

APPLICATION FOR CLEMENCY TO THE
GEORGIA BOARD OF PARDONS AND PAROLES
ON BEHALF OF
JOSHUA BISHOP

SARAH GERWIG-MOORE
Georgia Bar No. 292352
Mercer University School of Law
1021 Georgia Avenue
Macon, Georgia 31207
(478) 301-2195
gerwig-moore@law.mercer.edu

WILSON DuBOSE
Georgia Bar No. 231450
DuBose Law Group
285 N Main Street
Madison, Georgia 30650
(706) 342-7900
wdubose@duboselawgroup.net

Counsel for Joshua Bishop

TABLE OF CONTENTS

I. Introduction.....	1
II. The Facts of the Case and Confession to the Crimes.....	3
III. Josh’s Deep and Immediate Remorse.....	5
IV. Several Family Members of Leverett Morrison and Ricky Willis Join this Request for Clemency.....	8
V. Josh Bishop’s Childhood and Adolescence.....	12
VI. Josh Bishop’s Life Since his Sentence and Incarceration.....	17
A. Josh Bishop shows kindness and support to other inmates.....	18
B. Josh improves the lives of friends and family who live outside the prison...21	
VII. It is Appropriate for this Board to Consider the Proportionality of Mr. Bishop’s sentence with the sentence of his Co-Defendant.....	25
VIII. Seven of the Twelve Sentencing Jurors Now Support a Sentence of Life Without Parole for Josh Bishop.....	28
IX. Conclusion.....	32

Undersigned counsel applies to the Board of Pardons and Paroles, pursuant to Article IV, Section II, Par. II(a) and (d) of the Georgia Constitution of 1983, O.C.G.A. sections 42-9-20, 42-9-42(a), for consideration of this application on behalf of Joshua Bishop, for commutation of his sentence of death, imposed by the Superior Court of Baldwin County on February 13, 1996.

Counsel is grateful for the opportunity to have a full and fair hearing before the Board as we seek commutation of Mr. Bishop's death sentence.

I. Introduction

The story of Joshua Bishop's life is one of deprivation, abuse, hopelessness, depravity, and crime; but it is also one of faith, contrition, redemption, gratitude, and love. This Petition for Executive Clemency will show the remarkable journey Josh has taken in his life and describe the path Josh hopes to continue. His is a life that should be saved rather than taken prematurely, and is a life that can be held up to others as a living example of the extent to which lives in a state of loss and addiction can be transformed into ones of meaning, purpose, and hope.

Since entering the Georgia prison system for crimes to which he quickly and fully confessed, Josh has been given structure, and from that he has achieved stability. He has experienced the care and concern of others, and from

that he has developed a sense of worth and belonging in this world. He has experienced the comfort and joy that can arise from becoming a person of faith, and from that has come the need and desire to spread a message of hope and redemption. He has seen firsthand the examples of individuals whose lives are marked by devotion to duty, and from that he has come to learn the importance of becoming a thoughtful adult who accepts and can bear responsibility.

The person Josh Bishop has become bears little comparison to the teenager whose life had been defined by the dismal circumstances in which he was born and raised; a teenager whose view of life was so contorted that he devalued life itself. In the Josh we now know, we see a kind human being of humility, compassion, and gratitude. He is not a saint or a guru, or even a leader of the usual sort. He is a simple man of quiet and positive influence, and his life has touched others even since his imprisonment. Josh wants nothing more than to spend the rest of his life continuing to give himself to others, and joining him and on his behalf, we plead to this Board for clemency. The prolonging of his life would serve a far greater purpose than would the taking of it.

II. The Facts of the Case and Confession to the Crimes

On June 24, 1994, Josh Bishop was a teenager in Milledgeville, Georgia. He had lived many of his nineteen years on the streets, had grown up in various foster homes and group homes, and had experienced addiction, abandonment, and chaos. Josh spent that day drinking and using drugs with two significantly older men. Leverett Morrison, the victim in this case, was twenty-four years older than Josh. The other man, who would become Josh's co-defendant in the death of Mr. Morrison, was Mark Braxley. Mr. Braxley was thirty-six years old that day— Josh's senior by seventeen years. (Richard Horn, pg. 24.)¹

Josh and the two men continued drinking late into the night at the Hilltop Bar, which was located near Mr. Braxley's trailer, and Josh became severely impaired. Several Hilltop witnesses saw Josh so heavily intoxicated that he "had a hard time walking around," and "had to hold on to [Mr. Braxley] to stand up." (Delores Forshaw, pg. 240-41.) Witnesses also saw Josh leave with the two men in Mr. Morrison's Jeep. The three of them went back to the Braxley trailer and continued to drink and use drugs. At some point Mr. Braxley decided that he wanted to take Mr. Morrison's Jeep to visit his girlfriend, and ordered Josh to "get them keys." (Trial Transcript 1915-16.)

¹ Because of the volume of documents in this case, and to aid with organization, all witnesses have been grouped in tabbed sections according to their relation to the case. All citations are to the name of each witness and list the corresponding Appendix page number; all pages in the Appendix have been individually tabbed.

Mr. Morrison woke up as Josh tried to reach into his pocket, and Braxley handed Josh a piece of a closet rod. Josh intended to “just knock him out where [he] could take [the] keys.” But he hit Mr. Morrison “[a]bout twice and [Braxley] hit him about three times.” Braxley ordered Josh to “finish him.” (Trial Transcript 1917.) Josh refused and left the trailer. Soon after, there was a loud noise in the back bedroom. Josh re-entered the room and discovered that Morrison was dead. The two men wrapped Mr. Morrison’s body in a bedcover and took it out to the Jeep. Josh drove at first, but he was “shaking so bad” that Braxley took the wheel. They attempted to hide Mr. Morrison’s body, but Josh was unable to lift Mr. Morrison’s body into the dumpster. (Trial Transcript 1919.) They set the Jeep on fire at a nearby pond and walked back to the Braxley trailer. (Trial Transcript 1921.)

Virtually all of the details outlined above and presented at trial are available because Josh, after very initial denials, took full responsibility within a few hours of his arrest—within twenty-four hours of Mr. Morrison’s death. The investigating officers later stated that they believed Josh’s confession to be truthful and complete. (Richard Horn, pg. 23; Howard Sills, pg. 37.) Recordings of these confessions were played at Josh’s trial and formed the basis for his conviction at the guilt-innocence phase.

While in police custody, Josh also admitted his role in the death of Ricky Willis, another man killed at the Braxley trailer. Josh was never tried for this

offense, but his involvement in it was presented in the penalty phase of his trial for the murder of Leverett Morrison. (Trial Transcript 2227.) When questioned about it, Josh admitted that while staying at the Braxley trailer two weeks earlier, he got into a violent altercation with Mr. Willis after Willis bragged that he had sexually assaulted Josh's mother, Carolyn. Josh admitted that he had attacked Willis violently, punching him repeatedly. While serious, none of these injuries were fatal. Josh explained that Braxley had pulled out his tackle knife and urged Josh to use it on Mr. Willis. When Josh refused to do so, Braxley then cut Willis's throat, killing him. Later, witnesses observed Braxley sharpening this knife and placing it in his tackle box. (Trial Transcript 2515-16, 2257-59.)

Josh admitted he had helped Braxley bury the body, and his statement to police was consistent with the medical examiner's testimony indicating Willis had died from knife injuries rather than head abrasions. (Trial Transcript 2420.)

Both Josh and Mark Braxley were ultimately charged with murder and armed robbery (for taking and burning Morrison's Jeep) and the State gave notice of its intention to seek the death penalty.

III. Josh's Deep and Immediate Remorse

Almost as significant as what Josh said after the night of June 24, 1994, is the way he said it and the way he reflected about it. From the early hours of this case, Josh was contrite. Remorse cannot return a lost loved one to his

family members; that fact remains, and it permeates Josh's life as well as informs this petition for clemency. Remorse is, however, relevant to this Board's determination of whether Josh is an appropriate candidate for clemency. Josh is haunted by his crimes, sorrowful for his actions, and accepts full responsibility for his role in the murders.

Josh showed remorse for his actions nearly immediately after his arrest, primarily by cooperating with law enforcement. Detective Ricky Horn noted Josh's expressions of remorse, and his truthfulness and respectfulness throughout the process. (Richard Horn, pg. 23.) Sheriff Sills stated that, "[d]uring my interactions with him, Bishop was polite, straightforward, truthful, and remorseful. When I drove him to death row in Jackson after his trial, he thanked me and shook my hand, even though my work had put him there." (Howard Sills, pg. 39.)

Vanessa Thomas, Leverett Morrison's niece, writes, "He was sorry right away, and he has told my mother how sorry he is." (Vanessa Thomas, pg. 8.)

Those who meet Josh today immediately recognize that he is "repentant, remorseful and contrite." (Deacon Norm Keller, pg. 75.) Gary Shertenlieb is a man capable of recognizing sincere remorse in others. As a former military police officer, Shertenlieb questions the sincerity of prisoners' remorse in general; Shertenlieb has seen prisoners work the system by playing self-serving mind games against innocent people and realized that, more times than not, the

prisoner's remorsefulness stemmed from being caught, not from his actions.

However, Shertenlieb concluded differently about Josh:

Through the years I have seen Josh struggling to find if there were ways or anything he could do to reach out to anyone he may have brought hurt or sadness to from his past actions and show his true remorse and sorrow for any actions which may have caused them pain. This has not been always possible, but when it was, he would tell them of his remorse and sorrow—not so he would receive forgiveness but in an effort to help them possibly relieve their pain. Sure Josh would love forgiveness but he puts the act of healing others in front of his own desires.

(Gary Shertenlieb, pg. 123.)

Josh has used his time since his incarceration to find and grow in faith, to express his remorsefulness through prayers, artwork and outreach; but most importantly Josh took the initiative to make these changes in his life, the greatest indication of his immediate remorse. And his remorse continues. Josh's pain about what he did and what was lost was palpable in his recorded interview with representatives of this Board just a few days ago. Many have seen Josh's grief and pain over the years.

Pastor Tim Bagwell, who has visited Josh regularly on death row for the past three years, describes that he has witnessed first-hand the continuing development of Josh's remorseful character. "Now, as much as when he was first incarcerated, [Josh] recognizes and owns up to his culpability and sin. Sorrow and regret permeate his soul." (Rev. Tim Bagwell, pg. 55.) While he cannot undo his actions on those days in June of 1994, Josh "has longed for

ways to make reparations. He has shown deep care and concern” for the family of the victims. (Rev. Tim Bagwell, pg. 56.) In fact, as Diana Shertenlieb bears witness, Josh “prays for his victims and their families.” (Diana Shertenlieb, pg. 129.)

IV. Several family members of Leverett Morrison and Ricky Willis Join this Request for Clemency

There are a number of family members of Leverett Morrison and Ricky Willis who very powerfully and mercifully ask for clemency for Josh. Their grace amidst this tragedy is remarkable- and inspiring.²

Janet Warren was Leverett Morrison’s young sister, and they shared a strong relationship. In a letter to this Board, she pleads for Josh’s life, despite his crime.

I am Leverett Lewis Morrison’s middle sister and his favor sister. I loved my brother heart and soul. He was not just a brother. He was also our caretaker as kids. Our parents were both alcoholics and we were life in his care many days. It is because of him me and my sister survived.

I thank Mason’s for my upbringing. I was raised in Masonic Home of Georgia. Until I take my last breath, I will be thankful for them. Because of Mason’s, I had a Christian upbringing.

The reason for my letter is to plead for the life of Joshua Daniel Bishop as a 19 year old with no life. No

² For a number of understandable reasons, some family members have not wished to discuss the case or have conflicted feelings about joining the request for clemency.

one Godly in his life. He was a follower. I believe Mark Braxley was a ring leader. Joshua looked up to him. I was born in Baldwin County and have heard many bad story's about Mark. Yes Joshua played a part in my brother's death, but I believe if Joshua had never met Mark, this would never had happened.

I believe that Joshua can be a bless'n to other in prison. I feel his life has purpose. He can help other with his story. Things can happen with the blink of a eye. **Please let this man live!!!** [emphasis added] (Janet Warren, pg. 4-5.)

Janet Warren's daughter, Vanessa Thomas, writes in support of clemency as well. "He was sorry right away, and he has told my mother how sorry he is. She writes to him now, and feels compassion for him. We all do-- not in a naive way, but understanding both the pain he endured and without ignoring the pain he caused." (Vanessa Thomas, pg. 8.)

Ms. Thomas points out that Josh's execution would only deepen their grief: "My mother and Aunt Angela worry about Josh, and so do I. Seeing him executed for my uncle's murder would compound the sadness we feel at losing a family member." (Vanessa Thomas, pg. 8.)

Angela Morrison Duduk, another of Leverett Morrison's younger sisters, supports clemency for Josh Bishop.

For a decade and a half, my thoughts were only an eye for an eye, that there was no excuse for killing someone. But as I have thought more about it, I have come to realize that Joshua was brought into the world without a chance. He was brought up without love and was in and out of foster homes . . . Now that I think about Josh and his environment, I think Joshua was looking for someone to

comfort him and he chose the wrong playground and the wrong playmates . . . I sincerely think Josh has done his time and will continue doing his time, **but I ask you to please spare his life.** He was an addict and he was living on the streets and he would not have done what he did if not for drugs and alcohol. [emphasis added]

Mrs. Duduk also shares that their mother—also Leverett Morrison’s mother—wanted Josh’s life to be spared, despite the fact that he took her son’s life.

Even before the trial of this case, my mother said she did not want Josh to be put to death because ‘he was somebody’s child.’ [emphasis added]

(Angela Duduk, pg. 3.)

Mrs. Duduk sincerely pleads for the Board to spare Josh’s life:

It is certainly a hard life in prison, but it is still life. I loved my brother Leverett, **but his memory is not honored by killing Josh. I forgive Josh for what he did.** [emphasis added]

(Angela Duduk, pg. 3.)

Before his death, Albert Ray Morrison, Leverett Morrison’s brother, supported clemency.

I have known Josh all his life and I simply don’t believe that Josh would just up and kill someone. And I don’t think Josh should die for this...

(Ray Morrison, pg. 11.)

Ann Nowlin was Leverett Morrison’s wife at the time of his death. She, too, supports clemency, seeing Josh as a follower of his older co-defendant.

I feel that Mr. Bishop should no longer be on death row, but should have his sentence changed to a life sentence.

(Ann Nowlin, pg. 9.)

All of Ricky Willis's surviving family members supported clemency

before they passed away. Ronnie Daniels, Ricky Willis' half-brother and only living relative, also believed Joshua should be allowed to spend the rest of his life in prison.

I do not think it is fair that Josh got a death sentence if Mark was just as responsible for the killing. I am not friends with Mark Braxley or Josh Bishop, however, I do not want Josh to die. I think Josh should at least get a life without parole sentence.

(Affidavit of Ronnie Daniels, pg. 17.)

Lucille Ellis also requested clemency for Joshua; she was not a family member, but was close to the Willis family. Ms. Ellis also knew the Bishop family well and often saw the interactions between Josh and Mark Braxley.

I was very hurt to find out Josh had gotten a death sentence. . . . I am about as close to family as Ricky Willis ever had, and I don't want Josh to have a death sentence. Josh was only a teenager when this happened, and I can't believe Josh told Mark Braxley what to do in his own house or anywhere else for that matter.

(Lucille Ellis, pg. 14-15.)

These letters and affidavits demonstrate a common theme: many members of Leverett Morrison and Ricky Willis's families do not wish for Josh to be executed for his role in the death of their family members. They have lost someone dear to them, and Josh's execution would, in Vanessa Thomas's words, "compound" – rather than relieve – their pain.

The remainder of this petition for clemency addresses Josh Bishop's life before his crimes, his life since his incarceration and death sentence, and context relevant to this Board's consideration. Josh makes clear that he believes none of these circumstances is sufficient to excuse his crimes. As his counsel, however, we believe these explanations are important to understand what brought Josh to a place where the crimes were even possible and what he has done since that time to attempt to live a life of meaning and remorse. Dozens of people who know Josh Bishop personally have written to offer their support for clemency; some knew him as a child, others only met him after his incarceration. All give a unique perspective on the worth of the life of Josh Bishop—while bearing in mind the pain his actions have caused.

Likewise, sentencing jurors' opinions and other information related to proportionality review of Josh's sentence are necessary for this Board's thorough examination, and are not described here in order to deflect blame or deny responsibility.

V. Josh Bishop's Childhood and Adolescence

Many of the people—family members, case workers, foster parents, or others—who stood witness to Josh's childhood repeat a similar theme: "he

never had a chance.”³ His life prospects were undoubtedly dismal even from birth: his mother, Carolyn Bishop, herself a victim of physical and sexual abuse, could not name his father, and she was addicted to drugs and alcohol even before he was born. He was beaten; abandoned, reunited with his mother, only to be abandoned again; frequently homeless; often hungry; threatened with death or torture; and told repeatedly that his life had no value (and that his birth had ruined the lives of others). His mother’s abusive boyfriend, Tony Townsend, was known for being cruel and abusive to Josh and his mother and brother; he threatened them all with guns, and often made Josh sleep *under* their trailer in rural Milledgeville. (Allen Hartley, pg. 101; Eddie Edenfield, pg. 97.)

Still, Josh is clear that he views none of this as an excuse for his crimes.

Josh’s brother, Mike Bishop, recalls, “Our childhood was mental torture. Me and Josh never knew when something was going to go down around us, My mom’s boyfriend Tony Townsend was the biggest problem. I have seen those two fight A LOT. Tony was the type of person that always had a gun on him ... **It traumatized him more than me.**” (Mike Bishop, pg. 79.) Tony

³ The scope of social history and child services records is overwhelming and has involved counsel combing through thousands of pages. In order to assist this Board in reviewing these records, counsel has prepared this social history document, not as direct evidence but as an aid in understanding Josh Bishop’s childhood. That appears as a separately tabbed document in the Appendix.

A few excerpts of DFCS records, which are quoted in the petition, appear in tabbed sections hereafter; there are thousands more records that demonstrate Josh Bishop’s childhood abuse, neglect, and deprivation.

Townsend's cruelty was legendary. "Tony was always putting them in the car and threatening to take them to the graveyard and kill them. He would shove their heads down into the floor board and stick a pistol to it. He has even shot at the boys while in their house." (Eddie Edenfield, pg. 96.)

Josh was removed from the custody of his mother when he was six, after he witnessed (and hid from) a shoot out between her and Tony Townsend. (Mike Bishop, pg. 79.) ("Around 1981, due to Carolyn's living condition, addiction, and involvement with an abusive boyfriend, Michael and Joshua came into foster care.") (Angela Prosser, pg. 114.)

From the time when was removed until he was fifteen, he bounced between foster homes and group homes—always yearning to return to his mother —and was in sixteen different state placements in ten years. (Trial Transcript 2657.)

Some of these placements were brighter than others:

When we went to stay with the Brookins foster family it was like paradise. It was the country with cows, dogs, ponds and a garden. ... Mr. Brookins worked every day. When he came home we had dinner. Then we went outside on the porch and he drinks 1 beer. We couldn't believe Mr. Brookins could only have ONE beer. Me and Josh never saw anyone stop drinking after one beer —
(Mike Bishop, pg. 80.)

But all were temporary. Plunged back into an unstable lifestyle, Josh changed homes constantly, and rarely by his choice.

From 1987-1989 Josh lived at the Methodist Children's Home, which was for the most part a positive and stable placement. Josh attended Tinsley Elementary School in Macon, Georgia and made the Honor Roll. Former Methodist Home President Steve Rumford wrote about Carolyn Bishop's interference with Josh's progress and about Josh ultimately leaving the Home. "We now know, as we suspected, Josh's mother encouraged Josh to act up so he could fail in his placement at the Methodist Home and be returned." (Steve Rumford, pg. 108.)

After that time, Josh was alternately homeless or in YDC for minor offenses – often without any contact with family or plan for release. During those times, he asked YDC officials to reach out to his mother and even to let him, simply, go "home" (DFCS, pg. 396-421, 415-421)... wherever that may have been.

Officer Shane Gladin, who also assisted with the investigation stemming from Josh's crimes, recalls finding Josh living under a local bridge: "The Department of Family and Children's Services sent me to go pick up Josh from under the bridge. [Josh] was living in this terrible, dirty, and dangerous place, but didn't want to go because he didn't want to leave his mother alone there." (Shane Gladin, pg. 26.)

In 1991, DFCS custody officially ended and Josh was returned to his mother, who invariably found herself in legal troubles, often for drug and

alcohol related offenses or prostitution. (DFCS, pg. 318-324; 334; Wilbur Watts, pg. 217.) For nearly two years, they were often homeless, living under the bridge in Milledgeville or other temporary shelters. (Shane Gladin, pg. 26; DFCS, pg. 422-425.) Josh often witnessed the abuse of his mother by a number of men, and he did his best to protect her. Josh himself regularly fell victim to their abuse; he was stabbed when he was 14 years old while on the street and was shot at a number of times. (DFCS, pg. 437-440.)

By the time Joshua had reached his mid-teens, he and his mother were living day-to-day wherever and with whomever they could find shelter, food, and alcohol. Remarkably, Josh was employed regularly at Watts Construction Company and during his employment was well liked by both the owner of the company and his foreman. Mike Bishop recalls,

In 1992-93 I got a job at Watts Construction Company ...
Josh worked as a helper ... that was a good year. Josh
moved in with me and my girlfriend. ... **Josh was good.**
He was a great worker. He worked hard and he liked
to work, he never laid off and they liked him at Watts.
I think Josh was happy.

(Mike Bishop, pg. 81-82; see also Wilbur Watts, pg. 217.)

Just months before the crime, Josh was hospitalized for eight days after motorcycle accident and had surgery for a compound ankle fracture. To relieve that pain, doctors prescribed Josh Demerol and Darvocet - both very serious narcotics. (DFCS- Motorcycle Crash, pg. 441). Josh was soon laid off from Horton Homes (a construction job) for inability to work. Shortly after, he

began using drugs fairly heavily, and so began a downward spiral leading up to the crimes.

Former Caseworker Ida Freeman, who knew Josh's tragic life history only too well, pleads for clemency on his behalf:

I sincerely hope that you will take into account the factors which were outside of Josh's control during his so important childhood years. I know that they do not excuse his crimes but I do want the Board to know that even from the perspective of a CPD worker who has worked with a lot of dysfunctional families, Josh's family situation was shocking.

(Ida Freeman, pg. 112)

These conditions are indeed shocking. When Josh should have been loved, he was cast out; when he should have been nurtured, he went hungry; when he should have been guided, he was left to fend for himself. No child should be subjected to such a barrage of emotional and physical abuse, and while this is certainly no excuse for violent behavior in his later teen years, it contextualizes him as something other than a vicious monster.

VI. Josh Bishop's Life Since his Sentence and Incarceration

Ever aware of his crimes, Josh has attempted over the last twenty-two years to build a life of meaning and service. His incarceration is a punishment, to be sure, and one that he accepts. The sweetness that he is able to find in life—even in prison life—is not an effort to forget the sorrow he has caused or

the judgment he has earned. Rather, in small ways, from his work detail to writing letters of encouragement to others, Josh tries daily to live a life of gratitude, kindness, and faith.

Josh is a part of a community of friends, pastors, and fellow inmates, and these relationships are so varied that it is difficult to accurately depict them in only a few pages. Many friendships are summarized here, but letters appended—especially those included and tabbed from Pastors (pg. 55-77), Family (pg. 78-103), Closest Friends (pg. 122-149)—are powerful, moving, humbling. No summary could do them justice as they describe their love for Josh, their relationships with him, and what he brings to their lives.

A. Josh Bishop shows kindness and support to other inmates

His friendships are deep, committed, and extend beyond his cell walls. In reflection on Joshua's relationships to other men on death row, Pastor Tim Bagwell writes: "Josh is a community maker . . . The hugs were deep and genuine as he greeted persons/inmates he might not have seen for months or longer. These were real relationships for these men were brothers, sharing similar paths." (Rev. Tim Bagwell, pg. 55-56.)

Deacon Norman Keller also reflected on Joshua's feelings of love, and how he fills his heart with it. "Joshua fills his void from prison with love. There is no room for animosity, hate, or anything else." (Deacon Norm Keller, pg.

76.) Josh's closest contacts, especially other inmates on death row, see daily how Josh exhibits kind-heartedness towards others.

Prison, of course, places Josh in a diverse environment of men with various backgrounds and capabilities. "He builds relationships with people regardless of race, crime, or mental health issues." (Rev. Timothy Bagwell, pg. 57.) And this helps him stand out in the prison environment, explains Rev. David Probst: "Although the correctional officers are supposed to stay emotionally distant from the inmates, it is obvious by their demeanor toward and treatment of Josh that they have some regard for him. I recently ran into a former correctional officer in Milledgeville who had known Josh for many years. She wanted to know how he was doing, asked me to give him her regards and expressed her sorrow for Josh's current circumstances. While discussing Josh with another staff member, he said, 'Josh is one of the good guys.'" (emphasis added)(Rev. David Probst, pg. 72.)

For a period of time, Captain Rusty Wagner was in charge of the Milledgeville City Jail. He regularly interacted with Josh, who was housed in his jail for a period of a year and a half. It was during that time that Captain Wagner recognized the depth of Josh's patience and peace. "Inmate Bishop handled the stress of being in jail and awaiting such serious charges very well. He did not take his stress out on the staff or other inmates. My respect for

Joshua Bishop increased over the time that I knew him.” (Captain Rusty Wagner, pg. 33.)

Larry Lee, formerly on death row but who has received clemency, knew Josh well while they were both on death row at the prison in Jackson. When he first met Josh, he describes him as “a very young, immature, confused, and frightened young man.” (Larry Lee, pg. 198.) However, Larry watched Josh mature into a man. He writes, “I have witnessed several instances where Joshua has stepped up and go between several guys to stop violence. I have also saw him mediate a peaceful outcome in these instances.” (Larry Lee, pg. 198.) Larry also noticed Josh’s attitude change toward prison staff: “As Joshua matured into the man he is today, I witnessed his attitude change toward the administration and the officers who worked on death row. He went from hostile to helpful. He realized that it was not their fault he was there, it was his.” (Larry Lee, pg. 199.) Larry also speaks of how Josh developed a love of art and how he taught it to others in his community.

Josh Heath, an inmate, also writes of Josh’s bonds within the community behind bars. Heath’s story is quite remarkable. In prison himself, though not on death row, he was struggling to become an artist, and he sent a drawing and letter to the Art Institute. Someone at the institute was moved by Heath’s letter and put him in touch with Josh Bishop. One day, Heath received a letter from Josh. Josh began instructing Heath on art technique in a makeshift form of

inmate correspondence school. Josh's interest meant the world to Heath. He writes, "I did not have much support at that time, and Josh was there for me. ... I could tell that Josh cared about me. He had no reason to reach out to me. ... I am a pessimist by nature, so Josh's outlook and friendliness really lifted my spirits in a time of need." (Josh Heath, pg. 196-97.)

As part of Josh's commitment to his faith, he has worked to build relationships with several role models in the religious community while in prison.

One such role model was Father Austin Fogarty of the Archdiocese of Atlanta. Honored by many for his tireless work, Father Fogarty developed a close relationship over the course of many years with Joshua. Unfortunately, Father Fogarty passed away in 2014. In a touching tribute sent in a letter to his Godmother, Diana Shertenlieb, Joshua reflects on the influence Father Fogarty had, not only on Joshua's life, but the lives of the other inmates that Father Fogarty led in their faith. "He talked about how us guys have a place in God's hands, too. He said that we are those rough spots or callouses on God's hands. But with time our roughness can be smoothed out by prayer and meditation." (Diana Shertenlieb, 132.)

"I believe he is not the same person now as he was as a teenager when the crime was committed. He has a strong commitment and strong love for

God and for his fellow inmates and guards and really anyone his life touches.

He is a bright light to other inmates.” (Pastor Rick Moncrief, pg. 77.)

B. Josh improves the lives of friends and family who live outside the prison

Josh is able to show love to others now that he has received unconditional love from generous and kind people who care about him. One of the most powerful stories of love and acceptance Josh has received is that of how Diana and Gary Shertenlieb began to write to and visit Josh, ultimately embracing him as their godson and “adopted” son. (Gary Shertenlieb, pg. 122-24; Diana Shertenlieb, pg. 125.) Their courageous outreach, first as an act of charity, now grown into mutual affection, support, and devotion, is a beautiful inspiration. Josh has become a part of their family, and even after Gary’s passing last year, Josh is in the hearts of the Shertenlieb family. (Diana Shertenlieb, pg. 129.)

This love and acceptance, as well as his newfound faith, has helped Josh make peace with his difficult childhood. He has not forgotten where he grew up, and he takes time to write to children at the Methodist Home, a group home for children where he also spent time as a child. Through his letters, Joshua works to teach children about the dangers of turning your back on the opportunities the Methodist Home is providing, and turning to a life of drugs,

alcohol, and violence. Through the years, he has written letters to children at the Methodist Children's Home, and these are often read at group chapel services. He wants to share his story and encourage others to take a better path. And as Methodist Home house parent, Joseph Bullard, says in his letter, "it is more important than a million dollars that he reaches out to my kids now. They will listen to him." (Joseph Bullard, pg. 105.) The children are important to him, and with the full support and appropriate guidance from the Methodist Home staff, send him letters of encouragement as well.

"The last time [Josh and I] visited," writes Brandon Veasey, "I asked Josh what he would do if he was given clemency. His response, again, was not surprising. Josh said he wanted to use his story to help young people understand the consequences of their actions earlier in life than he did so they might not cause the same pain he caused." (Brandon Veasey, pg. 216.)

Joshua corresponds with Juliet Dunn, daughter of Amy and Ryan Dunn, as well, communicating to her how much she and her parents mean to him, and how much they aid one another in keeping life's challenges in perspective. (Amy Dunn, pg. 141.) Joshua also maintains a relationship with his niece, striving to support the loving family environment he and his brother never had. (Mike Bishop, pg. 78.)

Joshua has also created strong bonds with law students through the Mercer Law School clinic representing him in post-conviction challenges and in this matter.

My name is Thomas Allmond and I am asking that you grant clemency for a truly exceptional man named Josh Bishop. I am Currently a Naval Officer assigned as a Station Judge Advocate at Naval Station Mayport in Jacksonville, Florida. ... I served as a prosecutor for most of my time in Navy JAG and have never once been mistaken for a bleeding heart. My heart bleeds for Josh Bishop. (Thomas Allmond, pg. 150.)

With many, he has offered his faith and love to walk them through difficult times and life challenges—before and after their graduation and whether or not they continue to work on his case. As expressed in a letter to the board from Bethany Veasey, a 2014 Mercer Law graduate:

Josh and I have often discussed how God impacts our lives, even if it is in a way that doesn't make sense. Josh is incredibly insightful when it comes to his faith and how things always happen according to God's plan. When I was going through a difficult time, Josh encouraged and counseled me through it—often citing to Bible verses and stories.

For the Veaseys, Joshua has become another member of their family, and has used his gifts to inspire them not only religiously, but emotionally:

As a gift for my work on his case, Josh drew our family a beautiful portrait of my husband holding our newborn daughter. Accompanying the portrait was a note in which Josh states, 'a father's first time holding his child is like an astronaut's first steps on the moon.'...If Josh were granted clemency, I believe that he would continue to

help other inmates by supporting them as he has done for me and for my family. It is not only important to me, but to my brother-in-law, who has formed an even deeper relationship with Josh over the past years.

(Bethany Veasey, pg. 210).

Josh is concerned, though, that the stress inherent in his sentence and life situation may cause stress for those he cares about. Former investigator Jordan Dayan, echoing what so many others say and feel, explains, "Whenever I would talk to him about people that had been in his life and with whom I needed to talk, he would express concern that his case not be a bother to them. **He was always very concerned that their help in his case not effect them adversely in any way.**" (emphasis added)(Jordon Dayan, pg. 192.)

Far from burdening his friends, however, Josh seeks to encourage them through their own struggles, from the mundane to the significant. Former paralegal Olivia Williams wrote of her journey through recovery after a seriously debilitating automobile accident:

I spent the next six months in a wheelchair, [and] without the use of my arms. ... [Josh] sent word that he kept us in his prayers. When I was finally able to walk, visiting Josh was one of my first big outings **Knowing that Josh, even with all he faced, had room in his thoughts and prayers, time between letters to lawyers or work for his own case to write to me personally, showed me an example of patience, fortitude, and humility that kept me motivated to be positive rather than self-pitying.**

(emphasis added) (Olivia Williams, pg. 168.)

Methodist Home house parent "Papa" Joe Bullard loves Josh like a son.

At the age of 82, Papa Joe, still works full time at the Home and writes, "It means something in life when people go that extra mile. Josh does that. I do not take life for granted, and neither does he." (Joseph Bullard, pg. 105.)

VII. It is Appropriate for this Board to Consider the Proportionality of Mr. Bishop's sentence with the sentence of his Co-Defendant

A major theme in this case, from Josh's confession through the delivery of his death sentence, was the fact that his co-defendant – nearly twice his age—pleaded guilty to a life sentence with the possibility of parole. Josh was never offered a plea; as described by his trial counsel, Brian Combs, Josh would have waived his right to a trial and accepted a sentence of life without the possibility of parole. (Brian Combs, pg. 202.)

This petition does not seek to shift blame to the shoulders of Josh's co-defendant. Josh Bishop took responsibility for his actions as soon as he was arrested, and the main law enforcement officers in this case believed him to be truly remorseful for his involvement in these crimes, because of his truthful confession and his actions. (Richard Horn, pg. 23; Howard Sills, pg. 37.) Joshua was given the opportunity to place the blame on Braxley when asked, "So you think [Braxley] killed him or do you think both of y'all killed him?" However, Joshua acknowledged his own culpability and responded, "I think we both

killed him.” Investigator Horn noted that even before his trial Joshua

“expressed remorse over what happened. I felt that his expression of remorse was sincere.”(Ricky Horn, pg. 20.)

Even Sherriff Howard Sills, who does not join the request for clemency explained, “I believe that Mark Braxley is every bit as guilty, if not more guilty, than Joshua Bishop.” (Howard Sills, pg. 39.) Sherriff Sills based this opinion not only on his “long experience in deciding whether a con is telling the truth, but because the details [Joshua] gave matched the evidence . . . There was nothing in the physical evidence that was inconsistent with Bishop’s account,” while most of Braxley’s statements were lies and not supported by the physical evidence. (Howard Sills, 36.)

As discussed above, Braxley was nearly two decades senior to Joshua and had a checkered violent past, while Joshua, still a teenager, had no arrests more serious than a misdemeanor before June 1994. (Trial Transcript 2568.)

Additionally, the death of Morrison and Willis occurred at the home of Mark Braxley. Richard Horn stated in 2002, “I believed that Mr. Braxley was much more culpable in the crimes than he admitted and then the investigation may have revealed. I certainly can’t remember a case in which a 36 year old man was involved as well as an 18 year old who had control of the entire operation.”

(Richard Horn, pg. 23-24.)

Mark Braxley was known by many in Milledgeville for his violence, criminal activities, and sadistic ways. Braxley lived with his father, William Braxley, in a trailer on Linton Road. (Delores Forshaw, pg. 237) Many people would frequent this trailer for drugs and alcohol.

Braxley completely dominated his disabled father, and under the threat of violence demanded that his father give him money so he could purchase drugs or alcohol. If his father did not have any cash on hand, Braxley would go so far as to steal his father's checkbook and forge checks. (Delores Forshaw, pg. 238.)

Second only to these two investigating officers, the members of the trial jury were presented with all of the evidence allowed under the rules of evidence, and therefore were also ideally positioned to determine the relative culpability of the involved parties. As one of these jurors has so bluntly stated,

[a]s a juror in this case, the fairness in sentencing between these two men is very important to me. . . . I believed in my heart that the co-defendant in Mr. Bishop's case, Mr. Braxley, was more guilty than Mr. Bishop. . . . I do not think it is fair that Mr. Bishop should die for these crimes while his codefendant has a life [with the possibility of parole] sentence.

(Jeremy Foston, pg. 42.)

Although much of the above-presented information would indicate that Joshua was the less culpable of the two defendants, even if one is to assume that he and Braxley are equally culpable, clemency is appropriate in this case.

VIII. Seven of the Twelve Sentencing Jurors Now Support a Sentence of Life Without Parole for Josh Bishop

The role of a sentencing juror is an essential, yet difficult one, especially in a death penalty case. The jury in Josh's trial took its role very seriously and deliberated for nine hours over two days on the matter of his sentencing. However, seven of the twelve jurors—for a number of reasons—now believe their original death sentence was not appropriate and that without clemency Josh's "life will be unjustly taken." (Jeremy Foston, pg. 41; Jim Ray, pg. 43; Jacqueline Dixon, pg. 45; Dr. George Hobbs, pg. 48; Reginald Burney, pg. 49; Rev. Edward Butler, pg. 52; Paula Frost, pg. 54.)

Troubling to these jurors was Josh's difficult childhood and the fact that it was filled with systemic abuse and drug and alcohol dependency. (Jackie Dixon, pg. 46; Jeremy Foston, pg. 41.) At trial, juror Jeremy Foston, "was leaning toward a life sentence because Mr. Bishop had a terrible childhood and was just a young man." (Jeremy Foston, pg. 41.) Similarly, Jackie Dixon noticed the relationship between Josh and his mother: "[H]e followed her ways back then [and] sadly, along with drugs and alcohol and [other] men with bad choices, he followed them." (Jackie Dixon, pg. 46.) In addition to a failed family, Dixon expressed that DFCS and other state services had failed Josh, but now, Josh "has finally developed skills that can make a difference even [in prison]." (Jackie Dixon, pg. 46.)

Aside from the traumatic experiences throughout Josh's upbringing, more than half of the sentencing jurors were confused about the sentencing process. Specifically, they were confused about the distinction between sentencing a defendant to death by a unanimous vote and the repercussions, if any, for not arriving at a unanimous verdict. Jim Ray stated,

[w]e really struggled with our decision. We eventually changed our vote to a death sentence partly because we were told we had to be unanimous and those [two jurors] who wanted the death penalty were very firm in their conviction and let us know they would not change their minds.

(Jim Ray, pg. 43.)

Sharing Ray's confusion was juror Gregory Hobbs, who was under the impression that [the jury] must deliver a unanimous verdict, and "regret[ed] that [he] did not independently ask the judge for clarification on the sentencing guidelines." (Gregory Hobbs, pg. 48.)

Notably, Reverend Edward Butler, who is strongly in favor of the death penalty, wrote in his letter to this Board that

[d]etermining the appropriate sentence for Joshua Bishop was extremely difficult for me. . . . We deliberated this case for a very, very long time. I personally held out for life without parole sentence for a very, very long time. . . . I did eventually change my vote to a death sentence because I felt we needed to be unanimous.

(Edward Butler, pg. 52-53.)

Jackie Dixon has also spoken of jurors' concern about whether life without the possibility of parole (LWOP), which was a relatively new

sentencing option in death penalty cases, was a reliable sentence. Because “life” sentences include an opportunity for parole (in 1996, life sentences were parole-eligible after only a few years), jurors were concerned that a sentence less than death might result in Joshua’s release at some point. Many jurors did not want him to be eligible for parole or release, but this misunderstanding of a new sentencing option was confusing, and contributed to the jury’s death verdict.

In addition to their concerns for Josh’s childhood and uncertainty as to their own responsibilities as jurors, a number of the jurors articulated their beliefs that Josh’s co-defendant, Mr. Braxley, was the more culpable of the two. Many of the jurors emphasized that Josh seemed honest and never lied about his involvement in the crimes. Having been told that Mr. Braxley “would have his day in court” the jury ultimately handed down a unanimous death sentence for Josh. (Jeremy Foston, pg. 41.) If Josh was punished in one way, they believed Mr. Braxley would be similarly punished. Ray and other jurors believed that Mr. Braxley was “very influential in the murders” and as a jury they struggled with the fact that “[he] was much older than Bishop and that both murders happened at [Mr. Braxley’s] house . . .” (Jim Ray, pg. 43; *see also* Reginald Burney, pg. 49.)

While in the deliberation room, Jeremy Foston sought answers to the disparity and confusion among his fellow jury members.

We wanted to make sure Mr. Braxley would get the same punishment as Mr. Bishop. We even sent a note out asking if we could know what would happen to him. The prosecutor told us not to worry about Mr. Braxley, and that he would have his day in court. We assumed that meant he would have the same treatment as Mr. Bishop.

(Jeremy Foston, pg. 41.)

Josh's sentencing jury was unaware that only one holdout for life or life without parole would have prevented a death verdict and capital sentencing. Seven of those twelve jurors write now to correct the outcome of their misunderstanding, joining this request for clemency.

IX. Conclusion

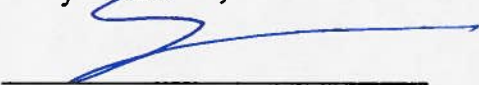
The Georgia Department of Corrections and this Board have two common themes in their respective mission statements. Both speak of bringing about "positive change" in offenders. Against all conceivable odds, Josh has been positively changed. In spite of a horrific childhood, the most tragic of personal choices as a teenager, and a sentence of death, Josh stands before this Board positively changed. All who meet him see it and know it. In prison, behind bars, on Georgia's death row, Josh has grown up from a boy into a man.

While there may be cases in which death is an appropriate punishment, counsel humbly submit that this is not such a case. Josh Bishop's life speaks. It speaks of the ability of a person to be rehabilitated and redeemed. It speaks of


the power of Georgia's prison system to bring about change for good. His life says more about the power of the court system, the prison system, and this Board's vision than his death ever could.

Counsel implores the Board to vote for life. Please spare Josh Bishop's life. Together with those who care about him, we plead that this Board will exercise its power to grant a stay of execution for 90 days in order to consider the materials presented herein, and bestow mercy and commute his death sentence to one of life without the possibility of parole.

Respectfully and humbly submitted, this 23d day of March, 2016.



SARAH GERWIG-MOORE
Georgia Bar No. 292352
Mercer University School of Law
1021 Georgia Avenue
Macon, Georgia 31207
(478) 301-2195
gerwig-moore@law.mercer.edu



C. WILSON DuBOSE
Georgia Bar No. 231450
DuBose Law Group
285 N Main Street
Madison, Georgia 30650
(706) 342-7900
wdubose@duboselawgroup.net

Counsel for Joshua Bishop