

Office of the Governor
State of Louisiana

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GOVERNOR



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August 9, 2023

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Louisiana Board of Pardons
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Baton Rouge, LA 70804

Dear Board Members:

I write to you today about the clemency applications that were recently submitted asking the Board to consider the recommendation of commutation for the 56 incarcerated people at Louisiana State Penitentiary who have been sentenced to death and are awaiting execution. At the Board's July 24 meeting, the Board was scheduled to consider waiver of rules and Board policy. After consideration of testimony of numerous stakeholders, including a representative from the Office of the Attorney General, the Board removed the agenda item from consideration and set aside the applications pending further review of the Board's rules. After thoughtful consideration, I am asking the Board to set these cases for hearing in a manner least disruptive to the non-capital cases currently pending before the Board.

It is important to first acknowledge that these applicants are seeking commutations, or reductions, of their sentences from death to life in prison without benefit of parole. Absent a finding by the court of actual innocence, none of these individuals will be released from prison, ever, if these applications are granted. Further, these requests are distinguishable from a request for a reprieve. As governor, I have constitutional authority to grant a reprieve, or stay of execution, unilaterally, but this action is temporary. A commutation, which is permanent, is constitutionally predicated upon a Board recommendation, and the Board is given broad authority in adopting rules to perform its duties. At issue in these applications is the interpretation of the rule providing for the time within which an application for a commutation of a death sentence may be submitted. LAC 22:V 203(E) and 02-203(E)-POL both provide that an applicant "may submit an application [for clemency] within one year from the date of the direct appeal denial." This provision is contained in the same section of rule and Board policy that establishes the threshold of time that a person applying for a commutation must serve before being eligible to submit an application for

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August 8, 2023
Page 2

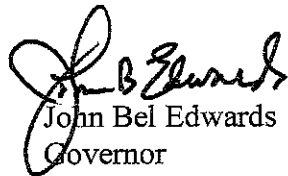
clemency. The Attorney General's advisory opinion erroneously concluded that this provision meant that the clemency application could only be filed within one year of the denial of a direct appeal. To read this provision as a limitation and prohibition on these applications being filed outside of a year from the date of denial of direct appeal is a misreading of the permissive "may" versus the mandatory "shall." The rule simply does not state that the application can only be filed within that first year. Further, to interpret this one year period as a prescriptive period is not logical in that an applicant sentenced to death would be treated differently, and much more harshly, than a non-capital applicant in that the capital applicant would only have a limited, finite window, after having served a relatively short time in prison, within which to ask for a permanent reduction of his sentence. No such prescriptive period exists for non-capital applicants. While numerous questions have been raised about the ambiguity within the Board rules and policy as they apply to capital cases, the distinction between asking for clemency and asking for a reprieve are clear. To read the rules to prohibit a capital applicant from asking the Board for clemency at any time outside of the one-year window after a direct appeal denial is misguided and yields a result that is both absurd and illogical. The rule, as written, simply does not prevent the Board's consideration of these applications at this time.

It is no secret where my personal beliefs lie with respect to the death penalty. I am guided by my deep faith in taking my pro-life stance against the death penalty. Beyond moral justifications, there are a number of reasons, whether based in law or science that support the need for mercy while considering these applications. I believe we must consider further the imperfect nature of the criminal justice system and the actual innocence that has been proven far too often after imposition of the death penalty. Over the last 20 years in Louisiana, there have been six exonerations and more than 50 reversals of sentences in capital cases. Even for those serving a death sentence whose guilt is unquestioned, there are still many more questions than answers. It is all but certain that there are individuals on our death row who lack the (constitutionally required) mental capacity to understand the punishment being carried out against him or those who lacked the mental capacity at the time of the commission of the offense or during trial to understand their actions. Many others committed their horrible offenses at an age when psychologists question whether someone could fully understand right from wrong and the resulting consequences of their actions. Again, it is important to note, the question is not whether these individuals should be set free, but whether a state-sanctioned execution meets the values of our pro-life state. All of these reasons were enough for me to support legislation to end the death penalty in Louisiana. While that effort failed in the Legislature, the Louisiana Constitution gives me as Governor and this Board the authority and the duty to consider these applications for individuals already sentenced to death. We should not shirk that obligation.

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Curtis "Pete" Fremin
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August 8, 2023
Page 3

I have an immense amount of respect and confidence in the Board and each of its members. The work that you do is intensive and demanding, both in terms of the time it takes to review each application and the emotional toll that the review of these files takes on each of you. I do not take the duties and obligations of the Board lightly. Nor do I take this request, or the effort required to timely and thoroughly hear the applications, lightly. However, given the importance of this issue, I ask the Board to set these cases for hearing in a manner that is least disruptive to the non-capital applications the Board is reviewing.

Sincerely,



John Bel Edwards
Governor

cc: Francis Abbott
Executive Director