
BEFORE THE TEXAS BOARD OF PARDONS AND PAROLES

In Re

FLETCHER THOMAS MANN

Petitioner.

**PETITION FOR REPRIEVE
FROM EXECUTION OF DEATH SENTENCE AND FOR
COMMUTATION OF SENTENCE TO IMPRISONMENT FOR LIFE**

**Board of Pardons and Paroles
Execution No. 705**

Submitted by:

**Dean S. Neuwirth
Martin D. Beier
Eden E. Harrington
Scot W. Anderson**

Counsel for Petitioner

APPLICATION FOR CLEMENCY
AND MEMORANDUM IN SUPPORT

Fletcher Thomas Mann respectfully submits this application for clemency, and requests a reprieve of his June 1, 1995 execution date. A reprieve is imperative to give the Board of Pardons and Paroles an opportunity to convene and conduct a hearing to consider Mr. Mann's request that his sentence of death be commuted to life imprisonment.

This application for clemency and request for a reprieve comes less than a month before the scheduled execution date through no fault of Mr. Mann. Indeed, the clemency petition and supporting documentation have been in preparation for several months concurrent with the litigation of his federal appeal. The timing, however, is dictated by the haste of the District Attorney of Dallas County which has sought and received a court order that Mr. Mann be put to death on June 1, 1995. The district attorney has obtained this order even though Mr. Mann's petition for certiorari to the U.S. Supreme Court to review his first federal habeas petition is still pending. Briefing on the petition for certiorari was only just completed on or about April 17, 1995, and the Court has yet to rule.

Mr. Mann has engaged in vigorous pursuit of his legal remedies within the federal and state courts, and was continuing to do so when this execution date was set. Mr. Mann requests a reprieve of 30 days, or such longer time as the Board may authorize, to halt this unnecessary and unwarranted rush toward

execution. Mr. Mann should be permitted to see his federal habeas petition through to final review. A reprieve will also give the Board and the Governor time to fully consider the important information contained in this request for commutation and should be granted regardless of the Supreme Court's decision, if rendered.

I. INTRODUCTION

Fletcher Thomas Mann received the death penalty for his participation in events occurring on the evening of September 11, 1980. On that date, Mr. Mann was just 19 years old. As will be discussed in greater detail below, Mr. Mann had a long history of drug abuse prior to that evening, and was in search of drugs and money to buy them when the events transpired. Furthermore, he suffers and has suffered from organic brain dysfunction dating from the first two years of his life, and possibly since birth. He has also been the victim of significant, prolonged physical and emotional abuse at the hands of his father, and spent his youth shuttled back and forth between various units of his broken home.

Fletcher Mann has been incarcerated since his arrest in 1981. In the years that have followed, Fletcher Mann has accepted responsibility for his crimes. At the same time, he has demonstrated the capacity to learn and change. Today, at the age of 34, he is a caring, artistic, and remorseful man who does not deserve to die for the sins of his youth. Executing Fletcher Mann now will do nothing but halt the progress he has made in prison and cause more hurt and injury to those who care about him.

II. PROCEDURAL HISTORY

A full recitation of the procedural history of Mr. Mann's case is contained in the opening pages of the Fifth Circuit's opinion, Scott v. Mann, 41 F.3d 968 (5th Cir. 1994). In summary, Fletcher Mann was convicted in 1982 of the murder of Christopher Bates in the Criminal District Court, Dallas County. He was sentenced to death.¹ Mann's conviction was affirmed on October 22, 1986. Mann v. State, 718 S.W.2d 741 (Tex.Crim.App. 1986). The U.S. Supreme Court denied certiorari on April 6, 1987. Mann v. Texas, 481 U.S. 1007 (1987).

Mr. Mann filed petitions for writ of habeas corpus in the state and federal courts. The state courts have denied Mann's collateral challenges. **His first federal habeas petition is pending before the U.S. Supreme Court.**

III. ISSUES LITIGATED

Exhibit One contains a list of the issues litigated in the state and federal judicial proceedings since Fletcher Mann's conviction.²

¹ Certified copies of the indictment, judgment, jury verdict and sentence have been ordered from the court and will be provided to the Board immediately upon receipt by counsel. Non-certified copies of these documents are attached to the transmittal letter for this petition along with the fee affidavit.

² The exhibits cited in this petition are contained in a separately-bound appendix submitted with this petition. The general and local offices of the Board of Pardons and Paroles, and the Governor's General Counsel's Office, have been provided with copies of the appendix and the cassette tape referred to below.

IV. PERSONAL BACKGROUND

Fletcher Thomas Mann was born on April 7, 1961 in Louisville, Kentucky, the second child and only son in a family of six. Fletcher was named after his father, Fletcher Mann, Sr. His mother is Beatrice ("Bea") Mann, and his sisters are Elizabeth ("Liz") Lee, and Renée and Michelle Mann.

Fletcher's childhood was marked by serious physical, emotional and substance abuse. In fact, Fletcher's misfortunes began shortly after his conception. Prior to birth, his mother tried to abort him using home remedies. At birth, his mother saw that Fletcher's head was damaged by forceps used in his delivery. As young "Tommy" grew, he suffered recurring headaches for which no cause was ever determined. Affidavit of Beatrice Mann, attached as Exhibit Two. Young Fletcher also experienced multiple, high fevers, probably associated with ear infections. Id. These fevers went untreated because his father would not let his mother take him to the doctor.

Fletcher's father, did not stop at denying his son necessary medical treatment. As a child and young teen, Fletcher was severely beaten by his father, who used "fists, belts, switches or other objects." See Affidavit of Elizabeth Marie Lee, attached as Exhibit Three; Exhibit Two. On several occasions, Fletcher's mother and sisters were also beaten as young Fletcher watched helplessly. This physical abuse continued until Fletcher was eighteen. Id.

Fletcher fared little better at school. Beginning in elementary school, he was found to have learning disabilities that required that he attend special education classes. He was never a good student, and he was frequently found "doodling" on paper rather than doing his schoolwork. Not surprisingly, at or near the time his parents divorced in 1973, at the tender age of twelve, Fletcher Mann dropped out of school forever. For the next six years, Fletcher was shuttled back and forth between his mother's, father's and older sister's homes. See Exhibits Two and Three.

At the age of ten, Fletcher began using drugs. Throughout his teens, he regularly used, and abused, a wide variety of different substances, including marijuana, heroin, PCP, speed and cocaine. He also sniffed glue and lighter fluid. See Exhibit Two; Affidavit of Fletcher Mann (Sr.), attached as Exhibit Four. His life became driven by drugs, and the need for money to buy them. In his own words: "I know that its the Hi [high] that make you go out and get your self in trouble because when you dont have the money to get [drugs] you will get it any way you can like I did[.]" Letter to Michelle Mann, Exhibit Five(A). Indeed, Fletcher's heavy substance abuse continued up to the very day of the murder.

Fletcher's background of childhood neglect, physical, emotional and drug abuse have led two independent health professionals to conclude that he likely suffers from organic brain damage. These health professionals, retained by new counsel after

Fletcher's conviction, have personally examined Fletcher to study his mental development as of the time of the crime.

On June 17, 1988, Fletcher was examined in prison by Dr. Windel Dickerson, a psychologist. A copy of Dr. Dickerson's report is attached as Exhibit Six. Dr. Dickerson's examination and interviews with Fletcher's family found that Mr. Mann exhibited behavioral problems from age 10, coinciding with his substance abuse. Dr. Dickerson administered a WAIS test, which resulted in an IQ score of 77. His results on a Rorschach test suggested "impairment of function," and Dr. Dickerson ultimately concluded that Mann's test results "confirm maturational delay, with possible underlying organic factors." His test results also "confirmed drug abuse as an additional contributor to a failure to develop normally[,] and the findings suggested "a pathogenic family milieu."

On September 13, 1988, Mann was also examined by a clinical neuropsychologist, Dr. Nancy A. Leslie. A copy of Dr. Leslie's report is attached as Exhibit Seven. Dr. Leslie ran an eight-hour battery of neuropsychological tests on Mann which showed that "Fletcher has specific cognitive dysfunctions that appear to be organic in nature and origin." Dr. Leslie opined that Fletcher's untreated high fevers as a child may have caused or contributed to his dysfunctions.

This evidence of potential organic brain damage, prolonged and repeated drug abuse, an abusive childhood, and a broken family life, was not presented to the jury which sentenced

Mr. Mann to death. The evidence indicates, however, that Fletcher Mann lacked the basic abilities to make rational decisions, which in turn, affects his culpability for the crimes he committed. Fletcher's jury never knew that he was unable to fully comprehend the legal and moral consequences of his actions, and therefore the propriety of the death sentence is in doubt. Because Fletcher Mann has shown that he is not a danger while confined in prison, the death sentence should be commuted to life imprisonment.

V. FLETCHER'S TRANSFORMATION IN PRISON

Fletcher Mann has spent his time in prison since the murder trying to make sense of his life, sobering up, and learning to become a better person. Although he still suffers from maturational delay and at times lacks focus and coherency, he has matured while in prison. Fletcher has come to recognize that during his teenage years he "never slowed down" to reflect on the effects of his actions on others.³ He realizes that his actions were self-centered, driven by his need for drugs and the money to purchase them. And since the middle-1980's, Fletcher has become aware of the terrible toll his acts have taken on the crime victims, their families, and his own family. As recently as September of 1994, Fletcher has expressed his remorse, saying he wishes the criminal acts he did "had never happened."

³ Fletcher discusses this realization in a short, taped statement to his family made on December 22, 1986, a day before he was to be executed. A copy of this tape is provided with this petition.

Prison has provided Fletcher a safe haven where he learned to turn away from drugs, and where he has begun to change his life's direction.⁴ These changes, collectively and individually, show that Fletcher Mann has developed under State care into someone with redeeming qualities whose life need not, and should not, be unnecessarily ended. Fletcher's efforts to reform show he is deserving of mercy.

From early on in his incarceration, Fletcher has regularly written to his mother and sisters, especially Elizabeth. These letters tell of his sorrow for his past selfish and hateful acts. At the same time, every one of these letters speaks of his love for his family, including the father who beat him: "i love him with all my [heart symbol] no mater what he did to me because i no [know] he love all of us he really dose [does]." Letter to Liz Lee, Exhibit Five(B).

More than any other evidence, these letters open Fletcher Mann's character to view and reveal that he deserves another chance at life. The sample letters attached as Exhibit Five, selected from over fifteen years of correspondence, show that Fletcher has learned to control himself in the prison environment and has grown as a person.⁵

⁴ Fletcher's disciplinary record shows on one occasion in 1986 he was found in possession of a single marijuana cigarette. Those same records contain a confession by another inmate who admits planting that cigarette on Fletcher.

⁵ Counsel apologizes for the poor quality of some of the photocopies in Exhibit Five, but Fletcher often wrote in pencil.

Fletcher's letters show he now understands that he has done great wrong and thereby hurt the people he loves. To his two young nephews, Elizabeth's sons, he writes: "I am sorry I could not do thing with youall but you see I miss [mess] up I did thing bab [bad] and never did what my mom told me and she was right." Letter, Exhibit Five(C). He often wishes he "could do it over again for I no [know] alot now and what I was doing out there is not what it about[.]" Letter to Liz Lee, Exhibit Five(D). See also Letter to Bea Mann, Exhibit Five(E) ("how I wish I could to [do] it all over again so I could show you all that I did love youall"); Letter to Bea Mann, Exhibit Five(F) ("i dont no if i could every make it up to you when i get out but i am going to try"); Letter to Bea Mann, Exhibit Five(G) (writing in third person: "he wish he could make up for what he done to youall and show youall he dose love youall wit all his [heart symbol]").⁶

Fletcher also uses his letters to warn others, especially his younger sister and nephews, to avoid the mistakes he made. To his sister Michelle, he writes: "Hey or [are] you getting Hi [high] I hope not for I know that its the Hi that make you go out and get yourself in trouble[.]" Letter to Michelle Mann, Exhibit Five(A). To his mother, he says: "mom . . . i dont want to she [see] her [Michelle] or renee go the way i did[.]" Letter to Bea Mann, Exhibit Five(F). To his nephews, Joe and Jon, Fletcher says "keep going to school and dont cut school for it will help you in the

⁶ Exhibits Five(M) through Five(Q) contain similar expressions of remorse and self-blame.

long run[,]" and then warns them: "youall be good and dont miss [mess] up like I did." Letter to Joe and John, Exhibit Five(K) and letter addressed "Hi boys," Exhibit Five(C).⁷ See also Letter to Liz Lee, undated, Exhibit Five(L) ("I wish I could be out and try to show them [Michelle and Renee] that they should go right"); Letter to Liz Lee, Exhibit Five(H) (expressing his frustration with fellow inmates who are "bab [bad] talking each other all the time" because "we should try to get along with each other").⁸

Prison has given Fletcher the controlled environment he needs to develop "normal" relationships with others. Fletcher has become a loyal friend to many of the inmates on Death Row. Fletcher even asked his own attorneys to intercede on behalf of his "bro," James Moreland, who was to be executed in January of 1994. Undated letter addressed "Dear Sir," marked as Exhibit Eight. He repeatedly asks his sister Liz to "pray for my cellmate" because his friend faced imminent execution. Letter to Liz Lee, Exhibits Five(I) and Five(J).

On his own initiative, and as a testament to the friendships he has made, Fletcher allows his fellow Death Row inmates to write prayers and last words in a Bible he keeps in his cell. Fletcher honors these inmates by reading this Bible and

⁷ This letter was written on the eve of Fletcher's execution date set for June 25, 1987.

⁸ Exhibits Five(R) through Five(T) contain similar admonitions to Fletcher's sisters and nephews.

their parting words regularly.⁹ Fletcher has told his sister Liz that he will leave the Bible as a gift to his family if his own execution takes place.

His time in prison has also permitted Fletcher to learn how to be compassionate and caring about other living creatures. One example of this compassion is his "pet" care. On a number of occasions, Fletcher has found young birds, abandoned or hurt, and unable to fly. Fletcher has taken these frightened creatures into his cell to soothe and care for them. Exhibiting great patience, Fletcher tended their injuries with homemade bandages. Once the birds healed, he then taught them to fly. He feeds them by sharing his meals with them. When they are ready, he either sets the birds free, or gives them as gifts to some of the guards at his prison.¹⁰

Prison has also allowed the artist in Fletcher Mann to surface. Photocopies of his paintings, drawings, and cross-stitch work, included as Exhibit Nine, show that Fletcher Mann has developed significant talent as an artist. His work spans from portraits to comics to flowers to nature scenes. These pieces reveal that Fletcher has gained an appreciation for life, and a sense of humor. It is both ironic and tragic that Fletcher's

⁹ Fletcher has also used his prison time to teach himself to read. As he proudly declared to his mother: "Hey mom I read 3 more book[.] I know it hard for you to think I am reading because I never even look at a book [before] but I have and my reading is getting better then it was[.]" Letter to Beatrice Mann, Exhibit Five(E).

¹⁰ Fletcher has an inmate friend who builds him bird cages for his charges.

talent was never allowed to blossom until he went to prison, particularly when his parents recall he liked to draw as a child.

One can only wonder how different Fletcher's life may have been if his mental impairment was recognized early on and his talents and abilities nurtured when he was young. Fletcher's life has been sad and painful, and he has caused great tragedy to others. Ending his life now, however, after he has made so much improvement in so many areas, would only add more tragedy. Fletcher Mann's demonstrated ability to function and grow in prison shows that he deserves to have his sentence commuted.

VI. OTHER MITIGATING FACTORS

Fletcher Mann's death sentence should also be commuted because his jury was denied critical mitigating evidence needed to determine the appropriate sentence. *Mann's trial counsel did not call one witness, nor introduce one document on Fletcher Mann's behalf*, in either the guilt-innocence or sentencing phases of his trial. By contrast, the State presented numerous witnesses at each proceeding. At sentencing, the State even called a doctor who testified that Fletcher could never be rehabilitated, even though the doctor never examined Mr. Mann. Fletcher's jury sentenced him to death because they saw only a one-sided case, presented by the prosecution.

A reprieve is necessary, in part, to allow the U.S. Supreme Court to review the Texas statute which allowed this to happen. That statute would only allow the jury to use evidence of

mental impairment **against** Fletcher -- to find he presented a future danger to the community. Because of this effect, Fletcher's trial counsel never developed "double-edged" evidence, such as that of Fletcher's mental impairment, as it could only be used to hurt Fletcher's case.¹¹

Fletcher Mann should not be executed when the jury that decided his fate was never presented with any of the relevant medical, family background, and character evidence described above. At a minimum, he deserves a reprieve to allow the Supreme Court time to review his pending challenge to a statute which barred his attorney from showing the jury that Fletcher Mann is a human being.

Mr. Mann's jury also never heard any evidence of Mann's good character, despite the willingness on the part of his family members to testify at his sentencing. See Exhibit Three [Lee affidavit]. The State's rush to execute Mr. Mann effectively destroys any chance that the Supreme Court can give careful consideration to his legal challenges. But regardless of whether the Court rules before June 1, the Governor and Board should grant a reprieve and take time to review this evidence to see if Fletcher Mann really deserves to die. Given the chance to present his evidence at a hearing, Mr. Mann will show that the death penalty is inappropriate here.

¹¹ The evidence is "double-edged" in that it would normally cut both in favor of, and against, Mr. Mann. Under the Texas law Mr. Mann continues to challenge, the evidence could only be used to cut against him. Mr. Mann is asking the Supreme Court to hold that this violates the constitutional requirement that a jury must be permitted to review all mitigating evidence.

Notably, Fletcher has disproved the "opinion" of Dr. Grigson, a psychiatrist who testified for the State at sentencing, that Fletcher would kill again.¹² Since his conviction, Fletcher's prison disciplinary record shows he has learned to calm himself and live peaceably with others. There is no reason to believe that if allowed to live, he would act any differently.

Finally, it is grossly unfair that Fletcher Mann should be put to death for his conduct during the evening of September 11, 1980, when his co-defendant, Martin Verbrugge, has received only a life sentence. Of the two, Fletcher is the least culpable, but the most severely treated.

As Mr. Mann would testify, he and Martin Verbrugge spent the early part of the evening of September 11, 1980 smoking marijuana, taking LSD and "doing crystal" (speed). Later that evening, high on drugs, they entered an apartment occupied by Christopher Bates, Robert Matzig, and Barbara Hoppe, robbed the occupants and killed two of them. As a result of this criminal episode, Martin Verbrugge received a life sentence, and Fletcher Mann has been sentenced to die.

Fletcher would testify that he entered the apartment with no intent to kill anyone.¹³ In his mind, this was a robbery for

¹² Grigson was recently censured by the Ethics Committee of the American Psychiatric Association which sought to expel him for testifying against people, like Fletcher Mann, that he never examined. See "Dr. Death wants day in Court over group's expulsion attempt," Dallas Morning News, dated August 4, 1994 at 25A, copy attached as Exhibit Ten.

¹³ In a written prayer sent to his mother, Fletcher writes to God: "Oh Lord please forgive me. For I didn't want to harm

drugs and cash to supply his habit. Things went horribly wrong, however, when Marty Verbrugge took Barbara Hoppe into an adjacent room, tied her up, raped her and then killed her. Although Fletcher, high on drugs, joined in the despicable act of rape, the circumstances indicate that Ms. Hoppe was murdered by Verbrugge to cover up for the rape and Mr. Bates was murdered and Mr. Matzig shot to conceal Ms. Hoppe's murder. Therefore, had Verbrugge not initiated the rape, and then murdered Ms. Hoppe, there might have been no murders at all.

Despite Fletcher's lesser culpability, he faces execution while Verbrugge received a life sentence for these same events. The inequity of these sentences, coupled with the significant role that drugs played in the crime, justifies a commutation of Mr. Mann's death sentence.

CONCLUSION

Fletcher Mann will never leave prison. He has already pled guilty and received life sentences for his involvement in the death of Barbara Hoppe and the attempted murder of Robert Matzig. But Fletcher Mann has shown that he deserves a second chance at life, even if it is only to be spent in a prison cell.

During his years in prison, Fletcher has demonstrated that he can be law-abiding and productive within the structured prison environment. He has matured, realized the terrible wrongs

anyone. . . . I neal [kneel] to you my God, I ask forgiveness on all accounts." Letter titled "A prayer to God, 8-7-81," attached as Exhibit Eleven.

he has committed, and has learned from those mistakes. He cares deeply about his family, has learned to care about others, and has tried to protect his sisters and nephews by warning them to learn from his mistakes. He has struggled valiantly to improve himself, teaching himself to read and developing a considerable artistic talent. All of these are reasons to believe that if kept alive, Fletcher will be a productive and useful member of the prison populace.

Fletcher Mann's death will also inflict serious emotional harm to his loving family, and will put a halt to this progress he has made to become a more mature and responsible human being. Killing Fletcher Mann will not undo the crimes he committed as a teenager fifteen years ago. Instead, his execution will extinguish the comfort and joy he provides as a loving son, a loving brother, and loyal friend. Lethal injection will destroy a man of demonstrated artistic talent, patience and remorse. Undersigned counsel submits that it is enough punishment to force Fletcher Mann to live the rest of his life in prison with the knowledge of what he has done. Accordingly, Fletcher Mann begs that his sentence be commuted to life imprisonment.

DATED: May 10, 1995

Respectfully submitted,
COGHILL & GOODSPEED P.C.

By: Unsigned copy
Martin D. Beier
1675 Broadway, Suite 2800
Denver, Colorado 80202
(303) 592-4400

09048000

Eden E. Harrington
Texas State Bar No.
TEXAS RESOURCE CENTER
1206 San Antonio Street
Austin, Texas 78701
(512) 471-5906

Dean S. Neuwirth
Suite 1160
1660 Wynkoop Street
Denver, Colorado 80202
(303) 446-0060

Of counsel: Scot W. Anderson, Esq.