

BREAKING: OH GOV GRANTS REPRIEVE TO RAYMOND TIBBETTS

February 8, 2018

Today, Governor John Kasich of Ohio announced he will grant a reprieve until October 17, 2018 to Raymond Tibbetts, who had been scheduled for execution on Tuesday, February 13, 2018. The purpose of this temporary reprieve is to allow the Ohio Parole Board to convene a hearing to consider new evidence bearing on Mr. Tibbetts' clemency request.

Following is a statement from Erin Barnhart, attorney for Mr. Tibbetts:

"Governor Kasich acted in the interests of fairness and justice by recognizing new information provided by a juror from Mr. Tibbetts' trial merits careful additional consideration. Because a juror from the original trial recently revealed flaws in the proceedings, there is now incontrovertible proof that Mr. Tibbetts never would have ended up on death row had the system functioned properly. This juror—whose single vote for life would have made Mr. Tibbetts ineligible for the death penalty under Ohio law—was shocked when he saw evidence that Mr. Tibbetts' abuse and abandonment continued throughout his childhood, even once the State placed him in foster care. The juror also learned that this horrible environment had devastating consequences for all of the Tibbetts children. Even more, Tibbetts' severe addiction problems were not fully addressed, particularly in regard to the dangers of prescribing opioids to people with a history of addiction. Mr. Tibbetts' attorneys failed to present this evidence at trial and the prosecutor misstated the facts. Juror Geiger's view of the case provides compelling reasons for the exercise of the Governor's reprieve power to allow the Ohio Parole Board to convene a hearing to consider this new information. We are confident that after doing so, the Board and the Governor will agree that clemency is appropriate to correct the failures in the legal process in this case. Governor Kasich has done our State a great *service* today by ensuring that careful consideration is given to this new information."

*-Erin Barnhart, Attorney for Ray Tibbetts and Assistant Federal Public Defender,
Capital Habeas Unit, Federal Public Defender's Office for the Southern District of Ohio
-February 8, 2018*

Warrant of Reprieve for Raymond Tibbetts: <http://bit.ly/2nMheUo>

Letter from Gov. Kasich to Chairman of Ohio Parole Board: <http://bit.ly/2EbROcZ>

Ray Tibbetts Case Background:

Juror Would Not Have Voted for Death if Trial Attorneys Provided Mitigation Information to the Jury

Ray Tibbetts had been scheduled for execution in Ohio on February 13, 2018. But new and important information has recently come to light in the case: juror Ross Geiger stated that if he had accurate information about Mr. Tibbetts' extreme history of abuse, abandonment and addiction at the time of the trial, he would not have voted for death.

Mr. Geiger's letter assessing the evidence, which can be accessed here: <http://bit.ly/2BHI5VI>, is particularly weighty because in Ohio, a single juror's recommendation against a death sentence requires the court to impose a life sentence rather than death.

Mr. Geiger wrote to Governor Kasich after reviewing extensive mitigating evidence which became public during the clemency process – *but was never seen by jurors*, even though it was available at the time of the trial. Having reviewed this information, Mr. Geiger cites multiple concerns, including inept defense attorneys, incomplete and inaccurate information about childhood trauma, misleading statements by prosecutors, unclear jury instructions, and the role of opioids. Mr. Geiger's letter to the Governor expresses his "deep concerns about the trial," concluding that "[b]ased on what I know today I would not have recommended the death penalty."

Mr. Geiger believes the system failed Mr. Tibbetts. In his words:

"All of these things lead me to one conclusion and that is that the system was and seems to be today very flawed in this case. The State of Ohio (through Hamilton County) called on me to fulfill a civic duty one that included an unenviable task of possibly recommending death for another man. I fulfilled this duty faithfully. Governor, if we are going to have a legal process that can send criminals to death that includes a special phase for mitigation shouldn't we get it right?"

The executive function of clemency is unique in that it is often the only time that the totality of all factors in death penalty cases can be evaluated in one complete picture. This is the case here, where both the courts and the parole board considered arguments about the failures of Mr. Tibbetts' lawyers to provide the jury with this evidence, but *without* knowing that Mr. Geiger would have changed his vote based on this information.

Mr. Geiger's letter provides new information: that a juror believes crucial gaps between what is now known and what the jury knew at the time demonstrate that, in Mr. Geiger's words, "the trial process was not well served in this case."

The letter from Mr. Geiger details why death is not appropriate for Mr. Tibbetts (in Mr. Geiger's own words):

- The truly terrible conditions, understated at trial, of Tibbetts (sic) entire childhood
- The lack of preparation if not outright malpractice on the part of the defense for the sentencing phase

- The apparent withholding of information from the jury during the sentencing phase
- The apparent ineptitude of the defense team in not calling Tibbetts sister to testify (what reasonable risk could this have had for Tibbetts?)
- The prosecutors leading the jury to inaccurate conclusions about Tibbetts siblings
- What I now believe were poor instructions to the jury regarding the autonomy of each juror in the sentencing phase
- The understated or not well understood impact that drugs and opioid prescription may have been a causal effect to increased drug abuse and a contributing factor to the murders

Mr. Geiger's letter also expresses the need to consider the impact of Mr. Tibbetts being improperly prescribed opioids, given the current understanding of this category of drugs' impact, little of which was known during Mr. Tibbetts' 1998 trial. As Mr. Geiger explains, "at the time the drugs argument did not carry much weight because we were not aware of the very real problem of prescribing opioids to people with addictive behaviors. As we now know in Ohio too well opioids can quickly lead to seriously grave consequences when not prescribed properly." Mr. Tibbetts struggled with substance abuse for much of his life as an attempt to numb the effects of his childhood trauma, but had achieved a period of sobriety when he suffered a workplace injury and was prescribed opioids despite his history of addiction. Predictably, he relapsed and spiraled to rock bottom shortly before committing the crime that sent him to death row.

Mr. Geiger's assessment of the new evidence aligns with federal appellate Judge Karen Nelson Moore's dissent in Mr. Tibbetts' case that criticized his trial attorneys for offering *just one witness* in support of their case against a death sentence. As the judge noted, "had Tibbetts's family and friends testified, the evidence regarding Tibbetts's childhood abuse would have come directly from individuals who experienced the same abusive environment as Tibbetts," and such testimony "as to what Tibbetts endured certainly would have had a greater impact on the jury than just listening to [a doctor] mention Tibbetts's childhood abuse vaguely and in passing." *Tibbetts v. Bradshaw*, 633 F.3d 436, 456 (6th Cir. 2011) (Moore, J., dissenting). Mr. Geiger writes he was "shock[ed]" to discover Mr. Tibbetts' sister was available to testify at trial because the jurors were left with the impression that "not one other person [was] willing to speak to mitigation" beyond an ill-informed psychiatrist.

Like the majority of the federal court that denied relief to Mr. Tibbetts without the benefit of Mr. Geiger's information, the Ohio Parole Board, which voted 11-1 against recommending clemency for Mr. Tibbetts following a hearing more than a year ago, was not confident that the jury's penalty recommendation "would have been different had his trial attorneys presented that mitigation evidence in the manner suggested by his current attorneys as opposed to how it was presented by his trial attorneys." Mr. Geiger's letter

demonstrates conclusively that the board's assumption was incorrect, and his vote for life would have prevented a death sentence for Mr. Tibbetts.

In addition, as Judge Moore pointed out, "it is important to remember one of the State's tactics" was to attempt "to undermine the mitigation value of Tibbetts's abusive childhood by implying that the defense was fabricating any mention of such abuse." *Id.* Mr. Geiger expresses his "anger" at learning about proof defense counsel could have given the jury that would have prevented the prosecutors from "dismantl[ing]" the scant mitigating circumstances they presented, including "[p]ages of relevant information concerning details of the abandonment, foster abuse, and re-abandonment and that it began before Tibbetts was even two years old."

For more information, or to speak with one of Mr. Tibbetts' attorneys, please contact: Tristin Aaron, tristinaaron@gmail.com

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