

## **Gov. Frank O'Bannon's statement on clemency appeal by Joseph Trueblood**

The weightiest and most difficult responsibility of any Governor is deciding a clemency request from an inmate facing execution. In making clemency decisions, I am guided by several fundamental principles, which I have outlined before.

First, I approach all clemency decisions with the deepest respect for the law, as expressed by the General Assembly and the courts, and for the underlying constitutional principle of separation of powers. Because ours is a nation of laws, not of persons, I give substantial deference to the laws written by the legislature and the conclusions reached by the courts. Our legislators have expressly determined that the death penalty is appropriate in aggravated murder cases. Because the General Assembly has the constitutional authority to establish penalties for crimes I will not substitute my judgment for theirs.

Second, it is not my role to second-guess years of judicial proceedings. Rather, I look to whether there is compelling and credible new evidence that would indicate a grave miscarriage of justice -- evidence that was never presented to the courts, evidence that can no longer be presented to the courts.

Third, I also focus on whether there is some fundamental defect in the judicial process that would erode our confidence in the integrity of those proceedings. If the process was fair, then I will defer to the findings of the courts.

Fourth, I look for exceptional circumstances, such as an act of heroism or extraordinary compassion, that may support granting an inmate clemency even where guilt is clear and the legal proceedings were fair.

Finally, I consider the recommendation of the Parole Board, along with all the information about the case and the petitioner that the board has collected during its proceedings. That includes the interview with the petitioner and the oral and written testimony presented at the public hearings. I respect the role of the board and I appreciate its efforts.

In addition to these fundamental principles, I am guided by the facts of the case found in the court records.

All the courts that have addressed Trueblood's crime, starting with the Tippecanoe Circuit Court and ending with the United States Court of Appeals for the Seventh Circuit, have determined that on Aug. 15, 1988, Trueblood murdered Susan Bowsher and her two children, Ashlyn Hughes, age two and a half, and William Bowsher, age seventeen months, by shooting each of them through the head.

More specifically, Trueblood had been cohabiting with Bowsher, although he was married to someone else. During the relationship, he had been possessive to the point of locking her in the house when he was away. Bowsher determined that she was going to reconcile with her husband, and she moved out of the residence she shared with Trueblood.

On Aug. 15, 1988, Bowsher called Trueblood to ask him to take her and her children somewhere. The previous day, Trueblood had obtained a handgun by taking it from his parents' home, where it was kept under lock and key. During the drive, Trueblood shot each of the victims. Each child was shot once, while Bowsher was shot three times in the head. Trueblood buried the victims in a single, shallow grave on the Tippecanoe-Fountain County line.

Trueblood was apprehended when his sister-in-law reported to her employer, and then to police, that Trueblood had come to her residence and discussed the murders with her husband, Trueblood's twin brother William. William had lent Trueblood the shovel he needed to bury the bodies, and William had advised Trueblood to get out of town. Trueblood was able to direct police to the general area where he had buried the bodies and also assisted the police in recovering the murder weapon, which he had thrown into a river.

Trueblood was charged with all three murders. Before trial began for the murder of Susan Bowsher, Trueblood pleaded guilty to that crime. He admitted to the trial court that he had shot Bowsher in the head, intending to kill her.

After he pleaded guilty to murdering Bowsher, Trueblood decided to stand trial for the murders of the children. His theory of defense at that trial was to be that Bowsher shot the children, then asked Trueblood to end her life in a kind of mercy killing. This strategy collapsed when Trueblood's twin brother William testified that Trueblood had confessed to him that he murdered all three victims. William testified that

Trueblood said he shot Bowsher because she had decided not to be with him any more, and he shot Ashlyn because he was afraid she would identify him as her mother's killer. After a few other witnesses testified, Trueblood changed his plea to guilty and admitted shooting the children.

After the trial court accepted Trueblood's guilty plea, Trueblood changed his story during the pre-sentence investigation. Although he had admitted in court that he shot all three victims, in his interview with a probation officer for sentencing purposes he changed his story. He stated that all three victims had been shot accidentally when he struggled for the gun with Bowsher to keep her from killing herself. Even at this point, he admitted that he administered the final shot to Bowsher's head, although he contended that he did so only to put her out of her misery after she had been severely wounded in the struggle.

In proceedings before the trial court after the interview took place, Tippecanoe Circuit Judge Ronald Melichar specifically concluded that Trueblood had been telling the truth when he admitted killing all three victims. Judge Melichar also concluded that Trueblood's unsworn statements to the probation officer were not true. Judge Melichar sentenced Trueblood to death for the murders of Ashlyn and William Bowsher (because of the guilty plea, there was no sentencing proceeding before or recommendation from a jury). Judge Melichar found two statutory aggravators. First, each victim was less than twelve years old. Second, Trueblood already had been convicted of another murder. Each of these aggravators is independently sufficient to support the death penalty. Judge Melichar also found that the crimes were cold-blooded and premeditated, although that finding was not an aggravating circumstance supporting the capital sentence.

Trueblood's capital sentence was automatically appealed to the Indiana Supreme Court. In 1992, the Supreme Court unanimously rejected Trueblood's claim that he should have been able to withdraw his guilty pleas to all three murders. *Trueblood v. State*, 587 N.E.2d 105 (Ind. 1992). The Supreme Court found substantial evidence supporting Judge Melichar's conclusion that Trueblood's admission of guilt was accurate. Trueblood answered specific questions in open court, admitting that he knowingly killed all three victims by shooting them in the head and that he intended to end their lives. Other witnesses at the trial, including Trueblood's brother, provided other evidence supporting the conclusion that Trueblood committed the murders. Our Supreme Court therefore concluded that the trial court correctly denied Trueblood's request to withdraw his guilty plea. The court also found that a capital sentence reflected the trial court's appropriate weighing of lawful mitigating and aggravating circumstances. Specifically, the court concluded that the trial court did not err by finding that Trueblood was suffering from no mental or emotional disturbance at the time he committed the murders.

The United States Supreme Court declined to hear Trueblood's request for review of the Indiana Supreme Court's ruling on direct appeal. *Trueblood v. Indiana*, 506 U.S. 897 (1992).

Trueblood sought post-conviction relief in state court, which was denied. The Indiana Supreme Court unanimously affirmed the denial of post-conviction relief in a comprehensive opinion in 1999. *Trueblood v. State*, 715 N.E.2d 1242 (Ind. 1999). The court rejected Trueblood's claim that his trial counsel was ineffective by counseling Trueblood to plead guilty. The court rejected Trueblood's claims that counsel should not have given this advice because he could have raised certain defenses and because Trueblood may not have been mentally competent (a psychological examination by a professional hired by Trueblood's attorney determined that Trueblood was competent to stand trial, determine how to plead, and assist his attorney). The court concluded that the decision to plead guilty was an appropriate strategic decision aimed at garnering mercy and avoiding a jury recommendation of death, although the strategy ultimately failed. The court also concluded that the decision to present certain psychological evidence, but not other psychological evidence, at sentencing was a reasonable strategic judgment, not ineffective assistance. The court also rejected all of Trueblood's claims that his counsel provided ineffective assistance at the sentencing phase and claims that Trueblood's appellate counsel was ineffective.

The United States Supreme Court also declined to hear Trueblood's appeal of the denial of state-court collateral relief. *Trueblood v. Indiana*, 531 U.S. 858 (2000).

The federal district court granted habeas corpus relief to Trueblood on some of his claims, although the district court's judgment was unanimously reversed on appeal by the Seventh Circuit. *Trueblood v. Anderson*, 156 F.Supp.2d 1056 (N.D. Ind. 2001). Federal district judge Allen Sharp determined that Trueblood's guilty plea to Susan Bowsher's murder was not knowing and voluntary because he did not understand that the plea constituted an admission of an aggravating circumstance for the death penalty in the cases involving the children's murder.

Judge Sharp ruled that the trial judge should have instructed Trueblood about this consequence of his plea, and his failure to do so violated Trueblood's rights. For the same reason, Judge Sharp found that Trueblood's counsel's advice that he plead guilty to Bowsheer's murder constituted ineffective assistance. Judge Sharp also found that the sentencing judge relied on an improper aggravating circumstance to levy the death penalty -- that the murders were cold-blooded and premeditated.

The Seventh Circuit unanimously rejected all of Judge Sharp's reasons for invalidating Trueblood's conviction. *Trueblood v. Davis*, 301 F.3d 784 (7th Cir. 2002). The Seventh Circuit ruled that defendants such as Trueblood have no constitutional right to be told every possible consequence of a guilty plea and that they have no right to be told about every potential effect of a plea in other cases. The court pointed out that Trueblood never denied that he was the one who fired the final shot into Bowsheer's head, making him guilty of a crime that would constitute an aggravating circumstance under Indiana's murder statute whether he pleaded guilty or not. The Seventh Circuit also rejected Judge Sharp's conclusion that the trial judge considered an improper aggravating circumstance. Like the Indiana Supreme Court, which addressed the issue directly, the Seventh Circuit concluded that Judge Melichar's reference to the cold-blooded circumstances of the crime and helplessness of the victims was "an observation about the crimes that was not only true but inescapable." The court ruled that these matters were appropriate considerations for the judge, not as to whether Trueblood was statutorily qualified for the death penalty, but as to whether the death penalty was suitable in light of all the circumstances. The judge's statement showed why he believed it was not appropriate to show mercy toward Trueblood in sentencing.

The United States Supreme Court denied Trueblood's request to hear an appeal of his federal collateral challenge. *Trueblood v. Davis*, 123 S.Ct. 1650 (2003).

The Indiana Supreme Court also has denied Trueblood's request to file a successive collateral challenge to his conviction and sentence in state court. *Trueblood v. State*, No. 79S00-0304-SD-172 (May 9, 2003). Trueblood sought to relitigate his claim that his rights were violated when he was advised to plead guilty to Bowsheer's murder, but our Supreme Court determined that this claim already had been adequately addressed in both federal and state courts. Trueblood sought to raise a new Sixth Amendment claim that he was "abandoned" by his trial counsel when they sought to withdraw after he changed his story in the pre-sentence interview. The court found that Trueblood's failure to raise this claim at an earlier stage meant that he could not raise it now, and that there was no reasonable possibility it would succeed. Trueblood also claimed that the U.S. Supreme Court's recent decision in *Ring v. Arizona*, 536 U.S. 584 (2002), entitled him to relief. *Ring* relates to the jury's role in capital cases. Our Supreme Court rejected Trueblood's claim because *Ring* does not hold that defendants such as Trueblood can waive their right to jury trial by pleading guilty and therefore does not apply to Trueblood. Finally, Trueblood again raised his claim that Judge Melichar relied on an improper aggravating circumstance. Our Supreme Court found no basis for further action on this claim because it had been rejected by both federal and state courts. The court therefore declined to permit Trueblood to file a successive petition for post-conviction relief.

On June 10, 2003, the U.S. Supreme Court denied Trueblood's petition for certiorari relating to his petition for successive post-conviction relief.

Thirteen years ago, Joseph Trueblood admitted that he killed Susan Bowsheer and her children Ashlyn and William. Although he later changed his story, a trial judge evaluated the credibility of Trueblood's statements and determined that he was telling the truth when he stated that he shot each victim through the head with the intention of ending their lives. This conclusion is backed up by other evidence, including the testimony of Trueblood's twin brother. There can be no question that two statutory aggravating factors supporting the death penalty exist in this case -- two of Trueblood's victims were less than twelve years old, and Trueblood committed multiple murders. The courts have followed the legislative command that the death penalty is appropriate only when statutory aggravating factors are present.

Trueblood's claims of legal error have received extensive consideration in state and federal courts, and all of them have been rejected. He has presented no new evidence indicating that he is innocent or showing that a miscarriage of justice took place. He still maintains that he did not shoot the children, but there are substantial reasons to disbelieve his contentions, as have all of the courts that reviewed this matter.

At this stage, Trueblood contends that he should receive clemency only because he was denied counsel at a critical stage of his proceeding -- when his trial counsel asked to withdraw after Trueblood changed his story in the pre-sentence interview with a probation officer. Trueblood contends that this specific issue was raised late in the proceedings and deemed "waived" by the Indiana Supreme Court, so it has never been considered on the merits.

Every appellate decision in this case has addressed the quality of Trueblood's legal representation at precisely the time implicated by the "abandonment" claim. Every appellate court has determined that Trueblood's counsel acted reasonably in advising him to plead guilty because he was likely to lose at trial and a guilty plea would eliminate the possibility of a jury recommendation of death and perhaps induce the sentencing judge to be merciful. Trial counsels' request to withdraw was based on their assertion that Trueblood had lied when he admitted shooting the children, thus bolstering Trueblood's claim. In essence, Trueblood's claim is that once he changed his story in the pre-sentence interview, his lawyers might have done something different that would have led the trial judge to show mercy by giving Trueblood a sentence less than death in exchange for his guilty pleas.

The federal district court and Seventh Circuit examined the "abandonment" claim, determining that Trueblood's counsel did not perform deficiently. The Indiana Supreme Court also considered this claim in relation to Trueblood's request to file a successive post-conviction petition. Our Supreme Court ruled that the claim could not be raised at this late stage, but also noted that the performance of Trueblood's counsel had been reviewed several times by appellate courts without any finding of deficient performance, and that there was "no reasonable possibility" that he was entitled to relief on this claim. I will not second-guess these judicial determinations regarding the single claim Trueblood has made in support of clemency.

While Trueblood has not raised the matter in relation to clemency, at his original sentencing proceeding some evidence was introduced that he rescued a woman from a burning building. This matter could influence a clemency decision. The only references to this matter, however, came in hearsay testimony by Trueblood's parents at his sentencing. While the Indiana Supreme Court ruled that the testimony was admissible under the relaxed evidentiary standards applying to sentencing, it also ruled that the trial court was not obliged to believe the testimony. The trial court did not credit the testimony, which was vague and general. Nor has Trueblood provided any further information about it. It is not tangible enough to serve as a basis for clemency.

In its proceeding, the Parole Board heard from the victims' family members, who unanimously opposed clemency, and Trueblood's family members, who supported it. The Parole Board's investigator also contacted more than 40 law enforcement officers who participated in the investigation of the crime, and all opposed clemency. Like the sentencing proceeding, the Parole Board's investigation indicated the Trueblood grew up in a violent, abusive, alcoholic home. He had almost no criminal record before he committed these murders, and his behavior in prison has been exemplary. In light of all these factors, the Parole Board unanimously rejected Trueblood's request for clemency.

Earlier this month, Trueblood wrote me a letter requesting clemency. In it, he says that he pleaded guilty based on the understanding that he would not receive the death penalty. But there was no plea bargain, only a hope that the guilty plea would lead to the exercise of mercy by the trial judge. In light of all the circumstances of this case, however, the trial judge sentenced Trueblood to death, a sentence that has been affirmed by state and federal courts.

In his letter, Trueblood asked to take a "lie detector" test to show that he believed his story to be true. The facts surrounding Trueblood's crimes have been judicially determined. The judicial system has provided Trueblood repeated opportunities in multiple appeals to challenge those facts in formal, timely, and appropriate settings. The Indiana Supreme Court has determined that the results of polygraph or "lie detector" tests cannot be used as evidence. "This is because of the inherent unreliability of polygraph examinations." *Gray v. State*, 758 N.E.2d 519, 522 (Ind. 2001). Indiana's courts have not hesitated to vacate convictions or sentences in capital cases when a procedural or substantive error has been found, but no error has been found in Trueblood's case. I base my clemency decision on the judicially determined facts.

My review of this case has determined that Trueblood's guilt is clear and the legal proceedings that led to his death sentence were fundamentally fair. As governor, I am deeply committed to upholding the Constitution and laws of Indiana, as I have sworn to do. My respect for the rule of law and my review of the facts in this case lead me to my decision.

The petition for clemency of Joseph Trueblood is denied.