

DATE TYPED: April 5, 2001
DATE PUBLISHED: April 6, 2001

**STATE OF OHIO
ADULT PAROLE AUTHORITY
COLUMBUS, OHIO**

Date of Meeting: April 3, 2001

Minutes of the SPECIAL MEETING of the Adult Parole Authority held at 1050 Freeway Drive, North, Columbus, Ohio 43229, on the date indicated above

**In Re: JAY W. SCOTT, MANCI # 178-850
(AKA Jay D. Scott)**

SUBJECT: Death Penalty Clemency

CRIME, CONVICTION: Aggravated Murder cc/w Aggravated Robbery w/ Gun Specification

DATE OF CRIME: May 6, 1983 Cleveland, Ohio

COUNTY: Cuyahoga

CASE NUMBER: CR182521

VICTIM: Vinney Prince, age 75

INDICTMENT: Aggravated Murder, Aggravated Robbery and a Gun Specification

SENTENCE: Death cc/w 7-25 years cs/w 3 years Actual Incar. for Gun

ADMISSION DATE: April 16, 1984

AGE AT ADMISSION: 31 years old

PRESIDING JUDGE: Honorable Joseph McManamom

PROSECUTOR: John T. Corrigan

ACCOMPLICES: Danny Jones, Edward O'Neal and Michael Streeter

FOREWORD:

Clemency consideration in this case was initiated by the Honorable Robert Taft, Governor of the State of Ohio and the Ohio Parole Board, pursuant to Section 2967.03 of the Ohio Revised Code and the Parole Board Policy on Clemency for Death Penalty Inmates. Following collection of available information and review of this case, the Ohio parole Board submits this report and recommendation.

OFFENSE :

The offense for which the inmate seeks clemency involves the aggravated murder of Ms. Vinney Prince, age 75.

On May 6, 1983, at approximately 12:00 noon, inmate and three accomplices (Danny Jones, Micheal Streeter and Edward O'Neal) drove to the area of the V&E Delicatessen, 8332 Quincey Avenue, Cleveland, Ohio and discussed robbing this establishment. Two accomplices stayed in the car while inmate and codefendent Edward O'Neal entered the store. Victim Vinney Prince had filled the inmate's order of bologna and crackers when inmate pulled a .38 caliber handgun and announced the robbery. Inmate shot Ms. Prince in the chest and then fled the scene, jumped into the car and drove from the area. Witnesses told police that the getaway car was a late model Cadillac with a thirty-day temporary tag in the window. Following a citizens tip concerning persons being overheard discussing their participation in this crime, police were able to trace this car to codefendent Danny Jones and on May 10, 1983 codefendents Jones and O'Neal were arrested. They implicated inmate and Streeter as their accomplices and identified inmate as the one who had shot Ms. Prince. Inmate was arrested by the FBI on July 29, 1983 in Reading, Pennsylvania and on November 10, 1983 inmate was returned to Cleveland to stand trial.

Following their arrests codefendents gave statements that the inmate told them he shot the victim because she reached for a gun. Although investigation of the scene did locate a handgun belonging to the victim, forensic tests indicated that she had not held or fired that weapon. At trial codefendent O'Neal testified that the inmate yelled "freeze", the victim cried out (screamed), and the inmate shot her. Forensic tests also revealed that the victim was shot once in the chest from a range of approximately twelve (12) inches.

On March 23, 1984 after a trial by jury, inmate was found guilty of all counts and specifications. On March 28, 1984 the jury, following the penalty phase, recommended the sentence of death and on April 4, 1984 the Honorable Judge Joseph McManamon accepted the jury's recommendation and ordered the inmate be put to death in the manner prescribed by law.

It must be noted that in addition to the above referenced offense for which clemency is requested, the inmate committed the following:

On May 7, 1983, at 1:15 a.m.(approximately 13 hours after the offense described above) the inmate and codefendent Michael Streeter were eating at the Shrimboat Carry-Out Restaurant,

2295 East 55th Street, Cleveland, Ohio. The inmate, armed with a handgun, approached the victim, Mr. Alexander Jones, age 64, who was employed by the restaurant as a security guard, and demanded that he relinquish his revolver. The inmate pulled the victim's gun from the holster while the victim resisted. The two men were facing each other and the victim and the inmate were struggling for control of the weapons. The inmate fired two shots from his weapon. One shot grazed the victim's shoulder and the other entered the victim's chest. The victim died as a result of this wound. Inmate and codefendant Streeter fled the scene, taking the victim's .38 caliber revolver. Danny Jones, codefendant in the Prince killing, implicated the inmate in this offense by indicating that in meeting with the inmate following the offense the inmate was bragging about the murder and was in possession of the victim's gun. Codefendant Streeter corroborated these facts in his statement to police upon his arrest on May 11, 1983 and the victim's gun was found in Streeter's apartment. The inmate was arrested by the FBI on July 29, 1983 in Reading, Pennsylvania.

On October 1, 1986 after a trial by jury, inmate was found guilty of all counts and specifications. The jury, following the penalty phase, recommended the sentence of death and on October 24, 1986 the Honorable Judge Fred J. Guzzo accepted the jury's recommendation and ordered the inmate be put to death in the manner prescribed by law. However, on December 9, 1988, the Court of Appeals, Eighth Appellate District, Cuyahoga County, while affirming the conviction, reversed the death sentence due to four jurors having seen a newspaper headline of "Cleveland faces 2nd death penalty." The Court determined that in the penalty phase of the trial the jury's knowledge that another court previously sentenced the inmate to death may have well diminished their concern for the new sentence. Once remanded the original court imposed a sentence of Life with parole eligibility after serving thirty full years.

PRIOR RECORD and INSTITUTIONAL ADJUSTMENT

Juvenile:

Department of Corrections files reflect that inmate's arrest record dates back to 1961 when the inmate was age nine. He was arrested for truancy, thefts and breaking and entering. He was admonished and supervised by the local juvenile authorities until April 1966, age 13, when he was placed in the Cleveland's Boys School. He remained in their custody until released on June 9, 1967 when released to his parents as they were moving to Cincinnati, Ohio. However, within that same month he was arrested for Theft and was admonished by the Hamilton County Juvenile Court. On November 22, 1967 inmate, now age 14, was placed in custody for truancy and incorrigibility. Released to his parents, within one week inmate was again arrested for Burglary. Inmate was committed to the Ohio Youth Commission where he remained at the Fairfield School for Boys until released January 13, 1969. Two months later he was again placed in custody for violation of release provisions and continued criminality. He remained in the custody of the Ohio Youth Commission until October 27, 1971. (Inmate now age 19)

Adult:

12/9/71	Armed Robbery	Cleveland, Oh	10-25 years
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Details: On 12/9/71 inmate and codefendants David Taylor and Charles Scott, inmate's brother, robbed the Hollis Delicatessen while brandishing a sawed-off shotgun. During the robbery codefendant Charles Scott struck the victim, Linell Hollins, in the mouth with the shotgun.

1/9/72 Attempt Escape Cleveland, Oh 1-5 years consecutive

Details: While in custody for the above offense, on 1/9/72 inmate and codefendant Charles Scott, inmate's brother, attempted to escape from the Cuyahoga County Jail by taking a nurse and two correctional officers hostage. Inmate held a piece of broken glass to the nurse's neck. The escape was unsuccessful when deputies rushed the inmate and his brother as their hostages fell to the floor.

Inmate was admitted to the Department of Correction on April 26, 1972 as #137222, to serve a sentence of eleven (11) to thirty (30) years for these two cases. Inmate was released on parole on 1/14/82. On 6/8/82 inmate absconded from supervision and began a year-long, two state crime spree that includes the two offenses previously described. Additional offenses include:

7/11/82 Felonious Assault Cleveland, Oh 2-15 years concurrent with Death sentence

Details: On 7/11/82 the inmate and a codefendant, Earl Carter, were involved in an argument with Allen Lundy, Jeffery Lundy and Jewel Lundy. It seems that Allen Lundy had shot inmate's brother Earl Scott and he was now paralyzed. Allen, 26, and Jeffery, 16, got into their car and left the scene. Inmate and codefendant followed them, cut off the victim's car to force it to stop, and then opened fire with handguns. Allen Lundy was wounded four times and Jeffery Lundy was wounded once. Approximately thirteen shots were fired.

5/6/83 Aggravated Murder Cleveland, Oh Death
Aggravated Robbery

Details: Aggravated murder and robbery of Vinney Prince

5/7/83 Aggravated Murder Cleveland, Oh Death - Sentence overturned
Aggravated Robbery on Appeal- modified to Life with parole eligibility after 30 full years

Details: Aggravated murder and robbery of Alexander Jones

10/14/85 Abduction Lucasville, Oh 2-10 years

Details: On this date at approximately 1:00 p.m. inmate and others executed a planned takeover of cellblock J1 at SOCF. Inmates on death row took two corrections officers hostage, threatened to kill the officers, and destroyed state property. Inmate acted as chief negotiator for the inmates.

In addition to the offenses listed the inmate was indicted for four counts of Aggravated Robbery in the Cleveland area and at least seven robbery offenses in Pennsylvania. These indictments were dismissed following the inmate's convictions for Aggravated Murder

Institutional Adjustment:

A review of inmate's institution adjustment during both periods of confinement can only be described as extremely poor. As an adult he was first admitted to the Department of Correction on April 26, 1972. While incarcerated at the Ohio State Reformatory in Mansfield inmate, on July 11, 1973, broke out of a lock-down unit and went to a work area of an inmate who had filed a complaint against him and stabbed the other inmate once in the back. On January 28, 1981 inmate, while in the Southern Ohio Correctional Facility maximum security segregation unit, broke out security screening, jumped to another tier and stabbed another inmate several times in the neck, shoulder, and leg. During his second incarceration beginning April 16, 1984, while placed on death row, inmate has amassed forty-three major rule infractions for disobedience of direct orders, destruction of state property, throwing objects at staff and other inmates, stabbing another inmate, setting fire to cell items, and his involvement in abducting staff as indicated above. As recently as November 12, 2000 inmate was convicted of Rule 19 (Arson) for setting his sheet on fire.

SOCIAL HISTORY

Inmate, Jay William Scott, was born on August 21, 1952 in Cleveland, Ohio as the sixth child of eleven born to the union of Willie and Sadie Mae Scott. During his entire childhood inmate and his family were severely impoverished. Although Willie Scott, inmate's father, was employed most of the time, he was addicted to both alcohol and gambling and did not fulfill his responsibilities for his family. As a result the Scott children were homeless, moved numerous times, went without food, heat, running water or electricity. Sadie Scott also developed an addiction to alcohol and both parents would leave the children unattended for days. The children, including Jay, learned how to live on the streets which were high delinquency areas and survive through stealing, breaking and entering, robbing and infrequently the kindness of others. Life was severely unstructured for this family. School was not a priority. The older brothers, each in their turn, were sent through the juvenile justice system and Jay followed this example. Life in the home was extremely abusive, both physically and psychologically. The father would beat the children with extension cords and abuse the mother to the point of hospitalizations for beatings, broken bones, lacerations and stab wounds. On one occasion the father pulled a gun and shot at Jay, to get his attention. From 1966, when Jay Scott was age thirteen, to the present (approximately 35 years), he has been in the custody of the juvenile justice system, a county jail or a correctional institution with the exception of approximately twenty-eight (28) months. Inmate's early developmental years were fraught with poverty, abuse neglect, lack of structure, lack of any positive role models and lack of trust of authority figures. His teen years, early adulthood, and middle age years he has been incarcerated. He has never held a job longer than a few months and possesses limited marketable vocational skills.

PROPONENTS

Inmate is currently represented by Attorneys John S. Pyle and Timothy F. Sweeney of Cleveland, Ohio. They have provided the Ohio Parole Board extensive written argument and documentation outlining the reasons Jay Scott should receive executive clemency. In addition, on April 3, 2001 both Mr. Pyle and Mr. Sweeney, as well as four members of the Scott family, personally appeared and gave oral arguments before the Ohio Parole Board. Reasons expressed were:

1. The jury was denied the opportunity, required by relevant law, to hear and consider, during the sentencing proceedings, any mitigating evidence about Jay D. Scott and his background, upbringing, and social history. Had they heard such evidence, there is a reasonable probability that a sentence other than death would have been imposed.
2. Jay D. Scott has a severe mental illness, and was recently diagnosed with schizophrenia. A person with such a severe mental illness should not be executed.
3. Mercy is appropriate and deserved under the circumstances of this case

Counsel supported the first of their reasons with direct testimony from four members of the Scott family and their statements have been incorporated into the information provided in the Social History section of this report. Counsel also offered information concerning the original trial counsel's "strategy" of pursuing the theory that there was "residual doubt" of the defendant's guilt, and that this residual doubt alone should persuade the jury to spare his life. Because of this strategy no evidence concerning the defendant's social history was presented in mitigation. Further evidence in support of this argument was provided in the form of four sworn affidavits from members of the original trial jury. All four jurors state how troubling or discomforting it was that the defense attorneys failed to present any mitigating or extenuating circumstances concerning Scott's background and that such information could have made a difference in the sentencing recommendation.

Counsel supported the second of their reasons with written documentation of Scott's severe mental illness and diagnoses of schizophrenia noted by several different psychiatrists over the past seven or eight years. They further supported their argument by providing a transcript of sworn testimony of Dr. Newton L.P. Jackson, Jr., Ph.D., a forensic psychologist, who has interviewed and examined Scott several times since 1987 and who in August, 1994 diagnosed Scott with chronic undifferentiated schizophrenia. Additionally, Counsel provided the Parole Board several recent articles concerning this aspect of mental illness.

In support of their third reason, counsel noted that the death penalty was to be reserved for the "most blameworthy" of people who have committed murder. They related that understanding Scott's actions in the context of his tragic life and circumstance directs the State to be merciful. Finally, we were ask to be guided by the admonition presented in the Gospel of Luke 6: 27-38 concerning loving ones enemies and judging others. Luke 6: 31, Jesus said "Do unto others as you would have them do unto you" and verse 6:36, Jesus said "Be merciful, just as your Father is

merciful.”

The Ohio Parole Board has received hundreds of letters supporting the granting of clemency from around the world. Some are written from groups such as Amnesty International or from prisoner rights/advocacy groups. Most are written in opposition of the death penalty, in general, and reflect limited awareness of the circumstances, history, and background of this particular case. The Cleveland Coalition Against The Death Penalty has provided a petition with 411 signatures supporting the granting of clemency and Ohioans to Stop Executions provided a petition with 117 signatures.

OPPONENTS

In response to a notice that the Ohio Parole Board would be conducting a hearing on April 3, 2001 to receive information and determine a recommendation concerning the request for executive clemency for Jay Scott, we were advised that Mr. Carmen Marino and Mr. Chris Frye, Assistant Prosecutors, Cuyahoga County would be attending. Additionally, we were advised that Ms. Sharon McCellan, Mr. Jim Canepa, Mr. Chuck Willie and Mr. Henry Appel, Assistants from the Attorney General’s Office, would also be attending.

Mr. Marino provided the Parole Board with a Hearing Brief outlining the State’s position in the matter of executive clemency for Jay Scott. This Brief clearly and concisely addresses the points raised in Scott’s application. Additionally, Mr. Marino provided an eloquent verbal presentation when he addressed the Parole Board on April 3, 2001.

To the issue of the jury being denied the opportunity to hear mitigating evidence during the sentence phase, Mr. Marino points to the court records where the ineffectiveness of counsel in utilizing the theory of “residual doubt” was raised repeatedly and overruled repeatedly. Specifically, Mr. Marino noted in response to the Appellant Scott’s petition for postconviction relief, the Eighth District, Court of Appeals remanded the case for an evidentiary hearing on the issue of ineffective assistance of counsel. After hearing evidence from both sides the Common Pleas Court found that counsel had acted properly. The Court of Appeals who requested the hearing agreed that counsel was not ineffective and that the strategy utilized in the trial was an informed decision and a reasonable mitigation phase tactic. Mr. Marino advised that the Ohio Supreme Court has also acknowledged that a decision not to present mitigation evidence may be a legitimate tactical decision. It is important to note that in actuality this strategy was to keep Scott’s criminal history from the jury. It was felt that had the jury been aware of the past record and institutional conduct of the inmate and his behavior leading up to the Prince murder, they would probably return with a death sentence recommendation. If mitigation concerning his social history, abuse, poverty and upbringing had been introduced, the State would have had the door open to bring in his criminal behavior. Mr. Marino further argued that affidavits from the four original jurors are flawed and to be given little weight as they still have not been given full information. When the jurors state that mitigation information may have impacted their sentencing decision, they have not addressed the impact if they had also been aware of Scott’s full criminal history.

Mr. Marino and Mr. Frye addressed inmate's second argument that commutation is warranted due to his being diagnosed as schizophrenic. There is no evidence that Scott had any mental illness at the time that he murdered Vinnie Prince or when on trial for that murder. They further argue that to be held to be legally incompetent to be executed, Scott must show that he does not understand: (1) that he is to be executed, or (2) that his execution is meant as punishment for the murder of Vinnie Prince. Prison medical records establish that he does not meet these factors.

Mr. Marino closed with the view that Scott clearly murdered two innocent people during the act of robbing them. Scott received fair trials that have been reviewed repeatedly over the past seventeen years. Scott was not then and is not now contrite or remorseful. Scott was not then merciful to his victims and is not now deserving of mercy.

ADDITIONAL INFORMATION

Notices to the Presiding Judge and the Prosecuting Attorney of Cuyahoga County, concerning the pending clemency consideration, were sent on February 27, 2001 pursuant to Section 2967.12 of the Ohio Revised Code. Notice of the pending clemency consideration and a request that the inmate voluntarily participate in an interview was served on the inmate on February 27, 2001. Inmate Scott requested an interview prior to his case being considered by the Parole Board. Therefore, Parole Board Member Jay Denton conducted the interview on March 22, 2001.

Inmate Scott appeared lucid, alert, attentive, and was willing to respond to questions. He spoke of his family, his upbringing and his criminal history. He stated that his intention was to rob the deli and that he didn't go in there intending to shoot anyone; it just happened. He committed this crime as he was on the run from having shot the man that shot his little brother. He further discussed shooting the security guard. His intention was to rob him of his revolver as he was running with three other guys and they only had two guns for the four of them. When the guard resisted and grabbed him, he shot trying to get the guard to let go. He thought the gun was pointed downward and would shoot him in the leg. Instead it shot him in the chest.

Inmate Scott spoke of his mental problems and that in the past several years he has been delusional and hearing voices. He stated that he had been placed on medication and that they worked most of the time. He indicated that there had been some relapses and that the Doctors have responded by changing his dosage or changing to a new medication. Scott indicated that he stopped taking his medication about six weeks ago because he wanted to be clear headed now that he has been receiving visits from his family. He indicated that he has not experienced any problems since discontinuing the medications and would go back on the medication if he felt he needed it.

When ask what he wanted to convey to the Parole Board and the Governor, Scott responded that although it's hard to believe (with him having committed two murders) that these were not intentional and that he didn't plan to kill anyone. He stated that he regrets what happened and

that he was sorry and that it was not intentional. He requests that the Governor reduce his sentence to Life, as he misses his freedom and one day wants to live a normal life.

A review of the institution visiting records reflect that since his re-commitment to the institution on April 16, 1984 he received no visits, except from attorneys, for the first three years of his incarceration. Following a single visit from his father, sister, and brother on August 7, 1987, inmate did not receive another visit from family members until February 16, 2001. Family members visited three times in March.

Attached is a letter dated April 2, 2001 from Ms. Karin Ho, Office of Victim Services, detailing their efforts in locating family members of Vinney Prince.

CONCLUSION

The Ohio Parole Board, following review of the written material submitted and the oral arguments presented on April 3, 2001, reach the following conclusions:

- Jay W. Scott, as convicted by jury and by his own admission, did shoot and kill Ms. Vinney Prince during the course of an Aggravated Robbery on May 6, 1983
- Jay W. Scott, as convicted by jury and by his own admission, did shoot and kill Mr. Alexander Jones during the course of an Aggravated Robbery on May 7, 1983
- The jury did not hear information concerning the inmate's childhood, upbringing, abuse, neglect, or his criminal history as a part of a valid defense strategy which has been reviewed by the Courts
- Jay W. Scott has been diagnosed as schizophrenic; chronic, undifferentiated type. However, this serious mental illness is controlled through medication and does not render the inmate, in the opinion of the Board, incompetent
- The mitigating factors presented to the Parole Board do not outweigh the aggravating circumstances in this case
- The exercise of Executive Clemency is not warranted in this case

RECOMMENDATION

Following consideration of available information, the Ohio Parole Board, with eleven (11) members participating, recommends to the Honorable Bob Taft, Governor of the State of Ohio, by a vote of ten (10) to one (1), that Executive Clemency in any form be denied in the case of Jay W. Scott, #178-850.

Dissenting Vote

Voting “Favorable” does not in any way diminish the cruelty nor warrant the taking of a human life. Human life is, indeed, precious and so was the life of the victim, Vinnie Prince. This was certainly a horrible crime; a person’s life was taken. Taking the life of Jay D. Scott does not in any way restore the life of the victim. It only sends a message to society and to our children that if you kill someone, the state will kill you. This “eye for an eye” mentality must stop. What kind of message are we sending our children? They should be taught that if you commit a crime you will surely be punished and maybe put away from society for the remainder of your life.

My concerns in this case are as follows:

- Jury was denied an opportunity to hear and consider any mitigating evidence regarding Mr. Scott’s background, upbringing, and social history.
- Four (4) jurors, Bernice Williams, John J. Patten, Booker T. Payne, and Verlene Estremera presented memoranda stating that they took seriously the matter of imposing a death sentence on another human being and had they had knowledge of the mitigation evidence in respect to Mr. Scott’s childhood (circumstances of neglect, abuse, severe poverty and his mental illness) this could have possibly made a difference in Mr. Scott’s sentence.
- Ohio is a “weighing state” where a capital jury is required to be instructed that it must recommend death if the aggravating circumstances outweigh the mitigating factors. Since there was no mitigating evidence to weigh against the aggravating evidence, a one-sided scenario was presented to the jurors. This could account for the 15-20 minute deliberation of the jurors. This could lead one to believe that a predetermination of guilt had been established among the jurors.
- Mr. Scott has a severe mental illness and was recently diagnosed with schizophrenia. Executing the mentally ill does not serve justice. Rather than taking his life, he and society will be better served if Mr. Scott is placed in an appropriate secure facility for the remainder of his life where he can be properly treated and society can feel safe. The death penalty is never appropriate for a defendant suffering from schizophrenia or any other severe mental disorder.
- The physical and emotional abuse which Mr. Scott endured as a child could have easily caused the strongest of individuals to go down the wrong path. There was absolutely no intervention from our system to help the Scott family. Not only did we as a society fail the victim, Ms. Vinnie Prince, but we also failed Jay D. Scott and his siblings. Mr. Scott’s “acting out” and other negative behavior actually began when he was 9 years old.

As stated earlier, Jay D. Scott should never be allowed to walk the streets of our society. He continues to be a threat to everyone, yet his life and all life is of value in the eyes of God. Punish him yes, keep him from society for the rest of his life, but temper the punishment with mercy.

Sandra A. Mack

Member
Ohio Parole Board