

APPLICATION FOR CLEMENCY FOR CLIFTON ALLEN WHITE

Do we kill Clifton White? For twelve years the legal system has struggled with this question. By August 24 we will have an answer. But is this really the right question. As we look back at Clifton White's life, it is not enough to simply ask whether or not to kill Clifton. When we look back at the tragic and senseless death of Kimberly Ewing, there are other questions that must be answered.

- 1) Why did this crime happen?
- 2) Could it have been prevented?
- 3) What can we learn from this tragedy?

Once we have the answers to these questions, we can ask ourselves what is the just and fair punishment in this case?

The sad truth is that this crime is one that could have and should have been prevented. In the months before this tragedy, Clifton's older sister, Teresa Deal, recognized that there was something very wrong with Clifton. Throughout his entire life, Clifton had been passive and kindhearted. In those last few months, however, she could tell that Clifton had changed dramatically. She knew that he was using cocaine heavily. He was losing control. He was not the Clifton that she knew. She realized that unless she did something, Clifton was going to hurt himself or somebody else.¹

Teresa tried to do something about it. Teresa had enough information about Clifton's drug use and about his recent actions to have him arrested. She called his probation officer repeatedly to tell him about Clifton's problems and to get him arrested. Teresa called a mental health center and she contacted a magistrate to ask for help. She did everything she could to try to get help for her brother, but nobody listened. Nobody

helped her. Nobody did what they could have done to stop Clifton before he hurt himself or someone else.

Teresa was not the only one who saw the warning signs. Clifton's probation officer knew from talking to Teresa and from seeing Clifton personally that Clifton was using drugs. On April 25, 1989, Clifton saw his probation officer, Phillip Toelkes.² This was just two weeks before the death of Kimberly Ewing. Officer Toelkes could tell that Clifton was using cocaine by the way he was acting and the way that he looked. **But Clifton left that meeting without getting any help and without being locked up.** Toelkes tried to find a drug rehabilitation program for Clifton, but there was nothing available until May. Before Clifton could get into the program, Kimberly Ewing was dead.

The warning signs were there. This crime should have been stopped. Clifton should have been put in a drug rehabilitation center. At the very least, there were grounds to arrest and take him off the streets. If only someone other than Teresa had paid attention... If only somebody had cared enough to intervene... If only somebody had been willing to help.

What led Clifton to this path of drug addiction and violence? Like all of us, Clifton was shaped by his family. His family loved Clifton and he returned their love. But this love could not cover up the fact that his family severely scarred Clifton. Clifton grew up in a household filled with violence, drugs, and abuse. Clifton's mother, Lillian, was an alcoholic who downed a fifth of gin every other day, beat her son for wetting his bed, and used belts, brooms, and anything else she could get her hands on to whip

¹ See Exhibit 1, Affidavit of Teresa White Hunt

² See Exhibit 2, Testimony of Phillip Toelkes at 1994 trial.

Clifton.³ Clifton's father, Reid, was a suicidal drug addict who stole from stores to support his addiction to paregoric, an over the counter medication. Clifton's father also fed his habit by stealing money wife had set aside for family necessities. Clifton's father committed these thefts in the presence of his son.⁴ Clifton witnessed and experienced violence at every turn. He watched while his father threatened to commit suicide on numerous occasions. One time, his father actually put a loaded gun against his father's head, threatening to blow his own head off.⁵ Another time his father threatened to end his life on the church steps. Instead of intervening, Clifton's mother's reaction was simply, "Let him kill himself."⁶

At age six, Clifton watched when his uncle came home drunk and began to beat Lillian, his mother. Clifton's grandfather arrived. He "ended the violence." By shooting Jimmy twice, first in one knee and then the other to make him stop beating Clifton's mother.⁷

Clifton didn't just watch violence, he was the victim of it. Clifton's mother, step-father, and grandparents all beat him, using things like tree branches and belts to raise welts and bruises on Clifton's body. Sometimes Clifton bled from the beatings. His sister, Teresa, said that "it didn't matter if it was just eating too many apples or not picking the beans they'd asked us to pick," he'd get whipped.⁸ Clifton idealized his thieving, suicidal, drug-addicted father because he was the only one in his family who

³ See Exhibit 3, Testimony of Teresa Deal at Post Conviction Hearing, pages 168-69.

⁴ Id. at 152-53.

⁵ Exhibit 4, Testimony of Francis Griffin and Exhibit 5, Statement of Francis Bell (Same person).

⁶ Exhibit 5.

⁷ Exhibit 3, pages 156.

⁸ Id. at pages 161-62.

didn't beat him.⁹ According to Clifton's Aunt Nancy, the boy's entire environment was "drinking and fighting."¹⁰ Despite this, Clifton hated fighting and was known as a boy who would run the other way from trouble. Once, his mother found out that there was a boy who was bullying Clifton. When she found out that her son wouldn't fight his tormentor, she beat him for three days straight, telling him that her beatings would be far worse than anything the boy could do to him. Finally, Clifton fought the boy, crying the entire time.¹¹

Clifton's adolescence saw further disintegration of his family. After being dragged through his parents' divorce and his mother's remarriage, young Clifton was just beginning to heal when his father died.¹² Only a few months later, his new step-father died as well. At the funeral, trying to hold back his tears, Clifton sat with his hands clenched so tightly together that all of the color was gone from his skin.¹³ In school, with undiagnosed learning disabilities, Clifton began to despair that he was, as his mother had always told him, a "loser," a "nothing," and a "nobody."¹⁴ Overwhelmed by feelings of loss, Clifton began to use marijuana and alcohol. For him, there seemed to be nothing wrong with this — he was surrounded by drunk and addicted role models.¹⁵ He followed in his father's footsteps and began to steal in order to support his addiction.

When I hear about Clifton's life growing up, I am reminded of something I have learned while trying cases. When I am picking a jury, one of my favorite questions for prospective jurors is this: "Who were the two most influential people in your life?" A lot

⁹ Exhibit 6, Report of Psychologist Dr. Matt Mendel, pages 2-3.

¹⁰ Exhibit 7, Interview with Nancy Jackson.

¹¹ Exhibit 3, Pages 160-61.

¹² Exhibit 6, page 3.

¹³ Exhibit 5.

¹⁴ Exhibit 6, page 3.

¹⁵ Id. at 2.

of folks hearing this question probably think it is a pretty silly question. Almost everybody says the exact same answer: my mom and my dad. But I learn a lot about my prospective jurors because the next question I ask them is: "What made them so influential?" And these perspective jurors begin to tell me what they have learned from their parents. They have learned the importance of being fair. They have learned about never quitting. About helping other people. About the importance of God, love and family.

The lessons recounted by jurors are not the lessons that Clifton learned from his parents. He learned about stealing. He learned about drugs. He learned about violence.

Kids who come from drug addicted, alcoholic violent homes are much more likely to become drug addicts or alcoholics and are more likely to commit violent acts. You don't need studies, experiments or experts to tell you that.¹⁶ It's common sense.

Child abuse is not simply a private problem. It is not a family problem. It's our problem because there are societal consequences. We have an obligation as a society to do something when children are inflicted with physical, mental and emotional abuse. Execution of those scarred adults who grew up in such homes is not the way to address the issue.

Clifton was using drugs heavily the night Kimberly Ewing was killed. But for the drug use, this crime would never have happened. Why was Clifton using drugs that night? Because Clifton suffered the disease of addiction. Why was Clifton addicted? His background and family life is certainly a part of it. But he was a drug addict, also in

¹⁶ Studies, however, do indicate the tremendous cost to society of child abuse and its consequences on those upon whom it is inflicted. Please see Exhibit 8, "Prevention Pays: The Costs of Not Preventing Child Abuse and Neglect."

part, because of a physical condition called hypothyroidism.¹⁷ Hypothyroidism is a problem with the hormone produced by the thyroid. This is a hormone that affects various aspects of a person's life, such as energy level, mood, body temperature, and body weight among other things. People with this condition often suffer excessive weight gain, poor short-term memory and concentration, depressed moods, loss of motivation, irritability, fatigue and insomnia. Around 1982, Clifton was diagnosed with this condition while he was in prison. He was given the proper medicine for this condition in prison and kept taking it throughout his incarceration. Upon his release, however, he stopped taking it. He stopped taking it because nobody ever explained to him the consequences of not taking the medication and he no longer believed that taking the medication was necessary.

In a hypothyroid state, without the appropriate medication, Clifton self-medicated, using cocaine to counteract the effects of hypothyroidism. Dr. Matt Mendel, a psychologist who examined Clifton in 1998, puts it best:

Where hypothyroidism creates depressed mood, cocaine replaces it with euphoria; where hypothyroidism leads to fatigue and weakness, cocaine evokes energy and vitality; where hypothyroidism brings about a sense of dullness, poor memory and impaired concentration, cocaine elicits a sense of acuity. Unfortunately, those effects are short lasting, and efforts to maintain them is a never-ending cycle of futility and desperation.¹⁸

Without his medication, cocaine could fill the void only briefly and he would soon need more since the cure did not fit the need.

¹⁷ For a description of Clifton White's problems of hypothyroidism, please see Dr. Mendel's report, Exhibit 6, pages 4-5.

¹⁸ Id.

So why didn't Clifton continue to take his medication once he got out of prison?

Since nobody ever explained to him the effects of hypothyroidism on his body and the consequences of not taking his medicine, Clifton believed that the medication he was taking was a medication to control his weight. When he was in prison, he was putting on a great deal of weight, and therefore, believed the medication was necessary. When on the street he didn't gain weight and, therefore, he didn't understand why he had to be taking the medicine. He did not gain weight, of course, because his diet was alcohol and cocaine.¹⁹

If someone had taken the time to explain to Clifton the consequences of not taking his medication, if someone had explained to him what this condition was doing to him, then his condition could have been controlled. There would have been no need for self-medication. If Clifton had gotten the help he needed, then this crime may never have happened.

Clifton's family background and his hypothyroidism partly explain why Clifton ended up on the road to violence. His experience in prison was a contributing factor as well. Clifton was a thief. A petty, non-violent criminal when he went to prison as a twenty one year old. He was described by those who knew him then as passive — almost to a fault. He was somebody who would run away from fights instead of standing up for himself. But then Clifton was anally raped in prison. Clifton describes his rape as “a scar that will never heal, a festering sore.”²⁰ After the rape, he confided in his sister about what had happened to him. He talked about his fears of it happening again.²¹ Being raped changes a person and it changed Clifton. Being raped affects men and

¹⁹ Id.

²⁰ Exhibit 6, page 5.

women in different ways. It often takes years before we can see how a man is affected by being raped. According to Stephen Donaldson, an expert on prison rape, "it takes about ten years for a woman to heal from rape and much longer for males...it might take ten years for the full effect of the brutalization to begin to be felt." This rape changed Clifton. He went from being a passive, non-violent criminal to becoming the person who killed Kimberly Ewing.

Perhaps it is asking too much to expect our prisons to rehabilitate offenders. But if we send non-violent offenders to prison and allow them to be brutally attacked when they are in prison, there are going to be consequences. As stated by Supreme Court Justice Harry Blackmun

Homosexual rape or other violence among prison inmates serves absolutely no penological purpose. Such brutality is the equivalent of torture, and is offensive to any modern standard of human dignity. The horrors experienced by many young inmates, particularly those who...are convicted of non-violent offenses, border on the unimaginable. Prison rape not only threatens the lives of those who fall prey to their aggressors, but is potentially damaging to the human spirit. Shame, depression, and a shattering loss of self-esteem, accompany the perpetual terror the victim thereafter must endure.²²

Prison does not have to be a cesspool of violence. We need to take steps to stop this type of violence from occurring. Executing those who become violent as a result of their experience in prison is not the answer.

Kimberly Ewing's death could, and should, have been prevented. But every time we could have done something that would have prevented Clifton from going down the path that led to this terrible crime, we looked the other way. Executing Clifton will not

²¹ Exhibit 1.

²² *Farmer v. Brennan*, 511 U.S. 825, 852-53 (Blackmun concurring).

change the fact that this tragedy should, and could, have been prevented. Killing Clifton does not solve the problems that led to Kimberly Ewing's death or prevent another death like hers. Putting Clifton to death only sweeps these problems under the rug, instead of forcing us to confront these problems head-on.

Do we kill Clifton White? Once execution was the punishment for virtually every crime. That is no longer true. We do not execute every criminal. We do not put to death everyone who kills. We do not even kill every person who commits first degree murder. A look at cases from Mecklenburg County where Clifton's case occurred, demonstrates that the death penalty is not used for every murder or even every premeditated murder. The death of Kimberly Ewing was certainly horrible. In the years since the death penalty has been reinstated in North Carolina, however, numerous murders that are as bad or worse than the crime committed by Clifton White have resulted in sentences less than death. Some defendants have been permitted to plead to offenses less than first degree murder. Some of these killers have even been freed.²³

In this state and in this country, the death penalty is reserved for the worst of the worst. Not just for the worst crimes. But for the worst of the worst people.

That is not Clifton White.

The worst of the worst are those who present a danger in the future. Those who we feel will be a danger in the future if they are permitted to live. But Clifton is not going to be a danger if he is allowed to live out his life incarcerated. He has never hurt anyone in all the years he has been in prison. Guards and others who worked in the

²³ For a list of some of the defendants in murder cases in Mecklenburg County who received sentences less than death, see Exhibit 9.

prison testified at his trial that Clifton got along well with both guards and inmates.²⁴ He was even described as being helpful with other inmates and being a positive influence.²⁵ We do not need to kill Clifton in order to protect society.

The worst of the worst are those whose murders are cold and calculated. Those who sit down and plan to kill the person. Those who kill while in full control of their emotions and actions. The death of Kimberly Ewing was horrible and tragic. But it was not a cold and calculated killing. It was a crime committed while Clifton was in the daze of drugs and alcohol. It was an explosion of anger by Clifton that occurred after years of abuse and after being raped. Dr. John Billinsky, who examined Clifton prior to trial, and Dr. Matt Mendel, who examined him for post conviction, agree that Clifton's ability to conform his conduct to the requirements of law and appreciate the criminality of his actions was impaired that night.²⁶ The jury that considered this case agreed.²⁷

The worst of the worst do not feel remorse for what they did. Perhaps they feel bad that they got caught, but they do not feel guilty for taking another life or lives. They call their victims collateral damage and feel no empathy for their victims. That is not Clifton. He feels and has expressed genuine sorrow for what he did. At the guilt-innocence phase of Clifton's trial, he took responsibility for what he did. When asked how he felt about the death of Kimberly Ewing, he said, "I accept the responsibility. It is my fault that there is a mother and father that don't have their daughter. I accept full responsibility. It was because of me."²⁸

²⁴ See Exhibit 10, Trial Testimony of Dr. Nathan Strahl, Exhibit 11, Trial Testimony of Fernandez O'Neill, Exhibit 12, Trial Testimony of Reginald Atkinson.

²⁵ Id.

²⁶ See Exhibit 13, Excerpt of Trial Testimony of Dr. John Billinsky, Exhibit 14, Excerpt of Post Conviction Testimony of Dr. Matt Mendel.

²⁷ Exhibit 15, Issues and Recommendation Sheet

²⁸ Exhibit 16, Excerpt of Clifton's White's testimony at trial during guilt-innocence

During his sentencing phase testimony, Clifton reiterated his sorrow for Kimberly Ewing's death and his acceptance of responsibility. He read aloud a letter he had sent his mother in which he described being tormented by what he had done to Kimberly Ewing, and in which he said that every night when he slept he saw Kimberly Ewing's face. He told the jury that he needed to be in prison for the rest of his life. When asked again about Ms. Ewing's death, Clifton said

I feel bad. I feel bad because it is my fault. This mother and father don't have a daughter, and it is my fault. It bothers me just to think about it. It is something that never leaves my mind. It will be with me for the rest of my life.²⁹

This remorse was not simply a trial tactic. Clifton has consistently and sincerely demonstrated his remorse throughout the past twelve years. Clifton was arrested in Florida nine days after Kimberly Ewing's death for an unrelated break in. The Florida police had no idea that Kimberly Ewing had been killed or that Clifton was a suspect in a murder investigation. Clifton, without any prompting from the police, freely and with great sorrow told the police that he had committed the crime.³⁰ Throughout the tape of his confession his sincere remorse is obvious. After hearing the tape, the jury concluded that his remorse was genuine.³¹

Those who have known Clifton throughout the twelve years have remarked how remorseful he is. His attorneys throughout the different stages of the litigation have been struck by his remorse.³² He has expressed sorrow for his actions to those who have

²⁹ Exhibit 17, Excerpt of Clifton White's testimony at sentencing phase of trial.

³⁰ Exhibit 18, Transcript from trial of tape of Clifton White's confession to Florida police.

³¹ Exhibit 15.

³² Exhibit 19, Letter from Lawrence Hewitt, Clifton White's trial attorney, Exhibit 20, Letter from Tom Maher, Clifton White's Appellate lawyer, Exhibit 21, Letter from Marshall Dayan, Clifton White's appellate attorney, Exhibit 22, Letter from Walter L. Jones, Clifton White's state post conviction attorney, Exhibit 23, Letter from the Honorable Louis A. Trosch, Clifton White's state post conviction attorney.

visited him throughout the past twelve years.³³ Nine years after the crime, Dr. Mendel was struck by Clifton's remorse as well.

Mr. White spoke about the murder on several occasions. This occurred both in response to my questions about the events and during less structured discussion when he spontaneously brought up his feelings of remorse and responsibility. He clearly expressed his sense of responsibility for the murder. "I took a mother away from a little girl and I took a daughter away from her mother and father and that's my fault."³⁴

Dr. Mendel further noted that Clifton said,

he is constantly anguished and tortured by what he has done. "Every night I go to bed and see Kim's face and think about what I did. Who gave me the power and authority to stop someone from breathing, from seeing her daughter? I will live with this pain and remorse and torture until the day that I die and that won't ever change."³⁵

Clifton understands that he ended a young life and destroyed a family. What haunts him most is the fact that he took a young girl away from her mother. He constantly thinks about what he did to that little girl. Clifton has told his sister, Teresa, that he knows how painful it would be for Teresa's daughter if Teresa were taken away from her. He knows that he has done that exact thing to Kimberly Ewing's daughter.³⁶

Clifton's remorse is genuine. After spending 15 hours with Clifton, conducting numerous tests and reviewing records, Dr. Mendel has concluded that his remorse is sincere and genuine. Dr. Mendel has used scientific means to determine the validity of Clifton's remorse.³⁷ For those of us who do not have a background in science, such

³³ Exhibit 1 and Exhibit 24, Letter from John Johnson.

³⁴ Exhibit 7, page 9.

³⁵ Id.

³⁶ Exhibit 1.

³⁷ Exhibit 7, pages 9-10.

methods are not necessary. We know the sorrow is real and the remorse is sincere. We hear it in his voice and we see it on his face.

No one disputes that Clifton White should be punished for what he did to Kimberly Ewing. That punishment should be severe and it should be harsh. Life imprisonment without the possibility of parole is a severe and harsh punishment. In this case, it is the appropriate punishment.

In deciding the appropriate sentence for Clifton, the jury sent out a note asking for the legal definition of life imprisonment. They wanted to know whether such sentence allowed for the possibility of appeal or parole. It is not surprising that the jury would want to know the answer to that question. They had also heard that if he is in prison, Clifton would not be a danger. They heard his remorse. But they had heard evidence of a terrifying crime. They wanted assurances that if they gave him a sentence of life imprisonment, he would never be freed.³⁸ Unfortunately, life without parole was not an option for a crime committed in 1989, so the jury could not be given the assurances they wanted that Clifton would never get out of prison. But in clemency the rules are different. The Governor can decree that Clifton be sentenced to life imprisonment without the possibility of parole. Our Chief Executive can assure that Clifton White will never be free.

Sometimes we forget just how harsh and severe prison is, and what a horrible existence spending the rest of your life in prison really is. Clifton has been punished for the past 12 years. Give him life without parole and his punishment will continue. He will be punished for what he did every day, every hour, every second for the rest of his

³⁸ Exhibit 25, note sent to jury at trial.

life. Every night he will go to bed and see Kimberly Ewing in his head. His torment and guilt will not stop on August 24.

A life behind bars is barely a life. Clifton has forever forfeited the right to choose what he eats, what he wears and where he sleeps. There are little things in this world that make life special. Things like walking in a park or going to the store to buy a coke. Or something as simple as the act of touching a family member. Every time Clifton sees a family member through a plexiglass wall he will be reminded that he is being punished for what he did that horrible night.

For the rest of Clifton's life he will wake up realizing I am in prison, I will always be in prison, I will die in prison.

If Clifton gets a life sentence, he will have nothing but life itself. And we ask that he be given that.

We are not asking the Governor to overrule the courts or the jury. We are not asking him to serve as another appellate court in this case. A governor with the power to grant clemency has a different role than a court reviewing a conviction or sentence. As Justice Martin of the North Carolina Supreme Court recently explained:

Mercy cannot be quantified or institutionalized. It is properly left to the conscience of the executive entitled to consider pleas and should not be bound by court decisions meant to do justice.

Mercy is not the same as justice nor is it the opposite. Executive clemency allows for discretion in a way that courtroom procedure cannot. It broadens the relevance of the philosophical and moral implications of an individual crime in a way that a judicial determination of guilt or innocence should not. As one clemency applicant eloquently describes it: When a chief executive considers clemency, he or she acts as the "distilled conscience" of the

citizenry.³⁹

The Governor can achieve both mercy and justice in this case by granting clemency and sentencing Clifton to life imprisonment without the possibility of parole.

Kimberly Ewing should not have been killed. And Clifton must be punished for what he did. But this was a crime that could have and should have been prevented. Executing Clifton White does not change that fact. It accomplishes nothing. Punish Clifton severely, harshly and appropriately by requiring him to be in prison for the rest of his life. And together let us figure out the answer to the most important question in this case: What can we do to stop this type of tragedy from happening again?

CONCLUSION

For the reasons stated above, life imprisonment without the possibility of parole, and not the death penalty, is the appropriate punishment for Clifton White. We therefore ask that Governor Easley use his powers justly and mercifully and:

1. Stop Clifton White's scheduled execution on August 24, 2001 at 2 a.m.
2. Grant Clifton White clemency from his death sentence.
3. Order the Clifton White's sentence be changed to life imprisonment without the possibility of parole.⁴⁰

Respectfully submitted this the _____ day of August 2001.

Jonathan E. Broun
Attorney for Clifton White

³⁹ *Bacon et al v. Lee et al*, No. 209A91, August 2, 2001, page 26 of slip opinion.

⁴⁰ Pursuant to N.C. Gen Stat. § 147-21, a copy of Mr. White's indictment for murder and the judgment sentencing him to death are attached as Exhibits 26 and 27 respectfully.