

**PETITION FOR CLEMENCY TO THE
GEORGIA BOARD OF PARDONS AND PAROLES
ON BEHALF OF
DONNIE CLEVELAND LANCE**

**Mary E. Wells
Ga. Bar No. 747852
623 Grant Street SE
Atlanta, Georgia 30312
T. 404-408-2180
mewells27@comcast.net**

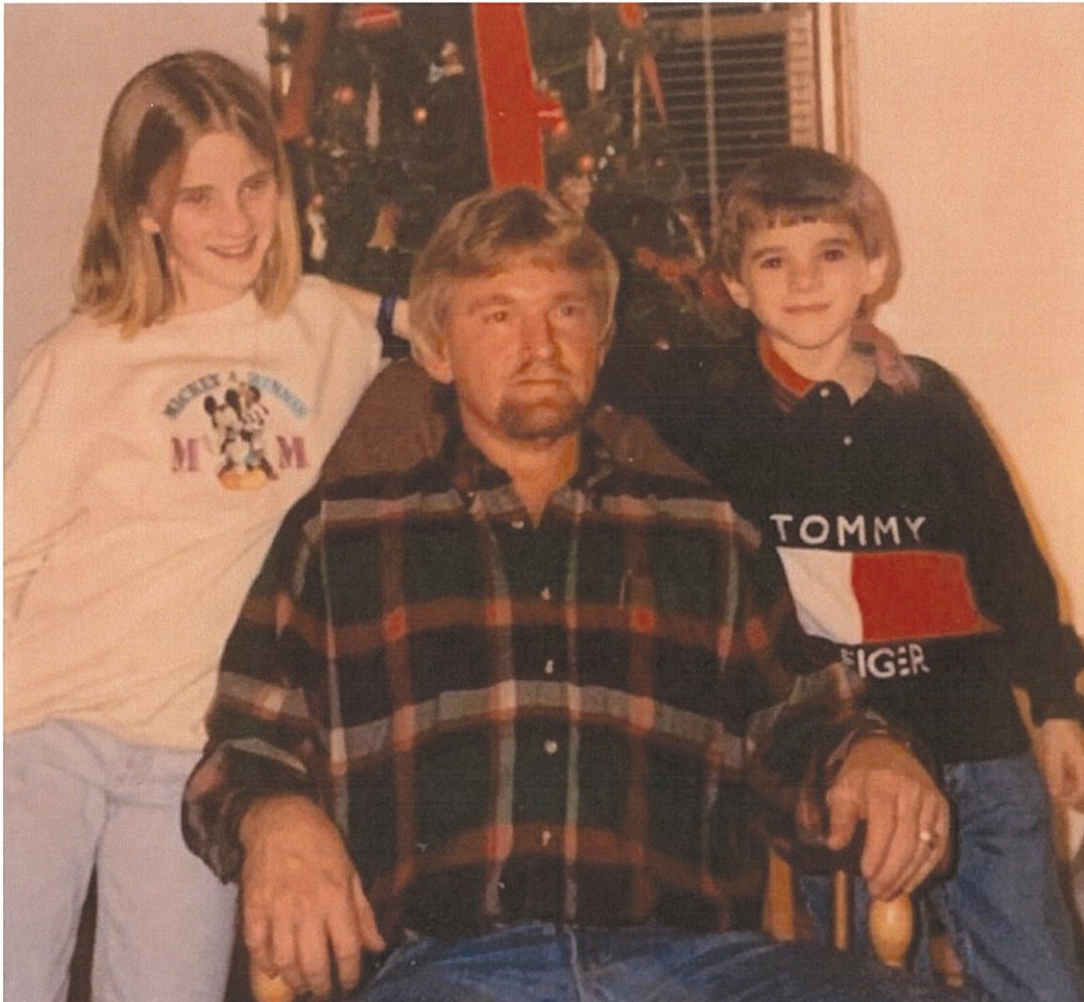
**L. Joseph Loveland – former partner
Ga. Bar No. 459350
James W. Boswell
Ga. Bar No. 069838
Jonathan R. Chally
Ga. Bar No. 141392
KING & SPALDING LLP
1180 Peachtree Street NE
Atlanta, Georgia 30309
T. 404-572-4600
F. 404-572-5100
jboswell@kslaw.com
ljloveland@gmail.com
jchally@kslaw.com**

Counsel for Donnie Cleveland Lance

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Petition for Clemency for Donnie Cleveland Lance



"We have spent our whole lives with this huge gaping hole in our hearts, but at least we've had dad at our sides. It's almost impossible to imagine that it could get worse."

Letter of Stephanie Lance Cape and
Jessie Lance to Parole Board, 1/23/20

The pleas of Joy Lance's children, the widespread support for clemency from others in the community, Mr. Lance's background, and his model behavior while in prison, compel this Board to exercise its discretion, and speak as the voice of a community that was previously not given a voice. This Board was created to grant mercy and this case calls out for mercy to temper justice. This Board is in a unique position: it is the first entity to consider this case that has both access to crucial information that Donnie Lance's jury never heard and information that the jury could never have known.¹ Your decision whether to save Donnie's life will not be hindered by procedural rules that can shut out the truth. Unlike the courts that reviewed Donnie Lance's prosecution and sentence, your decision will be made with full knowledge of the man Donnie Lance has become and the loss that his death would be for the children and grandchild of Joy Lance.

This Board is rarely presented with pleas for clemency coming directly from the victim's children, but that is the case here. Significantly, while the children of Joy Lance have doubts as to their father's guilt, their support for clemency is not conditioned on those doubts. Instead, their support is based on the undisputed fact that, over the two decades following their mother's death, their father has continued to be a supportive and loving parent. This, coupled with information

¹ The only two groups of people who can decide between life or death are this Board and the jury, and the jury was never provided the necessary information about Mr. Lance to make a reasoned decision.

about Mr. Lance that no jury ever considered, supports a finding that clemency should be granted.

Long ago, the Chief Justice of the United States Supreme Court, John Marshall, described clemency as “an act of grace . . . which exempts the individual, on whom it is bestowed, from the punishment the law inflicts for a crime he has committed.” *United States v. Wilson*, 32 U.S. 150 (1883). It is “the power of doing good without a rule.” *Mercy, Clemency and Capital Punishment*,: Two Accounts, 3 Ohio St. J. Crim. L. 273, 275 (2005), and is a process enacted “to help ensure that justice is tempered by mercy.” *Cavazos v. Smith*, 565 U.S. 1, 8-9 (2011). In Georgia, the “Board has the sole constitutional authority to commute, or reduce, a death sentence to life without parole.” <http://www.pap.state.ga.us>. As the following will show, the Board should exercise its authority and commute Mr. Lance’s death sentences.

I. Introduction

Donnie Lance has served more than 20 years on death row following his conviction for the 1997 murders of his former wife, Joy Lance, and her boyfriend, Dwight (“Butch”) Wood, Jr. The Donnie Lance who was tried and convicted of those crimes bears little or no resemblance to the Donnie Lance of today.

There have always been substantial questions as to Mr. Lance’s guilt and as the Board knows from the interview of Mr. Lance on January 22, he continues to

deny that he had any role in the murders. The prosecution at trial wove together a circumstantial evidence case of a cold and calculated killer who carefully planned and executed the crime. But we now know that Donnie Lance has a borderline IQ and suffered at the time of the crime from brain damage, a fact that both the State's retained neuropsychologist and Mr. Lance's mental health experts agree upon. The jury considering whether Mr. Lance should live or die never heard all of those facts

While the issues of innocence are worthy of serious consideration, those questions are not at the forefront of Mr. Lance's request for clemency today. Accordingly, we focus in this petition on the other compelling reasons why the Board, acting as the conscience of the State of Georgia, should exercise its discretion to commute Mr. Lance's death sentence:

- *First*, the people most injured by this crime, the children of Donnie and Joy Lance, do not want to see the execution of their only remaining parent. For over two decades, Mr. Lance has been a critical part of the lives of the children, Stephanie Lance Cape and Jessie Lance. Both were young when their mother died, and while they continue to mourn her loss, they have consistently looked to their father for advice and have continued to love him as their sole remaining parent. Both of Joy's children strongly support this petition for clemency, and they want their father to remain alive regardless of whether he is guilty or innocent.

Joy's children have jointly submitted a letter in support of their father's clemency petition and the Board will have the opportunity to hear from them in person. We anticipate that they will reaffirm what was recently reported by Bill Rankin in the AJC:

For two decades, Donnie Lance has been a devoted father, dispensing advice to and being a sounding board for his 30-year-old son and 34-year-old daughter. And he's done so from inside the most unexpected place: Georgia's death row.

He recommended that his son, Jessie Lance, enlist in the U.S. Marine Corps, an experience Jessie calls "the best thing I could have ever done for myself." He has reveled in the birth of his granddaughter, now almost 2. She lights up with a grin when her mom, Stephanie Cape, says the words "Papa Don."

Bill Rankin, Condemned man's children call for DNA tests," Atlanta Journal-Constitution, Nov 13, 2019. These two children are key voices for the Board to hear and consider. They, as much as anyone, suffered from the loss of their mother, and yet they are absolutely resolute in their conviction that their father's death will only worsen the pain and loss that they have experienced over most of their lives.

- *Second*, many others in the close-knit community of Jackson County share the children's support for clemency. A number of community members, including relatives and friends of both Mr. Lance and of the victims, believe that at this point, the execution of Donnie Lance would do far more harm than good. While many of these members of

the community continue to have doubt that Mr. Lance committed the murders, their support for clemency arises in large part from a sense that the community has lost enough and has endured enough pain, and from the community's conviction that Mr. Lance's execution will reopen wounds, not heal them. These members of the community have provided letters in support of clemency and we request that the Board hear these voices as well.²

- *Third*, in assessing whether Mr. Lance merits clemency, we ask that the Board evaluate the character of the Donnie Lance of 2020 as well as the Donnie Lance of the 1990's. There is no question that Donnie and Joy (and later Butch as well) had a troubled relationship over a number of years, and that alcohol abuse was a significant factor in a history of mutual aggression.³ This history was a huge factor in the trial and in the State's argument for the death penalty. But for over 20 years, in a highly structured prison environment without access to

² We recognize, of course, that there remain others in the community who continue to support the death penalty for Mr. Lance. We know that the Board will hear their voices as well, and we only ask that the Board then undertake the difficult balancing test of asking how this fractured community can best be served.

³ Mr. Lance was largely precluded at trial from introducing evidence of violence directed at him by the deceased, including the fact that he was shot in the head in 1993 by Joy Lance and Butch Wood. See App. J. 96 - Letter to Crime Lab 6.13.94 - *State v. Joy Lance and Butch Wood* - Attempted Murder Case - Victim Donnie Lance.

alcohol, Mr. Lance has been a model prisoner, with only two minor disciplinary issues: one for having 54 stamps instead of the allowed 50 stamps and one for refusing to move to a different cell. *See* App. A.5., Alan Thornquest. A number of mental health counselors from the prison have explained that Mr. Lance's conduct indicates a person who is not a risk to himself or others at this point. As Faye Greer-Cook, one of the mental health counselors who worked with Mr. Lance explained, "Mr. Lance was always polite and respectful to me both during our mental health sessions and when I observed him in the prison." App. A.4., Fay Greer-Cook. Accordingly, she observed that "a sentence of life without parole would be appropriate in his case. He is a model inmate who did not cause problems for the staff and would not have any issue serving life." Other counselors shared this assessment.

- *Finally*, this Board will hear information that the jury never heard, because incredibly, no evidence was presented on Mr. Lance's behalf at his sentencing phase. This Board should consider the undisputed evidence that Mr. Lance is borderline intellectually disabled and suffers from brain damage -- in conjunction with the other mitigating facts discussed above. Both the State's expert neuropsychologist and Mr.

Lance's neuropsychologist agree that these conditions existed at the time of the crimes. Because Mr. Lance's trial counsel presented no evidence of Mr. Lance's cognitive impairments at the penalty phase of his trial, the jury that sentenced Mr. Lance to death was unaware of this compelling evidence in deciding whether Mr. Lance should live or die. The state habeas court and three Justices of the United States Supreme Court concluded that the fact that the jury sentencing Mr. Lance did not hear this evidence mandated a new sentencing hearing. While these impairments do not excuse his actions, they certainly indicate that Mr. Lance is not among the "worst of the worst" criminals for whom the death penalty should be reserved.

We recognize that this Board sits as the conscience of our State. We also recognize that only a week ago, the Board granted clemency to Jimmy Meders. The facts of this case are different, but we respectfully submit that the reasons for the Board to spare Mr. Lance's life are equally compelling.

II. Historical Facts

Joy Lance and Butch Wood were murdered in 1997. Within hours of their death, law enforcement focused exclusively on Mr. Lance as a suspect. Despite their efforts, they uncovered no physical evidence connecting Mr. Lance to the crimes. No murder weapon was found; no fingerprints identifying Mr. Lance were

recovered; and no blood or other material was found on his clothes or in the car the State asserted he drove to the scene. Mr. Lance has consistently maintained his innocence.

With no physical evidence, the case against Mr. Lance relied almost exclusively on circumstantial evidence and expert testimony.⁴ Mr. Lance's convictions and death sentences were based on the District Attorney's contention that Mr. Lance was a cold and calculating murderer who carefully planned and executed the brutal murders of Joy and Butch and almost got away with the crime. But that portrait of Mr. Lance as a scheming murderer who managed to hide all of the evidence cannot be reconciled with the reality – recognized by the State's own neuropsychologist in post-trial proceedings – that Mr. Lance suffered from both a borderline IQ and brain damage at the time of the crime. How could a person with these impairments have planned and executed the murders while leaving virtually no trace?

The prosecution's portrayal of Mr. Lance was possible solely because Mr. Lance was tried in a manner that the State of Georgia would now not allow - and that this Board should not allow - to stand. At his trial, a single lawyer, Rich Brannon, represented Mr. Lance. Mr. Brannon requested that the court appoint a

⁴ In a trial where Mr. Lance lacked the funds to hire additional counsel or expert witnesses of his own, he was at a disadvantage.

second attorney and requested funds to hire experts.⁵ He explained that, in light of the State's identification of over 140 potential fact witnesses and six expert witnesses, he was devoting 100% of his time and effort to the issue of Mr. Lance's innocence and had no time to focus on investigating or developing mitigation evidence, including conducting any psychological or mental evaluations of Mr. Lance. The trial court denied this request and Mr. Lance proceeded to a trial where no such evaluation was conducted, giving his counsel no ability to challenge the "calculating murderer" image the State portrayed. As a result, Mr. Lance's trial counsel did not present any evidence at the sentencing phase and the prosecution's portrayal of Mr. Lance was allowed to stand entirely unrefuted.

Significantly, Mr. Lance was not tried in Jackson County. His trial was moved to Walton County because of a concern that the crimes had received too much publicity in Jackson County. While this was certainly a reasonable decision at the time, it is important to recognize that the jury that convicted and sentenced Mr. Lance was not composed of members of the community that will be affected by his execution.

To be clear, we are not asking this Board to pardon Mr. Lance or to determine that he is innocent of the murders. But the failure of the State in

⁵ Counsel's request was consistent with the American Bar Association guidelines at the time requiring at least two counsel in capital cases – guidelines that are now applied in all death penalty cases in Georgia

investigating only Mr. Lance as the possible perpetrator, when combined with the lack of direct evidence against Mr. Lance and the undisputed evidence that Mr. Lance has significant mental impairments, raises a significant question as to whether the death penalty imposed on Mr. Lance was appropriate in 1999. And, regardless of whether it was appropriate then, over the intervening years a compelling case has arisen to spare Mr. Lance's life. This Board has the opportunity to act such that, in the words of Justice Sotomayor of the United States Supreme Court in discussing Mr. Lance's case last year, "an egregious breakdown of basic procedural safeguards" will not go unremedied.

III. The Board Should Grant Mr. Lance's Petition for Clemency.

A. Joy Lance's Children Have Suffered Immeasurable Pain. To Execute Their Father Will Only Compound Their Trauma, Thus They Respectfully Request a Grant of Clemency From This Board.

Joy and Donnie Lance's children were too young in 1999 to meaningfully express any opinion as to whether Donnie Lance should be spared by the jury that found him guilty. But their love and affection for their father has never waned over the intervening time; his commitment to his children and, now, his grandchild has been equally strong. In a letter to this Board, they provide insight into how their relationship has evolved:

Mil and Pappy made sure we saw Daddy as much as possible. They would take us to the prison for visits and soon it just became a normal part of our lives. Even though Daddy was in prison, he was still our father. Dad would talk to us about our school and make sure we were

studying and doing well. He would remind us to be polite and kind to other people. Manners and respect has always been a big thing with Daddy. He says there is no reason to be rude to other people, “you should treat [them] how you want to be treated.” He is the one who has always made sure we stay in contact with Mama’s family and keep a good relationship with them. Our grandfather, Papa Jack, has not been in great health over the last few years and Daddy is always reminding us to go see him and check in on him. We have always included Daddy in every major decision in our lives. We are closer to our father in prison than a lot of our friends are to their fathers who live near them.

App. B.9., Stephanie Lance Cape and Jessie Lance.

Stephanie and Jessie are now adults, and Stephanie has a child of her own who also has developed a strong connection with her grandfather. While Jessie now lives in California, he visits his father whenever he is in Georgia. For example, over the recent holidays, he visited his father on each of the weekends he was in town. Stephanie still lives in Jackson County, Georgia, and visits her father once every two weeks, frequently bringing her two year old daughter as well. Everyone who knows Joy’s children knows how important this relationship is. As their great uncle John observed: “[Donnie] has been a part of their lives since he has been in prison. They go visit him as often as they can. Now Stephanie has a baby and she wants her dad to be a part of her life as well. This can happen even if he is in prison.” App. B.22., John Lance; *see, also e.g.*, App. B.18, 21, 23, 24, 26, 28, 29, 30, 32, 33, 38, 39; C.43, 44, 45, 47; D.56; E.59.

Recognizing the bond between Stephanie and her father, Stephanie's future husband, Seth Cape, drove to the prison to ask his permission to marry Stephanie before he proposed. App. B.24., Seth Cape. Stephanie's cousin talks about how important this was for Stephanie, this step that people outside of prison might take for granted. "It was a really big deal to Stephanie – it was really important that Seth get Donnie's blessing before she got engaged." App. B.28., Matthew Lance. Seth talks about how much his and Stephanie's daughter loves her "Papa Don" and how much a part of their everyday life he is through phone calls and video messages. App. B.24. And of course he worries what will happen to Stephanie and their daughter if her father is killed: "And it's not just Stephanie I'm worried about. [Our daughter] loves her Papa Don, and it will hurt her tremendously if he is executed. How do you explain to such a young child what happened to her grandpa?" *Id.*

Joy's children recognize that the pain caused by their mother's death, and by Butch's death, is not unique to them. They have all suffered a dreadful tragedy. This is something they all share:

This utmost simple realization is something we all share in, but at the same time, it divides us: and that is hurt. Everyone in Mama's family hurts. Everyone in Butch's family hurts. Everyone in my dad's family hurts. And, at the same time, no one is wrong for it. But, one thing that sets us apart is what we have left to lose. With us being the exception, everyone has lost everything they are going to lose from this nightmare. We have lost just as much, but somehow, we still have

more to lose – and that’s being taken away even as we sit here now. We’ll continue to pray that this final loss doesn’t come to pass.

App. B.9.

These families have suffered immeasurable trauma. Through no fault of their own, Mr. Lance’s children face further trauma. This Board has the exclusive power to stop this circle of pain. We hope that the Board will listen carefully to Stephanie and Jessie’s statements at the hearing on January 28.

B. The Children’s Request for Clemency Is Widely Supported in the Community.

Mr. Lance’s trial was not conducted in Jackson County, where he lived, but instead in Walton County. The jurors who were asked to determine if Donnie Lance’s life should be spared were told nothing more than the facts of the crime for which he was convicted. They were given no information about his mental health issues, nor about the many traumatic brain injuries he suffered which impacted his mental functioning. They learned nothing of the loving kind father that he had been to his two children prior to his arrest. They were not told about his contributions to the community where he lived, and the joy he brought to his children’s lives, and the lives of many others around him. Essentially, they were given none of the information about Donnie Lance that would allow them to see that this was a man deserving of life. That testimony, however, is available now and is even stronger

today because it provides insight into how the community currently feels and how Mr. Lance's execution will do far more harm than good.

Donnie Lance comes from a large, close knit family, many of whom live within walking distance in Pendergrass, Georgia. App. B.38. He and Joy had a nice home, one that was welcoming to adults and children alike. App. B.31, 38. The children who visited remembered the home as great place to be. Their house was two trailers combined and they had made a double room in the house and turned it into a huge playroom full of toys for the children. App. B.34. Donnie's cousin's daughter, LeAnn, who is Stephanie's age, spent many hours at Donnie and Joy's home. She remembers the two of them as "[] really good parents. Not just regular parents but really good." App. B.34., Leann Lance; *see also* App. B.36., Pamela Lance-Dalton.

Donnie built a Go-Kart track in front of his shop which became a gathering place for his children and all of their cousins and friends. He rented out Go-Karts for people to ride, but the many cousins and children of cousins were free to ride whenever they wanted, as long as they wore a helmet. App. B.36.; Board Interview of Donnie Lance, 1/22/2020. Donnie would help the children who did not know how to ride. Matthew Lance remembers how Donnie "always somehow made us

feel important” and how he always had stuff for the kids to do at his home. App. B.28.⁶

Donnie’s cousin Darren sometimes brought his children to the shop where Donnie and other men worked on cars, and recalls how Donnie made it clear that children were always welcome at the shop, and made sure that when children were there none of the adults used any inappropriate language. App.B. 31., Darron Lance; App. B.36. The children were free to come into the shop to play pool when they wanted. App. B.34.; *see also* App. B.36. Donnie would have candy hidden in the shop for the children to find when they were there. App. B.31. Darron remembers that his two girls grew very close to Jessie and Stephanie because his mother Fannie kept Jessie when he was little, and how they “loved Donnie.” App. B.31.; *see also* App. B.36.

There is no question that Donnie’s children were the center of his life. One cousin talks about how supportive Donnie was of his children and how he always made them the center of his attention. App. B.28. Donnie often took the children camping, and a favored treat was when they went to get ice cream. App. B.10., Affidavit of Stephanie Lance.

⁶Donnie was also an accomplished race car driver, who both built race cars and drove them in races, earning a reputation in the community as the man to watch. App. B.28.

At Christmas, Donnie and Joy would arrange for Santa Claus to come to the shop and bring toys for all of the children. App. B.36. One special year, Donnie even surprised the children with a pony. He said “hey I think someone left something outside for you” and out the window they saw a live pony. App. B.. Because of the efforts put forth by Donnie and Joy, their children grew up thinking Christmas was magical. Birthday parties were similar to Christmas and fun and loving surprises for the children were a big part of the Lance family life.

The letters collected in the Appendix talk about these stories and much more. They come from a wide-range of family and community members, and include support for clemency from members of the families and friends of the victims, childhood friends of Donnie and Joy, members of the clergy in Jackson County, and people who have suffered similar tragedies in their own lives. While each of these letters deserves to be read and considered separately, several themes permeate throughout:

- Widespread recognition that Stephanie and Jessie have already lost one parent, have relied heavily on Mr. Lance for the last two decades, and should be allowed to continue to do so as their own families grow;
- Concern from other family and community members that the execution of Mr. Lance will not provide closure, but will instead reopen wounds; and,

- Concern that Mr. Lance may not have committed the crimes given the absence of physical evidence and the fact that law enforcement focused exclusively on Mr. Lance from the beginning, while overlooking other obvious suspects.

We recognize that the voices of the community are not unanimous on this issue. We request, however, that the Board engage in the difficult job of assessing whether the execution of Donnie Lance will do more harm than good to a community that has already lost a great deal.

C. Mr. Lance's Conduct Since His Convictions Underscores That He Is an Ideal Candidate to Live Out His Natural Life in Prison.

As this Board has surely witnessed, many of the men and women incarcerated in Georgia's prisons and jails resist the realities of imprisonment at every turn, make life difficult for those around them, and simply give up on life and make no attempts toward rehabilitation. Donnie Lance has taken precisely the opposite course. He has accepted his imprisonment with grace and humility, making the Georgia Diagnostic Prison a better place for those who work and live there. As explained earlier, Donnie Lance has been a model prisoner over this 20 plus years of incarceration. He has had only two minor disciplinary reports over that time. And, despite the fact that Mr. Lance has at all times maintained his innocence, he has not allowed frustration to impact his conduct.

Death row is a place where it is easy to get in trouble and conversely, extremely difficult to avoid bad behavior. Yet Donnie has managed to do just that. And his success, and good behavior, has not gone unnoticed. A number of corrections officers and mental health counselors who worked with Donnie Lance have submitted letters supporting his clemency bid, and these letters unanimously describe Mr. Lance as a good citizen in the prison environment. *See App. A.1-8.* In addition to the comments of Faye Greer-Cook set out above, others corrections officers and mental health counselors who treated Mr. Lance in prison gave glowing reports of his behavior in the prison:

I considered Lance to be one of the good guys on the row. ...He would follow the rules and do what he was told the first time he was asked without saying any words. If only all the inmates were like this, prison would be a calm place.

App. A.1., Yanarda McCord. And,

Donnie was definitely one you could really bank on behavior-wise. From what I saw and heard, I would have been surprised if I had heard anything bad about him. He was the kind of inmate we could put anywhere and he would get along with anybody. He is what I would consider an overall good guy.

App. A.3., Mental health counselor Lindsey Veal. Tellingly, the mental health counselors treating Mr. Lance noted that his prison behavior was inconsistent with the charges for which he was convicted. For example,

I am not against the death penalty. ...But I do not believe Donnie Lance should be executed. I never saw any side of Donnie's personality that was angry or aggressive. ...*I never saw any behavior*

that was consistent with his conviction. The Donnie Lance I treated was a kind, caring man who loved his family.

App. A.2., Ramona Mott, LP (emphasis added). And,

I never saw nor heard of him giving any officers or counselors a hard time, nor having problems with any of the other inmates. He was just a little guy who kept to himself and *not the kind of guy you would think would be incarcerated.*

App. A.3., Mental health counselor Lindsey Veal (emphasis added). Alan

Thornquest, another mental health counselor who treated Mr. Lance, describing

him as a “good inmate” with a strong support system. App. A.5., Alan Thornquest.

Because of his behavior and demeanor, prison officials relied upon him to help keep the peace. For example, Ms. Mott found:

Whenever one of the other inmates was acting up, Donnie would just look at him and say ‘Man, it ain’t worth it, you just need to tone it down.’...That is just who Donnie is. He would never behave inappropriate and calls other inmates on it if he sees it.

App. A.2., Ramona Mott. Thus it is no surprise that the corrections officers and mental health examiners who treated Mr. Lance felt that he would excel in prison were he given a sentence of life without parole:

Lance was one of the good guys back there. He made my job easier and more enjoyable. There is just no reason for Lance to be executed. I think if his sentence was changed to life without parole, he would be a good prisoner and not cause any problems.

App. A.1., Yanarda McCord. And,

Based on what I observed of Donnie Lance and what I know about his prison behavior, I believe he would be a model inmate if his sentence

were commuted. He was very low key and did not require much attention from the staff. His behavior remained consistent throughout the two years during which I was his counselor.

App. A.2., Ramona Mott. *See also* App. A.6., Jemeka Stallworth (“I don’t believe that Donnie Lance should be executed and ask that you please let him live the rest of his life in prison. He was never a problem when I saw him and I do not think that would change if he were given life in prison.”); App. A.5., Alan Thornquest (“I would highly recommend that his sentence gets commuted to life because he has been a good inmate[] who will do well in prison”); App. A.8., Michael Kyles (“I do not remember anything about his behavior that would make me think he would not transition well to general population if his sentence were to be commuted to life without parole.”). Mr. Lance’s behavior in prison speaks loudly about the man he is.

Mr. Lance’s records and prison history, and the support of clemency by the Department of Corrections staff, provide convincing evidence of the respect and trust that he has gained during his incarceration. On this basis alone, he is a worthy candidate for mercy.

D. The Jury That Sentenced Mr. Lance to Death Never Heard Any of the Compelling Evidence that Is Available to this Board and that Supports a Grant of Clemency.

The jury that sentenced Mr. Lance to death on June 23, 1999, never heard about the circumstances of Mr. Lance's life that would compel them to grant clemency. The jury heard nothing but the gruesome facts of the crime. The jury had to make its decision about Mr. Lance's sentence without a full accounting of his life - both its achievements and disappointments - that would have given them an accurate basis to assess whether Donnie Lance was worthy of mercy instead of a death sentence.

As explained earlier, Mr. Lance's counsel failed to conduct any investigation into mitigating evidence and failed to offer any evidence regarding why Mr. Lance's life should be spared. The jury never heard any of the evidence from Mr. Lance's family members that is available to this Board. The jury never heard the evidence that underscores that Joy Lance's children do not want to lose their only remaining parent. And of course, the jury could not have considered the evidence now available to this Board about Mr. Lance's behavior over the last 20 years in prison - evidence that again is impossible to reconcile with the picture painted at trial of Mr. Lance as a brutal and ruthless killer. Given no information other than the verdict of guilt and the facts of the crime, the jury had little choice but to sentence Mr. Lance to death.

Because Mr. Lance's counsel had conducted no investigation into the issues of mitigation, he offered no evidence of any kind during the sentencing phase and asked no questions of the witnesses called by the prosecution. Every court that has considered this fact has recognized that this failure by counsel to conduct any investigation into mitigation meant that Mr. Lance was not adequately represented at the sentencing phase of his trial. As Justice Sotomayor of the United States Supreme Court explained, because Mr. Lance's counsel had "inexcusably failed even to look into" the facts supporting mitigation, "when the jury found Lance guilty and the question became whether Lance should be put to death, Lance's counsel had no evidence whatsoever to present." *Lance v. Sellers*, 139 S.Ct. 511, 511-12 (2019)(Sotomayor, J., Kagan, J., Ginsberg, J., dissenting).

The jury that condemned Mr. Lance to die never heard any of the uncontroverted evidence regarding his significant mental impairments. Overwhelmed by the State's circumstantial evidence case, Mr. Lance's counsel conducted no investigation into mitigating factors, including any mental examination of Lance. Thus, when the jury convicted Mr. Lance, his counsel was totally unprepared for the sentencing phase of the trial. Denied any reason to spare Lance's life, the jury voted to sentence him to death.

During Mr. Lance's state habeas corpus case, Judge Michael Clark of Gwinnett County concluded that, after hearing detailed evidence, the death sentence

for Mr. Lance could not be sustained. Far from evidencing a cold and calculated killer who carefully planned the near-perfect crime, Judge Clark found that “all of the mental health experts, including those employed by [the State], testified that [Mr. Lance] suffered from mental impairments that render [Mr. Lance] borderline mentally retarded, and all provided testimony that would have been extremely important for the jury to consider in determining the appropriate sentence.” Final Order Findings of Fact and Conclusion of Law Pursuant to O.C.G.A. § 9-14-49, *Lance v. Hall*, Case No: 2003-V-490, at 59 (Apr. 22, 2009).

Justice Sotomayor of the United States Supreme Court explained the facts that were not in dispute:

Four mental health professionals testified at an evidentiary hearing [in the state habeas proceeding]. They agreed on many points. First, Lance had permanent damage to his brain’s frontal lobe. Second, his IQ placed him in the borderline range for intellectual disability. Third, his symptoms warranted a diagnosis of clinical dementia.

Lance v. Sellers, 139 S.Ct. 511, 513 (2019)(Sotomayor, J., dissenting).

The State’s own expert neuropsychologist acknowledged that evidence of such mental impairments was routinely provided to the jury in capital cases. That evidence was not provided to the jury, but it is available to this Board. This Board, acting as the conscience of the State should consider this evidence in conjunction with the evidence of the family members and others in the community who support clemency and spare Lance’s life.

This Board is not being asked to make a legal judgment. The citizens of this state have empowered this Board to make decisions not as judges under the law, but as human beings, to serve as the conscience of our community. The jury concluded in 1999 that Mr. Lance should be condemned to die based on the limited information available to them at that moment. And while the courts that reviewed the case found nothing in the law that allowed them to change that decision, those judges were constrained in the questions they were allowed to examine. Under the law, they could only review the legal issues posed by Mr. Lance's case as it was framed at the moment of his sentence in 1998. They were not allowed to do what we ask you to do today: to take into account the full measure of the man that Donnie Lance has become.

Donnie Lance and his loved ones recognize that the relief they request is extraordinary. But it is clearly within the power of this Board to grant this relief in exceptional circumstances, for exceptional people. We are asking you to examine fully the history of Donnie Lance's life and use your statutory authority to grant him mercy.

Respectfully submitted this 23rd day of January, 2020.


Counsel for Donnie Cleveland Lance