

October 3, 2014

Deborah Leff
Acting U.S. Pardon Attorney
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Re: Commutation Petition, Jermaine Jerrell Sims, Reg. Number: 34263-083

Dear Ms. Leff:

The undersigned, a certified paralegal, herein respectfully requests your office's review of the previously filed commutation petition filed regarding the above-referenced federal prisoner who was sentenced to the statutory minimum and penultimate sentence of life imprisonment without parole on April 14, 1999, and has been confined for over 16 years on six counts for his alleged role in a bank robbery that resulted in the death of a bank teller in violation of 18 U.S.C.A. § 2113(a) and (e) (West Supp. 9).

Of great and significant importance to this case is the fact that it involved the entering of a bank by two armed men on January 30, 1997 and, in robbing the bank, opened fire, killing a bank teller and wounding three others. The perpetrators were tried and convicted for their crimes and each received a life sentence without the possibility of parole.

Defendant was alleged to have been involved in the bank robbery as a consequence of two of the weapons used in the slaying were determined to have been purchased by him with additional facts that his fingerprints were found on a can of lighter fluid that the perpetrators left behind at the bank. **Due to this evidence, the defendant was arrested for the robbery although investigators later determined that defendant was not one of the two actual perpetrators of the bank robbery.**¹

The undersigned, after numerous email communications with Mr. Sims (defendant) and a review of the facts relative to this case including trial testimony, case law, judicial rulings and reasoned analogy applied thereto, is mindful of the Commentaries on the Law of England (1765-1769) by Sir William Blackstone, who stated, to wit:

¹ See, Direct Appeal, U.S. v. Sims, U. S. Court of Appeals, 4th Cir., January 12, 2000, Case No. 99-4266. Affirmed by unpublished per curiam opinion. Annexed hereto as **Exhibit A**.

"Of great importance to the public is the preservation of...personal liberty; for if once it were left in the power of any the highest magistrate to imprison arbitrarily whomever he or his officers thought proper, (as in France it is daily practised by the crown,) there would soon be an end of all other rights and immunities...

"[T]he principal aim of society is to protect individuals in the enjoyment of those absolute rights, which were vested in them by the immutable laws of nature, but which could not be preserved in peace without that mutual assistance and intercourse which is gained by the institution of friendly and social communities. Hence it follows, that the first and primary end of human laws is to maintain and regulate these absolute rights of individuals."...

"It is better that ten guilty persons escape than one innocent suffer." (Emphasis applied.)

The undersigned is compelled to state that, after the review of defendant's case on all points by this office as requested herein, it should recommend that the President commute the life sentence meted herein for it does not provide just punishment and is a case where the defendant should be granted mercy.

"It is not what a lawyer tells me I may do; but what humanity, reason, and justice tell me I ought to do."-- Edmund Burke (1729 - 1797) Source: Second Speech on Conciliation,1775

In support of this request for commutation of the sentence meted herein, the undersigned states the following, to wit:

1. Defendant was convicted after a bench trial by the Honorable Richard L. Williams, Senior District Judge, E.D. Va., who stated,

"the evidence is conclusive that Mr. Sims was not in the bank, and therefore did not fire the shots that killed Lori Robinson or wounded the other bank employees. **There was no evidence that he was anywhere around the bank at the time as a driver or look out or anything else. He was charged and convicted as an aider and abetter, not as one of the perpetrators. Although the law makes no distinction between aiders and abettors and principals of the first degree, Mr. Sims' role in the bank robbery was different from that of Bobbitt and Jones. In addition, he has no prior felony record, and a relatively minor misdemeanor history.**" (JA 481-482). (Emphasis applied.)
2. In what can only be described as an extraordinary act of judicial compassion, Judge Williams has documented his support for defendants' commutation of

sentence as delineated in the letters annexed hereto as **Exhibits B, C and D** wherein the court wrote, respectively, to defendant and the "Office of the Pardon Attorney and stated in one of the letters, *"I, along with my colleague, The Honorable Dennis W. Dohnal, United States Magistrate Judge, write again in further support of the pending application for clemency by Mr. Jermaine Sims for whom Judge Dohnal was defense counsel when he was in private practice and I was the trial and sentencing judge. **We submit this letter jointly to emphasize our mutual interest and support of Mr. Sims' position, neither of us having ever previously offered our input in regard to a clemency request in either our public or private lives.**"* (See letter dated February 11, 2009 annexed hereto as **Exhibit B.**) (Emphasis applied and required.)

3. Judge Williams also stated the following during sentencing:

"But I am frank to tell you that I regret very much that a plea agreement wasn't reached in this case, and I wish that I could downwardly depart, because I think he is FAR LESS CULPABLE than the others, and while he may have masked his participation some, I still feel if it were up to me I would have given him a FAR LESS SEVERE sentence than what I had to give him." (JA 485)(emphasis added).

4. Additionally, with respect to testimony by witnesses in this case, it is noted that the following was provided in defendant's direct appeal, Record No. 99-4426 regarding defendant's non-involvement, to wit:

"At trial, Government witness Latisha Donaldson testified that she heard Jones say that "he [Sims] didn't do it. He just purchased the guns." (JA 419, 464). Government witness Dibon Toone testified that he overheard Jones state "I [Jones] don't know what they locked him [Sims] up for. He didn't have nothing to do with it." (JA 420, 464) Additionally, Angela Elliott testified that Bobbitt said "he didn't know why they would arrest Jus [Sims]...he didn't do it." (JA 132). Javar Sims testified that while he, Jones, Bobbitt and McCall were watching a news broadcast about appellant's arrest, Bobbitt laughed and said "**Jus [appellant] did not have anything to do with that.**" (JA 457-458). Jones then told Bobbitt to "hush, be quiet."" (JA 458). (Emphasis applied.)

5. Furthermore, the following, part of the record in defendant's direct appeal states, "Sims filed a motion for reconsideration of the Court's denial of his motion for reconsideration of the Court's denial of his motion for a new trial based on newly discovered evidence or, in the alternative to consider additional new evidence.

The added proffered evidence concerned statements made by Hassan Shabazz including:

“Mr Shabazz was []transported in custody of the Richmond federal courthouse at the time of the Bobbitt/Jones trial (February 1998) and in the same vehicle (van) as Bobbitt and Jones; **Mr. Shabazz also remembers Mr. Bobbitt responding to the effect that Mr. Sims did not know anything about the robbery before it occurred**, but that Bobbitt then changed the subject and the matter was not addressed again.”

6. The government’s case in chief relied on the fact that defendant legally purchased two of the firearms used in the bank robbery and that his fingerprints were found on a can of lighter fluid found at the scene of the robbery allegedly to set fire to the bank. Defendant states, in an email to the undersigned regarding these issues and responding to questions posed by the undersigned concerning same, stated the following:

“As for my legal purchase of the firearms, I was once in J.R.O.T.C.-during high school-and developed a liking for military styled guns! When I purchased the firearms, my intent was to have target practice with those legally purchased firearms, and then ultimately sell them for a price higher than the purchasing price; as they were quite cheap. As I wasn't staying with my mother at the time, I did not want to disrespect her by bringing the firearms to her home, thus, I stored them at Lafawn Bobbitt's mother's home-as he advised me they would be safe there-and when I wasn't there, they were taken in my absence!!! it makes no sense to legally purchase firearms, then transfer them for use in a crime of violence, knowing that the firearms would AUTOMATICALLY be traced back to me; as the serial numbers were not altered in any way!!! This should be enough proof that I wasn't involved. As for the lighter fluid, while I was going to a convenience store to purchase a 40oz. of beer, Bobbitt asked me to buy him a can of lighter fluid for the grill in his back yard, thus, that is how my fingerprint got on the can. I had no idea that he was going to use it for the purpose they say.”

7. Furthermore, regarding the purchase of two firearms, **not the firearm used to kill the bank teller**, during oral argument in *Abramski v. U.S.*, No. 12-1493, argued 1/22/14, originating out of the Fourth Circuit, Joseph R. Palmore, of the Solicitor General's Office, Washington, agreed that it would not violate the statute [922(a)(6)] for a person to purchase a firearm and, in the dealer's parking lot, sell the gun to a stranger who approached him and offered him more, even if the buyer turned out to be a felon.

In Exonerations In The United States, 1989 Through 2003, GROSS, JACOBY, MATHESON, MONTGOMERY & PATIL April 19, 2004 © Samuel R. Gross (2004), the University of Michigan published findings from a study of exonerations of defendants convicted of serious crimes in the United States since 1989, when the first DNA exoneration occurred.

The purpose was to study overall patterns in the exonerations that have accumulated in the past fifteen years in order to learn about the causes of false convictions and about the operation of our criminal justice system in general. The following are highlights of the studies' findings:

A total 328 exonerations in that 15-year period, 316 men and 12 women; 145 of them were cleared by DNA, 183 by other sorts of evidence. They had served an average of over ten years in prison for crimes for which they should never have been convicted.

Four defendants were exonerated posthumously, after they had died in prison.

The rate of exonerations increased sharply over the 15-year period of the study, from about 12 a year through the early 1990s to an average of 43 a year after 2000. From 1999 on, about half of all exonerations have been based on DNA evidence.

The count of exonerations was conservative and considered only exonerations based on investigations in the individual cases of the exonerated defendants. The database did not include at least 135 additional innocent defendants who were framed by rogue police officers and cleared in two mass exonerations: in 1999-2000 in Los Angeles, in the aftermath of the discovery of the Rampart area police scandal; and in 2003 in Tulia, Texas, when a single dishonest undercover officer was shown to have framed 39 innocent drug defendants.

The most important findings of the study concerned the cases that we *don't* see – miscarriages of justice that are not detected. Exonerations – those false convictions that do come to light – are no more than the tip of an iceberg. It is clear from these data that false convictions are much more common than exonerations, and that the vast majority are never caught.

As the study worked hard uncover false convictions, as was done in many death row cases, many errors were discovered – but only among those cases where efforts were concentrated. When we have a new scientific tool that detects judicial mistakes, as has been done for rape convictions with DNA, again, a lot of errors were found – among those cases for which the new tool is relevant.

The study concluded that “If we worked as hard to reinvestigate all cases as we do for many capital cases, or if some new scientific technology did for all criminal convictions what DNA has done for rape convictions, the number of exonerations would be much higher than what we have seen in recent years.” (Emphasis applied.)

Defendant Jermaine Sims, confined for over sixteen years as **an aider and abetter, not as one of the perpetrators**, has served his sentence in an exemplary fashion. He has availed himself of numerous educational opportunities and has completed requirements for his GED or High School Diploma, courses in psychology, served as a prison suicide watch companion, inmate mentor program, sales and marketing, Science ACE Course, and a host of other accomplishments too numerous to list herein as detailed in the Inmate Skills Development Plan annexed hereto as **Exhibit E**.

Defendant, among his accomplishments, has learned Spanish and now serves as a prisoner teacher to others and this is a truly commendable accomplishment by a young man who has refused to sulk and engage in the negative activities of many in confinement, but has, instead, used the time he is serving to better himself and others.

Mere words escape the undersigned to further illuminate both the unfortunate factors that led to his conviction and sentence by a truly compassionate and concerned federal judge and the heretofore exemplary conduct he has exhibited for the past sixteen years plus.

Furthermore, there are no words the undersigned can illustrate the arguably clear and unequivocal miscarriage of justice meted in this case that has resulted in this dynamic young man being sentenced to serve the remainder of his life confined for simply having purchased firearms and a can of lighter fluid

A **miscarriage of justice** primarily is the conviction and punishment of a person for a crime he or she did not commit. The term can also apply to errors in the other direction —“errors of impunity”, and to civil cases. Most criminal justice systems have some means to overturn, or “quash”, a wrongful conviction, but this is often difficult to achieve. In some instances a wrongful conviction is not overturned for several years, or until after the innocent person has been executed, released from custody, or has died.

“Miscarriage of justice” is sometimes synonymous with wrongful conviction, referring to a conviction reached in an unfair or disputed trial. Wrongful convictions are frequently cited by death penalty opponents as cause to eliminate death penalties to

avoid executing innocent persons. In recent years, DNA evidence has been used to clear many people falsely convicted.

As the undersigned has, on too many occasions over the past several years, read of the pantheon of human beings being exonerated after lengthy terms confined when evidence revealed that they were innocent of the charges, cases involving clear manifest injustice, and resulted in the loss of excessive of years locked in cages surrounded by barbed wire fences and walls, having to negotiate the often times treacherous environs of prisons, is strongly compelled to state, as refers to defendant Jermaine Jerrell Sims, ENOUGH HAS BEEN DONE TO SATISFY THE THIRST FOR PUNISHMENT!

Also, the term **travesty of justice** is sometimes used for a gross, deliberate miscarriage of justice. The usage of the term in a specific case is, however, inherently biased due to different opinions about the case. Show trials (not in the sense of high publicity, but in the sense of lack of regard to the actual legal procedure and fairness), due to their character, often lead to such travesties.

The concept of miscarriage of justice has important implications for standard of review, in that an appellate court will often only exercise its discretion to correct plain error when a miscarriage of justice (or "manifest injustice") would otherwise occur.

In this case, the undersigned requests, with every fiber of his being, that the Office of the Pardon Attorney view this case in the spirit and intent of the Clemency Project of 2014 and current Attorney General Eric Holder's speech regarding fairness in sentencing and punishment on August 1, 2014 in Philadelphia at the National Association of Criminal Defense Lawyers 57th Annual Meeting and 13th State Criminal Justice Network Conference, Mr. Holder stated, to wit:

[that] "...to ensure that America has a criminal justice system that's worthy of its highest ideals. **To make certain that those who pay their debts to society have fair opportunities to become productive, law-abiding citizens.** And to empower justice professionals to meet 21st-century crime challenges with 21st-century solutions.

With this goal in mind – one year ago – I launched a new “**Smart on Crime**” initiative, which includes a series of targeted, data-driven reforms that are designed to advance these goals...”

Mr. Holder also stated something that the undersigned requests guide the decision by the Pardon Attorney’s Office in defendant’s case, to wit:

“Criminal sentences must be based on the facts, the law, the actual crimes committed, the circumstances surrounding each individual case, and the defendant’s history of criminal conduct. They should not be based on unchangeable factors that a person cannot control, or on the possibility of a future crime that has not taken place. Equal justice can only mean individualized justice, with charges, convictions, and sentences befitting the conduct of each defendant and the particular crime he or she commits. (Emphasis applied.)

In closing, the undersigned is convinced, beyond a shadow of doubt, that Jermaine Sims is deserving of a second chance to live his life in society and that our society would be a better place **with him in it** as opposed to being confined for the remainder of his life for factors that he could not control and supported by none other than the sentencing judge as delineated hereinabove for it is believed, evidenced by his conduct for over the past sixteen years, that he will abide by the laws of society and be a constructive and beneficial member of society and PRAYS this office will recommend that his sentence be commuted to the President!

“Let the punishment fit the crime!”

Respectfully submitted,

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Attachments: (5)