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May 28, 2008

State Board of Pardons and Paroles
Floyd Veterans Memorial Building
East Tower, Balcony Level, Suite 458
Two Martin Luther King, Jr. Drive SE
Atlanta, GA 30334-4909

Re: Curtis Osborne

Dear Board Members:

You serve as protectors of the rights, privileges and promises made to our citizens by our Georgia Constitution. Through personal experience, I understand the burden that flows from such awesome responsibility, and I know you do not take it lightly.

This letter I write to you today in support of clemency for Curtis Osborne is a first for me, as I have never addressed this Board on behalf of anyone whose murder conviction was upheld on direct appeal by the Georgia Supreme Court. But, for reasons which I trust you will understand, I feel compelled to do so at this time on behalf of Mr. Osborne.

Before stating those reasons, I owe you some background information about me and my involvement with this case. I was privileged to be a Justice on the Georgia Supreme Court from January 1, 1990 through June 30, 2005, serving as Chief Justice the final four years. During my tenure the Court reviewed all murder convictions in which the death penalty was imposed as well as virtually every murder conviction. These cases accounted for approximately forty percent of the court's caseload. As a member of the court I voted to affirm countless murder convictions as well as a significant number of death sentences. This was my sworn duty and I carried it out to the best of my ability.

As a part of that duty, on June 21, 1993, I voted to affirm the death sentence imposed on Curtis Osborne. While the legitimacy of the death penalty was peripherally involved in that appeal, the issue now present before you is not the legitimacy of the death penalty, but the legitimacy of executing a human being whose lawyer did not zealously represent him, refused to

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investigate avenues that might well have led to a sentence of life in prison rather than death, and was motivated by racial bias, as the facts now reveal. Due to defense counsel's attitudes and consequent inaction, we will never know what the jury might have thought about the mitigating evidence that could have and should have been presented in the sentencing phase of the trial concerning Mr. Osborne's mental illness and harsh experiences during his formative years. Defense counsel's inaction denied the jury the opportunity to consider any mitigating factors, and, therefore, we cannot rely on the decision it reached.

Although it was early in my years on the court, I distinctly remember this appeal, not because of its facts or the issues raised, but because of the apparent ineptness of appointed defense counsel, Johnny B. Mostiler, and the lack of issues raised on appeal. Both his physical appearance and his limited presentation of this death penalty appeal troubled me, leading me to inquire of other court members about his background and his legal abilities or lack thereof. As best as I can remember, I was told that earlier he had been a fairly effective criminal defense attorney, but in more recent years various circumstances had taken a big toll on him and his ability to function as a lawyer. And, as is now all too well apparent, it is Mr. Osborne who is suffering due to Mr. Mostiler's grave shortcomings and his racial prejudices of perhaps a lifetime. Likewise, the criminal justice system of Georgia suffers, for this trial calls into question its ability to administer justice without respect to person or race or to provide protection of the law to the poor as well as the rich.

In the appeal Mr. Mostiler raised for Mr. Osborne are two most telling factors. First, the sparsity of issues raised, a total of only four, two of which were boiler-plate with no substance, and the other two were rather perfunctory. This is very alarming, as issues not properly raised in the direct appeal are, under most all circumstances, procedurally barred from consideration in habeas corpus proceedings and, therefore, are never addressed on the merits. Secondly, what is even more alarming is the fact that no issues whatsoever were raised concerning the bifurcated sentencing phase of the trial.

Experience shows that the importance of preparation for the sentencing phase and development of mitigating factors for consideration by the jury cannot be overstated. That is why state funds are required to be provided for indigent defendants in death penalty cases so that competent investigators and mental health experts may be hired, as that is the only effective way of gathering data surrounding the accused and his life that the jury can consider in mitigation when deciding between a life sentence and a death sentence. Without the presentation of such mitigating factors, the jury is effectively denied the right to consider a sentence other than death. And, that is exactly what happened in this trial. It also explains why no issues were raised on appeal relating to the sentencing phase of the trial, as we now know that Mr. Mostiler did not

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seek funds for hiring mental health experts or for hiring an investigator to inquire into Mr. Osborne's prior life. I cannot say what caused him to take this course of inaction, but I can say this — such a decision by defense counsel does not result in zealous representation, and I can think of no circumstances when such a course of inaction would be in the best interest of a poor, African American client like Mr. Osborne, for to do so forfeits most all hope of mercy in the sentencing phase of the trial.

In closing, I can imagine that you might well question why I am now asking you to correct an injustice that I did nothing about in 1993. That is a fair question, and my weak response is this: Appellate courts can only address the issues which were raised at trial and ruled on by the trial judge and subsequently also raised on appeal. The issues presented on appeal by Mr. Mostiler were practically non-existent.

Knowing what has now been presented to me and is being presented to you, I deeply wish I could have done more to see that the system provide a just trial and just appeal for Mr. Osborne, that justice be meted out to him without regard to race as promised by our State Constitution. It has not been up to this point. Regrettably, there is nothing I can now do, so I must ask you to do it for me and for all those who treasure the protections provided for and promises contained in Georgia's Constitution. For you, the Board of Pardons and Parole, has the power to uphold those promises for and on behalf of us all, and I hope you will vote to do so.

If my direct testimony would assist you in any way in your decision making process on Mr. Osborne's clemency petition, I will immediately drive to Atlanta and testify before you. Again, I appreciate the heavy burden of your awesome responsibility and, due to the facts and circumstances surrounding this case, strongly urge you to exercise your broad discretion and grant clemency to Curtis Osborne.

Sincerely,


NORMAN S. FLETCHER

NSF/cmr