Application to the Georgia Board of Pardons and Parole on behalf of Willie James Pye

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TABLE OF CONTENTS

BEFORE THE

BOARD OF PARDONS AND PAROLES

STATE OF GEORGIA

Application for a Stay of Execution and
for a Commutation of His Sentence of Death
by Willie James Pye

Undersigned counsel apply to the Board of Pardons and Paroles, pursuant to Article IV, Section II, Par. II(a) and (d) of the Georgia Constitution of 1983, O.C.G.A. §§ 42-9-20, 42-9-42(a), for consideration of this application on behalf of Willie Pye, for commutation of the sentence of death imposed by the Superior Court of Spalding County on June 7, 1996. Undersigned counsel request the opportunity to have a full and fair hearing before the full Board, allowing us to present witnesses in support of commutation at the conclusion of which we will seek commutation of Mr. Pye's death sentence.

Pursuant to Chapter 475.3.10(2)(6), Mr. Pye bases his Application on the following compelling grounds: (1) Mr. Pye is intellectually disabled and therefore ineligible for execution; (2) the appalling conditions of Mr. Pye's childhood and the profound developmental insults he suffered—factors the jury never heard—all weigh heavily in favor of commutation; (3) Mr. Pye's jury never learned of these things as a result of the wholesale collapse of the adversarial system in Spalding County, Georgia in the 1990s; (4) a federal law precluded the courts from providing a remedy for this collapse; (5) Mr. Pye is not, and has never been, a threat to the lives of corrections staff, contrary to the prosecutor's representation to the jury; (6) Mr. Pye plays a positive role in encouraging those in his family who have overcome the difficult circumstances of their past, and likewise has a positive impact on those around him in the prison; (7) the jurors who sentenced Mr. Pye to death have now asked that he not be executed; and (8) Mr. Pye feels remorse for the harm he has caused the family of Alicia Lynn Yarbrough.

I. Introduction.

Former Chief Justice of the Supreme Court Willliam Rehnquist once wrote that "[i]t is an unalterable fact that our judicial system, like the human beings who administer it, is fallible."[1] The citizens of Georgia are better than the judicial process that we provided in Mr. Pye's case. This Board, on behalf of the citizens, can now set those wrongs right.

Mr. Pye's trial is a shocking relic of the past, when a racist, overworked public defender, Johnny Mostiler, effectively abandoned his post, leaving no one and nothing, to stand between his client and death. Clemency provides the "fail safe" to correct what the courts could not. (And as this Board will hear, the courts *could not*.) Clemency, then, "is the historic remedy for preventing miscarriages of justice where judicial process has been exhausted."[2] In Georgia, this Board has the sole authority to provide that fail safe.

Had defense counsel not abdicated his role, the jurors would have learned that Mr. Pye is intellectually disabled and has an IQ of 68. They also would have learned the challenges he faced from birth—profound poverty, neglect, constant violence and chaos in his family home—foreclosed the possibility of healthy development. This is precisely the kind of evidence that supports a life sentence verdict. Their presence in Mr. Pye's life should have been all but obvious to Mr. Mostiler. Yet instead of learning about and presenting these facts, Mr. Mostiler shrugged off any meaningful investment in the case, and instead regurgitated the same scripted trial that he and the District Attorney had tried against each other in capital case after capital case.

That script called for the District Attorney to urge the jury in his closing argument that they must impose a death sentence to prevent the defendant—whichever defendant was on trial, no matter—from killing a guard in an escape attempt if he was sentenced to life in prison. And it called for Mr. Mostiler to respond with an anemic denial. But in Mr. Pye's case, there was

[1] *Herrera v. Collins,* 506 U.S. 390 (1993).

[2] *Herrera, supra.*

available evidence establishing that he did not present any danger, much less a danger to a corrections officer's *life*, but Mr. Mostiler did not summon it.

And in fact, the last 28 years have proven what Mr. Mostiler did not: Mr. Pye can be safely confined to prison. In spite of his disability, his circumstances, and a global pandemic that cut him off from the outside world, Mr. Pye has not complained. Mr. Pye thinks often of the Yarbrough family and their suffering and would do anything he could to repair the tragedy of Alicia Lynn Yarbrough's loss. He has devoted his time to his relationship with God, to being a positive and encouraging presence in the lives of his family, and to trying to make the. prison a more pleasant place for those who live and work there alike.

II. Mr. Pye is Intellectually Disabled.

Georgia was the first state in the country to prohibit the execution of persons with mental retardation[3] in the wake of public outcry after the execution of Jerome Bowden, a man with intellectual disability, in 1988. We did so first by statute,[4] then by judicial decision.[5] That same year, the Georgia Senate unanimously passed a resolution directed to this Board that read:

> WHEREAS, the Center for Public and Urban Research at Georgia State University conducted a survey and found that two-thirds of the Georgians sampled are in favor of life imprisonment instead of the death penalty as the maximum penalty for retarded offenders; and
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> WHEREAS, executing a retarded offender destroys public confidence in the criminal justice system;

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[3] In 2013, the American Psychiatric Association eliminated the diagnostic term "mental retardation" and replaced it with "intellectual disability." The Georgia legislature did the same in 2017, passing a bill to amend the Official Code of Georgia to change all references in the code from "mental retardation" to "intellectual disability."

[4] O.C.G.A. § 17-7-131.

[5] *Fleming v. Zant,* 386 S.E.2d 339 (Ga. 1989).

> NOW, THEREFORE, BE IT RESOLVED BY THE SENATE that, with respect to retarded persons sentenced to death, this body urges the State Board of Pardons and Paroles to give special consideration to commuting the sentences of such offenders to life imprisonment.[6]

Thirteen years later, the United States Supreme Court held likewise,[7] noting that intellectually disabled persons face unique risks within the criminal justice system because they are often poor witnesses in their own defense and are less able to give meaningful assistance to their counsel.[8] Mr. Pye is one of those vulnerable defendants.

An intellectual disability diagnosis has three prongs:

(1) significantly subaverage intellectual functioning,

(2) deficits in adaptive functioning that result in failure to meet developmental and sociocultural standards, and

(3) the onset of these deficits during the developmental period, i.e. prior to adulthood.

Mr. Pye meets all three criteria.

A. Mr. Pye meets the first diagnostic criteria.

The first criteria—significantly subaverage intellectual functioning—is satisfied when an individual has a full scale IQ score of "about 70 or below" on a standardized and individually administered intelligence test.[9] Because there

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[6] *Senate Resolution No. 388*, Journal of the Senate of the State of Georgia, Regular session 1988, Vol. II (February 25, 1988), available online at the Digital Library of Georgia: https://dlg.usg.edu/record/dlg_ggpd_y-ga-bl402-b1988-bv-p2#text.

[7] *Atkins v. Virginia*, 536 U.S. 304, 317, 320 (2002).

[8] *Hall v. Florida* 134 S.Ct. 1986, 1993 (2014).

[9] *See* Diagnostic and Statistical Manual of Mental Disorders, Fifth edition. ("DSM-V").

is a measurement error of approximately five points on most IQ tests, the medical community recognizes that it is possible to diagnose intellectual disability in individuals with IQ ranges from 70 - 75 or below.

During Mr. Pye's habeas corpus proceedings, the State's expert, Dr. Glen King, measured Mr. Pye's full scale IQ at 68. This is consistent with an earlier IQ test placing Mr. Pye's IQ at 70.

Throughout the postconviction appeals process, the State did not dispute that Mr. Pye meets the first criteria for intellectual disability. Nor could it; his only scores fall in the intellectually disabled range.

B. Mr. Pye meets the second criteria.

The second criteria, adaptive functioning, also referred to as adaptive behavior, "refers to how effectively individuals cope with common life demands."[10] This information must be obtained from multiple reliable independent sources (e.g., teacher evaluation, developmental and medical records) and can be measured by standardized tests administered to someone familiar with the individual's typical behavior.

As Dr. James Patton, a leading expert in the field of intellectual disability and the author of textbooks on intellectual disability as well as the coauthor of a commercially available standardized instrument for the measurement of adaptive behavior, explained in his report to this Board:

> "Deficits in adaptive functioning exist when a convergence of information obtained from a variety of sources and settings indicates that the subject's typical adaptive functioning differs clearly and appreciably from the standards of personal independence expected of a person of the same age, sociocultural background, and community setting."[11]

A valid assessment of these deficits is a comprehensive and time-intensive task.[12] It involves not only a careful review of all the available

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[10] *See* DSM-V.

[11] Report of Dr. James R. Patton, Exhibit 1.

[12] Patton report, *supra.*

records and observations of family, educators, and community members, but also the administration of formal measures of adaptive functioning.

The medical community divides the types of adaptive functioning in to three broad domains: conceptual, social, and practical. In order for an individual to demonstrate adaptive deficits sufficient to support a diagnosis of intellectual disability, **the individual need only have significantly subaverage adaptive functioning in one of the three domains.** As with the intellectual functioning prong, "significantly subaverage" with respect to the adaptive functioning prong means at least two standard deviations (15 points = one standard deviation) below the mean (of 100 for the population). Thus, as with IQ, a score of 70 or below on any standardized assessment of adaptive behavior in any one domain satisfies the diagnostic criteria.

During the state postconviction proceedings, a detailed assessment was conducted by a preeminent clinician in the field of intellectual disability who specialized exclusively in evaluating adaptive behavior, Dr. Victoria Swanson. Dr. Swanson reviewed voluminous records and then met with Mr. Pye and administered a number of probes in order to observe his abilities firsthand, e.g. asking him to take measurements with a ruler, or count change. Dr. Swanson also administered standardized measures of Mr. Pye's adaptive behavior to three of his family members. She concluded that Mr. Pye showed behavioral deficits that placed him more than two standard deviations below the mean in more than one domain.[13]

Dr. Patton, reviewing the available adaptive behavior information concerning Mr. Pye for the Board, charted the results of Dr. Swanson's administration of these standardized measures to Mr. Pye's brother, sister, and mother. All are below 70.[14]

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[13] *See* Report of Dr. Victoria Swanson, Exhibit 2.

[14] *See* Patton report, *supra,* at p. 10.

Table 2
Results of Formal Adaptive Functioning Assessment

Key Information	Lolla Pye	Pamela Bland	Ricky Pye	Willie Pye
Instrument Used	*ABAS-2*	*Vineland-II*	*Vineland-II*	*ABAS-2*
Examiner	Swanson	Swanson	Swanson	King
Focal Age (Norms)	6-9 y/o	16 y/o	25 y/o	42 y/o
Conceptual/ Communications	51*	63*	40*	90
Social/Socialization	--	67*	54*	**75**
Practical/Daily Living	--	61*	59*	85
Adaptive Behavior Composite/General Adaptive Composite	--	62*	51*	85

State expert Dr. King testified in the habeas proceedings that Mr. Pye's adaptive deficits "affect his ability each and every day to function in the community" and "put him at a much greater disadvantage than the average person."[15] But Dr. King insisted these admittedly weighty deficits were not sufficiently severe to cross the intellectual disability threshold and that they fell instead on the "borderline to low average" side of the dividing line.

Yet what Dr. King failed to reveal in his habeas testimony is that his own assessment placed Mr. Pye's functioning in the significantly subaverage range and supported a diagnosis of intellectual disability. Dr. King also administered a standardized measure of Mr. Pye's functioning: the Adaptive Behavior Assessment System, Second Edition ("ABAS-2"). As shown in the chart above, the results of that ABAS-II place Mr. Pye's adaptive behavior in the Social Domain at 75. When the standard error of measurement of +/-6 points for the ABAS-2 is considered, Mr. Pye's functioning is significantly subaverage in one domain according to Dr. King's own testing. As Dr. Patton explained:

[15] Swanson Report, *supra*.

> In other words, the confidence interval for the social domain score in which the true score resides is from 69 to 81. Neither on the test protocol or in his report does Dr. King provide the confidence interval for this score of 75. If he had done so, he would need to concede that Mr. Pye's adaptive score for social domain could be 69. [16]

Put another way, **Dr. King obtained an adaptive behavior score that qualified Mr. Pye for a diagnosis of intellectual disability** and never revealed that fact in his testimony.

Moreover, Dr. King's ABAS-2 score almost certainly overstates Mr. Pye's functioning. Rather than assess Mr. Pye using a family member or educator as a report, Dr. King used *Mr. Pye* as the source of his information for the ABAS. As Dr. Patton pointed out,

> "[I]t is important to point out that conducting the formal assessment using 'self-report' is not supported in practice. While the ABAS-2 does allow for obtaining information via self-report, using this technique is contraindicated given the fact that individuals with ID are prone to overstate how well they can do things – this is referred to as masking."

As Dr. Patton explains, Dr. King also committed a number of scoring errors on the ABAS-2.[17] Thus, in actuality, Mr. Pye's abilities across all domains are likely inflated on Dr. King's ABAS-2 administration, and yet he nevertheless generated a score low enough to place him in the significantly subaverage range in one domain.

Mr. Pye plainly meets the second criteria, a fact the State's expert disputed while the evidence confirming it sat in his own file.

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[16] Patton report, *supra*, at p. 11.

[17] Patton report, *supra,* at p. 12.

C. Mr. Pye meets the third criteria

Third, because intellectual disability is a developmental disability, an individual must exhibit the first two criteria prior to the age of 18. This does not mean there must be a diagnosis prior to age 18; the purpose is simply to distinguish intellectual disability from other forms of disability that may occur later in life.

School records and family accounts establish that Mr. Pye meets the third criteria. His limitations were observed by siblings, teachers, and classmates alike during childhood.[18] He was placed in special Title I classes for academically-disadvantaged children in elementary and middle school.[19] By the time he entered middle school, his standardized test scores put him in the lowest one percentile nationally in reading and language. His math skills remained at only a fourth grade level. He repeated the seventh grade and his teachers made efforts to record his grades in a way that would maximize his chances for promotion to the next grade level. By the time he completed the eighth grade at age fifteen, Mr. Pye's standardized tests scores still had not advanced beyond the fourth grade level. At the end of eighth grade, he dropped out. This is evidence that Mr. Pye's deficits were present during the developmental period.

D. Georgia's high burden of proof precludes intellectually-disabled offenders like Mr. Pye from proving their disability.

In all other states, this evidence would be enough to establish that Mr. Pye is not eligible for the death penalty. Despite being the first state to recognize intellectually disabled persons' lesser culpability and despite recognizing the public's rejection of executing the disabled, Georgia has maintained an insurmountably high standard for *proving* one's intellectual disability diagnosis.

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[18] *See, e.g.,* Affidavit of Clarence Bland, Exhibit 24; Testimony of Melissa Durrett, Exhibit 5.

[19] School records of Willie James Pye, Exhibit 4.

Georgia is the only state to require that a defendant prove his intellectual disability beyond a reasonable doubt, an incredibly high standard. Indeed, only one defendant has ever successfully done so at trial in a span of nearly 30 years.[20] Nearly all other states use the preponderance of the evidence standard, i.e., whether it is more than 50 percent likely that the evidence shows the defendant is intellectually disabled. But under the reasonable doubt standard, there can be no uncertainty whatsoever. And because the second prong of a proper diagnosis, adaptive behavior deficits, is a matter of clinical judgment, there is always at least *some* question of whether the defendant's deficits are sufficiently severe to overcome. In other words, some measure of doubt is baked in to the second criteria.

This Board, however, can independently account for the high likelihood that Mr. Pye is intellectually disabled, and honor the Georgia Senate's request to give "special consideration" to Mr. Pye's application by commuting his sentence to life.

III. A Crushing Number of Childhood Risk Factors.

Mr. Pye's difficult early life also weighs heavily in favor of commutation. The Board will hear from Dr. James Garbarino, the preeminent expert in the field of human development and family systems studies. Dr. Garbarino is Emeritus Professor of developmental psychology at Cornell University and at Loyola University Chicago. From 2006-2020, he was a professor and founding Director of the Center for the Human Rights of Children at Loyola University Chicago. From 1995-2006, he was a professor and co-director of the Family Life Development Center at Cornell University. Dr. Garbarino has served as consultant or advisor to a wide range of organizations, including the National Committee to Prevent Child Abuse, the National Institute for Mental Health, the American Medical Association, and the FBI. He is the author of numerous books on child development, child abuse, and risk factors for violent behavior.

Dr. Garbarino will offer a developmental perspective on Mr. Pye's difficult life and the prior clinical assessments. This developmental analysis

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[20] Lucas, L., *An Empirical Assessment of Georgia's Beyond a Reasonable Doubt Standard to Determine Intellectual Disability in Capital Cases*, 33 Ga.St.L.Rev. 553, 560 (2017).

will focus on three key points. First, understanding the developmental damage that Willie Pye experienced hinges upon the recognition that rarely, if ever, is a single risk factor determinative. Rather, it is the accumulation of risk factors—a tower of blocks which finally reaches a point where the tower collapses, knowing that each block alone does not produce the collapse. Second, the record is clear that Willie Pye experienced an overwhelming accumulation of risk factors. This risk accumulation is demonstrated, for example, by his high score on the Adverse Childhood Experiences Scale[21] ("ACES")(his score of eight being worse than 999 out of 1000 kids growing up in America). Third, the kind of accumulated risk in Mr. Pye's life results in pervasive damage across multiple domains of human functioning and well-being.

Two examples illustrate this. The number of risk factors identified by an individual's ACES accounts for about half the variation in important outcomes such as depression, suicidal thoughts/behavior, and substance abuse, and it accounts for about 30 percent of the variation in violent behavior. To put this in perspective, although it is recognized that smoking "causes" lung cancer, it only accounts for about 14 percent of the variation in who gets lung cancer.

This same accumulation of risk factors accounts for much of the variation in individual intellectual development, as well. The average IQ scores for children with none, one or two of these risk factors are 119, 116 and 113 respectively, while the average IQ scores for kids with five or more risk factors is 85 (in the lower 16% of American children). The fact that Willie's IQ scores are significantly lower than the average for individuals with his accumulation of risk scores (his reported IQ of 68 puts him in the lowest 2.5% of the population) suggests that in addition to environmental risk factors, there were/are also individual biological risk factors at work depressing his level of intellectual functioning.

[21] The Adverse Childhood Experiences Scale is a ten-item inventory of early traumatic experiences that is used to study the relationship between adverse childhood experiences and adult health and social outcomes. Examples of ACE items include family separation, and mental, sexual, or physical abuse.

Critically, these risk factors were not simply present in large number, but present in profound form in Mr. Pye's life.[22] He was delivered by midwife in a tiny dirt-floor shack in rural Henry County Georgia on January 6, 1965, the seventh child of Lolla Mae (Usher) Pye and the fifth she had with Ernest Pye Sr. Lolla herself came to parenting impacted by a significant accumulation of risk factors. In an affidavit provided before her death, Lolla recounted how she and her sisters were orphaned when their mother died from complications of childbirth and their drunken, philandering father abandoned them:

> My mother passed on within a few days of Fannie Ruth's birth. She washed her hair too soon after the baby came, which caused her to take a bad fever. The ladies from my grandmother's church came to give her tonics and pray over her, but she never got better.
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> My mother's family lived in a little house on a white man's farm just off Highway 155 outside McDonough. My granddad, Henry, farmed the land in exchange for some of the food and a place for the family to stay. The day my mother passed, my father took all four of us girls out to my granddad's house and left us. He never came back to see us after our mother died.

There were already at least five adults and five children living in her grandparents' two room house at the time Lolla and her three sisters were left on the doorstep, and the family struggled to put food on the table. Lolla sporadically attended a segregated rural schoolhouse but had to spend most of her time working in the fields, and never learned to read or write. By age seventeen, she had given birth to a son, Randy, and four years later to a daughter, Sandy.

Shortly after giving birth to Sandy, Lolla met Ernest "Buck" Pye. By the time he met Lolla, Ernest had been drinking from his father's moonshining

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[22] The recitation of numerous disturbing and harrowing conditions in Mr. Pye's childhood that follows comes from the accounts provided by members of Mr. Pye's Butts County community—including a police officer, a local business owner, a social worker and neighbors—and from Mr. Pye's family members. Those can be found at Exhibits 20 through 37 in the materials.

still for years. A former classmate recalled that he and Ernest were in the same fifth grade class though Ernest was already a teenager.

In 1960, Lolla and Ernest had a son, Larry, and had three more children over the next three years: Pam, Ernest Jr. and Andrew. One month after Andrew's birth in 1963, Ernest was arrested for two burglaries and was sentenced to three years consecutive for each offense. Lolla was left to support six small children alone, while their father was on the chain gang.

They occupied a dirt-floor house on Highway 155 that had no kitchen or bathroom and little furniture. "[A]ll it had inside was a woodburner that [they] used for heat and cooking." The children ate bread and gravy and drank watered-down milk and wore secondhand clothes.

It was against this dire backdrop that Willie James Pye was born. At the time, Lolla's physical and mental health were failing. She had given birth to four children between 1960 and 1963, was working long days of manual labor, and lived with the knowledge that her poverty was so severe that it threatened her children's very survival. The landlord was constantly threatening eviction while Lolla and the children hid. Lolla had no prenatal care and inadequate food while carrying Willie. She recalled the reality of another child was overwhelming:

> "I nearly broke down. I already had six children to see about; and now there were going to be seven, and three of them were little babies. Until later when I saved up, I didn't even have a tub to do the wash in. I had nothing to pay the rent with."

To cope, Lolla spent evenings drinking with friends at the "little juke joint right next door." Lolla would later confirm her drinking during her pregnancy with Willie to state habeas experts.

As psychiatrist Roderick Pettis explained, Lolla's circumstances meant that Willie arrived in the world already at risk for myriad cognitive and developmental problems.[23] The negative impact of maternal stress, poor gestational nutrition and maternal alcohol use on an infant are extensively

[23] *See* Pettis Report, Exhibit 12.

documented. For Willie Pye, these developmental insults were compounded by his neglect.

Lolla could not take time away from working. As soon as she recovered from giving birth, she left the newborn alone with his siblings while she worked or looked for work. She walked to town early each morning and walked back each night—often gone for ten to twelve hours each day. The children had no way to contact their mother in her absence. Ten year-old Randy, as the oldest, was responsible for heating the home and feeding the smaller children. He did not attend school so that he could stay with his six younger siblings. Randy scoured nearby railroad depots and lumber yards for scraps of coal and wood, which he brought home in a wagon for heat. He recalled his days:

> After [my mother left], I would make the fire. Once Larry and Pam got to be five and six years old and were old enough for school, I would help them get ready. Willie James was the brand new baby then. After the bus came, I would take the three little ones, Junior, Andrew and Willie, out to the yard to play in the dirt. This is mostly what we did until it was time to get dinner and baths.

Willie's older brother Larry, then five or six years old, recalled the older children didn't know how to console the infants so "[s]ometimes they would just cry steady all day."

This early neglect may be more devastating than any other experience Willie suffered as a child. Stimulation and positive interaction with a caregiver are the building blocks of cognitive development in infants and small children. During the very time at which the human brain is developing most rapidly, Willie Pye was not only lacking the food and shelter necessary for a child to thrive, but other necessities as well—opportunities to face new intellectual challenges, to practice motor skills, to learn language and to appreciate normal social attachments. In short, he began life in conditions that all but guaranteed his brain development would lag.

Ernest Pye was paroled in April 1967 and the family's conditions briefly improved.

But Ernest and Lolla had two more children and by then Ernest was drinking the family's income. Around the time Willie entered school, the family moved to Indian Springs, a more depressed, more dangerous part of Butts County.

The house in Indian Springs lacked indoor plumbing, it did not have a traditional kitchen and it had no bathroom of any kind. Because it housed so many people, it had none of the other traditionally designated rooms either. Instead, as a family friend recalls, "they had divided [the house] up into tiny rooms using boards and sheets," each with a bed. Willie's two sisters typically slept in one bed, Willie's parents and any infants and toddlers in another, Willie's brother Randy on a couch, and all the younger brothers piled together on a single bed.

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The Pye family home in Indian Springs, pictured here in 2013.

Even in an area where the county's poorest Black families lived, the Pye's stood out as the most impoverished. Willie and his siblings' school records reflect that they sometimes missed school for want of appropriate shoes, and classmates remember that they came to school dressed in only T-

shirts in the winter. Willie and his siblings were mocked because their clothing was tattered and ill-fitting. The school principal once took one of the Pye brothers into town to purchase shoes for him after the child arrived one morning without any. Food was sparse. As Willie's childhood friend recalled "in a community where most of us didn't have much, their family had nothing at all." Medical care was limited and dental care was non-existent.

Despite their circumstances, the only social services the family received came from Arthur Lawson, the "visiting teacher" from the Butts County School system, a position akin to a truancy officer. Because the family had so many children of compulsory school age and because the children were frequently absent or behind in their school work, his contact with the family was extensive. By the 1970's, he was sometimes in the family home as often as twice a week. Prior to his death, Mr. Lawson testified:

> "The condition of the house itself was deplorable. During most of the years that I worked with the family, the Indian Springs house was in disrepair. The family had food, but it was primarily fatback, bread and canned meat such as sardines. The children had no health care and were frequently behind on their vaccinations. The house was never clean, piles of filth, scraps and garbage were strewn everywhere. On one visit, I found things so unsanitary that I worried about the health of the children and I reported the conditions to the Department of Children and Family Services and encouraged them to intervene. Everything was filthy, the small children had not been bathed and there was spoiled food sitting around. There was nothing that DFACS could offer. The laws in existence at the time had little teeth. Cases of neglect and endangerment were not viewed with the seriousness they are today, and nothing about living in filthy conditions prompted intervention."

It wasn't until 1972, when Willie's thirteen-year-old sister Sandy became pregnant, that the family captured the attention of the Department of Family and Children Services. Upon seeing the living conditions, social workers directed Lolla to a local clothing closet and encouraged her to apply for additional benefits.

Lolla suffered from "nerve problems." By the time the family was settled in Indian Springs, she rarely left the house. There were days when Lolla didn't leave her bed at all. She pulled the curtains or sheets over the windows and self-medicated with homemade whiskey or gin.

Mr. Lawson recalled that the children "were not monitored at all" and that while Lolla would typically have an infant nearby, "toddlers and preschoolers were just sitting or wandering around the house, porch or yard." The older children hunted squirrels and rabbits for dinner or played in the nearby state park.

Neither Lolla nor Ernest required the children to go to school and they were often absent. Mr. Lawson recalled that in the winter, he often had to go fetch the children from their home for school because the lack of heating made it too painful to get up:

> Much of the time...the problem was much more basic [than the children's embarrassment over their poor appearance and academic performance]. The children didn't leave the bed and get on the bus because it was cold. The home had no heat and no one got up early to make a fire. The children slept several to a bed and there was no way a child was leaving a warm bed in the freezing cold, particularly since neither parent required them to get up. I would arrive at the house mid-morning after being alerted that they had not come to school - the sun had been up for a few hours, the house was a respectable temperature and kids would be out playing. The bus had gone and Mrs. Pye didn't drive so there was no option to go to school late. I would round everyone up, tell them to get their things, then pile them into the car and drive them to school.

Alcohol played a defining role in Mr. Pye's childhood. Ernest left for work before dawn and spent his evenings drinking in shothouses and bootlegging establishments. Willie's father is universally described by the witnesses who provided affidavits in the postconviction proceedings as a malicious and violent alcoholic.

The drinking was not only partially responsible for the family's crushing poverty – Ernest purchased the alcohol he needed in lieu of paying for

necessities – but it was the source of many fights inside the home and out. Ernest spent every evening after work in an illegal bootlegging establishment. After drinking, he called Lolla and the children disgusting, made wild accusations and went into "rages, cursing and screaming insults." He and Lolla had frequent screaming confrontations, sometimes over Ernest's paycheck. Willie's sister Pam remembered that her parents "spent the whole night screaming and yelling horrible things at each other." The fights turned physical. They struck each other with whatever was available.

Ernest directed his drunken aggression toward the children as well. Willie's sister Sandy recalled that "whoever was around would get it."

No one in the house endured more from Ernest than Willie did. Both Willie and his brother Junior were already targets because they were slow to accomplish tasks and not inclined to stick up for themselves, but Willie had the added disadvantage of being conceived while Ernest was incarcerated. Ernest would tell Willie that he was "too stupid to be his kid," and beat him:

> Willie James would get knocked across the house. He'd blast Willie right across the head and he'd go flying. My father thought he could be even meaner to Willie than he was to the rest of us, because he said that Willie wasn't his kid. He said that Willie was born because mom was messing around while he was in prison, and that he was sick of looking at a kid that belonged to some other guy.

Even when sober, Ernest would tell the other children to ignore Willie because Willie was not family. On the occasions when Ernest would pack some of the children into the car for an outing, he would tell Willie, "you're not coming with us, you're not my son." Other times, he would simply pull the car away as Willie ran to catch them.

Willie took the things his father said to heart, and took on a darker, more somber side. By third grade, his teacher already noted that he seemed "fearful and depressed" and "seem[ed] to be in a daze." At home, he became withdrawn and found places to hide for extended periods of time. The family reported in their testimony that he would stare blankly.

Eventually, the oldest Pye brothers rivaled their father in size and alcohol consumption and they contributed equally to the drunken fights. Mr.

Lawson recalled that things progressed to the point that he would arrive during the day to find the entire family embroiled in a huge brawl.

The Pye family's drinking and fighting were common knowledge in the community and yet one more reason they were looked down upon. The fights spilled onto the porch and yard for the neighborhood to watch: "You would see the boys attacking their father on the porch to get him away from their mother, while everyone in the house was screaming and Mr. Pye was thrashing around and cursing."

The Butts County Sheriff's Department was called routinely. Deputy Steve Bennett testified that when he arrived he could expect to see "several family members cussing, screaming or rolling around on the ground beating on each other." Deputy Bennett recalled how following the worst fights, he would find the smaller children hiding in the woods. In his assessment, Ernest's drinking and "plain old-fashioned meanness" were generally the cause of the fights. The police incident reports reflected Lolla's participation as well.

Earnest was notorious in the community at large. He was banned from the local (and only) convenience store because of his drunken and abusive behavior toward others. People cringed to see Ernest approaching. Willie's sister Pam reported that her father was mean and insulting and "would talk trash about his family out in public so that later on everyone would know our business, or he would talk trash about someone else and really make them angry so that everyone disliked the whole family."

As the Board will hear from Dr. Garbarino, the combination of these developmental insults –violence in the home, being belittled and threatened, witnessing domestic violence between his parents, the extraordinary poverty and food insecurity—was profoundly debilitating. Willie's brain development was already derailed by the combined impact of poor nutrition together with his mother's prenatal drinking and his total lack of stimulation in infancy. The accumulation of environmental risk factors further altered his very biology. In short, Willie's childhood provided him no chance at normal development.

IV. A Broken System.

The jury knew none of this about Willie Pye. Neither his intellectual disability nor his troubled background and its impact on his functioning were ever brought to light because of a deeply flawed system for conducting death penalty trials that existed in Spalding County at the time of Mr. Pye's prosecution.

A. Spalding County's public defender system: "One of the most appalling I have ever seen."

From the time of his arrest in November 1993 until his trial in June of 1996, Mr. Pye was represented by the contract public defender for Spalding County, Johnny B. Mostiler. Mr. Mostiler was notorious in the county as the archetype of the "meet 'em, greet 'em, plead 'em" public defender.

He obtained his role as the Spalding County public defender through a contract with the county. Under the contract, he was paid a lump sum—$345,00 in 1996, the year of Mr. Pye's trial—and in turn was responsible for providing all indigent defense services for the entire county. Mr. Mostiler subcontracted out the misdemeanor and juvenile cases but retained *all* felony cases, and handled those with the assistance of just one associate attorney and one investigator.

Contract defense systems have been roundly condemned. First, the contract provides disincentives for the attorney to identify a conflict of interest in a case. If he identifies a potential conflict, he must seek separate counsel for that defendant and hire the attorney out of the contract amount. Second, it likewise disincentivizes retaining experts and investigators and incurring necessary litigation expenses, such as ordering a transcript, because those expenses, too, come out of the contract total, and therefore, out of the contract defender's pocket.

However, far and away the most pointed criticism is that such systems incentivize large caseloads and fewer attorney hours per case. Mr. Mostiler was long the poster child for this problem in Georgia. As one of the premier scholars in legal ethics and former President of the American Bar Association, the late Dean Norman Lefstein observed:

> From mid-1992 to mid-1994, [Mr. Mostiler's] office accepted representation in 1522 felonies. Of these, 957 felony cases were closed. Accordingly, the number of felony cases carried forward… was 565. From mid-1994 to mid-1996, Mr. Mostiler's office accepted representation in 1721 felonies and also provided representation in the 565 felony cases carried forward into the new two-year period.

As Dean Lefstein noted in his report, even if the only other attorney in Mr. Mostiler's office handled fully half of the felony caseload, Mr. Mostiler "still would have represented a truly astonishing number of indigent defendants."

In addition, Mr. Mostiler was permitted under the contract to maintain an active civil practice—between 1992 and 1996, Mr. Mostiler filed a total of 174 new civil cases—as well as a separate criminal practice outside of Spalding County. And, of course, cases in which the State was seeking the death penalty were appointed outside the contract and billed to the county separately. During the time that he represented Mr. Pye, Mr. Mostiler was simultaneously representing four other capital defendants, including one who went to trial in January 1996, mere months before Mr. Pye's trial.

The recommended caseload for an attorney handling exclusively capital cases is 4 – 6 capital cases. When an attorney is handling exclusively non-capital felonies, the recommended caseload limit is 150 felony cases per year. In other words, Mr. Mostiler had a caseload many multiples of the recommended limit, *on top of* a full complement of death penalty cases and a busy private practice. There is simply no way that even the most industrious attorney could fulfill her ethical duties to each client under these circumstances.

What Mr. Mostiler did instead was volume. At one point, Mr. Mostiler himself bragged that in a given criminal docket week, he would plead between ten and twelve felony cases every 45 minutes; turning accused defendants in to convicted felons with all the efficiency of Henry Ford's assembly line. Michael Mears, the former head of the Multicounty Public Defender, then the statewide agency that assisted local defense counsel in capital cases, recalled being appalled by how Mr. Mostiler conducted his client meetings at the jail:

> "[O]ne memory I have stands out and it is beyond the pale. I had gone down to Spalding County to meet with Mostiler about some matter. I met with him at the sheriff's office where he was interviewing clients. He was sitting in an office in the Sheriff's Department and the Sheriff's deputies lined up all of the prisoners in a row and they came to the door and he asked them a few questions and then they moved on. None of them were there for more than a few minutes. … As they passed the door, he would consider that an interview. That was how he did it. … I have never been able to get that out of my head."

In a capital case, however, the opportunities for fast and dirty plea bargaining were few, and efficiency of scale had to be achieved another way. Mr. Mostiler had that covered, too: Simply conduct the *same* death penalty sentencing over and over. In case after case tried by Mr. Mostiler and District Attorney William McBroom against one another, the same sentencing proceeding with the same scripted arguments played out, with both men raising the same generic arguments for and against a sentence of death.

Mr. Mostiler's caseload kept him from providing Mr. Pye with a penalty phase presentation tailored to his tragic background, outlined above. Mr. Pye and his family knew that Mostiler was ignoring the case and tried unsuccessfully to capture his attention. Mr. Pye variously complained about Mostiler's inattention to his case to the trial court, the Multicounty Public Defender, the State bar, and the Supreme Court of Georgia, all in vain. He was forced the indignity of going to trial with an attorney who knew little about him and had not even bothered to obtain an evaluation of his mental health, in spite of his pleas for assistance.[24]

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[24] Mr. Mostiler failed to marshal key evidence in the guilt phase, too. The testimony of Mr. Pye's juvenile codefendant is the only evidence supporting some of the most aggravated aspects of the tragic crime: Alicia Yarbrough's abduction and rape. But Mr. Mostiler failed to present key evidence undermining that testimony. Alicia Yarbrough's neighbor and close friend reported that on the evening of her death, Ms. Yarbrough used her phone to call a motel and asked to be picked up by the occupants of the motel room. According to the neighbor, this was consistent with Ms. Yarbrough's usual practice of waiting until her new boyfriend, Charles Puckett, left home, then

An in-depth examination of federal capital trials conducted between 1990 and 1997 conducted on behalf of the Judicial Conference of the United States found that the average attorney time spent preparing a capital case that went to trial was 1,889 hours.[25] Mostiler did not spend one-tenth of that. His billing records show that he spent 211 total hours on the case, but 110 of those were in court for the trial and pretrial hearings, leaving just 100 hours of pretrial preparation.

B. A public defender who believed some of his clients were "little n*****s who deserved the death penalty."

Mr. Mostiler was also widely known for another troubling reason: His racism. Indeed, even one of the jurors who decided Mr. Pye's case was aware Mostiler held racist views.[26]

During a pretrial hearing in a noncapital case, the defendant, Mr. Mostiler's client, complained in open court that he was uncomfortable because Mr. Mostiler had used a racial slur to describe black men during a conversation. According to the hearing transcript, Mr. Mostiler indicated to the court that he "honestly can't say whether he used it or not," since he could not remember, and that he "d[idn't] use those terms out in public." The court refused to remove Mr. Mostiler.[27]

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leaving to spend time with Mr. Pye in the motel room from which he sold drugs. Jurors did not hear this testimony. This evidence—together with the autopsy report showing that the victim had cocaine in her system at the time of her death—would have supported Mr. Pye's testimony that the victim came to his motel room to use drugs and have consensual sex.

[25] See Subcomm. on Federal Death Penalty Cases, Comm. on Defender Services, Judicial Conference of the United States, *Federal Death Penalty Cases: Recommendations Concerning the Cost and Quality of Defense Representation* (1998).

[26] Letter from Rhonda K. Gulnac (formerly Rhonda Queen), Exhibit 18.

[27] *See State v. Middlebrooks,* Spalding County Case No. 99R-775 (Trial Transcript, March 21, 2000), Exhibit 42.

Whether out in public or not, he did use them, it seems, in the attorneys' lounge at the courthouse. There he told racist jokes full of slurs. He once peppered a colleague with questions, asking her why young Black men were so lazy.

Mr. Mostiler's views had consequences beyond making his colleagues and clients uncomfortable. From 1990 to 1994, Mr. Mostiler represented Curtis Osborne, another client facing the death penalty. Mr. Mostiler failed to inform Mr. Osborne of the state's life sentence plea offer. Another former client of Mr. Mostiler who was white testified in Mr. Osborne's appellate proceedings that:

> "The first time I recall Mr. Mostiller (sic) saying anything about Curtis Osborne's case was when he said, "The little n***** deserves the death penalty." I was shocked because I knew that Mr. Osborne had not gone to trial yet ... Mr. Mostiller (sic) made similar comments to me both before and after Mr. Osborne's trial."[28]

In another capital case, Mr. Mostiler permitted his Black client to testify before the jury while visibly shackled, and failed to object to the spectacle of "the prosecutor hand[ing the defendant] a fake gun and ha[ving] him reenact the murder, with the prosecutor playing the victim. [His] chains clanked and rattled with every move,"[29] evoking the dehumanizing specter of slavery.

C. A system that overproduced death verdicts.

Mr. Mostiler's involvement doomed capital defendants during this era. A murder defendant represented by Mr. Mostiler was nearly three times as likely to receive a death sentence as another defendant in the same circuit who had other counsel (either appointed counsel in one of the other counties in the Griffin Judicial Circuit or retained counsel).

From 1995 until 2005, William T. McBroom served as the Spalding County District Attorney. During his tenure, he was an inexhaustible procurer

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[28] *Osborne v. Terry,* 466 F.3d 1298 (11th Cir. 2006).

[29] *Whatley v. Warden*, 141 S.Ct. 1299 (2021) (Sotomayor, J., dissenting from the denial of certiorari).

of death sentences. Spalding County was then a tiny county with a population of just one percent of Georgia's total population. Yet in just a five year span from 1995 to 2000, Mr. McBroom was responsible for securing five death sentences, or eleven percent of all the death sentences in the state during that time frame. Four out of the five defendants were Black.

However, the unluckiest defendants were those—like Mr. Pye—who were both prosecuted by Mr. McBroom and represented by Mr. Mostiler. Those defendants received death sentences at a rate **five times higher** than other defendants in the circuit who were represented by other counsel and prosecuted by another district attorney over a twenty-year period.

Category (1976-1999)	Total Defendants	Death Sentences	Total	Percentage
Griffin Death Sentence Rate	154	11	0.07	7%
Non-Mostiler/McBroom Defendants	102	4	0.04	4%
Non-Mostiler Defendants	118	6	0.05	5%
Non-McBroom Defendants	123	11	0.09	9%
Mostiler Defendants	36	5	0.14	14%
McBroom Defendants	31	5	0.16	16%
Mostiler/McBroom Defendants	15	3	0.20	20%

This Board can correct for such disparities.

V. A Wrong Without a Remedy

When Mr. Pye's case reached the federal Court of Appeals in Atlanta, a three-judge panel "ha[d] little trouble concluding that [Johnny Mostiler] was deficient" and thus that Mr. Pye's right to counsel had been violated:[30]

> "Considering the paltry mitigation investigation Mr. Mostiler conducted, that he failed to pursue the leads he managed to uncover, and that he failed entirely to rebut the State's case in aggravation, we conclude that Mr. Mostiler performed deficiently in Mr. Pye's case."[31]

[30] *Pye v. Warden, Ga. Diagnostic Prison*, 853 Fed.Appx. 548 (11th Cir. 2021) (vacated).

[31] *Id.* at 565.

The court found that as a result of Mr. Mostiler's failure to conduct an investigation, "[t]he jury labored under a profoundly misleading picture of [Mr. Pye's] moral culpability—exacerbated by the State's strategy of suggesting future dangerousness—because the most important mitigating circumstances were completely withheld from it."[32] The court vacated Mr. Pye's death sentence. As the letters before the Board recount, Mr. Pye and his family were relieved and overjoyed.

It was short-lived. The full Eleventh Circuit Court of Appeals announced that it would revisit the ruling by the three-judge panel. The court reversed—not because the remaining judges believed that Mr. Mostiler adequately represented Mr. Pye—but rather because they believed the federal court had no authority to intervene under the federal habeas corpus statute. As one former Eleventh Circuit judge explained, the statute "requires federal courts to defer to state court decisions even where those decisions are clearly wrong," leaving the federal courts "hamstrung from correcting this grievous wrong."[33]

The federal courts must abide by the strictures that limit federal court interference in the state courts' criminal process. This Board need not. It is entrusted, instead, with the solemn power to correct miscarriages of justice in our State.

VI. A "Joy and a Light in Our Family and at the Diagnostic Prison."

Should this Board choose to correct that miscarriage of justice, Mr. Pye will present no danger to the people of Georgia or to the prison staff who interact with him. Quite the opposite: Mr. Pye's helpful, upbeat outlook will continue to be a positive force within the prison, and in the lives of his family. As his niece LaChandra Pye, now an attorney, recounts:

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[32] *Id.* at 570.

[33] Letter from Beverly B. Martin, U.S. Circuit Judge (ret.), Exhibit 47, at 3. As Judge Martin expressed in her letter to this Board, she "remain[s] persuaded that Mr. Pye faced an egregious denial of counsel."

> I've spent 30 years or so in the prison visitation room with Uncle Will … He's kept me laughing from a child to now whenever I visit. I've seen the way other inmates greet him with a smile, constantly introduce their visitors to him, and share with me how Uncle Will keeps them laughing and has been a source of hope and inspiration.
>
> I've seen how correctional officers greet him with a friendly smile and joking sentiment referring to him as "Pye." Many inmates and correctional officers have shared with me how Uncle Will boasts about me, my accomplishment, and his family. These are not the sentiments of someone who is a danger to society.[34]

Reverand Rick Moncrief, a volunteer chaplain at the Georgia Diagnostic and Classification Prison, has also witnessed firsthand the positive role Mr. Pye plays in the prison:

> In spite of his surroundings, Willie is one of the most active and cheerful people I know. In the many hours I've spent with him, I have never heard him say anything unkind about others in the prison, fellow inmates, guards – anyone. I've been able to observe his interactions with the guards there and see that good relationship. Willie is quite a character. I noticed right away that he immediately lights up a room; he's full of energy. He does not complain.[35]

Another of Mr. Pye's nieces, Senitra Usher-Bell, recounted that:

> I have heard that even the guards have been emotional since they learned of my uncle's execution date. If he were allowed to live out the rest of his life in prison, I am certain that he would never be a problem with the guards or inmates.[36]

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[34] Letter from LaChandra Pye, Exhibit 48.

[35] Letter from Rev. Rick Moncrief, Exhibit 56.

[36] Letter from Senitra Usher-Bell, Exhibit 54.

And Reginald Goodrum, a correctional officer who worked on death row for nearly a decade, confirms this:

> Willie Pye was reserved, to himself, and kind of quiet. He was not a troublemaker. He was as polite as any man could be. I don't remember him ever being rude, or disrespectful, or causing any issues … None of the other COs I worked with had any issues with him. If Willie Pye were allowed to live out the rest of his days in prison, I believe he would continue to be the same person I always knew him to be during the nine years I interacted with him on death row. I support clemency for Willie Pye. [37]

Mr. Pye has also managed to remain a loving and committed son, sibling, and uncle despite being unable to be physically present in the lives of his family. His sister, Pam Bland, affectionately writes:

> Will and I remain close siblings. I have supported Will since he was sentenced to death in 1996, through frequent visits, writing and responding to his letters, [and] numerous phone calls[.] I've also taken my three daughters to visit Will since they were children, and they are now all in late 30s or early 40s and visit him on their own. … He constantly tells me that he is okay and that he has faith the everything will work out. When I visit I always try to share things I know would make him smile and feel good. Will is a constant presence in my life and although we are separated by prison walls, my love for Will never left.[38]

[37] Letter from Reginald Goodrum, Exhibit 58.

[38] Letter from Pam Bland, Exhibit 51.

Mr. Pye with his sister, Pam, and
neice, Cheneeka, in 2001

Mr. Pye's nephew, Montarious Usher, adds:

> Despite being in prison, Uncle Willie has always maintained his position as my uncle, giving me encouragement despite his situation. … Despite being incarcerated, Uncle Will has remained part of the fabric of our family. I couldn't imagine not being able to talk with Uncle Will and having him as a part of our family.[39]

And perhaps most significantly, Mr. Pye continues to be a powerful source of strength and inspiration for his family. As his niece LaChandra explains:

> From my early childhood visits to my current adulthood visits, Uncle Will has always been interested in what's going on in my life. He provides encouraging words and inspiration and celebrates my successes. He always encourages me to do my best and to stay away from trouble and troublesome situations. When I graduated high school with honors and received a scholarship to college, he made sure during my visits to share with others about how smart his

[39] Letter from Montarious Usher, Exhibit 55.

> niece was and how well I was doing, and he would do so with the biggest smile on his face. … When I graduated college and received a full scholarship to law school he beamed with pride every time I came to visit. Other inmates would see me and say: "You're Pye's niece that in law school huh? He talks about you all the time."[40]

Senitra Usher-Bell echoes those sentiments:

> When we are together or on the phone, Uncle Will is always upbeat and makes sure to tell me how proud he is of me and my children.[41]

For thirty years, Mr. Pye has lived with the knowledge that he has caused great pain and suffering to the family of Alicia Lynn Yarbrough and has sought redemption through his relationship with God and Jesus. Reverend Moncrief noted that he has "had many spiritual conversations with Willie" over the years, and that Willie has told him more than once "that he bears the responsibility for the crime. He is very remorseful."[42] Mr. Pye's sister, Pam, added that "prayer is an important discipline to Will" and that "he prays to God daily."[43] As his friend Sheila Barlow explained:

> Because of Will's mental and spiritual transformation, he is able to speak lovingly about the victim's daughter. I could hear his voice smile as he recalled buying Christmas gifts for her as a child. He talked about buying her the bike that she wanted for Christmas. Yet, while he was remembering that moment, there was regret accompanying the gentle memories. There was remorse. [44]
>
> Mr. Pye's brother shares similar observations:

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[40] Letter from LaChandra Pye, *supra.*

[41] Letter from Senitra Usher-Bell, *supra.*

[42] Letter from Rev. Moncrief, *supra.*

[43] Letter from Pam Bland, *supra.*

[44] Letter from Sheila Barlow, Exhibit 53.

> "[I]t is because of [our] sacred brotherly love that Will and I have shared conversations where he would express concern about Alicia's family. I am confident in saying that Alicia is and was Will's first and only love. I believed then as I do now that Will loved Alicia. Although Will has never spoken to me about that dreadful night, he has expressed concern for Alicia's family by asking how they are faring. It is almost as if he wants to share with them that he regrets the outcome of his and Alicia's relationship. I truly believe this is Will's way of apologizing."[45]

This Board should grant clemency to Mr. Pye so that he can continue to lead a productive life—a life of humble devotion to God, that enriches his family and makes the prison system safer and better for all. As Reverand Rick Moncrief concludes in his letter to this Board:

> I want the Board to know that Willie Pye would be missed if he was not there [in the prison]. I would miss him. I believe the officers at the prison and others would miss him. I ask the Board to consider that, and see Willie for the person he is now, thirty years after the crime.[46]

VII. Requests to Spare Mr. Pye from His Trial Jurors.

Three of the nine remaining jurors in Mr. Pye's case support clemency for Mr. Pye. Jurors Rhonda Gulnac (formerly Rhonda Queen), LaShanya White-Weems, and Elizabeth Peeples have all provided letters requesting that this Board spare Mr. Pye's life: "I want the board to know I do not want Mr. Pye to be executed.;"[47] "I don't want Willie Pye to die;"[48] "I would like Mr. Pye to live out the rest of his life in prison."[49]

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[45] Letter from Ricky Pye, Exhibit 52.

[46] Letter from Rev. Moncrief, *supra.*

[47] Letter from Rhonda Gulnac, *formerly* Queen, Exhibit 18.

[48] Letter from Elizabeth Peeples, Exhibit 19.

[49] Letter from LaShanya White-Weems, Exhibit 17.

Ms. Gulnac recognized during the trial that Mostiler was not doing an adequate job of defending Mr. Pye, a view she says was held by other jurors:

> At the time, many of the jurors felt his attorney Johnny Mostiler did an inadequate job of defending him at trial. It was a serious case but Mostiler could not have cared less. He put up no evidence to refute the overwhelming evidence DA William McBroom provided to the jury of Mr. Pye's guilt.[50]

These jurors were tasked with one of the most harrowing and difficult civic duties we require of our citizens, determining whether a defendant should live or die. Yet critical information that could have changed the verdict was not presented. As the jurors report in their letters to this Board, this information would have mattered:

> During the sentencing phase, we didn't learn anything about Mr. Pye's mental health and impairments. Mental health is so critical to why people behave the way they do. How someone is raised matters. I have learned a little about Mr. Pye's background and I wish his attorney had shared this information with us. Information about his IQ and cognitive impairments would have been useful to know. And we didn't hear anything about how he grew up with constant violence and an alcoholic parent and very little parenting. I know how important it is for parents to support their children and show them love and protect them and do little things like read to them and take an interest in what they are doing. I wish everyone had heard that Mr. Pye didn't get any of this before we decided his sentence. [51]

Ms. Gulnac concurred:

> "Now learning about Mr. Pye's intellectual disability, and that people with this disability are ineligible for the death penalty, him

[50] Letter from Rhonda Gulnac, *supra*.

[51] Letter of LaShanya White-Weems, *supra*.

> growing up in extreme poverty and Mostiler's racism, I am not comfortable with my decision to sentence Mr. Pye to death."[52]

But none of this evidence, evidence which was in abundance, was presented to them by Mr. Pye's attorney. They felt they did not have a choice. As Ms. Gulnac recalled: "It was a difficult decision but we felt there was no other option but to sentence Mr. Pye to death at that time, based on the evidence we heard."[53]

As Ms. White-Weems recollects, it was an emotional situation and one that was made more difficult by the fact that they simply did not have the information they needed to make an informed decision.[54] We know that to be true because both jurors Gulnac and Peeples agree with her.

Jurors in all cases, but particularly capital cases, recognize the weight of their decisions. Their verdicts are entitled to great deference and respect. But when, as here, those jurors come forward and admit their verdicts represent a break down in our system of justice, those words are entitled to similar deference and respect.

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[52] Letter of Rhonda Gulnac, *supra*.

[53] Letter of Rhonda Gulnac, *supra.*

[54] Letter of LaShanya White-Weems, *supra*.

VIII. Conclusion.

This Board is empowered to intervene under exceptional circumstances, to act as a failsafe in cases where the courts have failed. This is such a case. The citizens of Georgia have empowered this Board to make decisions not as judges under the law, but as human beings, to serve as the conscience of our community.

For all of the reasons provided, as well as those presented at the hearing on this application, Mr. Pye and his loved ones respectfully request that the Board (1) grant a stay of his execution date for 90 days to permit the Board to review and deliberate the evidence on his behalf, and (2) exercise its power to grant mercy and commute his death sentence.

Respectfully,

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