

BEFORE THE BOARD OF PARDONS AND PAROLES
STATE OF GEORGIA

APPLICATION FOR RECONSIDERATION
OF CLEMENCY

Undersigned counsel applies to the Board of Pardons and Paroles for: (i) a 90-day stay of Kelly Gissendaner's execution, presently scheduled for September 29, 2015, at 7:00 PM, to permit full re-consideration of her application; (ii) reconsideration of the denial of Kelly Gissendaner's clemency application and commutation of her death sentence imposed by the Superior Court of Gwinnett County on November 19, 1998; (iii) a re-hearing before the full Board, allowing her to present additional witnesses and to be heard through her counsel; and (iv) after that review, the commutation of her sentence of death.¹

On February 24, 2015, this Board heard testimony in support of Ms. Gissendaner's application for clemency. The witnesses offered testimony about Ms. Gissendaner's faith and profound remorse, her studies in theology, and her service to others both inside and outside

¹ We incorporate by this reference all information previously submitted to this Board in support of Ms. Gissendaner's request for clemency.

the prison. The Board denied clemency on February 25, 2015. Ms. Gissendaner's execution was delayed until March 2, 2015, due to inclement weather. On March 2, 2015, Ms. Gissendaner filed an Application to Reconsider the clemency denial which was denied on that same date.

Since March 2, 2015, Ms. Gissendaner has discovered significant facts in support of issues relevant to clemency which are presented within this petition and which warrant a new assignment in front of the Board. We offer this application and request an assignment to enable the board to make an intelligent and informed decision to grant clemency in this case:

To serve the citizens of Georgia by exercising the constitutional authority of executive clemency through informed decision-making, thereby ensuring public safety, protecting victims' rights, and providing offenders with opportunities for positive change.

Board of Pardons and Paroles, New Mission Statement.

The Board's executive clemency power is founded on considerations of the public good, and is to be exercised on the ground that the public welfare, which is the legitimate object of all punishment,

will be as well promoted by a suspension as by an execution of the sentence. New mission statement

I. Proportionality:

A parole board's view of a case necessarily differs from that of a local court or law enforcement agency. The Board can compare the case with thousands of others statewide. The Board's unique central position and authority allows it to reduce sentence disparity.

<http://pap.georgia.gov/parole-consideration>.

A. Disparity of Sentence

Since this Board convened to hear Kelly Gissendaner's clemency application in February 2015, the Presiding Justice of the Supreme Court of Georgia, Norman Fletcher, has determined that he was wrong to deny Ms. Gissendaner's appeal in July 2000. Specifically, Justice Fletcher discussed how he erred in "conclud[ing] that her sentence was proportionate to her role in the crime." Ex. I.1. He noted the benchmark principle of relative fairness underlying proportionality determinations in legal proceedings:

As the Supreme Court has held, the death penalty is constitutional only to the extent that it is proportional. The principle of proportionality review is deeply rooted in our legal system, with the fundamental goal of ensuring that the death penalty is not arbitrarily applied. It is especially appropriate to consider proportionality when evaluating

cases in which one defendant who is more culpable than another is given a sentence of less than death, while the latter is given the ultimate punishment.

Id.

Justice Fletcher gives two keys reasons for his conclusion that Ms. Gissendaner's death sentence is disproportionate.

- 1) Ms. Gissendaner, who was not present during the killing, got death while the actual killer got life; and,
- 2) The State of Georgia has not executed a non-trigger person since the penalty was reinstated in 1976.

Justice Fletcher also points out that the proportionality review done by the Georgia Supreme Court at the time of Ms. Gissendaner's case was severely flawed. The only case cited by Georgia Supreme Court for the proposition that Ms. Gissendaner's death sentence was not impermissibly disproportionate to that of her co-conspirator even though he received a life sentence is *Waldrip v. State*, 482 S.E.2d 299 (Ga. 1997). In *Waldrip*, however, there was evidence not only that the defendant was present at the murder of a man who was planning to testify against Waldrip's son, but also that he may have participated in its commission as well. Here there is no question Ms. Gissendaner was

not present and took no physical part in the killing. This distinction is critical and demonstrates that Ms. Gissendaner's death sentence is disproportionate, especially considering this Board commuted Mr. Waldrip's death sentence in July 2014.

B. Ms. Gissendaner did not actually kill her husband and was not present when he was killed.

Both Kelly Gissendaner and Gregory Owen were convicted of murdering Douglas Gissendaner. Ms. Gissendaner has accepted responsibility and expressed deep remorse for her role in planning and assisting in her husband's murder. Both Owen and Ms. Gissendaner took steps which led to the murder, but it was Owen who actually abducted Mr. Gissendaner, forced him to drive to a secluded wooded area, marched him into the woods in the dead of night, and stabbed him to death. Ms. Gissendaner's sentence is disproportionate because the actual killer of Doug Gissendaner received a life sentence while Kelly Gissendaner, who was not even present when Doug Gissendaner was killed, was sentenced to death.

Gregory Owen had many choices to make on February 7, 1997 over the course of the hours, minutes, and seconds he spent waiting for Mr. Gissendaner, kidnapping him at knifepoint, traveling with him in

his car, walking him into the woods, and then killing him with his bare hands. But for Owen's choices and Owen's actions, Mr. Gissendaner would not have been murdered. The last person who could have prevented Douglas Gissendaner's murder is Gregory Owen. Given Owen's actions, especially when compared to Ms. Gissendaner's actions, Ms. Gissendaner's death sentence can only be considered disproportionate.

C. Ms. Gissendaner's case could have been resolved with a life sentence.

Prior to trial, the state offered to resolve Ms. Gissendaner's case with a life sentence with parole eligibility after 25 years. This was a recognition that this sentence was an appropriate and proportionate resolution of the case. Ms. Gissendaner was willing to enter a plea to a parolable life sentence. The case did not resolve because Ms. Gissendaner's attorney told her he believed an acquittal was quite possible and that a parolable life sentence was the likely result even if she was convicted. Ms. Gissendaner's lead counsel conveyed to her his beliefs that he thought they "had a shot" at acquittal because "the State's case was circumstantial" and he thought they would "be able to show that Mr. Owen was not believable." While her counsel

acknowledged the possibility of a death sentence if they lost at trial, he and his co-counsel “didn’t feel [Ms. Gissendaner] would probably get the death penalty” because the state’s case was weak, because “she was not the killer” and “[t]he fact that she was a woman.” He discussed all those facts with Ms. Gissendaner and was sure that she knew how he felt about those issues.

Ms. Gissendaner’s lawyers failed to research and offer advice about the relative similarity between Ms. Gissendaner’s offer – a straight life sentence – and the State’s offer, life with a contract not to seek parole for 25 years. Further, counsel failed to consider and advise Ms. Gissendaner that no parole contracts are not binding on the Board. Thus, regardless of a no parole for 25 years agreement, this Board would follow its mandate and consider Ms. Gissendaner for parole when it was statutorily required. Finally, trial counsel failed to consider, investigate, or explain to Ms. Gissendaner that in a murder case such as hers, she very likely would not have been paroled before 25 years if she had received a life sentence. In other words, what the prosecution was offering Ms. Gissendaner was very nearly equivalent to the sentence she would have accepted. Had they fulfilled their obligations

as Ms. Gissendaner's lawyers, Ms. Gissendaner would have been given the sentence she deserved, and the one to which both parties had agreed – life.

D. A death sentence is disproportionate for Ms. Gissendaner, a non-trigger person, because Georgia has never executed a non-trigger person post 1976.

The State of Georgia has executed fifty five people in the modern era of the death penalty. Of these fifty five, not one has been a non-trigger person. As the constitutionality of the death penalty relies upon the proportionality of the sentence to other similarly situated defendants, *see* Ex. I.1., it is difficult to support an argument that Ms. Gissendaner's case is not impermissibly disproportionate to other similarly situated defendants in Georgia. A grant of clemency is warranted under the facts of this case.

II. Ms. Gissendaner's Life Changing Works In Prison

The fact that Ms. Gissendaner has channeled her spiritual growth and reformation into helping other women in prison is not a secret. This Board heard from Megan Chambers previously who recalled how Ms. Gissendaner's actions changed her life. The Board also received written statements from other inmates who talked about

Ms. Gissendaner's reputation in the prison, and the work she did with other women. However, few of those statements held the rich detail of witnesses discovered since the last clemency hearing. Such details provide this Board with a real understanding of the depth of Ms. Gissendaner's outreach and the lasting impact she has made on these people.

Perhaps some of the most touching stories come from the juveniles housed near Kelly. These women were without question among the most vulnerable inmates. They were frequently placed near Kelly during their transition into the prison, so that hers was one of the first adult interactions that had in the prison. Kevonna Hall, who was little more than a child when she was locked up recalls:

I was 14 years old when I went to prison. ... The first day I was at Metro I remember sitting in that small cell crying. I heard this voice call out to me. She said are you okay? I could not see who was talking at the time but the voice kept talking to me. We talked to each other through the door flap. She asked me my name and kept trying to tell me everything was going to be all right. She told me her name was Kelly and I did not need to be afraid. From my first night at Metro, Kelly reached out to me when she saw I was scared. She was like a mother to me. She spent a lot of time talking to me and encouraging me.

...

There were times when I would wake up in the middle of the night afraid and Kelly would sing to me until I fell back asleep. I remember her signing Amazing Grace. She read stories to me when I was lonely and down. She would give me food when I was hungry and always gave me puzzle books and books to read. She was like a mother to me trying to help me cope and be a better person.

Kevonna Hall, Ex. II.1. These gentle acts of kindness gave Ms. Hall the support she needed to survive as a young girl in an adult prison.

Patrece Young, who was sixteen when she went to prison, remembers Kelly counseling her when she began cutting herself, assuring her that God loved her and would protect her. Kelly also made sure that Ms. Young had items she needed to survive in the prison:

I can remember me sitting in a cold cell cutting myself and no one knowing. And no one willing to help me free myself from the cage that my sixteen-year old sins and wrong put me in. I lost my hope in humans and didn't trust them. I believed they were all the same. Every day while I was in that cell next to Kelly Gissendaner she made it her business to tell me, "Lil baby you're gonna be all right, or here Lil baby you gotta eat something, or Lil baby God has your back. He is nothing like us and He truly loves you." She just kept telling me about this greater love while I was screaming hateful things and cursing at her over and over. Kelly never said One mean word back she just said I love you.

When I didn't have food, she fed me. When I didn't have soap or clean underwear Kelly gave me hers. I love her and the hurt and pain I feel is real. My play mom, my sister, my friend Kelly helped me get past my hurts and pain ... I thought I would never see this side again but here I am.

Patrece Young, Ex. II.3. With Kelly's help, Ms. Young did survive prison and now is a productive member of society.

Courtney Flowers, another 16 year old girl in prison, similarly recalls Kelly as a motherly figure, much like the memories of Ms.

Young:

I was 16 years old when I went to Metro State Prison. Since I was a juvenile, I was housed in lock down. I was placed in the cell across from Kelly Gissendaner. Kelly was my main contact for the first six weeks I was in prison. I was in a state of up in the clouds and shock. The emotional stress was unbearable at times. It was a very traumatizing time in my life, and I was depressed and full of anxiety. I had lost all hope. I just wanted to give up. I don't have many detailed stories from that time but I do remember Kelly being a motherly figure to me.

Courtney Boring Flowers, Ex.II.3.

Because Kelly was housed on the most secure wing, she frequently found herself by women who were at the end of their rope. Some contemplated suicide; some actually attempted it. To each, Kelly was a beacon of hope. Often these women felt as if they had been forsaken by their own family or they in turn had forsaken their family. Kelly helped them through these difficult times, encouraging them to have the faith to move forward.

I was as low as you can get in your life. I felt like my family had abandoned me. I was crying and wanted to take my life. I remember lying on the floor in a safe cell sobbing that I have no reason to live. That is when I heard Kelly Gissendaner for the first time. She called out to me and said, "Hey you over there, YOU do have a reason to live."

Donna Smith, Ex.II.15. And,

So I thought about committing suicide. I was such a high risk that I was put in lock down for three months on suicide watch. It just so happened my cell was right beside Kelly. And Kelly talked to me every night and day I was in there. She convinced me that I could be a good mother to my child, and for that I will always be grateful.

Tiffany Barns, Ex. II.17. Kelly reminded these women that their lives were still worth living. This was not an isolated occurrence as Kelly helped numerous women who were suicidal.

I was in lockdown after a suicide attempt. I had begun to slice my arms to harm myself. When her calls to me went unanswered, she started banging on her door to get the officer's attention. The officer came up and Kelly told her to check in on me. When the officer saw me, she saw I had been cutting myself. Kelly started crying and asking, "Is she ok?" Even though I couldn't answer Kelly myself, I heard her crying and thought she was so compassionate toward me even though she was on death row. If I remember it right, she had just received another denial (on her case) right before that. This made it more amazing to me that she had so much compassion for me during such a difficult time for her.

Nikki Cantrell, Ex. II.12.

At the time I met Kelly I was at my lowest point. I didn't care whether I lived or died. ... By the time I became aware of my surroundings I was covered in blood. I remember laying on the floor crying and begging her to please not stop talking. Even though I wouldn't talk back to her, she talked to me through the air vent all night long. Our air vents are on the floor and Kelly lay on that floor all night long talking to me. I can't tell you how important Kelly has been to my life whatever she did and said that night has stayed with me. That night was one of the last times I cut myself. What Kelly did for me that night stayed with me because she truly cared.

Linda Harden, Ex. II.6.

I had at that time said I am going to do it today. I am going to kill myself. I remember praying and crying out to God that hey man if you're real then please help me... I started to cut myself. I heard this soft mother's like voice... It finally said get on the floor area put your ear to the door, so we can talk.

Misty Cronan, Ex. II.8. For of course, the soft woman's voice under the door was Kelly's. She would lie on the floor and talk to these until they had found strength to face what was happening.

Sometimes those who were attempting to harm themselves also proved to be difficult for the prison to manage, so Kelly's work provided a much needed support for the prison system. For example:

I was placed in lockdown for twelve days for fighting....I was all alone and wanted to end my life. Kelly heard me and called out to me. She had to yell at first to get my attention I was sobbing so loud. I remember how soothing her voice was

to my broken spirit. ... She started encouraging me and giving me hope.

Shara Moore, Ex. II.13. Like the other women whose lives Kelly touched, Ms. Moore attributed her ability to change to Ms. Gissendaner ("I believe God had me at that place in lockdown so he could use Kelly with me.")

The woman who are acting out are of special concern to the prison, as they are the ones who could potentially injure another inmate or staff. Several women discuss their trips to lockdown resulting from their anger at their situation, and how Kelly's calm, patient voice gave them the support they needed to find a way to excel in prison.

I hated everyone when I went into prison. I hated my family, and I hated God. I felt like God had turned His back on me. I was evil hearted and mean. I got in fights and mouthed off to officers.[] I spent time in lockdown because of my attitude and behavior and that is when I first met Kelly.

....

I remember her walking by my cell one day and she handed me a Kairos pamphlet. She said you may not want to talk to me but these people can help you. She said God loves me more than I could ever believe at this moment. The pamphlet Kelly gave me changed my entire life.

Stephanie Brown, Ex. II.4.

When Tiffany Bryson was suicidal, Kelly helped her through that time:

I spent 68 days in lock-down next to Kelly. Kelly taught me a lot when I was falling apart. She was there to lift me up when I wanted to off myself. When I needed something she was there, not just for a few hours, but for the whole 68 days. I would sing to her and other people on the floor. "His eye is on the sparrow." Right now Kelly is that sparrow.

Tiffany Bryson, Ex. II.11.

Kelly's support of her fellow inmates went beyond just kind words and encouragement. She helped them see the need to use their prison time in a way that would ensure they could prevail in society and be productive citizens. Kevonna Hall, the 14 year old girl, remembers that Kelly made her promise to get her GED. Kelly also advised her to take advantage of the programs that were offered by the DOC, as those would provide her with the skills she needed to be successful. ("She told me I was going to get out some day and that I needed to work hard and learn as much as possible while I was incarcerated."). Ex. II.1.

Life on the high security wing meant that Kelly interacted with many of the mental health patients as they often were housed on her wing. Like the juveniles, these women are particularly vulnerable, and Kelly watched out for them in similar ways. One fellow inmate tells of a time Kelly made sure they all were able to participate in a prison fundraiser, despite some of them having no funds to contribute.

We were allowed to have walks to raise money for different charities at Lee Arrendale State Prison. They would sell meal tickets for \$5 a plate to raise money. ...Kelly had me find out which ladies on the mental health caseload had no family support. Kelly bought plates for all of them. I know for a fact Kelly bought over 25 for those who could not buy their own.

Beverly Dawn Barber, Ex. II.14. For women in prison that have no source of income other than what family and friends may give them, \$125 is a generous amount of money to spend on making sure that those without still got food.

There is no question that Kelly's work with other inmates was a valuable tool for the officers. Former Deputy Director and Warden Vanessa O'Donnell talks about the benefit of the prison system to having inmates who, like Kelly, support their fellow inmates and encourage them to work with the system. See Ex. III.1. ([Ms. Gissendaner's] ability to reach these inmates and provide them with the will to reform and excel has been repeatedly exhibited. This in turn provides a great service to the DOC as it increases the safety of the institution while helping inmates to leave the confines of the DOC permanently.)

Because of Ms. Gissendaner's success with other inmates, corrections officers would intentionally put inmates who were exhibiting problem behavior near her cell.

I spent the majority of my time at Metro in lockdown....I was screaming about killing everybody and killing myself. I hate myself and my destructive life. Officers put me next to Kelly at Metro and Arrendale because they thought she could help me.

Kelly spoke calmly to me and asked me to ask myself some hard questions....I can't say her words verbatim but I remember her soothing voice the most. Her words calmed the storm inside of me.

Stephanie Smith, Ex. II.5. Ms. Gissendaner even once intervened in an argument between guards, successfully breaking them up with just her words.

I also saw her break up a fight between two officers. They were screaming at each other and one officer jumped on the other officer. Kelly was able to appeal to them and get them to calm down. I also saw Kelly talk a young woman out of committing suicide.

Stephanie Brown, Ex. II.4.

Although this Board heard from some inmates previously, the statements in the Appendix to this Application provide a much clearer and detailed picture of the support that Kelly has provided to other

inmates, and the value that this has within the Department of Corrections.

The real value of the work that Kelly has done with these inmates is reflected in their own words, and in the fact that women who previously so no way to move forward are now working as productive members of society. There is an amazing consistency in their belief that without Kelly's help, they could not have made the changes needed.

Kelly's words are the only way that I made it and I am now out of prison. Kelly is the only reason a lot of us are alive today. And all of us would gladly give up time off of our own life just to save her.

Linda Harden, Ex. II.6.

No one knows if I would be here today if I had not heard her voice.

Misty Cronan,, Ex. II. 8.

I know you can't all know everything that she was to so many of us, but I promise you that many of us would not be here except for the fact that Kelly would not give up on us.

Tiffany Barns, Ex. II.7.

I truly do not think I would be here today if Kelly had not been placed in my path.

Kevonna Hall, Ex. II.1.

The days I was in lockdown with Kelly truly changed me and how I did my time in prison. Kelly encouraged me to follow the rules and to participate in any programs that would help me make it once I got out of prison.

Shara Moore, Ex. II.13.

I am a member of society in the fullest way ... because I asked myself those hard questions that Kelly asked me to ask myself.

Stephanie Smith, Ex. II.5.

Kelly has helped countless women that are currently doing well in society.

Lakisha S. Porter, Ex. II. 25.

She didn't have to reach out to any of us, but she always did.
Donna Smith, Ex. II.15.

Because of her admonishing to comply with the prison's rule book and respect code toward authority, I stopped misbehaving and trying to kill myself. I'm alive today, because of Kelly's position guide.

Nikki Roberts, Ex.II.9.

I am a new home owner, have a great job, and I owe it all to Kelly.

Patricia Etchesonn, Ex. II.19.

She didn't have to reach out to any of us, but she always did.

Donna Smith, Ex. II.15. Courtney Flowers believes that the value of Kelly's support is so obvious that it would be readily apparent to the Board had you met Kelly as they had.

We would not be here today if you were the ones who had lived with Kelly. ...I hope it will help you see how special she is and how instrumental she has been in helping many women in prison.

Courtney Boring Flowers, Ex. II.2.

Perhaps most tellingly, people who know the inmates whose lives Kelly touched talk about their observations of the changes in their friends/ family members, and the value of Kelly's steady support of these women. Jodie Westwood, a friend of Kara Stephens, gives Kelly full credit for keeping Kara from killing herself and how important that has been for Ms. Stephens's extended family. After Ms. Stephens was released from prison, she took custody of her two grandchildren due to the inability of their parents to keep them. Ms. Stephens was able to provide a home for these children. "So you see, it's not one life, but now two, and now 4 and now those children of the grandchildren and the list is ever expanding." Jodie Westwood, Ex. II.27.

Nikki Roberts's sister also gives Kelly credit for the changes she saw in her sister.

To watch Nikki working an honorable job every day, volunteering, helping others, active in her church, tutoring children, spending so much time without family, I know it's because of a work from God. And that work's name is Kelly Gissendaner."

Sheryl Stewart, Ex.II.24.

Kelly Gissendaner, through her continued belief in the women she has met in prison and her desire to work with them to help them reach their full potential and ensure that they do not return to prison, has benefited innumerable people.

She saved my daughter's life ...[s]he met her angel here on earth and that was Kelly.

Julia Johnson, Ex.II.28.

Conclusion

The State of Georgia has not executed a person who did not commit the actual killing since the death penalty was reinstated in 1976. There is a reason for this. Kelly Gissendaner should not be the first.

Ex. I.1. , Statement of Justice Norman Fletcher

The evidence about Ms. Gissendaner's relative culpability to that of her co-defendant literally transforms this case, eroding public confidence in her death sentence and demonstrating its disproportionate nature. This Board's "unique central position and

authority allows it to reduce [the] sentence disparity” present in these cases.

The following facts support the commutation of Ms. Gissendaner’s death sentence to a sentence of life without parole:

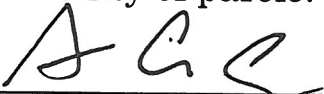
1. The disproportionate nature of her sentence relative to her co-defendant who is equally or more culpable;
2. Her good works in prison, that are a product of her faith, which offer compelling support and sustenance to other inmates, prison guards, and administration by making the prison a safer place;
3. Her sincere remorse and acceptance of responsibility;
4. The support of corrections officers and administrators for a grant of clemency;
5. All prior grounds submitted to this Board.

For all the reasons discussed above and in the previous clemency petitions, and for the reasons found in the evidence and argument presented at the hearing on this Application, Ms. Gissendaner asks this Board to grant a stay of execution for ninety (90) days to permit the Board to review and deliberate on new evidence on Ms. Gissendaner’s

behalf and exercise its power to bestow mercy and commute Ms.

Gissendaner's death sentence to a sentence of life without the

possibility of parole.



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