly to be placed later in Manchester Special School District for three years and then back to Eureka School District. He stopped school entirely at age 16, when his father "pulled him out of school to cut firewood."

14. A March, 1967 report from the Missouri Department of Corrections states, "School authorities state that the subject attended a program for the educably mentally retarded from October, 1969 to November, 1962. His Benet IQ as of September 10, 1958 was recorded at 65. At this time, he is nearly illiterate, and the level of his intellectual functioning might be some psychological involvement." The above mentioned report from Fulton State Hospital indicates Mr. Gilmore is "currently functioning in the borderline range of mental retardation and reading at the 6.1 grade level."

15. Mr. Gilmore began using LSD at age 13 and used other drugs, including marijuana, amphetamines, dilaudid, barbiturates and alcohol.

He began using marijuana in 1975 and used every day until his arrest. Mr. Gilmore stated, during a pre-sentence investigation, he began using

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amphetamines in 1977 and until his arrest was using "14 pills a day." He admitted to alcohol use on a daily basis. He has never been in a treatment program for substance abuse.

16. According to the 1981 psychological report, Mr. Gilmore suffered two significant physical injuries, one in 1973 and the other in 1980. Both were injuries to the head. Mr. Gilmore stated that he was admitted to St. Louis County Hospital for a "blood clot in his head" and he had "occasional nose bleeds" but was never formally treated. In 1980, he suffered damage to his skull and was taken to Washington Memorial Hospital in Potosi, transferred to St. John's Mercy Hospital in St. Louis but he signed himself out of the hospital without having treatment because "they wanted to operate" and he stated "he had no money to pay for the operation." The above report indicates he never received formal treatment for this injury, although there are indications such was advised.

17. The 1981 psychological report indicated a diagnosis of "mixed substance abuse, marijuana and amphetamines, alcohol dependence, borderline intellectual functioning, adult anti-social behavior, by history."

## VI.

### SOCIAL, ECONOMIC, FAMILY AND INTELLECTUAL DEPRIVATION ARE GROUNDS FOR COMMUTATION

18. Mr. Gilmore's background indicates facts of severe deprivation in major areas of his life: mental health, education, intellectual

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development, and family life. He was never removed from an obviously abusive family. He was mentally retarded. But, instead of receiving benefits of special education, he was removed from school. He never received treatment for an obvious alcohol and drug problem. Today, society and the state of Missouri demand that at least attempts be made to address these problems. Such was not the case in Mr. Gilmore's life. Growing up in the 1950's, Mr. Gilmore never received benefits of the assistance society sees today as essential. It is not in the interest of the common good to punish this man by taking his life when he did not have the benefits of assistance which are available today.

VII.  
COMMUTATION SHOULD BE GRANTED  
BECAUSE THE DEATH PENALTY IS NOT A DETERRENT

19. A recent Study concluded the following:

"During the 1950's there is no evidence that executions had even the slightest deterrent effect on murder. In addition, based upon our analysis of this decade, we find no support for the argument that a return to past execution practices will provide an effective solution to the murder problem. Rather, if executions are to again receive a prominent role in the criminal justice system, their use will have to be justified on grounds other than deterrence."

This study compared murder and executions in death penalty states in the 1950's. (William C. Bailey, "The Deterrent Effect of Capital Punishment During the 1950's," Suicide and Life Threatening Behavior, Vol. 13, #2, Summer, 1983, pp. 95-109.)

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20. Regarding deterrence, it is significant to note that there have been two executions in Missouri, one in January, 1989 and one in January, 1990. However, county crime statistics for St. Louis County January to March, 1990 indicate that reports of murder have increased by 80 percent from 1989 to 1990. This increase contrasts with reports of property crimes which have decreased. (See County Crime Statistics for this period released May 4, 1990.)

VIII.  
THE COMMON GOOD

21. The common good requires the state, through the governor, to weigh justice, assess responsibility, and mete out punishment and rewards. Humanly speaking, we cannot achieve justice perfectly, nor assess perfectly the responsibility of each offender. We need, especially regarding capital punishment, to be careful that punishment given is fair to each person involved, based on proportion; based on deliberation of the facts, aggravating and mitigating; and fits the offense. We cannot say that these apply in Mr. Gilmore's case.

22. The common good would be violated if our punishment responds with something other than balance, fairness, and all the facts.

23. Executions must be tempered by tolerance, the presumption of humanity, and all that we are to one another as brothers and sisters loved by God. We are all in need of His saving power.

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24. Society abhors violence. Violence begets more violence. The death penalty is clearly no more of a deterrent than imprisonment; in fact, it appears to be an incentive to more murders. Execution destroys human life, a gift of our Creator, Redeemer God. It debases humanity, encourages revenge, precludes repentance and sanctions violence as a solution. It is in the interest of the common good of the people of our state that the chain of violence be broken.

FOR THE FOREGOING REASONS, a reprieve staying the carrying out of the death penalty pending further actions as hereinabove described should be granted or in the alternative the death sentence should be commuted to life without parole.

Respectfully Submitted,

Joyce Armstrong  
Eastern Mo. ACLU, St. Louis

Benedictine Sisters  
Our Lady of Peace Community, Columbia, Missouri

Right Rev. John Buchanan  
As Bishop of the Episcopal Diocese of West Missouri

Marjorie Byler  
Amnesty International - USA, Midwest Region

Michele Coleman  
Jefferson City, Missouri

The Rev. Norm Dake  
Church in Society Commission  
Missouri-Kansas Synod  
Evangelical Lutheran Church in America

Peter DeSimone  
Missouri Association for Social Welfare

Fellowship of Reconciliation

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Columbia, Missouri Chapter

Bishop W. T. Handy, Jr.  
Missouri Area United Methodist Church

The Rt. Rev. William A. Jones, Jr.  
Episcopal Diocese of Missouri

Most Reverend John Leibrecht  
Bishop of the Catholic Diocese of Springfield-Cape Girardeau

Most Reverend John L. May  
Archbishop of the Catholic Diocese of St. Louis

Most Reverend Michael F. McAuliffe  
Bishop of the Catholic Diocese of Jefferson City

Bill Ramsey  
American Friends Service Committee, St. Louis

Elder Roy Schaefer

Most Reverend John J. Sullivan  
Bishop of the Catholic Diocese of Kansas City-St. Joseph

The Right Rev. At-thffl- VOC,01  
As Bishop of the Episcopal Diocese of West Missouri

Dr. John L. Williams  
Presbyterian Synods of Mid-America

Dated August 29, 1990

Attorney at Law  
P. O. Box 1022  
Jefferson City, MO 65102  
314/635-7239  
(Attorney for Applicants)