

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

QUINTIN PHILLIPPE JONES,)
Plaintiff,)

v.)

Civil No. _____

DAVID GUTIERREZ, Chair,)
Texas Board of Pardons and Paroles)

***EXECUTION SCHEDULED
FOR MAY 19, 2021***

A. D'WAYNE JERNIGAN, Member,)
Texas Board of Pardons and Paroles)

CARMELLA JONES, Member,)
Texas Board of Pardons and Paroles)

JAMES LAFAVERS, Member,)
Texas Board of Pardons and Paroles)

BRIAN LONG, Member,)
Texas Board of Pardons and Paroles)

ED ROBERTSON, Member,)
Texas Board of Pardons and Paroles)

LINDA MOLINA, Member,)
Texas Board of Pardons and Paroles)
Defendants.)

COMPLAINT FILED UNDER 42 U.S.C. § 1983

Mr. Jones is scheduled to be executed on May 19, 2021, after 6:00 p.m.

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TABLE OF EXHIBITS

- A. Tuesday, May 18, 2021 Board Decision Denying Clemency
- B. Quintin Phillippe Jones's Clemency Application
- C. Appendix to Quintin Phillippe Jones's Clemency Application
- D. Quintin Phillippe Jones's Supplement to the Clemency Application
- E. Appendix to Quintin Phillippe Jones's Supplement to the Clemency Application
- F. Thomas Whitaker's Clemency Application

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I. Introduction.

1. On May 18, 2021, the Texas Board of Pardons and Paroles (the “Board”) voted against recommending clemency for Quintin Jones. *See* Ex. A. Undersigned counsel received notice of the denial from the Board via email at 1:44 p.m.

2. Conversely, on February 20, 2018, the Board unanimously recommended to Governor Abbott that Thomas Whitaker's death sentence be commuted to one of life in prison. The Governor accepted the Board's recommendation and commuted Whitaker's sentence on February 22, 2018. In commuting Whitaker's death sentence, the Governor stated that it was because "Mr. Whitaker's father insists that he would be victimized again if the state put [his son] to death."¹

3. The same grounds for clemency that were found to be meritorious in Whitaker's case are present and equally strong in Mr. Jones's case. *Compare* Ex's. B–E *with* Ex. F. As in the Whitaker case, in Mr. Jones's case, the victim's family is also Mr. Jones's family, and the family is pleading for clemency and asking that the State not re-traumatize family members by executing Mr. Jones.

4. In these circumstances, the lack of consistency in the application of grounds for clemency – where clemency was recommended and granted for Whitaker, who is white, and rejected for Mr. Jones, who is black – presents a legally cognizable claim that Mr. Jones's race played an impermissible role in the Board's denial of his application for clemency. Absent a neutral

¹ Press Release, "Governor Abbott Commutes Death Sentence of Thomas Bartlett Whitaker," OFFICE OF THE TEXAS GOVERNOR (February 22, 2018) <https://gov.texas.gov/news/post/governor-abbott-commutes-death-sentence-of-thomas-bartlett-whitaker>.

explanation for this differential treatment – and none has been provided – an inference of unequal treatment based on race is present, giving rise to concern that the Board’s decisionmaking process was compromised by racial discrimination.

5. This Court should grant a temporary stay of execution to permit an inquiry into the grounds for denial of Mr. Jones’s clemency application. Mr. Jones has a liberty interest protected by the Fourteenth Amendment in not being discriminated against on the basis of his race. The Board’s inconsistent and arbitrary action, rejecting Mr. Jones’s application for clemency when identical grounds led to the Board’s grant of clemency for Whitaker, warrants examination by this Court to ensure that Mr. Jones is not subject to discriminatory treatment based on his race, and that any execution of Mr. Jones will comport with constitutional requisites.

6. Mr. Jones does not ask for relief from his death sentence and is seeking only to obtain relief from an impending constitutional violation. A favorable ruling for Mr. Jones would not mean that Texas can never execute him, as the claim does not call into question the validity of his sentence. Thus, this Court has jurisdiction. *See Young v. Gutierrez*, 895 F.3d 829, 831 (5th Cir. 2018).

7. This claim is appropriately raised in a Section 1983 action. *Id.* All Mr. Jones asks is that the Board be held to constitutional standards in

considering and voting on his application for clemency, and not act impermissibly to discriminate against him on the basis of his race.

II. Jurisdiction and Venue

8. This court has jurisdiction under 28 U.S.C. §§ 1331, 1343, 1651, 2201, and 2202, and under 42 U.S.C. § 1983. The injury Mr. Jones complains of is the denial of due process and the absence of equal protection of law, which are guaranteed in the Fourteenth Amendment to the United States Constitution. An execution that violates the Fourteenth Amendment would constitute cruel and unusual punishment under the Eighth Amendment of the United States Constitution.

9. Venue is proper under 28 U.S.C. § 1391(a) because Board member A. D'Wayne Jernigan, the board member at the Huntsville, Texas office, resides in Huntsville and all other defendants are residents of the State in which this district is located.

10. Additionally, venue is proper under 28 U.S.C. § 1391(b) because a substantial part of the major events or omissions giving rise to Mr. Jones's claims occurred in this district.

III. Parties

11. Mr. Jones is currently incarcerated under a sentence of death at the Polunsky Unit of the Texas Department of Criminal Justice in Livingston, Texas. He is scheduled to be executed on May 19, 2021.

12. David Gutierrez, A. D'Wayne Jernigan, Carmella Jones, James LaFavers, Brian Long, Ed Robertson, and Linda Molina are members of the Texas Board of Pardons and Paroles. They are being sued in their official capacities.

IV. Relevant Factual and Procedural History

A. Quintin Jones

13. In 1999, when Mr. Jones was 20 years old and high on heroin and cocaine, he killed his great-aunt Berthena Bryant for \$30 to buy more drugs. Mr. Jones has expressed deep remorse for his crime. He has never blamed his conduct on his personal circumstances at the time and has always taken full personal responsibility for his actions.

14. Mr. Jones's case is one of the rare cases where the victim's family is also the defendant's family. As set forth below, based on Mr. Jones's remorse, maturation, and transformation over the past twenty years, the family has forgiven Mr. Jones.

15. Mattie Long, the victim's sister and closest living relative, actively seeks clemency for Mr. Jones. She was deeply saddened by her sister's death, but she has since forgiven Mr. Jones. Ms. Long has visited Mr. Jones in prison, writes letters to him, and maintains a relationship with her great-nephew whom she loves. Mattie Long wrote to the Board pleading that they spare Mr. Jones's life. In her final plea, Ms. Long wrote:

Because I was so close to Bert, her death hurt me a lot. Even so, God is merciful. Quintin can't bring her back. I can't bring her back. I am writing this to ask you to please spare Quintin's life.

See Ex. B at 23–24; Ex. C at 6–7.

16. Benjamin Jones, the victim's great-nephew, and Mr. Jones's brother is also a staunch supporter of Mr. Jones's application for clemency. Benjamin was extremely close with the victim; he lived with Ms. Bryant for a period of time and she was like a mother-figure to him. Like Ms. Long, Benjamin was deeply saddened by Ms. Bryant's death. Over the years, however, Benjamin has rekindled his relationship with Mr. Jones and forgiven his brother. Benjamin has witnessed the personal transformation that Mr. Jones has undergone while in prison. Benjamin wrote to the Board to say that Mr. Jones's execution will only serve to retraumatize him and his family and to plead for mercy. In his letter to the Board, Benjamin pleaded, "[p]lease don't cause us to be victimized again through Quin's execution." *See* Ex. B at 24–27; Ex. at 8–14.

17. The family's forgiveness is a direct testament to Mr. Jones's personal transformation during his time in prison. Mr. Jones entered prison at the lowest time of his life as a drug-addicted, self-loathing, lost young adult. Growing up in an environment of verbal and sexual abuse, Mr. Jones had turned to abusing drugs as a means of coping with his deteriorating mental

health. Over the course of his decades of incarceration, however, Mr. Jones has made a point of turning his life around and being purposeful about being a positive influence in the lives of people around him every day. Today, Mr. Jones is a thoughtful, compassionate, and selfless person. His family has recognized this positive transformation in Mr. Jones and multiple family members have described Mr. Jones's personal, transformational journey in their letters to the Board. *See Ex. B at 23–29.*

18. Over the past two decades, Mr. Jones has developed deep and meaningful friendships with people around the world who he has written to during his time in prison: a New York journalist in medical isolation awaiting a bone marrow transplant; an Australian prison psychologist who contacted Mr. Jones with an interest in better understanding the experience of prisoners on death row; a Swiss mother who lost her son to suicide; a German schoolteacher diagnosed with bladder cancer; a nine-year-old girl in England who wrote the Pope to save her friend's life; and numerous others. Each wrote to the Board, describing the positive influence that Mr. Jones has played in their lives, emphasizing how he is one of the most selfless, thoughtful people they know. As one person states in her testimonial, Mr. Jones “is the living proof that a human being who once killed someone under the influence of drugs can reform himself, flourish and illuminate the world around him, if given the opportunity and if considered as a human being[.]” A second person states that

Mr. Jones “has dedicated himself to improving the lives of others,” and has “touched the lives of many across the world, including me.” A third person remarks that, “[t]o let [Mr. Jones] stand as a representative of a life saved through self-guided rehabilitation seems the most just conclusion for this kind and thoughtful man who offers genuine remorse.” *See* Ex. B at 29–36; Ex. C at 153–197.

19. Mr. Jones has also been a positive role model and influence on his fellow inmates during his time on death row. Multiple inmates wrote letters to the Board that explained how Mr. Jones had been a mentor to them. Teddrick Batiste, for example, told the Board that Mr. Jones taught him to be a better father to his son, to listen and empathize with others, to release his anger, and to appreciate the power of prayer. *See* Ex. D at 6–7; Ex. E at 4–8.

B. Thomas Whitaker

20. While Mr. Jones’s crime was egregious, committed at the lowest time of his life, Thomas Whitaker’s crime was equally if not more egregious, involving careful and meticulous premeditation over multiple years in a plot to murder his family and garner inheritance funds.

21. Whitaker had led his family to believe he was enrolled in college and was about to graduate. *Whitaker v. Davis*, 853 F.3d 253, 255 (5th Cir. 2017). Since at least 2000, Whitaker had planned, with several other individuals, at different times, to murder his family and had made at least one

unsuccessful attempt. *Id.* On December 10, 2003, Whitaker and his father, mother, and younger brother ostensibly went out to celebrate Whitaker's graduation from college. *Id.* Whitaker, however, had been lying to his family; he was not actually enrolled in college, nor was he about to graduate. *Id.*

22. On that day in December, Whitaker succeeded in his criminal plan. *Id.* When the family arrived home from the "graduation" dinner, Whitaker's roommate was inside, and he shot and killed Whitaker's mother and younger brother and wounded Whitaker's father as they entered the home. *Id.* Whitaker himself was shot in the arm, in an attempt to trick authorities into believing that he too was an attempted victim of the attack. Whitaker's mother and brother died, but his father survived his injuries. Whitaker was subsequently convicted of capital murder and sentenced to death for his role in the murder of his family members. *Id.*

23. Whitaker's father, Kent Whitaker, the sole survivor, and closest living relative of the victims, was Whitaker's most vocal advocate. He fought for clemency for his son, asking the Board to recommend commutation so he would not lose the last surviving member of his family. Ex. F at 4–13.

V. Causes of Action

Count 1: The Texas Board of Pardons and Paroles' May 18, 2021 decision not to recommend that Mr. Jones's death sentence be commuted was rendered in violation of the Due Process Clause and Equal Protection Clause of the Fourteenth Amendment.

24. Mr. Jones realleges and incorporates herein by reference the allegations contained in the preceding paragraphs of this Complaint.

25. In *Ohio Adult Parole Auth. v. Woodard*, the Supreme Court addressed the question of what procedures are required by the Due Process clause in clemency proceedings. Justice O'Connor's concurring opinion for the five-to-four Court provides the law of the case. As Justice O'Connor explained, while clemency proceedings do not trigger the same panoply of Due Process protections implicated in judicial proceedings, minimal procedural safeguards nevertheless do apply to clemency proceedings. *Ohio Adult Parole Auth. v. Woodard*, 523 U.S. 272, 289 (1998); see also *Faulder v. Tex. Bd. of Pardons & Paroles*, 178 F.3d 343, 344 (5th Cir. 1999). "Judicial intervention might, for example, be warranted in the face of a scheme whereby a state official flipped a coin to determine whether to grant clemency." *Woodard*, 523 U.S. at 289.

26. Comparing Mr. Jones's case to Whitaker's, the Board's decision to deny Mr. Jones clemency is arbitrary, given the inconsistent application of grounds for clemency. Both Whitaker and Jones's families forgave them and told the Board that an execution would only serve to re-traumatize them. The Board voted unanimously *for* clemency for Whitaker, who is white. The Board voted unanimously *against* clemency for Mr. Jones, who is black. Absent any explanation for this differential treatment – and none has been provided – the Board's starkly divergent recommendations in the Whitaker and Jones cases

gives rise to an inference of unequal treatment based on race. Any consideration of race in the application of grounds for clemency is impermissible under the Due Process and Equal Protection clauses. *See, e.g., Washington v. Davis*, 426 U.S. 229, 239 (1976) (“The central purpose of the Equal Protection Clause of the Fourteenth Amendment is the prevention of official conduct discriminating on the basis of race.”); *Mahone v. Addicks Utility Dist.*, 836 F.2d 921, 932 (5th Cir. 1988).

27. The pernicious role played by race throughout the criminal justice system is by now well documented.² And this case illustrates the influence of race in clemency proceedings; while there may be few standards regulating grants of clemency, the law is clear that racial discrimination in the determination of whether or not to recommend clemency is constitutionally proscribed.

28. Courts have repeatedly held that discrimination on the basis of race is “odious in all aspects, [but] is especially pernicious in the administration of justice.” *Peña-Rodriguez v. Colorado*, 137 S.Ct. 855, 868

² “African Americans are more likely than white Americans to be arrested; once arrested, they are more likely to be convicted; and once convicted, they are more likely to experience lengthy prison sentences.” The Sentencing Project, Report to the United Nations on Racial Disparities in the U.S. Criminal Justice System (2018), <https://www.sentencingproject.org/publications/un-report-on-racial-disparities>. “African-American adults are 5.9 times more likely to go to prison than white adults.” *Id.* Adding to the racial disparities, research also shows that prosecutors are “more likely to charge people of color with crimes that carry heavier sentences than whites.” *Id.* “Nearly half (48%) of the 206,000 people serving life and ‘virtual life’ prison sentences are African American.” *Id.*

(2017) (quoting *Rose v. Mitchell*, 443 U.S. 524 (1979)); see also *Tharpe v. Ford*, 139 S.Ct. 911, 913 (2019) (“[R]acial bias is ‘a familiar and recurring evil.’ . . . The work of ‘purg[ing] racial prejudice from the administration of justice’ is far from done.”) (citing *Pena-Rodriguez*, 137 S.Ct. at 867 (2017)).

29. If left unchecked, racial bias “would risk systemic injury to the administration of justice.” *Peña-Rodriguez*, 137 S.Ct. at 868. The basic premise of our criminal justice system is that “[o]ur law punishes people for what they do, not who they are. Dispensing punishment on the basis of an immutable characteristic flatly contravenes this guiding principle.” *Buck v. Davis*, 137 S.Ct. 759, 778 (2017).

30. Holding this premise to be true, Mr. Jones’s eligibility for clemency should be considered on grounds free of racial discrimination and unequal treatment. Whitaker received mercy and will now live out his life in a prison cell. This same result is what Mr. Jones has requested and what the closest living relatives of Ms. Bryant have also requested. No factor other than race is currently apparent to account for the disparate results reached in these two cases, and the Constitution does not permit that factor to play any part in the Board’s decision of whether or not to recommend that clemency be granted.

Count 2: In light of the actions of the Defendants denying Mr. Jones Due Process and Equal Protection, it would be a violation of the Eighth Amendment’s protection against Cruel and Unusual Punishment to allow the State to execute Mr. Jones at this time.

31. Mr. Jones realleges and incorporates here by reference the allegations contained in the preceding paragraphs of this Complaint.

32. Because of the State's conduct, Mr. Jones has been denied due process and equal protection of law. This Court should stay Mr. Jones's imminent execution until Mr. Jones has received the due process and equal protection to which he is entitled, for until that point, carrying out a death sentence on an inmate who was denied clemency because of his race would violate the Eighth Amendment's prohibition on cruel and unusual punishment.

VI. Prayer for relief

Plaintiff Quintin Jones prays that the Court provide relief as follows:

1. Stay his execution currently set for May 19, 2021; and
2. Conduct a hearing to inquire into the grounds for the Board's denial of Mr. Jones's clemency application to ensure that Mr. Jones's execution, if it is to proceed, proceeds in a manner that is untainted by racial discrimination and comports in all respects with the Constitution.

Respectfully submitted,

/s/ Michael Mowla
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Verification

I, Michael Mowla, attorney for Plaintiff in this case, state that the facts set forth in this Complaint are true. I declare under penalty of perjury that the foregoing is true and correct. Executed on May 19, 2021.

/s/ Michael Mowla
Michael Mowla

Certificate of Service

I certify that on May 19, 2021, a copy of this document was served via email on the following counsel:

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/s/ Michael Mowla
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