

OCTOBER 2002 SESSION  
PRISONER REVIEW BOARD  
STATE OF ILLINOIS

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PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	Docket No. \
vs.	)	
	)	
JAMES TENNER	)	Inmate No. B01473
	)	
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SUBMITTED TO THE HONORABLE GEORGE RYAN, GOVERNOR  
OF THE STATE OF ILLINOIS

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**PEOPLE'S RESPONSE IN OPPOSITION TO PETITION  
FOR EXECUTIVE CLEMENCY**

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**HEARING REQUESTED**

RICHARD A. DEVINE  
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By: JUDY L. DeANGELIS  
MICHAEL SMITH  
Assistant State's Attorneys

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**I**

**HISTORY OF THE CASE**

On direct appeal, the Illinois Supreme Court vacated petitioner's conviction for attempted murder and affirmed the remaining convictions and sentence of death. People v. Tenner, 157 Ill. 2d 341, 626 N.E.2d 138 (1993). Petitioner then filed a post-conviction petition. After requesting the State to file a response to petitioner's petition, the court dismissed the petition, implicitly denying petitioner's petition without an evidentiary hearing, after determining that the "bulk" of the issues were either waived or res judicata and that the petition was "patently without merit and deserves to be denied[.]" Tenner appealed from that dismissal but his convictions and sentence were affirmed. People v. Tenner, 175 Ill. 2d 372, 677 N.E.2d 859 (1997). The Illinois Supreme Court denied a petition for rehearing on March 31, 1997. The United States Supreme Court denied a petition for writ of certiorari on October 6, 1997.

Tenner next filed a petition for writ of habeas corpus which was subsequently denied by the Northern District Court of Illinois. United States ex rel. Tenner v. Gilmore, 1998 U.S. Dist. LEXIS

16188 (N.D. Ill. Oct. 8, 1998). Tenner then appealed the denial of his habeas corpus petition to the United States Court of Appeals for the Seventh Circuit which affirmed the denial of habeas relief on June 9, 1999. Tenner v. Gilmore, 184 F.3d 608 (7<sup>th</sup> Cir. 1999) The United States Supreme Court then denied a petition for writ of certiorari on December 6, 1999. Petitioner then filed a successive post-conviction petition in the Circuit Court of Cook County which was dismissed without an evidentiary hearing. The Illinois Supreme Court has presently taken the case under advisement after hearing oral arguments on May 14, 2002.

## II

### FACTS OF THE CASE

On September 2, 1987, James Tenner placed nooses around the necks of three of his friends, yelled at them for approximately two hours because he believed they had interfered with his relationship with his girlfriend, Shirley Garza and then, while their hands and feet were tied together and their necks were in the nooses, he shot them, killing two of them and severely injuring the third. Tenner had known these friends, his victims, for a long time. He met Albert and Donna Sauls in the early 1970's and over the course of the years he worked with Albert in several different businesses. In the beginning of 1987, Tenner met Shirley Garza at a Dunkin' Donuts and later introduced Shirley to Donna and Albert Sauls, as well as another friend of theirs, Alvin Smith. Tenner and Shirley began to date and lived together for a short period during the spring of 1987, but by July, 1987, Shirley had left Tenner and they no longer lived together.

On September 2, 1987, after finishing work for the day, Albert Sauls and Alvin Smith went to the garage located at 3202 South State Street, Chicago Heights where both Tenner and Sauls rented space. Albert and Alvin arrived at approximately 6:00 p.m. and began to work on repairing Saul's truck. Shirley Garza and Albert's wife, Donna, arrived at the garage a short time later. When Alvin Smith attempted to leave, he was met outside by Tenner who pointed a shotgun at him and ordered him back into the garage. With Tenner right behind him, Alvin put his hands in the air and stepped backwards into the garage. Once inside, Tenner pointed his shotgun at Alvin Smith, Shirley Garza, and Donna and Albert Sauls and ordered them to lie down on the floor. Tenner told them that he was going to tie them up and tell them what he thought of them.

Tenner ordered Donna and Shirley to get up off the floor. He removed several pieces of rope from his pocket which each piece having a loop tied with a slip knot at both ends. Tenner ordered Shirley to tie Alvin's ankles together and to tie his hands behind his back. He ordered Donna to tie Albert the same way and then gave Shirley two more ropes and forced her to tie Donna's hands and feet. Shotgun in hand, Tenner ordered Donna, Albert, and Alvin to kick their feet and make the ropes tighter.

Tenner then told them that they were going to take a short walk around the garage to the section in the same building that he rented for his trucks and that he was going to tell them what he thought of them and when he finished he would leave. Although Albert, Alvin, Shirley, and Donna refused to go with Tenner, he explained to them that if they did not, he would shoot them. Moving slowly because their feet were bound they went around the building and entered the back of petitioner's garage. Tenner then shut the garage door and started to talk to them. As they walked, they saw that there were three ropes of different lengths hanging from the overhead beams in the garage. The end of each rope was tied into a noose.

Tenner then began to walk back and forth in front of the victims, waving his shotgun and yelling at them about their alleged interference in his relationship with Shirley as he ordered them to stand under the specific rope that corresponded to their height. He told Shirley at that time that she messed up his plans when she arrived at the garage and that he would have to make another noose for her but before she had to put her head in the noose, he ordered her to place the nooses around the necks of Donna, Albert, and Alvin. Tenner then got some duct tape and forced Shirley to place the tape over their mouths. When she was done doing Tenner's dirty work, petitioner made another noose, put the loop over Shirley's head, tied her feet and hands and put tape over her mouth.

With each of the victim's hands and feet bound, their mouths taped, and their necks in nooses, he then, again, began yelling about the Sauls involvement in his break up with Shirley. Tenner then asked Shirley to choose which of her friends should die first, as he looked at his watch and told all of them that they had just about run out of time and that they had lived their last few minutes. Tenner then let Shirley go, ordering her to go out into the street and wait and to not to do anything crazy or he would kill her. He then turned to the other victims and told them, " ... I guess this is it." He pointed his shotgun at Donna Sauls and shot her in the face and in the shoulder. As she slumped to the floor the noose tightened, causing her neck to break. After Donna fell, Tenner turned his shotgun on Alvin Smith and shot him in the abdomen which also caused him to slump into his noose. (R. 805) After shooting Donna and Alvin, he then turned his gun on Albert and fired twice, although Albert had managed to get his hands free from the rope that bound them together. As Albert he had his hands up, trying to remove the noose around his neck, Tenner shot him in the arm and in the eye.

Tenner then fled the scene with Shirley in his car as a hostage. He drove to O'Hare Airport where he picked up his wife, Triva Tenner, and then drove in the direction of Rockford, where Triva lived. Tenner told Shirley that he was going to kill her there. Tenner never made it to Rockford because an all-points bulletin was sent and he was stopped while driving near the airport. A loaded shotgun was recovered from the front driver's area of the car, along with a couple of boxes of shotgun shells from the back seat on the driver's side.

Albert Sauls lay bleeding on the ground of the garage for sometime before he was able to move. He tried to cut the rope from his neck with a knife but he dropped the knife on the ground. Eventually, Albert was able to get his hands on the rope and untie it where it was anchored on the wall. He tried several times to get up but each time he fell down. Eventually he was able to crawl to the front

of the garage and press the garage door opener. As he crawled he dragged the long length of rope behind him. Albert again tried to get up and walk but he could not see because of the gunshot wound to his eye. He knew there was a house across the street, so he crawled over 250 feet to the house and yelled for help. Daniel Castine heard Albert yelling and when he saw him, he was bleeding from the face and arm, and he had a noose around his neck. He had to force his fingers under the rope in order to cut the noose from Albert's neck.

At trial, Tenner admitted that he went to his garage the day of the murders, cut several pieces of rope, tied slip knots on both ends in the shape of a noose which he threw over the beam of the garage. He then “ran into” Alvin Smith as he was walking outside. He further admitted that he told everybody to get on the floor and then gave Shirley Garza the ropes so that she could tie their hands and feet. He admitted he then took the group to his side of the garage and that when they got to his garage he made Shirley put the nooses on their necks and tape over their mouths. He said he was “afraid” that they were going to try and kill him so he picked up his shotgun and started shooting.

After hearing all of the testimony and the evidence adduced at trial, the jury found petitioner guilty for the hanging and murders of Alvin and Donna and the attempt murder of Albert. The state sought the death penalty. After Tenner was found eligible for the death penalty, the state presented in aggravation testimony concerning Tenner’s history of beating the various women in his life. One incident involved Shirley Garza who had reported to the police that she was in her car at a stop light when Tenner opened the door, got in and pulled a knife. He cut her on the left arm and in the abdomen and then told her to drive across the street to where he held her in the car at knifepoint until 2:30 a.m. a police captain with the Chicago Police Department testified that when Shirley Garza came into the police station he saw the stab wounds on her arm and stomach. The State then presented a certified

copy of conviction which indicated that on December 3, 1968 petitioner pled guilty to the offense of burglary and was sentenced to two years probation

In mitigation petitioner called twelve witnesses including six family members. All the witnesses testified that petitioner was a hard worker and that he had been an important part of their lives. Officer Sorell of the Cook County Department of Corrections testified that petitioner was a good inmate and that he had done work for her. Following all the evidence and arguments in aggravation and mitigation, the jury returned a verdict indicating that there were no mitigating factors sufficient to preclude the imposition of the death penalty. On March 12, 1990, petitioner was sentenced to death by the Honorable Will Gierach.



### III

#### REASONS FOR DENYING THE PETITION

JAMES TENNER DOES NOT DESERVE EXECUTIVE CLEMENCY IN ANY FORM WHERE HE ADMITTED HANGING HIS THREE FRIENDS WITH PRE-MADE NOOSES WHILE THEIR HANDS AND FEET WERE BOUND, AND THEN YELLED AT THEM FOR TWO HOURS BEFORE SHOOTING THEM, KILLING TWO OF THEM AND SEVERELY INJURING THE THIRD FOR NO REASON OTHER THAN HIS CLAIM THAT HE WAS MAD AT THEM FOR ALLEGEDLY INTERFERING IN HIS RELATIONSHIP WITH HIS GIRLFRIEND.

James Tenner is not claiming now, nor has he ever claimed, that he is actually innocent of the hanging and murders of his friends. What he does claim now, after five state and federal courts have rejected his arguments, is that he is deserving of mercy in the form of executive clemency. He believes so because: (1) he claims he has no substantial criminal history; (2) the hangings and murders he committed were “out of character” for him; and (3) he was “upset about something” and that he was defending his girlfriend when he hung his friends in pre-made nooses and then shot them after yelling at them for hours. He further believes that he is entitled to clemency because he did not receive the benefit of the changes to the Illinois capital sentencing system which have recently been adopted, proposed or enacted.

Tenner’s arguments are not only unavailing, they are appalling. The jury at Tenner’s murder trial was presented all of the information which Tenner now presents to this Board and that jury carefully weighed such testimony and evidence before deciding that Tenner was guilty of the murders and attempt murder of his friends and that there was insufficient mitigation to preclude the imposition of the death penalty.<sup>1</sup> The jury heard Tenner’s alleged “self-defense” defense but chose

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<sup>1</sup> Although petitioner now takes issue with the fact that is jury was “all white,” he has never, in his

to disregard that defense, especially where the evidence proved, and Tenner unquestionably admitted during his testimony at trial, the he led his friends into a garage at gunpoint, with no chance for them to run, and then forced them to put their heads into nooses while he yelled at them about their alleged meddling into his relationship with Ms. Garza. Clearly, this petitioner is not actually innocent of the crimes he committed, nor has he ever made a claim of actual innocence to any court which has reviewed his case.

Moreover, the same jury that heard petitioner admit that he hung and shot his friends also heard about the way Tenner treated the women in his life, how he physically abused them, contrary to his claim that he did not have a “substantial criminal history.” The jury also heard twelve people, family and friends, testify in mitigation about what a wonderful, helpful, hard working, respectful person Tenner was (and from a corrections officer who stated that Tenner was helpful), but that jury chose to disregard such testimony given Tenner’s inhuman and abhorrent actions the night of the hangings and murders. No one is denying that Tenner may have been a hard working, self-made business man but that certainly did not stop him from hanging his three friends and then trying to kill all of them and that, only by the grace of God, two were killed instead of three.

Further, every court which has reviewed this case, both at the state and federal level, has continually rejected Tenner’s claims that he was somehow mentally incapacitated at the time of the murders or was incompetent to stand trial, especially where his defense at trial was to claim an unreasonable belief in self-defense and that he was a good, hard working person, not a mentally

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twelve years of appeals, raised any issue with regard to alleged racial discrimination in the selection of the jury pursuant to Batson v. Kentucky.

incapacitated person. Certainly, any claim which has been rejected by a jury and at least five other courts of review should not now become an issue before this Board at this time.

As to Tenner's claim that he is entitled to clemency because he did not receive the benefit of the changes to the Illinois capital sentencing system which have recently been adopted, proposed or enacted, such claim must also be rejected. By relying upon a laundry list of new Supreme Court Rules, statutes and proposals from the Governor's Commission on Capital Punishment which were not available at the time of his trial, petitioner claims that his trial (as well as that of every other capital petitioner in Illinois) was by definition fundamentally unfair. However, the Illinois Supreme Court has expressly rejected the claim "that every capital trial has been unreliable and that all appellate review has been haphazard" (People v. Hickey, \_\_\_ Ill. 2d \_\_\_, 2001 Ill. LEXIS 1080 at \*57 (No. 87286 September 27, 2001)). Rather, the Court held that the additional safeguards included in its rules governing capital cases are not retroactively applicable because they "function solely as devices to further protect those rights given to petitioners by the federal and state constitutions" and that "[a] violation of procedures designed to secure constitutional rights should not be equated with a denial of those constitutional rights." Id. at \*63, 64.

Thus, the fact that the Court, the General Assembly and the Governor's Commission have endeavored to improve the process does not mean that an injustice would result simply because the recent changes were not applied retroactively to petitioner's case. Instead, a true injustice would only result if it were reflexively determined that petitioner's trial was fundamentally unfair without any examination of the proceedings themselves. It is telling, however, that petitioner has not even attempted to demonstrate how the recent changes would have

affected the outcome of the proceedings. Moreover, and again, petitioner ignores the fact that every court which has examined the proceedings in his case determined that they were fundamentally fair and that he was not unduly prejudiced in any manner. In fact, as Judge Easterbrook stated so eloquently in his opinion from the Seventh Circuit: “Some crimes are so heinous, and so well documented, that there is little to be done for the petitioner. This is one of those crimes.”

Petitioner’s further assertion that he is entitled to clemency because the new Supreme Court Rules governing capital cases were not applicable to his proceedings is equally unavailing. The Illinois Supreme Court has clearly held that the amendments to its rules are not retroactively applicable. Hickey, 2001 Ill. LEXIS 1080 at \*65.

With regard to his specific claims, petitioner first asserts that his sentence should be reduced because the State’s Attorney’s decision to seek death was made without uniform protocols to guide his discretion and was not approved by a state-wide review committee. However, it has long been recognized by the Illinois Supreme Court that the State’s Attorney is endowed with the exclusive discretion to decide which of several charges shall be brought, or whether to prosecute at all. A prosecutor’s discretion extends to decisions about whether or not the death penalty should be sought.” People v. Jamison, 197 Ill. 2d 135, 161-62, 756 N.E.2d 788 (2001). Therefore, any attempt to mandate such a review would constitute an impermissible restriction on the independence of the various State’s Attorneys under the Illinois Constitution. Moreover, petitioner does not even allege much less argue that the decision to seek death in his case was the result of an abuse of discretion. Accordingly, it must be rejected.

Moreover, petitioner asserts that clemency is warranted because the statutory language

and corresponding jury instruction that after considering all of the evidence that “there is no mitigating factor sufficient to preclude the imposition of a death sentence” led the jury to mistakenly believe that the death penalty is mandatory. However, both the Illinois Supreme Court and the federal courts have consistently rejected any claim that the statute is confusing and might lead a jury to believe that the death penalty is mandatory. See People v. Mitchell, 152 Ill. 2d 274, 346, 604 N.E.2d 877 (1992); Silagy v. Peters, 905 F.2d 986, 998-99 (7th Cir. 1990). Moreover, because both the prosecution and the defense argued to the jury about the appropriateness of the death sentence in petitioner’s case, any confusion in the language of the instruction was negated by the closing arguments.

Additionally, petitioner asserts that his sentence should be commuted because the judge was not given the opportunity to override the jury’s decision to impose the death penalty. Petitioner is wrong, however, because Illinois judges have long had the inherent authority to grant a new trial or sentencing hearing (or even enter a judgment notwithstanding the verdict). Because the trial judge at petitioner’s trial denied his post-trial motions, it is clear that the judge would not have overridden the jury’s verdict.

Petitioner’s further claim regarding the qualifications and training of judges for death penalty trial litigation and the Governor’s Commission Recommendation regarding same must be similarly rejected since petitioner was tried before the Honorable Will E. Gierach, a Cook County Circuit Court judge for many years who had much experience overseeing numerous felony trials, including at least two other capital murder trials, Willie Thompkins and Verneal Jimerson. Additionally, petitioner’s claim that the Recommendations addressing the requirements of the Capital Trial Bar were not in place at the time of his trial is equally without merit where Tenner’s

lead defense attorney, Assistant Public Defender Michael Morrissey, was the head of the Capital Litigation division of the Public Defender's Office. Tenner could not have received better representation from the Public Defender's office than what he did.

Additionally, petitioner also claims that he is entitled to clemency because the Illinois Supreme Court failed to consider whether his death sentence was disproportionate, excessive or otherwise inappropriate. However, because the Illinois Supreme Court has demonstrated that it will address comparative sentencing arguments whenever they are raised by petitioners in capital cases (see People v. Emerson, 189 Ill. 2d 436, 727 N.E.2d 302 (2000); People v. Palmer, 162 Ill. 2d 465, 491, 643 N.E.2d 797 (1994)) and will vacate a death sentence if it determines that it is excessive in light of the facts of the case and the petitioner's background (see People v. Smith, 177 Ill. 2d 53, 685 N.E.2d 880 (1997); People v. Blackwell, 171 Ill. 2d 338, 665 N.E.2d 782 (1996)), it is clear that the only reason the Illinois Supreme Court did not review petitioner's sentence in such a manner is because he did not ask the Court to do so.

Finally, petitioner asserts that he is entitled to clemency because he was denied adequate funding to investigate the case and/or to retain the necessary expert witnesses. However, despite the creation of the Capital Litigation Trust Fund, there is no indication that any capital petitioner in Illinois, particularly those prosecuted in Cook County has ever been deprived of the necessary funds to investigate or retain appropriate experts. Rather, courts have denied various requests which are deemed unreasonable or unnecessary, the same standard which applies for funds under the Capital Litigation Trust Fund. 725 ILCS 124/15(c). Also, the Cook County Public Defender has significant resources available for capital litigation. Therefore, the mere fact that the Capital Litigation Trust Fund was not created until 2000 is irrelevant. Tenner received effective assistance

of counsel at every single stage of this litigation, with sufficient resources, according to every single court which has reviewed his claims. Tenner, deservedly, did not receive any relief from any court which has reviewed this case to date and, most certainly, he is not deserving of relief from the governor of this state.

## CONCLUSION

For all these reasons, the People of the State of Illinois respectfully request that this Board and Governor Ryan deny executive clemency to JAMES TENNER.

Respectfully submitted,

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