

DATE TYPED: February 14, 2005
DATE PUBLISHED: February 15, 2005

IN RE: WILLIAM H. SMITH, MANCI #202-636

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

Date of Meeting: February 8, 2005

Date of Executive Session: February 14, 2005

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: William H. Smith, MANCI #202-636

SUBJECT: Death Sentence Clemency

CRIME, CONVICTION: Aggravated Murder w/ specification – Principal Offender during a Rape Offense cc/w Aggravated Murder w/ specification – Principal Offender during an Aggravated Robbery cs/w Rape cs/w Aggravated Robbery

DATE, PLACE OF CRIME: September 26, 1987; Cincinnati, Ohio

COUNTY Hamilton

CASE NUMBER: B-874498

VICTIM: Mary Bradford

INDICTMENT: Counts 1: Aggravated Murder with specification - Principal Offender during a Rape Offense;
Count 2: Aggravated Murder with specification - Principal Offender during an Aggravated Robbery Offense;
Count 3: Rape;
Count 4: Aggravated Robbery.

VERDICT: Found guilty by Three Judge Panel as charged in Counts 1, 2, 3 and 4, and both specifications in Counts 1 and 2.

SENTENCE: Count 1 – Death; Count 2 – Death; Count 3 – 10-25 years CRC, with 10 years actual incarceration time; Count 4 – 10-25 years CRC, with 10 years actual incarceration time; Count 1 and 2, concurrent; Counts 3 and 4, consecutive, and consecutive with Counts 1 and 2.

ADMITTED TO INSTITUTION: April 15, 1988

TIME SERVED: 16 years, 10 months

AGE AT ADMISSION: 30 years old, (D.O.B. - 10/28/57)

William H. Smith
Death Penalty Clemency Report

CURRENT AGE: 47

JAIL TIME CREDIT: 200 Days

PRESIDING JUDGES: Honorable Norbert Nadel
Honorable Ralph Winkler
Honorable Robert Kraft

PROSECUTING ATTORNEY: Arthur M. Ney, Jr.

FOREWORD:

Clemency in the case of William H. Smith #202-636 was initiated by The Honorable Bob Taft, Governor of the State of Ohio, and the Ohio Parole Board, pursuant to Sections 2967.03 and 2967.07 of the Ohio Revised Code and the Parole Board Policy #105-PBD-05.

A previous Clemency Report was sent to The Honorable George V. Voinovich, then Governor of the State of Ohio, on April 24, 1995. That report contained a unanimous Parole Board recommendation against clemency.

On January 26, 2005, the inmate's counsel, Jennifer Kinsley, declined on behalf of Mr. Smith an opportunity to be interviewed by a representative of the Parole Board at Mansfield Correctional Institution. The Parole Board subsequently met on February 8, 2005 to hear the case of William H. Smith. The case was considered upon application by the inmate's counsel, H. Louis Sirkin, Jennifer M. Kinsley & Laurence E. Komp. Testimony in support of clemency was presented by Mr. Smith's counsel, Ms. Kinsley and Mr. Komp and by Mr. Smith's cousin, Mr. Gary Dorsey representing the Smith, Dorsey, Reid, Carter, Butts & Ward families. Testimony in opposition to clemency was presented by Assistant Hamilton County Prosecutor Ronald W. Springman and by Assistant Attorneys General Henry Appel and Greg Perry. During the course of the hearing, it was determined that Mr. Smith had, in fact, desired to be interviewed by the Parole Board. At the conclusion of all testimony and rebuttal presentations, the Board adjourned to deliberate and discuss the case. It was promptly determined that Mr. Smith should be afforded an opportunity to be interviewed by the Board. As a result, an interview was rescheduled and held on February 9, 2005 with Parole Board Member Peter Davis interviewing Mr. Smith at the Mansfield Correctional Institution.

On February 14, 2005 the Board reconvened to discuss the case. The Board gave careful review, consideration and discussion to all testimony, to Mr. Smith's interview, to all available facts pertaining to the crime including voluminous supplemental materials submitted by counsel and family for Mr. Smith, by the Hamilton County Prosecutor, and by the Office of the Attorney General. Considerable discussion was had as to all credible evidence offered or adduced in mitigation. The Board deliberated extensively upon the propriety of clemency in the form of commutation and in the form of reprieve. **With eight (8) members participating, the Board voted unanimously to provide an UNFAVORABLE recommendation to the Honorable Bob Taft, Governor of the State of Ohio.**

DETAILS OF THE INSTANT OFFENSE:

According to the Clemency Investigation, who sited their source as the Hamilton County Prosecutors Office, the following is known concerning the instant offense:

During the evening of 9/26/87, William H. Smith met Ms. Janice Echols and her friend Ms. Mary Bradford (age 47) at the Race Inn located at 1606 Race Street in Cincinnati, Ohio. After several hours of socializing and drinking, they left this location and drove to the Queen Anne Café located at 2141 Central Avenue in Cincinnati, Ohio. At approximately 1:30 am on 9/27/87, the group left this location and the subject dropped Ms. Echols off at another bar. Mr. Smith then proceeded to the victim's residence with her.

Mr. Smith and the victim then had sexual intercourse after drinking and allegedly using cocaine that belonged to him. The subject eventually left the victim's apartment, but returned when he discovered that some of his cocaine was missing. Upon returning, he confronted the victim, but she denied taking any of the cocaine. He then proceeded to stab the victim approximately 10 times in the neck, right breast, and right chest. While the victim was laying on the bed bleeding to death, Mr. Smith proceeded to have intercourse with her again. He then stole 2 televisions and a stereo system belonging to the victim, and left the apartment.

At approximately 4:00 pm that same day, a friend of the victim went to her apartment, and entered after finding the door unlocked. He then found the victim lying in a pool of blood on her bed, and contacted police.

The victim's death was ruled a homicide due to multiple stab wounds to the heart, aorta, and lungs. A rape examination was also conducted that showed that the victim had vaginal intercourse.

Through investigation, homicide detectives determined that William H. Smith was the last person to be seen with the victim. He was subsequently arrested at 1:30 pm on 9/28/87. The subject initially denied any involvement in the offense, but later admitted to stabbing the victim in the neck and having sex with her after stabbing her 8 more times. At the time, he claimed that this was the result of an argument over missing cigarettes and cocaine. During the argument, he claimed that the victim actually retrieved the knife, and he took it from her after striking her in the stomach.

APPLICANTS STATEMENT:

Mr. Smith was interviewed by Board Member Peter Davis on February 9, 2005 at the Mansfield Correctional Institution. Also present were Mr. Smith's counsel Jennifer M. Kinsley and Parole Board Quality Assurance Case Analyst Matt Morris. The interview was witnessed via teleconference at Parole Board Central Office in Columbus by Mr. Smith's counsel Laurence Komp, by Assistant Attorneys General Henry Appel and Greg Perry and by Parole Board Executive Assistant Judy Coakley.

With regard to culpability and aggravating circumstances Mr. Smith's version of the instant offense does not differ in substantial detail from the above referenced official version as obtained from the Hamilton County Prosecutor's office. He admits to meeting Ms. Bradford in a bar; accompanying her home; ingesting beer, vodka, marijuana and cocaine; arguing with Ms. Bradford [although not recalling the nature or subject of the argument]; wrestling the knife away from Ms. Bradford and stabbing her four (4) times; watching her lay bleeding in the living room chair; carrying her to the bedroom; removing her underpants and engaging in vaginal sex as she lay bleeding from multiple stab wounds; leaving Ms. Bradford in the bedroom [still not knowing whether she was dead or alive] as he made three (3) trips to his car to steal Ms. Bradford's stereo and two (2) televisions; and finally leaving the apartment still not knowing whether Ms. Bradford was dead or alive.

In detailing his account of the offense, Mr. Smith tearfully stated that he takes full responsibility for his inexcusable, unjustifiable and inexplicable behavior. He repeatedly remarked that he could have

and should have left Ms. Bradford's apartment at any number of times during the escalation of their verbal argument and even after he wrestled the knife from her hand. He stated that he cannot explain to himself nor to this Board why he did not leave prior to the stabbing, or immediately after the stabbing. He cannot explain to himself nor to this Board how he could or why he would rape Ms. Bradford after the stabbing, stating that he had never forced sexual conduct on any woman before that night. He cannot explain why he decided to steal Ms. Bradford's stereo and televisions and take them to his mother's house. He offered no excuses or rationalization for his offense behavior other than being "stupid and dumb". He also characterized as "stupid and dumb" his sending a fabricated letter to Ms. Bradford's daughter during his first year of incarceration, falsely asserting his innocence and falsely accusing a "Ricky Johnson" as Ms. Bradford's killer. He stated that it was after Death Row was moved from Lucasville to Mansfield in late 1994 that he finally "came clean" and began to tell the truth to himself and to others about his sole responsibility for Ms. Bradford's murder, rape and robbery.

PRIOR RECORD:

JUVENILE:

<u>DATE</u>	<u>OFFENSE</u>	<u>LOCATION</u>	<u>DISPOSITION</u>
1/26/73 (Age 15)	Robbery	Juvenile Court	Official probation; Termination date unavailable.
<u>Details:</u> Unavailable.			
7/29/1973 (Age 15)	Breaking & Entering	Juvenile Court	Official probation, restitution, and court costs remitted. Probation termination date unavailable.
<u>Details:</u> Unavailable			
12/27/73 (Age 16)	Burglary	Juvenile Court	Restitution, continued on probation, and referred to Job Corps.
<u>Details:</u> Unavailable			
7/2/74 (Age 16)	Unauthorized Use of Motor Vehicle	Juvenile Court	Official probation, \$20 fine and court costs. Probation termination date unavailable.

Details: Unavailable

OTHER ADJUDICATIONS:

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In 1973, the subject was arrested for being incorrigible. In 1974, he was arrested for being unruly and questionable conduct. All of these convictions resulted in court costs being remitted or a continuance of probation.

INSTITUTIONAL AND/OR SUPERVISION ADJUSTMENT: Unavailable.

ADULT:

<u>DATE</u>	<u>OFFENSE</u>	<u>LOCATION</u>	<u>DISPOSITION</u>
11/14/75 (Age 18)	Breaking & Entering (B753893)	Cincinnati, Ohio	8/19/76; 6 months to 5 years OSR, suspended; fines, costs, restitution and 2 years probation, concurrent with date of arrest for 5/5/76. 8/7/78: Guilty of probation violation, restored and continued on probation for an additional 3 years. 3/26/79; Declared an Absconder due to whereabouts being unknown. 7/29/80; Guilty of probation violation, sentenced to 6 months to 5 years, OSR. 8/20/80: Admitted to OSR #112-988; 3/21/81; Paroled. 3/21/82; Final Release on #112-988.

Details: District One Police observed the subject and an accomplice removing copper pipe from a building at 1332 Race Street. This building belonged to the Estate of Vincent Westerdorf.

3/17/76 (Age 18)	Theft (Under \$150)	Cincinnati Ohio	4/19/76; 10 days workhouse and court costs.
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Details: Subject removed copper pipes from a building at 1625 Republic Street.

5/5/76 (Age 18)	Breaking & Entering (B761494)	Cincinnati, Ohio	8/19/76: 6 months–5 years, suspended, 2 years probation concurrent with date of arrest of 11/14/75. 8/7/78: Guilty of probation violation, restored and continued on probation for an additional 3 years. 3/26/79: Entry declaring subject an absconder from probation due to whereabouts unknown. 7/31/80: Entry restoring, then terminating probation.
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Details: Subject broke into an apartment of Fred Wright, 1614 Elm Street, Cincinnati, Ohio.

5/18/77 (Age 19)	Assault	Cincinnati, Ohio	6/17/77; 180 days workhouse 15 days suspended.
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Details: Subject followed Charles Bishop to his residence, at 1216 Race Street. Subject asked the victim for ten (10) cents. When the victim said that he had no money, subject began beating the victim on the left side of his face.

8/26/85 (Age 27)	Breaking & Entering (B853077)	Cincinnati, Ohio	10/28/85: 1 year Ohio Penitentiary; 11/8/85: Admitted on CCI#187640 6/27/86: Released.
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Details: Subject broke into a residence at 3248 Glendora Avenue, and removed two (2) stained glass windows.

9/28/87 (Age 29)	Aggravated Murder w/ specification (2 counts), cs/w Rape, cs/w Aggravated Robbery (B874498)	Cincinnati, Ohio	INSTANT OFFENSE
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OTHER CONVICTIONS:

Subject has four (4) other convictions. In 1979, he was arrested for Engaging in Gambling, which resulted in fines and being ordered to pay court costs. In 1984, he was charged with No Driver's License on two (2) occasions for which he was fined and ordered to pay court costs. In 1987, the subject was arrested for Possession of a Dangerous Drug, which resulted in five (5) days at the Hamilton County Criminal Justice Center and costs remitted.

DISMISSED/NOLLED AND/OR UNKNOWN DISPOSITION CHARGES:

In 1978, the subject was arrested in Hamilton County for Aggravated Burglary, a charge which was ignored by the Grand Jury. In 1984, he was arrested for Criminal Damaging, which was dismissed. In 1985, the subject was arrested by the Fulton County Police Department in Atlanta, Georgia, on two (2) charges of Simple Battery and Disturbing a Lawful Gathering. Both of these charges were subsequently dismissed.

INSTITUTIONAL ADJUSTMENT:

Mr. Smith has spent approximately 17 years on Death Row. He has demonstrated good institutional conduct with only two (2) relatively minor disciplinary tickets, and none during the past ten (10) years. He also has maintained good job evaluations and enjoys a good rapport with correctional officers and other institutional staff. His institutional adjustment has been exemplary.

COUNSEL'S ARGUMENTS FOR CLEMENCY:

Counsel for Mr. Smith assert six (6) arguments in support of mitigation against the imposition of the death penalty in this case.

1. Poor Representation of Trial Counsel During Penalty Hearing

We note that many of the alleged deficient actions of Mr. Smith's trial counsel were within their proper discretion as matters of defense trial strategy. The Board defers to the substantive findings of the Federal District Court and the Sixth Circuit Court of Appeals in their rejection of Mr. Smith's claim that he received ineffective assistance of trial counsel.

2. Organic Brain Damage

Mr. Smith has never been diagnosed with a major mental illness, nor with a serious mental defect, nor with an organic brain disease. There is clear and convincing evidence that at the time of the offense Mr. Smith suffered from a personality disorder characterized by poor impulse control. There is credible evidence that he was diagnosed [post conviction in 1992] with "mild static diffuse cerebral dysfunction", occasioned by either "chronic alcohol abuse" or "traumatic brain damage". It is noted that the diagnosing clinical psychologist [Dr. Kathleen J. Burch] did not identify any major head injuries to Mr. Smith & effectively corroborated the finding in Dr. Nancy Schmidtgoessling's mitigation report that Mr. Smith's primary mental deficit was poor impulse control. Moreover, during the February 9, 2005 interview, Mr. Smith stated that he has not suffered any head trauma since his sister hit him in the top of his head with a "coke bottle" during a weekend home visit from Longview State Hospital [sometime between the ages of 9 & 14].

Counsel asserts that Mr. Smith's recent cranial CAT scan [one of a battery of physiological exams occasioned by Mr. Smith's treatment for heart attack symptoms] indicates the presence of an abnormality or mass in his brain [specifically between his seventh and eighth cranial nerve]. Reportedly the treating physician at Mansfield General Hospital & a neuroradiologist consulted by Mr. Smith's attorneys [Dr. Clifford Pleatman] recommend a follow-up MRI to obtain a more complete diagnosis. This is the basis for counsel's alternate request for clemency in the form of a reprieve. It should be noted that Mr. Smith's medical records in this regard were not made available to State's counsel nor to this Board at the time of the February 8, 2005 hearing. Absent a copy of any medical report, State's counsel presented a compelling affidavit from Dr. Richard Lederman, [Cleveland Clinic Department of Neurology] stating in pertinent part:

"The seventh cranial nerve primarily controls the function of facial muscles and taste from the tongue. The eighth cranial nerve primarily relays sound and balance information from the inner and middle ear to the brain."

“If Dr. Pleatman is suggesting that the seventh and eighth cranial nerves are in Mr. Smith’s brain, he is mistaken. The seventh and eighth cranial nerves are, by definition, not part of the brain, although these nerve fibers originate and terminate in the brain.”

“Assuming that the abnormality in the seventh and eight cranial nerves is very severe, Mr. Smith would likely suffer facial paralysis on one side of his face and total deafness in one ear.”

“It is my opinion that any such an abnormality --- no matter how severe --- would not affect an individuals ability to tell right from wrong. Nor would such an abnormality affect an individual’s ability to conform his conduct to the requirement of the law. “

A copy of Mr. Smith’s Emergency Department Reports from Mansfield General Hospital dated December 9, 2004 and December 29, 2004 were given to this Board by counsel after the interview of Mr. Smith on February 9, 2005. An actual copy of the CAT scan was not included. Relevant portions of the December 29, 2004 report CAT scan summary include the following:

“The ventricles are symmetric in size, position and configuration. There is no convincing evidence of intracranial mass or hemorrhage. There are small areas of increased attenuation demonstrated in the basal ganglia bilaterally which likely represent calcifications within the basal ganglion as they are symmetric. There is no evidence of midline shift. There is no evidence of extra-axial collection. Bone windows reveal no evidence of fracture. There is mucosal sinus disease evident within the left frontal and bilateral ethmoid sinuses.”

“IMPRESSION:

1. No evidence of intracranial mass or hemorrhage.
2. Areas of increased attenuation within the bilateral basal ganglia which likely represent physiologic calcifications.
3. Bilateral ethmoid and left frontal mucosal sinus disease. “

“I recommend further evaluation of this patient with an MRI examination of the brain.”

This Board holds the view that any necessary follow-up MRI examination for Mr. Smith is strictly a medical decision, properly and exclusively within the discretionary authority of the Medical Director at the Mansfield Correctional Institution in consultation with the Medical Director for the Department of Rehabilitation and Correction.

The Board recognizes that credible evidence of Mr. Smith’s diagnoses of poor impulse control and “mild static diffuse cerebral dysfunction” is a proper consideration to be weighed in the pursuit of a claim for mercy.

3. Deprived Childhood

This Board concurs with the findings of the Supreme Court of Ohio in recognizing that Mr. Smith's "history, character, and background do offer mitigating features. Smith clearly had an arduous childhood, and his early life shaped a personality with serious character defects. His limited mental capacity, childhood deprivation, and alcohol and drug dependency all reflect mitigating features." Mr. Smith's abysmal childhood, as comprehensively detailed in the penalty phase mitigation report compiled by Dr. Nancy Schmidtgoessling, Ph.D., is a significant consideration to be weighed in the pursuit of a claim for mercy.

4. Good Institutional Adjustment

As previously noted, this Board finds Mr. Smith's overall institutional adjustment to be exemplary and a proper consideration to be weighed in the pursuit of a claim for mercy.

5. Sixth Circuit Court of Appeals Dissenting Opinion

In Mr. Smith's claim for federal habeas relief, Judge Guy Cole rendered a dissenting opinion on the narrow grounds that Mr. Smith was denied the full benefit of expert psychiatric assistance during the sentencing phase, noting that Dr. Nancy Schmidtgoessling was appointed by the court as an amicus "neutral" expert rather than as a "defense" expert. This Board offers no comment on the legal merits of Judge Cole's argument as to the applicability of prior case law in support of his dissenting opinion. The Board does take note, however, that Judge Cole did not dissent from the majority's finding that Mr. Smith received effective assistance of trial counsel. We concur with the following argument advanced by the Attorney General:

"In concurring with the District Court that Smith's trial counsel effectively represented him, the Sixth Circuit found that extensive mitigation was presented via Dr. Schmidtgoessling's testimony and her mitigation report presented into evidence by the defense described in greater detail Smith's family background, developmental history, his commitment, and his later functioning as a young adult. Finally, the Sixth Circuit concluded that Smith failed to identify any significant evidence that was overlooked by counsel and not presented to the trial court."

6. Racial Discrimination in Grand Jury Process

This Board was presented with insufficient credible evidence with which to form an opinion as to whether the Hamilton County Grand Jury process was unconstitutionally deficient at the time of Mr. Smith's offense, due to an alleged pattern or practice of racial discrimination in the selection of the Grand Jury forepersons. We defer to the unanimous opinion of the Sixth Circuit Court of Appeals who rejected this claim on the merits.

CONCLUSION:

The Board acknowledges the following mitigating factors:

1. Mr. Smith suffered an abysmal childhood of deprivation and abuse.
2. Mr. Smith's sincere, genuine and strong expression of remorse.
3. At the time of the offense, Mr. Smith suffered from a personality disorder that may have manifested in a loss of impulse control with regard to the killing of Ms. Bradford.
4. Mr. Smith has demonstrated exemplary conduct and adjustment within a structured prison setting.

After careful, extensive deliberation and discussion, the Board finds that the aforementioned mitigating factors do not outweigh the non-impulsive aggravating circumstances of Mr. Smith's prolonged victimization of Ms. Bradford: raping her as she lay bleeding and near death from multiple stab wounds and then making multiple trips from her apartment to his car to steal her stereo and televisions. This callous victimization continued even into the first year of Mr. Smith's incarceration by his deceitful, self-serving letter to one of Ms. Bradford's daughters. The only relevant mental defect is "poor impulse control". But impulsivity alone does not explain the aggravating circumstances of this brutal crime. A wretched childhood, an impulsive character defect, good prison conduct and belated but sincere expression of remorse are simply not sufficient to overcome the magnitude of aggravating circumstances in this case. A sufficient justifiable basis for mercy cannot be found. There is no manifest miscarriage of justice in the imposition of sentence. The Board deliberated extensively upon the propriety of clemency in the form of commutation and in the form of reprieve. **With eight (8) members participating, the Board voted unanimously to provide an UNFAVORABLE recommendation, both as to commutation and as to reprieve, to the Honorable Bob Taft, Governor of the State of Ohio.**

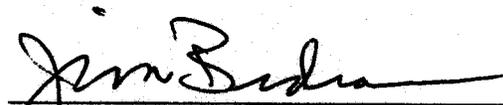
William H. Smith # 202-636
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Ohio Parole Board Members
Voting Favorable

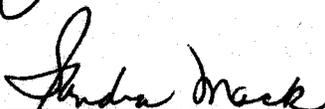
Ohio Parole Board Members
Voting Unfavorable



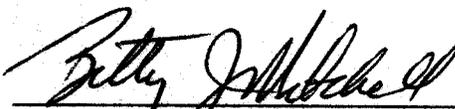
Gary Croft, Chairperson



Jim Bedra



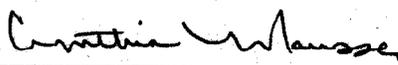
Sandra Mack, Ph.D.



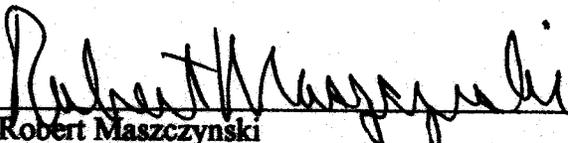
Betty J. Mitchell



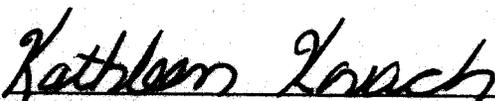
Peter Davis



Cynthia Mausser



Robert Maszczyński



Kathleen Kovach