

DONALD J. HICKMAN, J.D.

June 1, 2018

Indiana Parole Board
302 W. Washington St., Rm. E321
Indianapolis, IN 46204-2278

RE: MICHAEL J. FLOYD
DOC Number 29443

To Whom It May Concern:

I write in response to the Clemency petition filed by Michael J. Floyd, prisoner number 29443. I was the prosecuting attorney that tried the case against him in Lawrence Circuit Court in 1983. Let me say from the outset that I am firmly opposed to any grant of clemency or a pardon for him. He's an unrepentant rapist and his current petition confirms that.

Floyd maintains that he is innocent but a jury didn't see it that way. Floyd makes several arguments in support of his position but those arguments have all been adjudicated against him. As usual he is not telling the truth in his retelling of the case. Rather than refute his arguments one by one, I will respond to only three to show his pattern of deceit.

One, he complains on page 23 of his petition about the "loss" of his alibi witness. His mother had been listed as his alibi witness and, as such, would have had to remain outside the courtroom during the trial due to a separation of witnesses order. However, she remained in the courtroom throughout the trial, thus rendering herself ineligible to testify.

Floyd complains that this was caused by his attorney's error saying on page 24 of his clemency petition that her testimony ". . . was lost by McSoley's violation of the witness separation order." Further on he says that "Surely there can be no tactical reason for counsel to violate a witness separation order."

His lie is exposed on page one of the trial transcript where his lawyer, immediately after the judge ordered all the witnesses to leave the courtroom, stated: “Your Honor, for the record the defendant’s mother, Mrs. Floyd, had been listed as a witness for discovery purposes but the decision has been made not to call her as a witness and she will be staying in the courtroom.”

Whether McSoley had discussed this decision with his client prior to announcing it we do not know. But it was announced right in front of him. We do not know what the tactical reason was but it was right there in the open. He never raised the issue on appeal but only later when he claimed ineffective assistance of counsel in his Post Conviction Relief petitions. To now claim that his lawyer “violated” the court’s order is disingenuous at best but really just an outright lie. He knew she was not going to be called as a witness and he acquiesced in that decision.

A second major argument of Floyd’s is that there were stains on the victim’s underwear that were made by someone with Type A blood and both Floyd and the victim have Type O. The Type A stains were dealt with at his PCR hearing when it was pointed out that the victim’s boyfriend was Type A and she had had consensual sex with him earlier.

Floyd takes four pages of his petition (pages 20 – 23) to complain about how his attorney didn’t present the blood type evidence, that there was a stain on the victim’s underwear created by someone with Type A blood and that he is Type O. However, he does not mention in his petition that seminal fluid was removed from the victim’s vagina by the examining doctor and tested. It contained sperm and was deposited by someone with Type O blood. Floyd is Type O. That is the evidence in the lab report from the FBI but Floyd failed to mention it. While not dispositive, the fact is that Floyd is not excluded by the test results as he tries to claim. No one argued that Floyd was the donor of the Type A stain but he clearly could have been the donor of the motile sperm found in the victim that were Type O.

A third argument that Floyd makes is that he should be believed because he turned down plea offers on two separate occasions saying that he couldn’t plead guilty to something he didn’t do. I understand that sentiment and agree with him. I never wanted a defendant to plead guilty to something he didn’t do. But once again Floyd is not telling the

truth. Floyd was never made any plea offers whatsoever. I never made him any offers prior to trial other than to plead guilty as charged and have a sentencing hearing. Further, neither Jim Gallagher, the chief deputy prosecutor who handled the PCR hearing in 1997, nor Scott Callahan, the elected prosecuting attorney at that time, ever made any offers to Floyd. None.

Floyd's other arguments are similarly flawed. The evidence was carefully considered by the jury and Floyd was found guilty. The Supreme Court reviewed the case and affirmed his conviction. Floyd also filed two PCR (Post Conviction Relief) petitions and raised all these same issues again plus a claim of ineffective assistance of counsel. Both petitions were fully adjudicated on the merits and he lost both. Neither PCR petition was heard by the original judge in the case nor was the State represented by me, the original prosecutor. Successor prosecutors and judges have reviewed his claims and found them meritless.

Floyd just won't quit. Twelve years ago he filed a Motion to Correct Erroneous Sentence even though the Supreme Court had previously held that his sentence was fully within the parameters of the law and that the sentencing judge had acted appropriately. His Motion was denied.

Floyd has the charming ability to tell just enough of the truth to make his accompanying lies seem believable. But in the end, his lies are just that -- lies. The sentencing judge was correct in sentencing Floyd to 110 years. An unrepentant, pathologically lying rapist is exactly where he belongs -- in prison until he has served his entire sentence.

Sincerely,

A handwritten signature in black ink, appearing to read "D. J. Hickman", with a stylized flourish at the end.

Donald J. Hickman