

Grant of Commutation to Darnell Williams

Whether to give clemency in a death penalty case is one of the most difficult decisions a governor must make. Clemency is a highly individualized determination. It is appropriate in specific situations, including where the judicial system has not functioned properly or has not allowed for the most suitable result in a particular case.

Darnell Williams is legally eligible for the death penalty because he willingly participated in the robbery of John and Henrietta Rease on August 12, 1986. Under Indiana's felony murder statute, Williams is therefore guilty of the murders that took place in association with the robbery whether or not he was the trigger man. Moreover, Williams is legally qualified for the death sentence because a jury found beyond a reasonable doubt that the state proved two statutory aggravators - multiple victims and murder in the course of a robbery.

But Williams' legal eligibility for the death penalty is not the sole issue before me. Clemency should not be used to undermine the legislative determination allowing the death penalty in appropriate cases. The General Assembly made a considered choice to permit the death penalty in Indiana, and the judicial system ensures that the death sentence is imposed only upon the most solemn consideration. I believe the death penalty is an appropriate punishment in some circumstances, and my constitutional responsibility to consider clemency has a role in ensuring that the outcome is fair and just.

Claims for clemency are uniquely dependent on the individual facts of each case. In considering clemency, I give weight to the recommendation of the Parole Board, which conducts a thorough examination of each case, including personal interviews with the prisoner and public hearings allowing public participation. In this case, the Parole Board voted unanimously to recommend commutation of Williams' death sentence to life without parole.

Williams has advanced four arguments to support his request that his sentence be reduced to life without parole. He argues: (1) his life circumstances before committing the crime make the death penalty inappropriate; (2) removal of his co-defendant, Gregory Rouster, from death row because of Rouster's mental retardation makes it fundamentally unfair for Williams to be executed; (3) Thomas Vanes, the prosecutor in his case, T. Edward Page, the magistrate who presided over his post-conviction proceeding, and several members of his jury now oppose capital punishment for Williams; and (4) recently discovered evidence "unravels the case for death."

The evidence regarding Williams' life circumstances already has been reviewed by courts and has not been found sufficient to overturn the death sentence. Much of the evidence on this topic was presented to the jury at trial, and other evidence was presented on post-conviction review. I do not find evidence regarding Williams' upbringing to lend much weight to his claim for clemency, but I view the evidence of Williams' mental status somewhat differently. Williams' IQ has been measured at 78 and 81, and he

attended special education classes throughout his schooling. The usual “cutoff” for mental retardation is IQ of 70-75, and Williams falls above that level. The U.S. Supreme Court imposed a hard and fast rule that no one who is mentally retarded may be executed. The courts have set a clear legal standard, but it remains problematic to confidently place the solemn decision of life or death on a few percentage points on either side of a line. Williams' mental status weighs as a factor in the clemency decision.

A more substantial factor is Williams' argument that it is unjust to execute Williams when his co-defendant Gregory Rouster, who is more culpable, will not be executed. Clemency is an appropriate method to adjust sentences of persons involved in the same crime to obtain a just result based on relative culpability.

The record is clear that Rouster is more culpable in this case. Stealing from the Reases was his idea in the first place, and his fingerprints are on goods removed from the home but not carried away from the site. Significantly, Rouster's statement after leaving the Reases' home indicates he took personal responsibility for both murders. Moreover, two people very close to the case, Thomas Vanes, who prosecuted the trial, and T. Edward Page, who presided over the post-conviction proceeding, both agree Rouster was more culpable and it would be unfair to subject Williams to harsher punishment. Such statements from participants in the criminal justice system are extraordinary.

Thus, those who bear the most responsibility for a crime should pay the highest penalty. Because Rouster cannot be executed for the crime, it is unjust for Williams to be executed. While it is true, as the courts have held, that Rouster and Williams have each been subject to an individualized sentencing determination and received due process as defined by law, the sentencing decisions were made independently; each sentence has been reviewed without reference to the other. Moreover, in reviewing other capital cases I have found no instance in which Indiana has executed a defendant where a more culpable co-defendant's life was spared. The principle of proportional sentencing is deeply rooted in our legal system. The principle dates back to early English law, and the framers of Indiana's Constitution declared that “All penalties shall be proportional to the nature of the offense.”

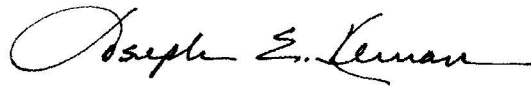
The claim for clemency is further supported by doubts about Williams' actual role in the crime. It is impossible to know who fired the weapons that killed the Reases. There is evidence indicating that Williams did so. There also is evidence indicating that Rouster, alone or in combination with someone else, committed the murders. It is unwise to impose the sentence of death in these particular circumstances, with doubt as to Williams' direct participation in the murders and additional evidence continuing to emerge depreciating Williams' involvement in the murders – although there is no evidence exonerating him.

As Governor, I have sworn to uphold the Constitution and the laws of Indiana. I have great confidence in our system of justice. In this case, the state and federal courts have been fair and thoughtful in their deliberations. Clemency is one part of the constitutional system, to be exercised in those cases that justice requires. My review of

the facts of this case leads me to exercise clemency by commuting Williams' sentence. This decision is based on the unique circumstances of this case. All these facts taken together, not one single element, cause me to grant clemency.

Commutation

The proper and just result in this case, based on the information now available, is for Darnell Williams to serve a term of life imprisonment without parole. I therefore commute his sentence to life without possibility of parole.

A handwritten signature in black ink, reading "Joseph E. Kernan". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

July 2, 2004

Joseph E. Kernan

STATE OF INDIANA
EXECUTIVE DEPARTMENT
INDIANAPOLIS

EXECUTIVE ORDER 04-18

FOR: CLEMENCY FOR DARNELL WILLIAMS, DOC No. 872037-ISP

TO ALL WHOM THESE PRESENTS MAY COME, GREETING:

WHEREAS, Darnell Williams was convicted in Lake County Superior Court on March 25, 1987, for the offense of Murder, two counts, and he received a sentence of Death on each of the two counts; and

WHEREAS, Williams is guilty of the murders of John and Henrietta Rease and legally eligible for the death penalty; and

WHEREAS, Williams' claims have received proper and thorough consideration by the judicial system; and

WHEREAS, Williams has asked that his sentences be commuted to life without parole; and

WHEREAS, the Parole Board, after careful investigation and examination of all the facts, unanimously recommended that Williams' sentences be commuted to life without parole; and

WHEREAS, there exist sufficient reasons to commute Williams' sentences, as explained in detail in the document titled Grant of Commutation to Darnell Williams, attached hereto and incorporated in this Executive Order; and

WHEREAS, my review of the facts of this case leads me to exercise clemency by commuting Williams' sentences. This decision is based on the unique circumstances of this case. All the facts, not one single element, cause me to grant clemency.

NOW, THEREFORE, I, Joseph E. Kernan, Governor of the State of Indiana, by virtue of the power vested in me by the Constitution and laws of the State of Indiana, hereby commute the Death sentence of Darnell Williams to Life Without Parole for each of his two counts of Murder.



IN TESTIMONY WHEREOF, I, Joseph E. Kernan, have hereunto set by hand and caused to be affixed the Great Seal of the State of Indiana, at the Capitol, in the City of Indianapolis, this Second day of July, 2004.

A handwritten signature in cursive script, reading "Joseph E. Kernan".

Joseph E. Kernan
Governor of Indiana

ATTEST: Todd Rokita
Secretary of State