

ARKANSAS BOARD OF PAROLE



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September 26, 2014

To: Governor Mike Beebe
From: Dennis Young, Commissioner
Arkansas Parole Board
Re: James R. Weaver, ADC# 093762
Executive Clemency Request

On June 5, 2014, an Executive Clemency interview was held at the Tucker Max unit with inmate James R. Weaver. That interview, subsequent interviews, a lengthy review of the case file from the Pulaski County Prosecuting Attorney's Office, a full review of the transcript of Weaver's trial which was obtained from the Arkansas Supreme Court, and numerous conversations with others have all led me to provide further information to you regarding Mr. Weaver's request for Executive Clemency.

Mr. Weaver, at age 19, was convicted by a Jury Trial on 03/06/1990. He received a sentence of Capital Murder and was given Life without Parole for his being charged as an accomplice in the murder of a roommate, John Rogers on December 14, 1989. Weaver's other roommate, Alan Hubbard, bludgeoned Rogers to death.

Mr. Weaver was represented in a one (1) day trial by an attorney assigned as a public defender. I do not pretend to be an attorney, but certainly feel that this individual was not properly defended by our legal system. Weaver's participation in this criminal act should never have been deserving of the Life without Parole punishment rendered by the Judge and Jury.

In preparing myself for the personal interview of Weaver, I reviewed the inmate's file jacket (Exhibit 1) and information in the eOMIS system (Exhibit 2), which are maintained on all inmates. The official version of the crime states "(CR90-0036) On December 14, 1989, James Weaver unlawfully, feloniously, with the premeditated and deliberate purpose of causing the death of another person, caused the death of John Rogers by beating him to death against the peace and dignity of the State of Arkansas." This information is incorrect as John Rogers was beaten to death by Alan Hubbard and not James Weaver. The file also states, "Defendant James Weaver has been previously convicted of four (4) or more felonies, and consequently his sentence should be increased as provided for in Ark. Code 5-4-501". That code deals with Habitual criminals. Further, under "Summary of Prior Criminal Actions," the file states "James Weaver was convicted of two (2) counts of Theft of Property and two (2) counts of Breaking and Entering in Pine Bluff, Arkansas, on April 13, 1988, and was sentenced to three (3) years' probation and thirty-two (32) hours." Actually these convictions were all attributed to Alan Hubbard, who grew up in Pine Bluff and was a childhood friend of John Rogers. The exact wording, with only a different name, also appears in Alan Hubbard's file (Exhibit 3) and attributes the four previous felonies correctly to Alan Hubbard. This has all been verified and therefore, the assertion that Weaver was a habitual criminal was also erroneous. Copies of those particular pages from the inmate's file jacket and from eOMIS are attached.

That erroneous information was in Weaver's file when the inmate's file was prepared for an Executive Clemency request to you in 2007. I do not know if the information showing four (4) prior felonies had any bearing on your decision to deny that request. That erroneous information caused me, at first, to think that a denial was possibly proper. Now, however, since I have studied this file much, much more and done further investigation into it, I am truly of the belief that Weaver's sentence should either (1) be commuted to time served or (2) commute to parole eligible.

The trial of James Weaver was held on March 6, 1990—only three (3) months after the killing of John Rogers on December 4, 1989. Bill Luppen was the court appointed Public Defender and the Circuit Judge was John Langston. Alan Hubbard was not available to be a witness at this trial because he was being held at the State Hospital to determine his mental competency. On March 5, 1990, Luppen sought a delay in Weaver's trial under a Motion for Continuance (Exhibit 4) until Hubbard would be available to be a witness since Hubbard had readily admitted that he killed Rogers. A copy of Hubbard's statement (Exhibit 5) to the police is attached. Judge Langston did not want the trial to be delayed per his statement in the transcript (Exhibit 4) "knowing the State Hospital, even though given a forthright order on it, it would be eight or nine months before they examine him. And you are talking about putting this trial off for possibly a year." In a letter (Exhibit 6) dated May 24, 1990 (only 2 1/2 months later) to Judge Langston from doctors at the State Hospital, Hubbard was declared to be competent

and understanding and ready to return to court for disposition. Attorney Lupen also asked the Judge to have the trial of Alan Hubbard first, but was denied. In the transcript Judge Langston also pre-judged the ability of Hubbard to be a witness by his statement (Exhibit 4) of "He most certainly would take the fifth amendment if he was called." Mr. Luppen's motion for continuance was denied. Whatever happened to the adage of a fair and impartial trial??

The trial of James Weaver lasted only one (1) day starting at 9:00 a.m., and included jury selection, the trial, jury instructions, jury deliberation as well as a verdict, which was rendered at 8:32 p.m. The defense only called one witness, James Weaver!! Surely there were others who should have been called, if for no other reason than to point out what a submissive person James Weaver was. Weaver was raised in a home with an abusive, alcoholic father and James was a very submissive son who always did what he was told until he reached the age of 18 and was able to move out of the house. This same submissiveness eventually proved to be his downfall when he was confronted by Alan Hubbard standing beside the lifeless, bludgeoned body of John Rogers. When Hubbard told Weaver that he was going to help him with the disposal of the body, Weaver had little choice but to comply or perhaps risk being beaten to death himself. Weaver's only mistake was that he did not quickly notify law enforcement of this crime. He was still scared of what Hubbard might do to him, but when confronted by detectives, Weaver did not attempt to hide anything, as he then knew that Hubbard could not harm him from that point on. Weaver's statement is also enclosed (Exhibit 7).

After four (4) months of reading inmate jackets which involved deaths of victims, I have certainly seen enough to believe that James Weaver should never have been convicted of Capital Murder and given Life without Parole. A much more appropriate charge would have been Manslaughter, as the definition fits this criminal action much, much better.

Alan Hubbard never went to trial. James Weaver was given Capital Murder and charged with Life without Parole. On August 6, 1990, Hubbard took a plea bargain of First Degree Murder and was given Life with the possibility of Parole. The plea bargain was given by the same Prosecuting Attorney's Office. Unfortunately, we will never know what outcome James Weaver would have received if Hubbard had been a witness at the Weaver trial or if Hubbard had been tried before Weaver. Hubbard, subsequently, died in prison on May 22, 2007.

The circumstances of James Weaver's involvement in this killing can best be summed up by reading the opening statements (Exhibit 8) and the closing statements (Exhibit 9) of the transcript of the trial which were obtained from the Supreme Court. Copies of those pages are attached. In addition, Judge Langston refused to answer a question from the Jury that could have very easily allowed the Jury to further consider a charge of First Degree Murder, Second Degree Murder or Manslaughter instead of Capital Murder (Exhibit 9). Judge Langston stated "I'm afraid I'm going to have to decline to answer your question. Under the law, I cannot

explain this to you further. I know what you're working with is the definition there, but you have to accept what you have."

As a Commissioner on the Arkansas Parole Board, it is not my job to re-try cases, however, I do feel strongly that it is my duty to point out what I perceive to be a gross injustice. Most of those injustices involve the length of sentences for similar crimes. One such recently reviewed incident is eerily similar to the Weaver Case. In that case (Exhibit 10) an accomplice to a murder on February 15, 1998 who was much more involved than Weaver was in a cover-up of a murder only received a 20 year sentence for Murder 1st degree compared to Weaver's sentence of Life without Parole. That individual has now been paroled after serving nearly 14 years. That individual feared for his own life, just as James Weaver did, if he did not cooperate with the killer and help dispose of a dead body and help cover up the scene of the killing. But, he is now a free man, and James Weaver continues his imprisonment without any chance of parole unless you find that he should become parole eligible or have his sentence commuted to time served.

It is my hope that you will see to it that one of these conclusions is reached. There are also many others who share this opinion including members of his family, friends, pastors, prospective employers, penal system employees, and all seven (7) members of the Arkansas Parole Board.

If there are any questions regarding this Clemency request, please feel free to call me. Thank you for giving this Clemency request your attention and consideration.

Sincerely,

Dennis Young
Commissioner
Arkansas Parole Board
501-682-3853 (direct)
903-826-3260 (cell)

James Weaver, ADC# 093762
Executive Clemency Request

Exhibits Enclosed

1. James Weaver's File Jacket
2. James Weaver's eOMIS File
3. Alan Hubbard's eOMIS File
4. Motion for Continuance
5. Alan Hubbard's Statement to Police
6. State Hospital Letter
7. James Weaver's Statement to Police
8. Opening Statement of Trial
9. Closing Statement of Trial
10. (ADC#) File Jacket of another inmate who was also charged as an accomplice to murder and only sentenced to a 20 YEAR TERM. HE WAS RELEASED ON PAROLE IN 2014 AFTER SERVING 16 YEARS.