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*Application to the  
Georgia Board of Pardons and Paroles  
on Behalf of  
Keith “Bo” Tharpe*

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CHARLES E. COX, JR. (Ga. 192305)  
Charles E. Cox, Jr., LLC  
1950 Northside Crossing  
P.O. Box 67  
Macon, Georgia 31202  
478-757-2990

HEIDI E. REINER (Ga. 601909)  
LYNN M. PEARSON (Ga. 311108)  
Georgia Resource Center  
303 Elizabeth Street, NE  
Atlanta, Georgia 30307  
404-222-9202

COUNSEL FOR MR. THARPE

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BEFORE THE  
BOARD OF PARDONS AND PAROLES  
STATE OF GEORGIA

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Pursuant to Article IV, Section II, Par. II(a) and (d) of the Georgia Constitution of 1983, and O.C.G.A. §§ 42-9-20 and 42-9-42(a), Keith “Bo” Tharpe, through undersigned counsel, submits this Application to the Board of Pardons and Paroles seeking commutation of the death sentence he received from the Superior Court of Jones County on January 10, 1991, as punishment for the murder of Mrs. Jaqueline Freeman. Mr. Tharpe respectfully asks the Board to stay his execution, presently scheduled for September 26, 2017, to permit its measured consideration of his Application, and to provide Mr. Tharpe a full and fair hearing before the full Board, at which he may present witnesses and be heard through counsel. Finally, on the basis of the information this Board learns from this Application, supporting documentation, live witnesses, and its own investigation, Mr. Tharpe asks this Board to exercise mercy and to commute his death sentence to a term of life imprisonment without the possibility of parole.

**INTRODUCTION**

Keith “Bo” Tharpe has spent the past nearly 27 years regretting his terrible decisions and the actions that culminated in his sister-in-law Jaqueline Freeman’s tragic death on September 25, 1990. He wishes more than anything he could take back that day and give back Mrs. Freeman’s life. But, he also knows that he cannot do that, nor can he erase the unimaginable pain he has caused Mrs. Freeman’s family, his wife Migrisus Tharpe, her family, and his own

family. What Mr. Tharpe can do is atone for his actions and the pain he has caused and choose to live every day striving to follow God's example. And that is what Mr. Tharpe does every day of his life in prison.

We acknowledge, as do those who offer their support of Mr. Tharpe via letter and testimony, that Mr. Tharpe has committed a horrible crime and taken a life. He deserves to be punished, as he has been and will continue to be should this Board show mercy and commute his sentence to life without parole. However, as set forth below, Mr. Tharpe, has, proven himself to be much more than his crime. He has used his time in prison to overcome his addictions to crack cocaine and alcohol, commit himself to God through Bible study and conversations with spiritual advisors, accept full responsibility for his choices and actions, develop deep remorse for those he caused pain, reconnect with friends and family whom he alienated with his crack addiction and crime, build a community of friends both inside and outside of prison with whom he shares his faith and life lessons, and learn to walk God's path. Mr. Tharpe is a now a man who, even in the often undignified environment of prison, conducts himself with humility. He treats both the staff and other inmates with respect and generosity and, drawing on his own experience and mistakes, acts as a positive, peace-promoting presence in the prison.

In addition to the profound growth Mr. Tharpe has shown since his crime, many of the family members affected by this senseless crime still support clemency for Mr. Tharpe. The timing of Mr. Tharpe's clemency proceedings has been especially painful for the families, given that his execution is scheduled for the day after the 27th anniversary of Jackie Freeman's death. These victims know that Mr. Tharpe must be punished, but have witnessed his change and growth after overcoming his addictions and committing his life to God, family, and friends. They know that Keith Tharpe today is not the same man who committed the horrible crime for

which he is on death row. And, they know that executing Mr. Tharpe will not bring Mrs. Freeman back nor provide closure or relief, but instead will only reopen the wounds they have worked for 27 years to heal through forgiveness and God’s grace.

In addition to the victims’ family members’ wishes discussed below and Mr. Tharpe’s acceptance of responsibility, expression of remorse, deep faith, and personal growth, this Board is the only entity able to consider aspects of fundamental unfairness in Mr. Tharpe’s trial – namely, that Mr. Tharpe was sentenced to death by a juror who did so because Mr. Tharpe was a “nigger,” who killed someone from a family of “good black folks.” Although the Supreme Court has said that it is “imperative to purge racial prejudice from the administration of justice,”<sup>1</sup> the procedural barriers to judicial review have blocked entirely any examination of the impermissible bigotry that infected Mr. Tharpe’s trial.<sup>2</sup> This Board has the ability to look

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<sup>1</sup> *Pena-Rodriguez v. Colorado*, 137 S. Ct. 855, 859 (2017).

<sup>2</sup> Other aspects of Mr. Tharpe’s trial were similarly tainted. For example, Mr. Tharpe’s trial proceedings began just three months after his crime. This was an exceptionally short lead up to trial that did not afford Mr. Tharpe the thorough and in-depth investigation of his mitigating factors and mental health that is now a prerequisite to a capital trial. While trial counsel’s minimal preparation in this brief time frame unquestionably falls below current standards for representing a defendant facing the death penalty, even by comparison with other Georgia capital trials in that era, Mr. Tharpe’s – at just 108 days from crime to death sentence – remains the shortest of all. *See Tharpe v. State*, 416 S.E.2d 78 (1992). Of the 42 death sentences imposed between 1988 and 1992, the average time between the crime and sentence was 463 days, reflecting far more extensive preparation and investigation. *See, e.g., Moon v. State*, 375 S.E.2d 442 (1988) (1154 days); *Jarrells v. State*, 375 S.E.2d 842 (1989) (192 days); *Hightower v. State*, 386 S.E.2d 509 (1989) (298 days); *Black v. State*, 410 S.E.2d 740 (1991) (296 days); *Hatcher v. State*, 379 S.E.2d 775 (1989) (212 days); *Ferrell v. State*, 401 S.E.2d 741 (1991) (263 days); *Miler v. State*, 380 S.E.2d 690 (1989) (385 days); *Hall v. State*, 380 S.E.2d 690 (1989) (208 days); *Brantley v. State*, 380 S.E.2d 690 (1989) (747 days); *Meders v. State*, 380 S.E.2d 690 (1989) (543 days); *Todd v. State*, 410 S.E.2d 725 (1991) (298 days); *Pitts v. State*, 386 S.E.2d 351 (1989) (265 days); *Stripling v. State*, 386 S.E.2d 351 (1989) (259 days); *Crowe v. State*, 458 S.E.2d 799 (1995) (628 days); *Hammond v. State*, 398 S.E.2d 168 (1990) (604 days); *Johnson v. State*, 422 S.E.2d 648 (1992) (597 days); *Sallie v. State*, 499 S.E.2d 897 (1998) (366 days); *Hill v. State*, 427 S.E.2d 770 (1993) (350 days); *Davis v. State*, 404 S.E.2d 100 (1991) (741 days);

beyond such barriers and examine the role of racial prejudice in Mr. Tharpe's death sentence and, after doing so, commute his sentence to life without parole so that no one in Georgia is executed on the basis of the color of his skin.

Without in any way discounting or minimizing Mrs. Freeman's death and the pain caused by Mr. Tharpe's crime, we ask the Board to consider who Mr. Tharpe is today: a man full of remorse, living every day guided by his faith, respect, and good will, who strives to put as much good into the world as he can, which he will continue to do if allowed to live out the remainder of his natural life in prison.

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*Fugate v. State*, 431 S.E.2d 104 (1993) (361 days); *Ledford v. State*, 439 S.E.2d 917 (1994) (289 days).

The rush to trial in Mr. Tharpe's case resulted in these critical mental health issues being omitted that could have long ago spared Mr. Tharpe from the death penalty. The psychologist trial counsel consulted, Dr. Archer Moore, found Mr. Tharpe within the borderline range of intellectual functioning, but trial counsel did not provide any supporting documents to assist with his mental health diagnosis. In later proceedings, Dr. Moore testified that had he been given relevant background materials, he would have diagnosed Mr. Tharpe as mentally retarded (now "intellectually disabled") at the time of trial. If he had, Mr. Tharpe would have been ineligible for execution under Georgia law and he would not be imminently facing execution today. See *Fleming v. Zant*, 259 Ga. 687 (1989); O.C.G.A. § 17-7-131.

In addition to the shortcomings of his defense, Mr. Tharpe was tried by Ocmulgee Circuit District Attorney Joseph Briley, a prosecutor notorious for using discriminatory practices during jury selection. By the time of Mr. Tharpe's trial, Mr. Briley had already been found to have used peremptory strikes in a discriminatory manner in capital case under an older, more stringent legal standard of *Swain v. Alabama*, 380 U.S. 202 (1965) that required a showing of the prosecuting attorney's discriminatory history. *Horton v. Zant*, 941 F.2d 1449 (11th Cir. 1991). Mr. Briley's history of discrimination included authoring a memo providing instruction to other attorneys about how to underrepresent African Americans and women on grand and traverse jury lists while still avoiding legal challenges. See *Amadeo v. Zant*, 486 U.S. 214, 217-18 (1988). In Mr. Tharpe's case, Mr. Briley used his peremptory strikes to strike five of the eight prospective African American jurors. *Tharpe*, 262 Ga. at 111-12.

**I. THE CRACK EPIDEMIC OF THE 1980s AND 90s WREAKED HAVOC IN THE MACON COMMUNITY, LIKE MANY OTHER COMMUNITIES ACROSS THE COUNTRY, AND LED TO MR. THARPE’S ADDICTION.**

**A. The Power of Crack Cocaine on Individuals and Families is Readily Apparent and Mr. Tharpe Was No Exception.**

*Things in the neighborhood changed when I got out of prison in 1992. You couldn’t trust no one. Crack had taken over my neighborhood, and people were robbing each other to feed their drug habits. Neighbors kept to themselves, and so did I. Crack affected a lot of families. I have a couple in my family. My uncle . . . lost his job and would steal to feed his habit. My cousins . . . were addicts. [One] went to prison for possession and assaulting someone while high. I even knew someone who was suspected of killing his own father for money to buy drugs. . . . Drugs are like a disease that affects people to this day.*

*-Letter from Rufus Fuller, childhood friend, p. 1 (Ex. 15)*

**1. Though it Was Ultimately Mr. Tharpe’s Choice to Try Crack Cocaine, a Number of Risk Factors, Including Alcohol Consumption From Age Five Left Mr. Tharpe More Vulnerable than Others to the Crack’s Arrival.**

Ultimately, it was Mr. Tharpe’s decision to try crack cocaine.<sup>3</sup> It is undeniable, however, that in terms of substance abuse and addiction, the cards were stacked against Mr. Tharpe well before he had any choice in the matter. The risk factors discussed below do not in any way excuse Mr. Tharpe’s actions or his choices. Rather, they are meant to provide the Board with background to explain how Mr. Tharpe first came into contact with crack cocaine, a drug that would quickly ruin his life and the lives of many people around him, including, most tragically, Jackie Freeman’s.

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<sup>3</sup> See, e.g., Letter from Helen Foreman, p. 1 (Ex. 27) (I know that Keith is ultimately responsible for taking drugs and for his crime. He knows and owns that, too. But I also know that Keith didn’t have the backing at home to help him do right.”).

Even before he was born, Mr. Tharpe was exposed to alcohol: his mother drank liquor and beer every day of her pregnancy with Mr. Tharpe.<sup>4</sup> After he was born, alcohol remained a central part of Mr. Tharpe’s everyday life.<sup>5</sup> Throughout Mr. Tharpe’s childhood, neither parent worked steadily, but instead drank excessively<sup>6</sup> and ran an illegal moonshining business – a “shot house” – out of their home.<sup>7</sup> Mr. Tharpe’s parents sold the homemade liquor out of their

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<sup>4</sup> Naomi Tharpe Aff. ¶ 6 (Ex. 37) (“I drank both moonshine liquor and beer daily while I was pregnant with my son Keith.”).

<sup>5</sup> Mr. Tharpe’s early exposure to alcohol was compounded by his lifelong intellectual limitations, which both parties in Mr. Tharpe’s case agree are significant. During state habeas proceedings, testing by both the state and defense revealed that Mr. Tharpe had an IQ of 67-68. Neuropsychological testing also revealed that Mr. Tharpe suffers from brain damage. School records further showed that Mr. Tharpe had to be “socially promoted” *four* times to complete his schooling. *See* Ex. 45. Testimony from family members revealed that Mr. Tharpe had had struggled with childhood development skills such as walking and learning to read, and that he had limited life skills as an adult that prevented, which led to his struggle to find and keep jobs and otherwise cope productively with life’s stresses and challenges. Even though the State’s post-conviction expert did not diagnose Mr. Tharpe with intellectual disability, he readily agreed that Mr. Tharpe was in the borderline range of intelligence and thus, at best, still impaired in his intellectual functioning. Although Georgia bars execution of intellectually disabled individuals, it requires the defendant to establish his disability beyond a reasonable doubt. Georgia remains the only state to require this burden of proof. *See* O.C.G.A. § 17-7-131(c)(3), (j). It bears repeating that Mr. Tharpe’s jury heard absolutely nothing about his low IQ and other impairments, as documented before trial by the defense doctor.

<sup>6</sup> Mr. Tharpe’s father, Lewis, was also an alcoholic, *see* Naomi Tharpe Aff. ¶ 7, and frequently abusive:

Lewis had a very bad drinking problem, too. He just had to have his liquor. He loved moonshine and gin. The older he got, the more he drank....When Lewis was drunk, which was most nights, he would say terrible things to Keith, telling Keith he was stupid. Lewis was also very abusive to me [Naomi] and the kids when he was drinking.

*Id.* Lewis Tharpe had affairs with many different women and abandoned his family for weeks at a time to pursue these affairs. *Id.* Naomi Tharpe was once arrested for continually harassing one of her husband’s mistresses. *Id.* Naomi Tharpe was arrested on another occasion for possessing and selling moonshine. *Id.* at ¶ 5.

<sup>7</sup> Mr. Tharpe’s mother also had a vicious temper and an admitted lack of self-control; she at times attacked Mr. Tharpe, who she recalls sometimes beating until he bled. *See* Naomi

home to men who would become intoxicated and engage in physical fights at the home all hours of the night.<sup>8</sup> Beginning around age five, Mr. Tharpe began serving moonshine to these customers.<sup>9</sup> From there he started taking sips of grain alcohol, encouraged by his father and the customers. *See* Audrey Tharpe Pope Aff. ¶ 6 (Ex. 39).

I love [my sister and Keith’s mother] Naomi, but I have always thought that she and Lewis didn’t set a good example for Keith and Regina running a shothouse out of their house. Back then I was living next door to them. There was too much drinking and too many drunk men in Keith’s life when he was too young to know it wasn’t right. Keith grew up thinking drinking and playing cards all night is as normal as sleep. That started him drinking even though he was just a boy.

(Letter from Fannie Green, Mr. Tharpe’s maternal aunt, pp. 1-2, Ex. 8.)

Keith was exposed to too much at home, including his parents fighting and being made to serve moonshine out of their home. I did not let my children go to Naomi’s house because I felt my kids would be allowed to do whatever they felt like without any supervision. . . .

Keith didn’t have the backing at home to help him do right. . . . [H]is home was not a source of support. He was exposed to too much at a young age. His parents sold liquor, he was allowed to drink liquor, and he was always surrounded by many people drinking from a young age.

(Letter from Helen Foreman, Mr. Tharpe’s maternal aunt, pp. 1-2, Ex. 27.)

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Tharpe Aff. ¶ 8. She and her husband had frequent physical fights in the presence of Mr. Tharpe, and she was unpredictable in her relationship with her son; one moment she was nice to him; the next, she belittled him as dumb and worthless. *See* Audrey Tharpe Pope Aff. ¶ 3, 5. Mr. Tharpe was beaten for such behaviors as wetting the bed. *Id.* at ¶ 5.

<sup>8</sup> *See* Fannie Bates Green Aff. ¶ 6 (“Because of the liquor, Naomi’s house always had people, mostly men, hanging around drinking, smoking, and playing cards. They would be inside the house and outside the house, just everywhere. It didn’t matter what time of day it was, either. All night long and all day long, you could find men hanging around Naomi’s house drinking and fighting. They always had a card game going, and nine times out of ten the card game would give rise to a fight, with fists flying and trashy talk spewing. Naomi’s two youngest children [Audrey and Keith] grew up right in the middle of all that mess”).

<sup>9</sup> Fannie Bates Green Aff. ¶ 8 (“Keith, being a boy child, was allowed to be out among the customers from the time he was old enough to walk good. By the time he was about five, his mamma and daddy would have him serving moonshine to the customers.”).

By age ten, Mr. Tharpe was ingesting enough hard liquor to make him drunk to the point of losing consciousness.<sup>10</sup> Far from seeing this as a problem, Mr. Tharpe's parents tended to see it as "cute" or entertaining.<sup>11</sup> Mr. Tharpe's upbringing, particularly his early exposure to alcohol, impaired his development and left him particularly vulnerable to continued alcohol and drug abuse.<sup>12</sup> As a result of this life-long exposure to an environment which normalized substance

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<sup>10</sup> *Id.* ("The older Keith got, the more he drank. When he was just ten years old, we would sometimes find him passed out by a tree, drunk on moonshine.").

<sup>11</sup> *Id.* ("Keith's daddy and the customers thought it was cute when five year old Keith would take sips of the shine before he gave it to the customer. I did not.").

<sup>12</sup> Dr. Archer Moore, equipped with background information he lacked at the time of trial, discussed in detail how Mr. Tharpe's alcohol and drug dependencies developed in the context of his upbringing in an environment pervaded by intoxicant-abusing adults:

Several factors influence the development of substance abuse problems. The first factor is the genetic, biochemical component, which is amply demonstrated by Mr. Tharpe's extensive family history of substance abuse. There is clear scientific evidence pointing to a genetic predisposition to substance abuse problems, and thus, any blame which one might associate with Mr. Tharpe for his history of substance abuse ought rightfully be shared by his forebears. The second factor is related to the social context in which one is raised. That is, in a social network which frowns upon the use of alcohol or drugs, there is likely to be a very low incidence of substance abuse because the social network actively discourages the use of substances. The family in which Mr. Tharpe was raised, on the other hand, tolerated and even encouraged the abuse of alcohol. Mr. Tharpe was surrounded by messages that instant relief and instant gratification through substance abuse is both appropriate and desirable.

The third factor influencing the development of a substance abuse problem is psychological. This concept encompasses the stability and character of the family unit, the neighborhood or community environment in which one was raised, and the values expressed by the society and sub-culture in which one exists. Thus, Mr. Tharpe's constant exposure to alcohol in his home and on the streets, and the nature of the value system which he grew up in, is responsible for the psychological "environment" in which Mr. Tharpe's substance abuse was literally fostered and encouraged. In the majority of cases of substance abuse, as here, there are one or more parents also suffering from substance abuse. In most cases of people with serious substance abuse problems, one or both parents were not there for the child, either physically or emotionally. That was clearly, and

abuse, when crack came to Macon, Mr. Tharpe was uniquely susceptible to its addictive nature, and ultimately, its devastating effects.

**2. “He loved his wife and he loved his kids, but once he got hung up on that stuff it was all that mattered to him;”<sup>13</sup> “He wasn’t the same Keith.”<sup>14</sup>**

*“There were family members that Keith just didn’t come around when he was using. When he did, it was like his character had changed. . . . That was not the normal Keith, not the loving and kind Keith who cared deeply for his family. The drugs don’t excuse what he did, but I also know that the way Keith behaved on drugs wasn’t who he was as a person before, or who he is now.”*

*–Letter from Audrey Pope, Mr. Tharpe’s sister, p. 1 (Ex. 7)*

For Mr. Tharpe, nothing could ever live up to the high of the first time he used crack cocaine. Nevertheless, he, like many in his surrounding community, spent years chasing that first high, only to damage relationships, alienate family, and lose himself in a culture of drugs. The introduction of crack cocaine in Macon and Mr. Tharpe’s subsequent debilitating addiction resulted in a downward spiral. His deterioration was compounded by his wife and children leaving him, exacerbated by his limited intellectual functioning and inability to cope with such enormous stressors, and culminated in the senseless taking of his sister-in-law Mrs. Freeman’s

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tragically, the case for Mr. Tharpe. His father was intermittently absent from the home, and when present was frequently abusive to Mr. Tharpe and his mother. His mother and father’s relationship lacked love or commitment, and both parents were psychologically and physically abusive towards each other and towards their children. The family dynamic in the Tharpe home deprived Mr. Tharpe of the nurturance which helps build a psychologically healthy child.

Mr. Tharpe’s substance abuse problem cannot be intelligently understood without reference to these factors in his background which caused and shaped his own substance abuse problem.

(Dr. Archer Moore Aff. ¶¶ 20-22, Ex. 44.)

<sup>13</sup> Letter from Fannie Green, Mr. Tharpe’s maternal aunt, p. 2 (Ex. 8).

<sup>14</sup> Letter from Larry Martin, Mr. Tharpe’s friend from elementary school (Ex. 26).

life. Mr. Tharpe's jury was never privy to his addiction (or the childhood that predisposed him to it), nor to his limited intellectual abilities and thus were left without any context for understanding how someone others described as kind, loving, and generous, could possibly do the things Mr. Tharpe did on September 25, 1990.<sup>15</sup>

By all accounts, Mr. Tharpe, despite his childhood home environment and intellectual limitations, was a friendly, outgoing, happy, and athletic child. He loved being around people, had many friends, and was a standout athlete through high school.

[E]ven with his upbringing, Keith was a joyful and kind child that enjoyed riding bikes and playing marbles. He was very caring. He had a cousin named JT. Keith was poor, but JT was even poorer. Keith shared the toys and snacks he had with JT and used to do little things for his parents who were disabled and lived back behind Keith's house.

(Letter from Fannie Green, Mr. Tharpe's maternal aunt, p. 2, Ex. 8.)

Keith and my own sons were great athletes. Keith and my boys excelled in baseball. If they had been scouted, I believe that they could have played professionally. I remember my family going to watch the boys play games. We loved watching Keith play baseball.

Keith was a sweet, well-mannered child. He would do anything for his friends. Once he literally gave the shirt off his back to a friend who needed one for a job interview. He had a good understanding of others' needs and always wanted to help.

(Letter from Helen Foreman, Mr. Tharpe's maternal aunt, p. 1, Ex. 27.)

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<sup>15</sup> These mitigating factors would have made a difference to at least three jurors. "I know [Mr. Tharpe's intellectual disability] would have very likely made a difference to me. As it was, there was no explanation for Keith's actions. . . . We weren't given any evidence that explained Keith's drug use to consider." James Stinson Aff. ¶ 6 (Ex. 36); *see also* Tracy Simmons Aff. ¶ 6 (Ex. 34) ("[W]e did not receive any information that he had any mental health problems at all. The information about [Mr. Tharpe's intellectual disability] would have helped us to better understand some of what happened."); Margaret Bonner Aff. ¶ 5 (Ex. 36) ("[I]f I have to make the decision whether someone lives or dies, I want to know as much about the person as possible so that I can make a fair decision . . . . While I don't believe that [intellectual disability] and brain damage, or a bad childhood, are excuses for what he did, these things would have been important to know about in deciding on the right punishment.").

When we were kids, I thought of [Keith] like a younger brother. Keith is my cousin – our grandmothers were sisters. . . . Keith was a happy child and a free spirit. He was very talkative when he was comfortable around people he knew, and he could make you laugh.

(Letter from Alphonso Taylor, Mr. Tharpe’s cousin, p. 1, Ex. 16.)

I grew up down the street from where Keith grew up. Keith was the same age as my younger brother but we all played together in a pack and he and I were good friends. Back in those days kids walked everywhere. We met up into little groups of neighborhood children and walked to the parks and even just up and down the streets. I loved having Keith in our little group. He talked a lot and he was so funny. It was good to have Keith around you because he made you smile. I went to Sunday School with Keith. We went to Lundy Chapel Baptist Church. You couldn’t talk in Sunday School and that was HARD for Keith. You could sing though and Keith like to sing. He thought he was a good singer, but he wasn’t. We teased him but he didn’t care, he sang anyway.

(Letter from Marilyn Watkins, childhood Friend, p. 1, Ex. 28.)

Bo and I used to play football and basketball in the parks around Macon. Bo wasn’t a trouble maker. He didn’t get in fights or do any of the things you would think someone would do headed to a place like death row. He did nice things for people. He took a special interest in my younger brother after our mom died. Bo did people’s yards and he showed my brother how to do them too so he could earn some money. Bo had another friend, JT. JT’s parents were deaf and dumb and they lived in a little house in the woods behind Bo’s house. They didn’t have running water or lights. Bo took jugs of water from his house back to them and checked on them to make sure they were ok. JT is dead now but I know he would have wanted to tell you about how good Bo was to his parents.

(Letter from Bobby Fuller, childhood friend, p. 1, Ex. 30.) Even Mr. Tharpe’s difficulty with school – he was socially promoted four times<sup>16</sup> – did not stop teachers and peers from noticing his positive character.

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<sup>16</sup> See Bibb Co. Public Schools Records (Ex. 45) (noting that Mr. Tharpe was “slow, but tries,” as identified by second grade and was socially promoted from fourth, fifth, sixth, and seventh grades); Jo Bess Grenga Aff. ¶ 3 (“I have clear memories of Keith’s inability to keep up with the work. His grades were very low. Keith was what we used to term as a very slow learner.”); Letter from Regina Moss, childhood friend, Ex. 32 (“All the way through high school, [Keith and I] took all the same classes. He would sit near me so that I could help him. We made it through school that way. He never wanted other students to know that he had trouble learning.”).

(Keith) was very special to me because of his gentle quiet spirit and his unfortunate inability to keep up with his classmates, no matter how hard he tried. Keith was well-liked by his fellow students. I believe part of the reason . . . is that he was an exceptional athlete. . . . I just can't adequately express just how respectful and sweet Keith was in my class.

(Affidavit of Jo Bess Grenga, Mr. Tharpe's seventh grade teacher, ¶ 2, Ex. 42.)

Mr. Tharpe's generous spirit and outgoing personality carried into adolescence and adulthood, and he was known for his eagerness to help a friend or family member in any way he could.

I have five brothers and five sisters. I could never depend on them like I could with Bo. I could always call on Bo when I needed things like a ride or help doing yard work. He was happy to help. He would help you any way he could. I looked up to him . . . .

(Letter from Rufus Fuller, childhood friend, p. 1, Ex. 15.) Mr. Tharpe's sister remembers him as the outgoing sibling, who was easy for all to like.

Keith was always gregarious, always real friendly. He was comfortable in a crowd talking to people. We are almost like opposites. Growing up, I was more of a "homebody" and kept to myself. Our older brother Marvin was the same as me, quiet and reserved. Keith was the outgoing one. He seemed to thrive on interacting with people. He would do anything to help people if he could, you know, go out of his way. It was easy for you to like him.

(Letter from Audrey Pope, Mr. Tharpe's sister, p. 1, Ex. 7.) Memories of Mr. Tharpe's gentle, inclusive attitude are cherished by family members to this day.

Keith Leroy Tharpe is my favorite cousin, but has always been more like a brother to me. His mother's mother and my father's mother were sisters. Keith made me feel welcome in the family even though my mother and father were not married. . . . Growing up, Keith was kind and respectful to others. Keith has always tried to help people in many ways. He would always look out for me and sure I was alright. He and his uncle Nathaniel would sometimes stop by to visit me. Keith would give me rides to and from work when I did not have anyone else to depend on. He helped me financially when I was struggling. It meant a lot to me that he cared. There was a time in my life when I was going through some changes. Keith was supportive and helped me cope with my situation.

(Letter from Barbara Ann Jackson, Mr. Tharpe's cousin, p. 1, Ex. 17.)

Keith came around my house often while we were neighbors. He was a good listener for me. I was home almost all the time with my sick mother and I really needed a friend then. Keith was so good to me. He always offered to help me with my chores. He especially like to help me take care of my dogs, cleaning their yard, bathing them or playing with them . . . .

(Affidavit of Patti Baxter, friend (now deceased), ¶ 3, Ex. 43.)

These characteristics ingratiated Mr. Tharpe both to his peers and his elders, and made him a valued member not only of his own family, but a welcome addition in other families, too.

I first met Keith in 1977 when we were both 19 years old and working at the Bibb Mill. We've been like brothers ever since. I call him Bo Tharpe, and so does everyone that knows him. Bo was always a popular guy. He got along with everyone and was the life of the party. He was always kind and caring, the type of person that would do anything to help you...

I would describe Bo as a country boy, who is loving, caring, trustworthy, loves life, and has a good heart. He loved to go fishing, be with his family and friends, and race cars. We had great time together doing these things and just generally hanging out and enjoying life. When I broke my ankle in a motorcycle accident, I was stuck at home in a cast, unable to drive. Bo would come by almost every day to take me out so I wouldn't be sad and stuck at home.

Bo was also close to my late mother Cleo McElroy. She thought of him as one of her sons. My mother was a devout Christian woman with a discerning spirit. She was one of those people who doesn't want you having other people over to her house and she rarely let me have friends over, but Bo was the exception and was always welcomed with open arms into her house. My mother loved Bo because he had manners, was respectful, and never cussed around her. She had much respect for him.

(Letter from Billy McElroy, hometown friend, p. 1, Ex. 14.)

Bo was one of the only friends that became like family. My mother, Cleo McElroy, always enjoyed Bo's presence in our home. She was a private woman, and Bo was one of the few non-family members she welcomed into our home with open arms. He was like one of her sons.

...

Bo had an aura about him, when you met him, you'd like him. He was always kind, lively, and the life of the party. He enjoys laughing and keeps the people around him doing the same.

(Letter from Phyllis McElroy, hometown friend, p. 1, Ex. 25.)

Mr. Tharpe married his high school sweetheart, Migrisus Freeman. Together, they had four daughters: Keshia, Melissa, Candice, and Brittney, in addition to Tameka, Mr. Tharpe's daughter from a previous relationship. Friends and family remember Bo as a family man and loving father, who enjoyed spending time with his wife and children.

I have some gold memories of my father before he went to prison. Like when he showed us how to catch lightning bugs. He showed us how to attract them to our jar. We liked to watch them when they lit up the night. He was very outgoing, loud, and happy. He liked to make us laugh. He told jokes and made faces that went from silly to stern and back again and that made us laugh and laugh. I remember playing with my family on the bridge between my father's aunties' houses and all of us laughing and joking. We had big Sunday dinners with Migrisus's family. There were so many cousins. All the kids ran around and the adults talked and cooked and cut up. We had big dinners at my Grandma Fannie's house; she was my father's grandmother and the matriarch of the family. Any time you came near her, she wanted to feed you. We all loved her. For the biggest reunions, we put up tents in her yard. We ate homemade peach ice cream. I know those are the memories of a child who did not understand all there was to understand about life, but those simple memories are a blessing to me.

(Letter from Tameka Hall-Price, Mr. Tharpe's daughter, p. 1, Ex. 4.)

I witnessed how loving Bo was to his wife and daughters. I wasn't always the best father when my kids were growing up, but I remember Bo being a good dad and being there for his kids. He often had one or more of his daughters with him when we hung out; they were always around when they were coming up and Bo took good care of them.

(Letter from Billy McElroy, hometown friend, p. 2, Ex. 14.)

Bo would bring his family over to family cookouts at my mother's home. His girls would run around and play. These were happy times before Bo started using drugs.

(Letter from Phyllis McElroy, hometown friend, p. 1, Ex. 25.)

Mr. Tharpe, however, became unrecognizable to family and friends after he started using crack cocaine. He withdrew from family, once the center of his universe:

Drugs really hit Keith hard. He kept it away from his family as much as he could, but we live in a small community and we all knew he was using and it changed him. He loved his wife and he loved his kids, but once he got hung up on that stuff it was all that mattered to him. I had a stepson that got addicted to the same

crack Keith got on. My stepson lived with us. I watched him change from a loving boy to one we didn't even know. He stole from us and fought against the police when they tried to help him. I pray every day for God to fight the evil drugs have brought on us.

(Letter from Fannie Green, Mr. Tharpe's maternal aunt, p. 2, Ex. 8.)

Before Keith's arrest, my mother and I had moved farther away and I had not seen him in a long time. I didn't understand why our relationship changed. He didn't reach out to see me any more so I didn't see him either. It was only after he went to prison that I learned he was on drugs; I never saw the drug addict side of him. When I was old enough to understand, my uncle told me how he used to do drugs with my father and that Keith was strung out before he committed these terrible crimes.

(Letter from Tameka Hall-Price, Mr. Tharpe's daughter, p. 2, Ex. 4.)

The only people Mr. Tharpe regularly saw when he was using crack, were friends who were also using. Even they, though, noticed the change in Mr. Tharpe, and no longer saw the man they once knew.

Our lives took a turn in the late eighties when cocaine hit Macon. It came through like a storm, the drugs flourished. People who used to sell weed started selling cocaine, then eventually crack, because you could make a lot of money. Crack was easy to get, and it gave a quick high. I learned very fast how easy it was to get caught up in drug use. Me and Bo made the mistake of trying crack, not knowing how it would affect us. We had only ever smoked weed before that and we thought we could handle it, but we were ignorant of what crack could do. You could never get the same high you got from the first time you use crack, so you end up chasing that feeling while your life gradually slips away.

We were sick, the addiction was a sickness. It put you in an environment of "low-lives." People would be on what they called "The Strip", Ernest Street, selling stolen items, drugs, and prostituting. The drugs made you do things you wouldn't normally do. I had been a churchgoing person that cared about my appearance; using crack made it hard to keep your dignity. It made me stay away from my kids and family, I didn't want them to see me like that. It's taken many years to repair the relationships with my children to this day. I think going to prison helped me get back to myself, I got back into bible study. I eventually kicked my drug habit in 1994.

I don't know what was going through Bo's mind when he committed the crime. I knew he was having trouble in his marriage; I wish I could have done more to help him. When I heard what Bo had done, I could not believe it. It was so out of

his character, but I know that on crack people do things they would never dream of doing off it.

(Letter from Billy McElroy, hometown friend, pp. 1-2, Ex. 14.)

After getting back to Macon, I ran into Keith on Dawn Street, where we would both buy crack. Dawn Street was in a part of town known for drugs and crime. Keith (and a lot of other people) also smoked crack at my sister's house. We never talked openly about our addictions, but I could tell Keith was using, because he had changed. You can tell when a person is on drugs: they're always in a hurry, they look like they lost weight, got no sleep, don't make eye contact, wearing the same clothes for several days. Before crack, Keith was always a loud and friendly person. When I saw him on Dawn Street, though, he would talk in a whisper. He wasn't the same Keith.

(Letter from Larry Martin, childhood friend, p. 1, Ex. 26.)

[W]hen crack hit Macon[, i]t was like a bomb blast. I don't know how it started but in everybody's family I knew, somebody was on drugs. In my family that was me. [Bo and I] stopped playing ball. . . . We hardly stayed around our people when we were using because we didn't want them to see us like that. We were up and down that Bellevue neighborhood to feed our habits. The focus was all on the drugs - using, getting more, using.

I believe that Bo would not have killed Ms. Freeman and hurt Migrisus and his family like he did if he hadn't been a drug addict, but I do not believe drugs are an excuse for what Bo did. Nothing can excuse it or undo its harm. I know it haunts him every day and that is how it should be.

(Letter from Bobby Fuller, childhood friend, p. 2, Ex. 30.)

I found out about Bo's crime while in prison. I was shocked. I couldn't believe it. I learned later that Bo suffered from a crack addiction, but because of when I went into prison, I never knew that Bo. But I know people who have been addicted to crack and how that can change people and make them act crazy. The Bo who killed Mrs. Freeman wasn't the Bo I knew - I never knew Bo to be a violent person.

(Letter from Rufus Fuller, childhood friend, p. 1, Ex. 15.)

After getting and using crack became Mr. Tharpe's sole focus in life, he abandoned his responsibilities to his family, in addition to nearly everyone and everything else. In August

1990, Mr. Tharpe's wife took their kids and left him;<sup>17</sup> finally, he had nothing left in his life but crack.<sup>18</sup> Migrisus' departure with the kids was a wake-up call, though not one strong enough to overcome Mr. Tharpe's crack addiction. Mr. Tharpe was desperate to get back his family. Mr. and Mrs. Tharpe continued to talk after she left, both by phone<sup>19</sup> and in person.<sup>20</sup> Mrs. Tharpe's relatives, however, were protective of Migrisus and wanted Mr. Tharpe to stay away from her and their family, which ultimately resulted in their requesting and receiving a peace warrant against Mr. Tharpe. Given his addiction and intellectual limitations, Mr. Tharpe was ill-equipped to deal with the stress of his family situation and incapable of navigating it in any sort of healthy or appropriate manner. The gregarious, well-liked, generous man Mr. Tharpe was became lost in the depths of addiction and pain and overcome with anger and desperation.

The night before Mrs. Freeman's murder, Mr. Tharpe drank and smoked crack until the early morning hours.<sup>21</sup> Severely impaired, he drove toward the Freeman family's property, where numerous family members had homes and where his wife, who he was trying frantically

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<sup>17</sup> See TT 2039 (Migrisus Tharpe stating at trial that she left Mr. Tharpe "[b]ecause he had started using drugs real bad").

<sup>18</sup> Although undersigned counsel has described the risk factors Mr. Tharpe faced and the path that led him to crack cocaine use, Mr. Tharpe would be the first to state that it was his choice to start using crack cocaine and that his family leaving him was a natural consequence of his own choices. In addition to taking full responsibility and feeling great remorse for taking Jackie Freeman's life, discussed more *infra*, Mr. Tharpe takes full responsibility for his crack cocaine use and the pain it caused his family and the resulting damage to his family relationships.

<sup>19</sup> See TT 2046.

<sup>20</sup> See TT 2047, 2094-95.

<sup>21</sup> See *Tharpe v. State*, 262 Ga. 110, 110 (1992); HT 158 (Migrisus Tharpe describing Mr. Tharpe's behavior the morning of the crime and stating that "if he was really high and, you know, he would just kind of be quiet or if I, you know, said something to him or told him something his whole, and it could have been because he was high, would just change, you know. He would be a whole different person.").

to win back, were staying. He encountered his wife and sister-in-law, Mrs. Freeman, on the road leading to the Freemans' property, stopped them, and told Mrs. Tharpe to get in his truck and come with him. Though he harbored no ill-will toward Mrs. Freeman with whom he was otherwise friendly, Mr. Tharpe and Mrs. Freeman argued about whether Mrs. Tharpe would go alone with Mr. Tharpe. During this argument, he shot Mrs. Freeman once with a shotgun, then inexplicably reloaded and shot her again. To this day, Mr. Tharpe cannot fathom what came over him and caused him to act as he did and kill Mrs. Freeman. It is an act for which he takes full responsibility and will regret every day for the rest of his life, knowing how short he cut her life and the time and joy he stole from her family and his own.

**II. MR. THARPE HAS CONTINUOUSLY SOUGHT REDEMPTION THROUGH HIS FAITH, EMBRACING RESPONSIBILITY FOR HIS CRIMES, STRUGGLING WITH HIS DEEP REMORSE, AND RESOLVING TO LIVE A LIFE IN PRISON GUIDED BY RESPECT, GOD, AND GOOD WILL.**

*“Bo is a man whose heart is heavy with the sadness of remorse, and yet full of resolve to do some good however he can.”*

*-Rev. Christopher Homiak, Pen Friend, p. 1 (Ex. 10)*

Neither undersigned counsel, nor those who have written in support of Mr. Tharpe offer the following information as an excuse or justification for Mr. Tharpe's actions. Mr. Tharpe continues to live every day with the horror of his actions and accepts full responsibility for the choices he made that led to them. The information below seeks to make the Board aware that Mr. Tharpe is now resolved in his faith to live a meaningful, Christian life, doing whatever good he can for his family, friends, and his prison community.

**A. Mr. Tharpe Takes Full Responsibility for His Actions, Lives with Genuine Remorse, and Has Requested Forgiveness from God and Those He Hurt by His Crimes and Actions.**

*“Every time I see him or talk to him he apologizes to us for two things: first, what he did to Jackie and second, not being there to raise us. The apologies happen every phone call, every letter, and especially on the visits. I believe in my heart of hearts he is honestly and sincerely sorry. He is grateful that people are still here for him, but he is ashamed for who he allowed himself to become, for hurting Jackie’s family and for letting us all down.”*

*-Letter from Tameka Hall-Price, Mr. Tharpe’s oldest daughter, p. 1 (Ex 4)*

Those who know Mr. Tharpe best hear regularly about his sorrow for having killed Jackie and hurt her family and his own.<sup>22</sup> Mr. Tharpe is deeply remorseful and ashamed of his crime and the pain he caused Mrs. Freeman’s family. Although undersigned counsel believes the circumstances of Mr. Tharpe’s upbringing, alcohol and crack addictions, and intellectual disability are relevant to his culpability and this Board’s exercise of mercy, Mr. Tharpe would be the first to say that those factors do not in any way excuse or justify his actions on September 25, 1990.

Through his faith in God, support from family, friends, and spiritual advisors, and his own personal growth in prison, Mr. Tharpe has returned to the kind and generous disposition he embodied before crack took over his life. He works every day to put all the good into the world he can and to live a Christian life devoted to helping others learn and grown from his own terrible mistakes.

I believe Keith Tharpe is as straight and honest as anybody I know. Today I am here to witness that Keith has earned not just my support but my brotherly love. If he is allowed to live, I believe he will continue to demonstrate his faith in God,

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<sup>22</sup> See, e.g., Letter from Kerin Fogarty, pen friend living in Crib Point, Victoria, Australia, who has been writing Mr. Tharpe for 15 years, p. 1 (Ex. 22) (“[Keith] continues to show remorse for his crime while still taking responsibility for it. He shows great awareness for his mistake and uses his experience to encourage others to better themselves and move forward in life.”).

spread God's word through his own simple explanations and example, and help toward the goal of rehabilitating inmates. I see true remorse and sorrow in this man.

(Letter from Deacon James Nelson, Spiritual Counselor for Mr. Tharpe as part of Governor Deal's Prison Religious Counseling Program, p. 3, Ex. 12.)

Although I have not known Keith for as long as some others in his life, I feel I know him deeply and sincerely. His change and growth, which I believe is a result of his deepening faith in God, is apparent to all who know him. I am confident that today, Keith is not the man he was when he committed his crime and got on death row. If Keith's sentence were commuted and he were allowed to live in prison, Keith would be a valuable counselor to others in prison, would exhibit exemplary conduct as he does now, and would make prison a better place for everyone in it. . . .

Inmates often share details about their crimes with me. Keith has done so, reflecting on his remorse and vastly changed mental state today as compared to at the time of the crime. I believe Keith Tharpe completely when he says that he takes full responsibility for everything that happened. He was overcome in his life at the time of the crime by struggles with alcohol and crack cocaine addiction, which he acknowledges caused him to do things otherwise out of character, and resulted in him causing a great deal of pain to his family and friends. He does not mention any of the following to excuse his actions, but only to express his remorse and describe what led him to commit such a terrible and tragic act of violence.

(Letter from Deacon Robert Pittard letter, Spiritual Counselor for Mr. Tharpe as part of Governor Deal's Prison Religious Counseling Program, p. 1, 3, Ex. 11.) Mr. Tharpe not only expresses his remorse to his spiritual advisors, but also regularly shares it with his family and friends, whom Mr. Tharpe is well-aware were also deeply hurt by his actions.

I have visited Keith many times while he has been in prison. I know that he takes accountability for his actions and for the harm that he caused. He is deeply remorseful; he realizes he did wrong. He talks now with the sense that we - those who cared for him - always wanted him to have. I truly believe that if he is allowed to live, Keith will do his best to deter others from making mistakes like he did.

I know that Keith is ultimately responsible for taking drugs and for his crime. He knows and owns that, too. . . . [Today, though] I think about the changed man who desires to use his wisdom to counsel other young people. I think about who he could have been and, if granted clemency, who he could still be in prison. . . .

Now, given the chance to live, I believe that even from prison he will be able to inspire others to live a kinder, more spiritual and meaningful life.

(Letter from Helen Foreman, Mr. Tharpe's maternal aunt, pp. 1-2, Ex. 27.)

Whenever I get to talk to Bo, he expresses his remorse, more than I can count. He wishes he could take his actions back and undo the hurt he caused. I believe Bo has found peace in his faith as I have done. My faith has helped me deal with setbacks in my life, and I have grown into a better man because of my relationship with God. I think Bo has done the same. When I was living in Michigan, I taught Bible study at a homeless shelter and saw how much of a blessing a relationship with God can be in a person's life. God has touched and blessed my life, and my hope every day is that Bo can experience the same feelings of peace and joy that I do when praising God. It is clear to me that Bo's time in prison has given him a chance to have a deeper relationship with God, including the peace and purpose that comes with a relationship with God. I pray that this Board will show mercy on Bo and allow him to continue his path of redemption.

(Letter from Billy McElroy, hometown friend, p. 2, Ex. 14.)

I know [Keith] is deeply remorseful. The consequences of Keith's actions cause him constant anguish and profound regret; the guilt will weigh heavy on him forever. Every day he prays for forgiveness from God and the victim's family, and for the pain he caused his own family. He truly understands the gravity of his crimes. It is his most fervent wish to be given the chance to make recompense to his family and society.

Keith has spoken to me about his state of mind at the time of the crime. If I compare that with the man he is now, it is like these were two different men. The man I know is thoughtful with a strong moral code. He is a God-fearing man who worries for his children and values fairness and equality in our society. There is no malice, rancour, violence, or hatred in his character. I have spoken at length with him on many matters. I have heard his views on politics, spirituality, music, and so many more aspects of life. Keith strikes me as man who wants to do good in the world.

(Letter from Alasdair MacLennan, pen friend, p. 1, Ex. 24.)

Mr. Tharpe is not someone who hides from his past or from his wrongdoings. To the contrary, he lives with them every day and readily acknowledges to all those close to him both his crime and the irreparable pain he caused to all those who loves Jackie Freeman, and to all those who love him. The level of honesty and remorse with which Mr. Tharpe faces his past is no small feat. It has taken years of prayer, countless conversations with friends, family, spiritual

advisors, and the humbling realization that nothing he ever does will change the terrible decisions and actions in his past. What is remarkable about Mr. Tharpe's transformation, however, is that he hasn't let this realization dampen his spirit.<sup>23</sup> While he faces his wrongs head on and accepts full responsibility for them, he has learned not to dwell in the darkness those realizations can create. Instead, Mr. Tharpe has learned to channel his remorse and sorrow into hope and a desire to good. He is invigorated and driven to seek closer relationships with God, family, and friends, and to share God's word with others so that they, too, may garner some understanding and peace by learning about and accepting God's love and forgiveness.

**B. Mr. Tharpe Has Used His Time in Prison to Develop and Deepen His Faith in God and His Understanding of God's Word, and Works Day-To-Day To Follow God's Example.**

Raised in the church, but without having truly devoted his life to God before his crime, Mr. Tharpe has, during his time in prison, found his way back to Christ. Mr. Tharpe is immensely grateful for the opportunity he has had to build his faith during his incarceration. He has done so by communicating with family, friends, and pen friends, and by meeting regularly with a number of spiritual advisors.

Over the years, we have witnessed a growth in Bo's faith that he will attest to. More and more often, he spends time in our visits talking about God's care for him and God's hand working in his life. He seems more and more aware of it as the years go by, and he gives credit to his friend [Keith] Taylor and to several pastor friends who visit him for their positive influence in helping him to see it. I give credit to Bo, as well. When we started visiting him, he admitted to a certain feeling of resistance when Taylor talked about God for long periods of time, or wrote letters with no other subject than God. Now Bo brings it up and talks in the

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<sup>23</sup> See, e.g., Letter from Joseph Shippen, Assistant Priest at St. Francis Episcopal Church in Macon, Georgia, and leader of monthly communion services at GDGP, and his wife, Suzanne Hobby-Shippen, p. 2 (Ex. 13) ("Bo is also a joy to visit with. He is upbeat and positive, and always shows a deep, genuine interest in what is going on in our lives, and with our children and our families.").

most humble way about the way he feels that God is working in his life. It is remarkable to see how the person who used to be on the receiving end of spiritual advice is now the one doing the sharing. During a time of sadness for our family, he gently reminded us, “Don’t forget to hold your head up. Looking up is the only way you’ll be able to see the blessings coming down!” Bo was baptized earlier this year, and we have been profoundly touched to see the gratitude and happiness he shows every time he talks about it.

(Letter from Joseph Shippen, Assistant Priest at St. Francis Episcopal Church in Macon, Georgia, and leader of monthly communion services at GDCP, and his wife, Suzanne Hobby-Shippen, p. 2, Ex. 13.)<sup>24</sup>

Bo & I talk about our faith in our letters. Sometimes I mention something I heard at church or will send him a verse from the Bible. One comment he makes a lot is that God is in control. I believe he has given his life over to God. He has a simple faith with a strong sense of God’s presence in his life. We sent him the Action Bible which is a visually focused Bible & is especially helpful for people who have difficulties reading. He loves reading/looking at it & shares it with other inmates.

(Letter from Lavonne Dyck, Pen Friend, p. 2, Ex. 20.) Through diligent study and his supportive community, Mr. Tharpe has grown strong in his faith over time.

It’s been amazing to witness the progression of [Bo’s] outlook on his difficult situation. As he’s moved from his 40s to his 50s I’ve seen greater and greater peace and wisdom rest on him. He has taught me so much about the importance of commitment in friendships, honesty in communication, and patience in times of trial. Life in prison has forced the issue on all these topics and instead of becoming increasingly bitter or hardened he has grown in wisdom and love. I cherish our times of prayer at the end of each of our visits. It’s during this time that I most clearly hear him articulate child-like submission to God at work in his life and circumstances.

(Letter from Christina Dyck, friend, p. 1, Ex. 18.) With this growth, Mr. Tharpe has found a peace he never knew before.

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<sup>24</sup> Keith Taylor was previously on death row until his sentence was commuted to life without parole in 2004. He died in prison in 2011. He was Mr. Tharpe’s best friend for 20 years. See (Letter from Joseph Shippen, Assistant Priest at St. Francis Episcopal Church in Macon, Georgia, and leader of monthly communion services at GDCP, and his wife, Suzanne Hobby-Shippen, p. 1, Ex. 13.)

Since Keith has been in prison, I believe that God has entered into his life. I can assure you he is not one of those chain gang converts. He is the real deal. His faith in God both sustains him and pushes him to act as a Christian by loving his fellow man. Today he talks about God so much, saying, “He’s the only crutch I need now.” He is a reformed drug addict. He made a soul-wrenching mistake, and he never excuses what he did. I believe it is only his faith in God that allows him to live with what he has done.

(Letter from Mary Edith Fuller, hometown friend, p. 1, Ex. 29.)

He and I have been talking about the chance he might be executed. My father believes in God and Jesus. He tells me if it’s his time he knows he’s safe because he has accepted Jesus. He can trust in Jesus’s will for him. He comes from a faith based family, but he didn’t accept the real meaning of faith until he went to prison. Since then, he has shared his Christian faith with me. He is always tucking scriptures into our letters. He likes to share what he is reading in the Bible and he always asks questions about my church.

(Letter from Tameka Hall-Price, Mr. Tharpe’s Daughter, p. 3, Ex 4.)

In addition to building his own network of friends with whom he shares his faith, Mr. Tharpe was chosen by the Georgia Diagnostic and Classification Prison (GDCP) Chaplain as the only inmate under a death sentence to participate in Governor Deal’s new Department of Corrections religious counseling program, which is primarily directed at reducing recidivism. One of the program’s religious counselors who has spent more than 70 hours visiting with Mr. Tharpe described the Governor’s motivation to start the program: “Governor Deal started this program because he believes that people who have committed crimes – even homicides – can change, are redeemable, and can learn to live peaceful lives with God’s help.” (Letter from Deacon Robert Pittard, Spiritual Counselor for Mr. Tharpe as part of Governor Deal’s Prison Religious Counseling Program, p. 1, Ex. 11.) Mr. Tharpe is a perfect illustration of one such transformation.

Each visit we talked of the Word of God. Our conversations lead to many topics, and we explored them. We learned we both share a love of hunting, fishing and motorcycles. We often returned to Keith’s life on the streets, and mine in shambles. He has admitted his crimes to me and repeatedly expressed his remorse

both before me and before God. His prayers for those he hurt and those who are hurting are simple and genuine and beautiful.

(Letter from Deacon James Nelson, Spiritual Counselor for Mr. Tharpe as part of Governor Deal's Prison Religious Counseling Program, p. 3, Ex. 12.)

During our visits, Keith and I often discuss our faith in God and various aspects of the Bible. It is clear to me from our conversations that Keith is trusting in God. He has reformed himself. He had become a Christian before we met. During one of our visits, Keith brought his Bible to the visitation area, and I could see that it was an extremely well-used and loved Bible, with many dog-eared pages and underlining of passages -- truly a beautiful Bible reflecting Keith's long relationship with God and Jesus.

When I first began to visit Keith, because I didn't yet know him, I had my questions about his sincerity in the beginning, but even though we can never know another person's thoughts, I am now certain that Keith is sincere in his faith. This change is reflected in Keith's words and his behavior. For example, Keith is extremely repentant. He takes full responsibility for killing his sister-in-law, Jackie Freeman, and is so sorry that he cannot take back the wrong he's done. He has great concern that he may have cut off Jackie's life before she accepted Jesus, and pleads for forgiveness from her family, his family, and all those he's caused pain by his actions.

Keith can look back on his actions now with some clarity that he didn't have at the time of the crime. He has told me that since he's been in prison, he realized that he "needed to stop thinking the same way." In developing his relationship with God, he has done just that and learned to think of and be guided by a purpose. "God has a job for me. Up there or down here. I'll take it either way. Maybe somebody I don't even know needs Jesus." I know, if allowed to live, Bo will have a purpose, a new job - telling everyone he can about Jesus.

(Letter from Deacon Robert Pittard, Spiritual Counselor for Mr. Tharpe as part of Governor Deal's Prison Religious Counseling Program, p. 2, Ex. 11.)

Earlier this year, Mr. Tharpe took the extraordinary step of having himself re-baptized. Although he was baptized as a baby, Mr. Tharpe wanted to be baptized again, this time by his own volition now that he knows what it truly means to love God and live a Christian life. Mr. Tharpe's baptism marked the next step in his growth in Christ. The experience has inspired a

peace and confidence in his faith and emboldened him to share his faith with non-believers in a way he hadn't before.

When I first considered baptizing Keith, I was filled with doubts and second thoughts. I didn't feel worthy to baptize anyone. Was Keith just using Christianity to look better? Would "sprinkling" him be enough when my faith believes in full immersion, and what if the prison punished me for doing this? My thoughts were filled with these questions. No one knew of the conflict in my mind.

Then four days before the Tuesday I was going to try to perform the baptism this small miracle happened to me. My granddaughter brought me a gift that her friend had told her to give me. I hardly knew her friend. We had spoken maybe ten words to each other in our lives. No one, not even my wife, knew the anguish I was going through. What did this almost stranger send me from the Holy Land? Two vials of water from the River Jordan. We Christians believe in signs from God. This just couldn't have come from anywhere else. I was speechless and immediately knew I was in God's will. All the doubts were gone. To me, the water I would use to baptize Keith was from the River Jordan and from God.

I baptized Keith L. (Bo) Tharpe on Tuesday, July 18, 2017. There were four of us, Keith, me, Jim Nelson and J. L. Moody [another Gideon]. All of us were on our knees in the visitation room. Keith repeated Billy Graham's sinner's prayer. Keith confessed his sins and firmly stated his repentance. He asked God and mankind to forgive him. He stated his desire to be baptized and stated his hearts belief, "I believe that Jesus is the Christ, the Son of the Living God and my Lord and Savior." As a Deacon of Mount Carmel Christian Church, I baptized Keith in the name of the Father, the Son and the Holy Spirit into his newness of life. Keith's baptism was incredibly meaningful to him, as it was to me. He talks about it with great pride and joy every time I visit him.

(Letter from Deacon Robert Pittard, Spiritual Counselor for Mr. Tharpe as part of Governor Deal's Prison Religious Counseling Program, pp. 2-3, Ex. 11.)

I had the great honor to witness Keith in a moment of true transcendence. It was Keith's baptism, performed by a fellow Deacon from Mount Carmel, Buddy Pittard. Thinking about it still gives me goosebumps. Buddy sprinkled water on Keith's head. Keith was so moved and so grateful it showed on his face and even in his very movements. Keith was very emotional. We could all feel that things were different than before. I had a rare feeling of being enveloped by warmth and comfort, as if a cloud came down to surround us and through those clouds flew a dove stating simply, "This is my follower of whom I am most proud." I am proud to have shared such a moment with him.

(Letter from Deacon James Nelson, Spiritual Counselor for Mr. Tharpe as part of Governor Deal's Prison Religious Counseling Program, p. 2-3, Ex. 12.)

Throughout his time in prison, Mr. Tharpe has developed and strengthened his faith in God. Those who know him have no doubt that Mr. Tharpe's faith today is strong and that he is, as Mr. Tharpe puts it, "right with God," and graciously in receipt of His love, peace, and forgiveness.

**C. Mr. Tharpe Possesses An Exceptional Ability and Desire to Build and Maintain Strong Relationships Both In- and Outside of Prison Walls.**

Mr. Tharpe has a unique ability to form connections with other people. His outgoing nature and generous spirit make him easy to like and eager to stay connected with others both inside and outside the prison community. Mr. Tharpe is well-known for his habit of looking out for other inmates who do not have the network of people he has and who do not have means – spiritual, financial, or otherwise – to care for themselves independently.

Tharpe treated people with respect - inmates and officers alike. He cared about the wellbeing of other inmates, and had a way of recognizing when other inmates were having an emotional time. Prison can be a dangerous place for weaker inmates. Tharpe knew this. When I worked at G House I watched him consistently take up for the quiet and more vulnerable inmates. I was also impressed by his generosity to other inmates. He was known for sharing his packages with inmates that did not receive one.

(Letter from Arthur Jones, Retired GDCP Corrections Supervisor, p. 1, Ex. 2.)

I would like to describe the remarkable friendship that existed between Bo [Tharpe] and [Keith] Taylor. These men arrived on death row within a few years of one another. Their cells were side-by-side for the first ten years, and later, when Taylor was moved to a different cell, they were able to talk to each other through the air vent that connected the back wall of their cells.

I ask you to picture these two inmates. It was clear to us that both men had limited intellectual functioning. Even though they were both pleasant and friendly to visit with, it quickly became apparent that they had fewer mental resources to help them navigate the world than most people do. It was poignant to us to witness,

over the years, the deep friendship that existed between these two intellectually challenged people.

Their personalities complemented each other. Taylor, our family friend, was very reserved, almost timid. He was open to being friends with anyone, but was someone who could be easily taken advantage of. Bo, by contrast, is friendly and outgoing. I think he recognized Taylor's vulnerability, and decided to take Taylor under his wing.

For a period of ten years, Taylor had little money to buy food from the prison store. Bo shared money from his own account with Taylor for that decade. Bo learned from Taylor, as well. He has shared with us that Taylor helped him grow in his Christian faith, and was a caring listener who gave good advice whenever Bo needed it. . . .

In the harsh environment of prison, these two intellectually challenged people shared a friendship of trust, encouragement, faith, spirituality, and caring that sustained them and made them better people. They lifted one another up. When we think of their story, our faith in humanity is revived.

(Letter from Joseph Shippen, Assistant Priest at St. Francis Episcopal Church in Macon, Georgia, and leader of monthly communion services at GDCP, and his wife, Suzanne Hobby-Shippen, pp. 1-2, Ex. 13.)

Mr. Tharpe also works hard to stay connected with loves ones and to participate in their daily lives as much as possible from prison. For example, Mr. Tharpe stays in touch with his granddaughter – who has never known him in the free world – by writing, emailing, visiting, and sending birthday gifts.

He has been incarcerated all my entire life, but I still have a great connection with my grandfather. I know my mother took me to meet him when I was a baby, but my first memory of visiting him is when I was about eleven/twelve years old. As a kid, we would go visit my grandfather and he always had such high energy and a positive spirit. You envision someone on death row to be full of pain and to show it, but he never did. He always kept the mood fun and happy, despite the situation. One thing I remember well about my grandfather was when he said I could ask him anything, he knew that he made huge mistakes and he didn't hide from that. I enjoyed the letters he sent me and I always anticipated the wonderful gifts such as crocheted dogs and magic books and kits as a kid!

As I grew older, I had less time to visit my grandfather in prison. I grew up, went off to college, graduated, and now work for the Susan G. Komen Foundation as

an Affiliate Coordinator at the Macon office. I decided that I wanted to start visiting my grandfather again and renew our connection. There were some challenges to visiting him due to changes in prison policy and his visitation list, but eventually my mother and I were able to start visiting again.

The idea to visit him again was up to me because I needed to see him. That day of the visit we laughed and of course he still had that great positive spirit. We talked about old times and current news. We started emailing not too long after that visit and he always was consistent with responding. We talked about things such as music, my birthday, family, and just simply what kind of day I had. The emails let us continue building our relationship. One of the sweetest things that my grandfather did for me was send me an E-card after I told him about a bad breakup. The card came at a perfect time and it brought tears to my eyes. He is still an attentive grandfather for me when I have bad days and I appreciate that.

(Letter from Khadijah Hall, Mr. Tharpe's granddaughter, p. 1, Ex. 6.) His daughter Tameka describes how her relationship with her father has grown over the years:

In many ways, I didn't really get to know my father until after he was in prison. I visited him with my Nana Naomi when I was younger. The first time I went to see him in prison it was scary, because I had never been to a prison before and it was intimidating to be there. But as soon as we saw Keith, he smiled, told jokes and made us feel comfortable. He was always bragging on us to the officers. He had so many questions for me: How you doing? How is school? What do you like about school? What do you read? Who are your friends? He would keep going if I didn't interrupt him to learn something about him. After my daughter was born she came too; Keith made her a crocheted doll. He started asking about her school. He wanted to soak in everything he had missed. I never had anyone so proud of me and my family. As my husband and I had our other children, it was always important to Keith to give them advice and encourage them not to follow his path. He felt his life could have meaning if they saw his situation as a living reminder of what NOT to do. . . .

My father is a different man now. He never misses a moment to show affection to his family with hugs and kisses. He tells us how much he loves us. He tells me he wished he would have listened to his family when they tried to help him. He has taught me about accepting responsibility for your own actions. He never put the blame on anyone else for what he did. . . .

It may be hard for someone who hasn't lived what I have to understand, but I am proud of my father for the person he has become.

(Letter from Tameka Hall-Price, Mr. Tharpe's daughter, p. 2-3, Ex. 4.) Mr. Tharpe has tried to be as open as possible about the mistakes he has made and the lessons he has learned in hopes

that others will learn from them. He has especially tried to reach out to young people, both in prison and outside to use his example to guide them away from drugs and violence.

I have two daughters and five grandchildren, three boys and two girls. I love them with all my heart and want what's best for them. I really do appreciate the times Keith calls me and talks with my grandsons about making the right decisions and staying out of trouble. Keith is humble in the way he uses his personal experiences with bad decisions as an example to warn my grandsons about consequences. My oldest grandsons are 23 and 18 now. I pray they listen to the life lessons Keith gives them, so I never have to see them make bad decisions and suffer the consequences.

(Letter from Barbara Ann Jackson, Mr. Tharpe's cousin, p. 1, Ex. 17.)

He tries to let young people know the lessons he has learned. He tells my son, "You don't want to go this life." He gives my nephew advice, telling him not to continue using. He doesn't say it in a "higher than thou" way, but he says it because he doesn't desire that anyone else goes down the road that he has gone down.

(Letter from Mary Edith Fuller, Mr. Tharpe's friend, p. 1-2, Ex. 29.)

As my husband and I had our other children, it was always important to Keith to give them advice and encourage them not to follow his path. He felt his life could have meaning if they saw his situation as a living reminder of what NOT to do.

(Letter from Tameka Hall-Price, Mr. Tharpe's daughter, p. 2, Ex. 4.)

Bo looked out for me even as we got older. We both had our issues with drugs. I was in and out of prison for drug offenses. I sold crack to support my habit, and it eventually led me to prison for a twenty-four year stay. Bo had already been in prison for his crime by the time I went in. I was at the Coastal State Prison, then later was moved to the Carrol County prison. During that time, Bo and I used to write to each other when it was allowed. Even though Bo was going through what he was going through, he still took the time to encourage me to keep my head up. He encouraged me to use my parole as a chance to keep my life on track. It meant a lot that Bo took the time to write to me and encourage me.

Since getting out of prison, I have been working and spending time with my daughter and granddaughter. Bo helped me really think about the decisions I needed to make to stay on the right path. I decided to stay in Carrolton where I have support from Matt's House, the halfway house where I currently live, and to be close to work. I am saving up to get my own place and making sure to catch up on all the lost time with my family.

(Letter from Miller Fuller, childhood friend, p. 1, Ex. 31.)

The work Mr. Tharpe puts into his family relationships from prison mirrors the generous and gregarious person he was before crack entered his life.

Keith is a changed person today since he's been off drugs. He is friendly again, and he continues to be a good friend even in prison. He has pen pals he has been writing letters to for over a decade. He has reconnected with old friends from elementary school and others that he knew growing up. And, he stays involved in our family, even from prison. I used to visit Keith more frequently in the past, but since I've had several surgeries, including back surgery, visiting has been more difficult. My husband, daughter, and I used to visit Keith together. When my grandson was born, he came along, too. I wish that I could visit more than I do now, but I did get to visit in August, and I'm grateful that my cousins, mom, and aunt are able to go. I know Keith really appreciates those visits. I am also grateful that Keith and I are able to keep in touch by phone. We talk about once a week. I keep Keith updated on what is happening in the family, how our mom is doing, and things going on in Macon.

(Letter from Audrey Pope, Mr. Tharpe's sister, p.1, Ex. 7). He visits with family as often as possible and does all he can to look out for family members, including his mother, whom his



*Naomi Tharpe in 2017 with a treasured possession, a blanket her son Keith "Bo" Tharpe made as part of the prison's now-defunct needlecraft program.*

friends regularly check in on on Mr. Tharpe's behalf.

I am 95 years old and I live in a nursing home because my health has gone downhill and my memory isn't what it used to be. My family still takes me to visit Keith, and it is very special to me every time' see him. I only can go when' don't have to use the prison telephones because I am hard of hearing. We try to make it a happy time. My sister Fannie knows how to make Keith laugh. We usually buy him something to eat and we talk about old times. . . . When we visit, Keith always tries to make sure I am comfortable. He doesn't mind when I fall asleep on him. He is very friendly to everyone. Even from prison he tries to be the best son to me that he can be. He still has friends in Macon and he asks them

to visit me and check on me. His friends Billy and Rufus come see me. They bring me little presents that he can't bring me. They have visited enough times now we are friends all on our own. This has been a great kindness Keith has given to me.

(Letter from Naomi Tharpe, Mr. Tharpe's mother, p. 1-2, Ex. 5.)

Mr. Tharpe's generosity and affection extends beyond family, too, to friends with whom he came up and continues to communicate with and support. In his relationships with others, Mr. Tharpe strives to share the wisdom he's gained from his mistakes and emphasize to others the importance of family.

Since I have been back in touch with Keith, it has been very special for me. What he has in him now is stronger than what he was before. I can feel it. He is right with the Lord. His attitude is an inspiration to me. He lives in prison because that's the bed he's made, but he feels the Lord has blessed him. He feels lucky because he has found his faith. I have really learned from Keith Tharpe. I would dance if they told me his life is to be saved.

(Marilyn Watkins, hometown friend, p. 2, Ex. 28.)

Keith is a comfort to me. We talk about each other's families. We reminisce about church and minister to one another. We encourage one another. He always asks about Miller, Leon, and Bobby. He makes me feel special, he is protective of me, and he tells me that I have always been good. He is always encouraging others, and not focusing on himself. He is always upbeat, that is his gift. He inspires people. After hearing from him, you realize that you haven't got any problems. Keith could say "poor, poor pitiful me," but he doesn't. He has so little, but the only thing Keith ever asks of me is my advice.

(Mary Edith Fuller, hometown friend, p. 1, Ex. 29.)

I have been writing to Keith for the past fifteen years. Our initial contact was via an organisation in the UK called Human Writes. Human Writes connects individuals to inmates on death row in the U.S. looking for a penfriend. Keith and I were paired up mainly due to our similar ages and interests. Since then we have both been on a journey of self-discovery and improvement. Our correspondence has always been open and honest.

Keith was a major factor in me re-uniting with my son Chris. I had him when I was nineteen years old and made the difficult choice to put him up for adoption. Keith was always urging me to contact Chris. I did so eight years ago, and our relationship has gone from strength to strength. To Keith I am forever thankful he kept on at me, stressing the importance of family in our lives.

(Letter from Kerin Fogarty, pen friend in Crib Point, Victoria, Australia, p. 1, Ex. 22.)

In addition, Mr. Tharpe has consistently gone farther and sought out and maintained connections with new people across the state, country, and world, and has become an integral part of those new friends' lives and families.

I was introduced to Bo through my sister who was involved in our church ministry of visiting prisoners. As someone who earned a degree at a Bible College and has been involved in pastoral work, I began visiting Bo as a ministry of encouragement and service to him. But as it turns out, my friendship with Bo is truly one of mutuality - building one another up in Christian faith. . . .

Through the years Bo has come to know my whole family. My mother and father began corresponding with Bo through letters, and have had a few opportunities to visit as well. Bo never fails to ask about my family and I know he genuinely cares about each of us based on the little details he often remembers. Recently we experienced a great joy when my 11-year-old daughter joined a visit. It was her first time to meet Bo, although she has known of him for years. We shared so much laughter. Bo easily connected with her - playing along with her imaginary games, telling stories of his youth, and relishing the opportunity to share food and fellowship together.

Through our free flowing conversations Bo often recounts the mistakes he made as a young adult. It is painfully obvious he regrets the life of substance abuse and poor choices which led to his imprisonment. But I am so grateful to hear the stories of new choices that have given him life and thankfulness.

(Letter from Christina Dyck, friend who has been visiting and exchanging letters and emails with Mr. Tharpe for 12 years, p. 1, Ex. 18.) Mr. Tharpe has maintained many of these friendships for many years – even decades – sometimes without ever having met the individual in person.

I began writing Bo when I lived in Georgia the summer of 2006. Since then, we've exchanged 15-20 letters a year, without fail. He never forgets to send a birthday or Christmas card. I consider him a faithful friend, and a wise soul. . . .

Bo has taught me many things about being a Christian, and about counting my blessings of living in the free world. He reads the Bible regularly, and particularly likes the Psalms and the book of Isaiah. I asked him once about how he keeps going, and he responded, "*Some of my bright spots are being able to read my Bible, praying, getting a letter from somebody who care about me, and being able to watch major sports . . . I'm always leaning on God, but I lean on him when I feel like the devil trying to trick me into doing something crazy. I used*

*to have a very quick temper, but it took me a long time to realize that it was just the devil tricking me to ride with him. So when someone cross me now, I just let God know that He got my back when I used to be fighting my own battles. When I was in the free world, I never took time to pray or read my Bible, which was bad. You know I don't want to be here on death row or in prison, but coming here may have saved me from going to hell, so I have learnt to count my blessings.”* Bo is a changed man, one who's woken up to his own power to make better choices.

In addition to talking about his faith, Bo and I have written about many other things over the years. Bo is a loyal friend who appreciates hearing updates from the free world. He loves hearing about my 9-month old child, and seeing pictures. Bo enjoys talking about gardening, and asks questions based on the season. He loves football and basketball, and follows the Falcons NFL team closely, as well as the NBA and NCAA March Madness. From his cell, Bo makes whatever positive contributions he can to his web of relationships, faithfully responding to every letter he receives.

(Letter from Rev. Chris Homiak, pen friend living in Kansas City, Missouri, who has been exchanging letters and emails with Mr. Tharpe for 11 years, p. 1, Ex. 10.)

Twenty-four years ago, I wrote to Keith Tharpe in response to an ad in a magazine that offered to connect people in the free world with death row pen pals. I sent him a card. When he wrote me back and signed his letter “Your Chocolate Son.” From that point on, I became his “Strawberry Mom,” and he became my youngest son. . . .

Over the years, I have talked about all kinds of topics with Keith. We share stories about our families. I live on a farm in Idaho where we grow hay and my son has range cattle. Keith asks me how things are going on the farm. He is always interested in hearing about it. I tell him about family gatherings, and how we talk about him when we're together as a family. My children think of him as their other sibling. After family gatherings, I send Keith a letter that has a message written from all the members of my family. He is cared for by everyone in our family.

(Letter from Maxine Jones, pen friend living in King Hill, Idaho, who has been exchanging letters with Mr. Tharpe for 24 years, p. 1, Ex. 21.)

[Keith] and I have been pen friends for the last fourteen of his twenty-six years on the row. . . .

In all these years of corresponding he has shown himself as someone quite concerned about what I had to tell him in my letters. I would bring up to him members of my family with various difficulties and he would give me sound advice and follow up on it. In all these instances he seemed genuinely interested

in the youth taking the right turns in life. My children were teenagers at the start of our communication. They regard him now as their uncle because of the consistent display of affection he has been showing them in his letters. The way he is today and if it got to that point, I would welcome Mr. Tharpe in my home as a guest.

From time to time he would ask me for advice regarding his own personal and family matters. Eventually he told me of his being very sorry for his past wrongs. He regretted having used drugs' which affected so much his behavior then as well as his family relations. Those who were hurt by him are not to be forgotten. Keith tells me he is very sorry for what he did and also that he has apologized to members of Mrs. Freeman's family and fervently desires for them to be able to heal of their wounds. From his letters I can see he has become a respectable person with an entirely different and better attitude than at the time of the tragic events of 1990.

(Letter from Juan Toledo, pen friend living in Cáceres, Spain who has been exchanging letters and emails with Mr. Tharpe for 13 years, pp. 1-2, Ex. 23.)

Mr. Tharpe's strong, simple faith has helped him become the epitome of redemption and rehabilitation that he is today. With daily Bible study, prayer, and conversations with friends, family, and spiritual advisors, Mr. Tharpe has found the strength and peace necessary not only to navigate life in prison, but also to make the best of it for himself and for others. Further, Mr. Tharpe fully accepts responsibility for his actions and for Mrs. Freeman's death. It is through his faith in God and God's forgiveness that Mr. Tharpe has learned to share all the good he has to give other inmates and the world. This same faith has given him hope for merciful intervention by this Board, and for grace to live out his life in a peaceful, positive, and meaningful way in prison.

**D. Mr. Tharpe's Presence Makes the Prison a Better, Safer Place.**

As this Board well knows, many individuals in Georgia's prisons because of trouble they caused in the community continue to cause trouble in prison, fighting rehabilitation, making corrections staff's job more dangerous and unpredictable, and disrupting other inmates' lives and

attempts at growth.<sup>25</sup> Mr. Tharpe, however, has been just the opposite. Indeed, he is an example of an offender who seized opportunities in prison and made positive changes, work this Board supports and recognizes as part of its mission.<sup>26</sup> During his time in prison, Mr. Tharpe overcame his addictions,<sup>27</sup> accepted his imprisonment with respect and humility, shared the life lessons he's learned with others in an attempt to help them do better, and made GDCP a safer, kinder, and calmer place for all who work and live there. Arthur Jones, a retired Corrections Supervisor who oversaw Mr. Tharpe on death row stated that “[i]nmates like Tharpe, who help to diffuse [sic] conflicts rather than start them, become an asset to the officers watching over them.”<sup>28</sup> Mr. Jones stated further that Mr. Tharpe’s contribution to the prison and Mr. Tharpe’s personal growth during his incarceration make Mr. Tharpe undeserving of execution:

I am well aware of why Inmate Tharpe is on death row. He took a life, and needs to be punished. I support the death penalty - there are people on death row right now who, in my opinion, should be executed. I can count on one hand the inmates I felt worthy of clemency, and Tharpe is one of them. I do not believe that Inmate Tharpe should be executed. Tharpe has used his time on death row to

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<sup>25</sup> For example, BJ Murphy, who was a counselor at GDCP for 18 years states that his “experience with death row inmates was that quite a fair number of them had difficult attitudes which the correctional staff had to deal with on a daily basis to maintain order. It was a common for G house inmates to get disciplined for Failure to Follow Instructions and Insubordination.” (BJ Murphy letter, p. 2, Ex. 9.)

<sup>26</sup> See Parole Board’s Mission Statement, available at <https://pap.georgia.gov/sites/pap.georgia.gov/files/PressReleases/Mission%20-%20Vision%20-%20Values%20%283%29.pdf> (last visited Sept. 16, 2017).

<sup>27</sup> In his more than 26 years at GDCP, Mr. Tharpe has incurred five disciplinary reports. One for possessing too many postage stamps; one for failure to follow instructions; and three related to failing or refusing drug tests, because Mr. Tharpe was still succumbing to his addictions. However, since 2004, around the time Mr. Tharpe accepted Christ into his life, Mr. Tharpe has not had a single drug or alcohol-related disciplinary report. The single incident in his prison record involving violence (with no injury) was, per officer reports, clearly instigated by another inmate. The incident was expunged from Mr. Tharpe’s record.

<sup>28</sup> Letter from Arthur Jones, Retired Department of Corrections Supervisor, p. 1 (Ex. 2).

improve himself, he has made the choice to be civil, kind, and respectful. I pray that this Board will strongly consider granting clemency, allowing Inmate Tharpe to spend the rest of his natural life in prison. In my opinion if he is granted clemency, Tharpe will continue to be an asset to the officers in any prison where he is housed.

(Letter from Arthur Jones, Retired Department of Corrections Supervisor, p. 2, Ex. 2.)

Mr. Tharpe's written records corroborate Mr. Jones' assessment. According to DOC reports, Mr. Tharpe "maintain[s] good relationship[s] with peers and staff,"<sup>29</sup> and "is polite and respectful."<sup>30</sup> His attitude is consistently rated as "positive"<sup>31</sup> and his behavior "excellent"<sup>32</sup> and "above average."<sup>33</sup> Mr. Tharpe "presents no management problems"<sup>34</sup> and "uses free and leisure

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<sup>29</sup> See Work/Activity Plan and Status Report, Mar. 8, 1991. See also, e.g., Needs Assessment/Program Plan, July 14, 1995 ("Gets along well with staff and peers."); Needs Assessment/Program Plan, July 8, 1996 ("He related well to staff and others."); Needs Assessment/Program Plan, Jan. 11, 2000 ("I/m interacts well with staff and other inmates.").

<sup>30</sup> See Counselor Notes, Aug. 9, 1996. See also Counselor Notes, Oct. 2005 – Nov. 2006 (stating Mr. Tharpe is "polite and mannerable"); Counselor Notes, July 2004 – Nov. 2004 ("attitude, demeanor, and mood good; polite and cooperative").

<sup>31</sup> See, e.g., Counselor Notes, Aug. 9, 1996; Counselor Notes, July 21, 1997. See also Letter from Maxine Jones, pen friend, p. 1 (Ex. 21) ("My home contains several arts and crafts projects that Keith made for us as part of previous prison arts programs. He did crochet, knitting, and cross-stitch, and the quality of his work is outstanding. I had a crochet piece he made framed, and it still hangs over my bed. I appreciate the time he took to make such beautiful work for me and my family.").

<sup>32</sup> See, e.g., Counselor Notes, Jan. 27, 2004; Counselor Notes, July 29, 2003 (marked "excellent" after crossing out "good").

<sup>33</sup> See, e.g., Counselor Notes, Mar. 6, 1991 (stating attitude and behavior are "above average"); Needs Assessment/Program Plan, July 11, 2002 (calling behavior "good"); Reclassification Form, July 29, 2003 (same); Reclassification Form, July 30, 2004 (same).

<sup>34</sup> See, e.g., Counselor Notes, July 21, 1997. See also, e.g., Needs Assessment/Program Plan, July 22, 1994 (Causes no management problem."); Counselor Notes, Nov. 1994 ("No management problem."); Counselor notes Apr. 16, 1992 ("No management problems, tends to avoid associating with trouble makers.").

time productively”<sup>35</sup> by, for example, participating in religious services,<sup>36</sup> taking regular visits<sup>37</sup> and phone calls<sup>38</sup>, socializing on the block<sup>39</sup>, going out on yard call,<sup>40</sup> and, when previously available, participating in the crochet and weavercraft programs.<sup>41</sup> According to a mental health counselor who worked at GDCP for 18 years and oversaw Mr. Tharpe, such high praise is far from the norm:

I do recall a very small, select group of death row prisoners who were well-behaved, obedient and compliant. Having reviewed the reclassification reports that I filed on Inmate Tharpe, I can see that he was one of the inmates in this select group.

My assessments of Inmate Tharpe’s cellblock behavior as “Good” or “Excellent” over multiple years means that he was an inmate who gave respect and got respect back in return. It means that I never viewed Tharpe as a disciplinary problem; or heard from corrections officers that Tharpe was disruptive, demonstrated a bad attitude, or violated any rules. It means that Tharpe was well-behaved and minded his own business so that neither I, nor the Warden when making rounds, ever had to pay him any particular attention.

In light of my experience as a corrections mental health counselor, I support clemency for Inmate Tharpe. In Tharpe’s case, I feel confident that he would continue to positively contribute to a prison environment with a sentence of Life Without Parole. Tharpe is the kind of inmate who can help keep a cell block running smoothly with his calm, steady behavior. I believe he could continue to add this kind of value to other prison environments if given an opportunity to do

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<sup>35</sup> See Needs Assessment/Program Plan, July 11, 2002; Needs Assessment/Program Plan, Jan. 11, 2000.

<sup>36</sup> See, e.g., Counsel Notes, Sept. 1, 2006.

<sup>37</sup> See, e.g., Needs Assessment/Program Plan, July 8, 1996; Counselor Notes, Jan. 4, 2010.

<sup>38</sup> See, e.g., Reclassification Form, July 2, 2009.

<sup>39</sup> See, e.g., Needs Assessment/Program Plan, July 11, 2002.

<sup>40</sup> See, e.g., Counselor Notes, July 14, 1995.

<sup>41</sup> See, e.g., *id.*; Counselor Notes, July 8, 1996.

so. For these reasons, I ask the Board to commute Tharpe's sentence to Life Without Parole.

(Letter from BJ Murphy, former GDCP mental health counselor for 18 years, p. 2, Ex. 9.)

Unsurprisingly, given Mr. Tharpe's friendly, outgoing spirit and the respectful way in which he conducts himself and encourages others to behave, Mr. Tharpe is well-liked by both staff and other inmates at GDCP.

Over the years I have known him, Bo has grown in maturity and seems to be settling into a sort of "elder-status," not getting involved in the drama of prisoner arguments. In our visits Bo is friendly towards inmates and officers alike. He often wants to introduce me to the other guys also receiving visitors. It is clear from those around Bo that he is well-liked and someone to be respected.

(Letter from Russell Dyck, friend, p. 1, Ex. 19.)

Bo is also a joy to visit with. . . . The only interruptions in our visits come when someone new enters the room, either another inmate or a visitor, and comes over to greet him - he has many friends!

(Letter from Joseph Shippen, Assistant Priest at St. Francis Episcopal Church in Macon, Georgia, and leader of monthly communion services at GDCP, and his wife, Suzanne Hobby-Shippen, p. 2, Ex. 13.)

Mr. Tharpe's spiritual advisors and friends also see the work Mr. Tharpe has put into himself and the pride he takes in conducting himself in a humble, respectful, and giving manner to others in the prison.

The Keith Tharpe of today is what most counselors would call totally institutionalized. It is a positive trait as it refers to a high degree of adaptation and acceptance of life in the system. Keith has been an inmate for twenty six years awaiting his death sentence. Although Keith's drug and alcohol addiction followed him to prison for some years, he has worked hard to grow and get to the place he is now in which he has no desire for drugs or contraband and will not let others even talk to him about it.

Keith remembers drinking before he was seven years old and spent his entire life with alcoholics and as an alcoholic himself. His present changed attitude toward drugs and his personal behavior is something I wish he could pass on to others. He does not merely refrain from alcohol and drugs; he actually has no desire for

any part of his previous life. In this case there is value in this man, even in prison. He still knows the streets and the base reasons so many young men fall into crime and self-destruction, and he can tell young people what to expect if they follow the drug life. He once told me “If you ever go into a crack house you know something you will never hear? Laughter. This thing is not done for enjoyment. You chase that first high and are seeking a certain level of intoxication you can never reach.” Keith has no addiction today and has no desire to use in any way.

Today, Mr. Tharpe feels that God has forgiven him, though he still struggles to forgive himself. He is quite outgoing toward all persons around him and could be a good influence on other inmates. This attitude of acceptance and trust in God has changed him for the better. He is very well adjusted to prison and would be of benefit to others in the institution as a model peer and spiritual counselor. His story and his advice could reduce recidivism in those inmates who are released.

Because of Keith’s devotion to God, he is personally clean and mentally alert. He is of clear mind and very much a viable person. Keith understands that freedom is not in his future. Even if the death penalty is in his future he understands and trusts God. He is, in my opinion, not due the death penalty and is of value as a person, a Christian man, right now and in the future, even in the restricted environment of prison. He is of use. He will earn his meals and he may just save that one person, that lost sheep who strayed, that unknown person Jesus is waiting for.

(Letter from Deacon Robert Pittard letter, Spiritual Counselor for Mr. Tharpe as part of Governor Deal’s Prison Religious Counseling Program, pp. 3-4, Ex. 11.)

Mr. Tharpe is open and honest about his past struggles, and embraces them as lessons learned on his path to redemption.

Keith and I have talked about his addiction to drugs in his past. He is grateful to be free from these awful drugs, and Keith’s true character has returned. He is now a sober and reflective man who is understanding of others. His mind is reformed and he is in possession of his soul again. Having witnessed Keith’s capacity for repentance and introspection of the years, it would be devastating to see his life taken.

Keith has made a journey of transformation which could be used to guide other young men of similar backgrounds within the prison system. He would be an ideal mentor for young inmates suffering from addiction, as well as those with some capacity for reform. He would provide honest and wise counsel that could help break the cycle of re-offending in some youth. Keith’s story is not glamorous, but it is instructive.

(Letter from Alasdair MacLennan, pen friend, pp. 1-2, Ex. 24.)

Mr. Tharpe has taken advantage of the structure of prison and the rehabilitative opportunities therein. He is truly a prison rehabilitation success story. He has beaten his addictions and become a model inmate who makes the prison better, safer, and more supportive for other inmates and staff alike. Mr. Tharpe spends time nurturing his simple but strong faith in God, studying his Bible, talking with spiritual advisers and friends, and nurturing his extensive community of family and friends both inside and beyond prison walls. Mr. Tharpe's record of rehabilitation and redemption demonstrate that he is a reliable, peace-making, positive member of the prison community worthy of this Board's mercy..



*Mr. Tharpe with his, mother, daughters, and granddaughters during GDCP visitation.*



*Mr. Tharpe with his mother, sister, and sister's family during GDCP visitation.*

### **III. MANY OF THE VICTIMS' FAMILY MEMBERS SUPPORT CLEMENCY FOR MR. THARPE.**

*\*\*\*This section of the Application has been redacted to protect the victims' and victims' family members' identities and privacy\*\*\**

**IV. MR. THARPE ASKS THIS BOARD FOR MERCIFUL INTERVENTION BECAUSE HE WAS SENTENCED TO DEATH BY A BLATANTLY RACIST JUROR, YET HAS BEEN UNABLE TO HAVE HIS CLAIM REVIEWED BY THE COURTS.**

On May 16, 1998, during Mr. Tharpe’s state habeas proceedings, routine juror interviews revealed that one of the jurors who imposed Mr. Tharpe’s death sentence, Barney Gattie, possessed profoundly racist views that influenced his decision in the case. Based on this discovery, Mr. Tharpe submitted substantial and credible evidence, including live and affidavit testimony by Juror Gattie and others, demonstrating Mr. Gattie’s free and unabashed use of the racial slur “nigger” to describe Mr. Tharpe and his admission that he voted to impose the death penalty because Mr. Tharpe was a “nigger,” while the victim was from a family of “good black folks.” Although the juror later denied some portions of his original affidavit, he *never* denied making the racist comments that displayed his views of African Americans. Nonetheless, because of a Georgia law requiring that jury’s verdicts not be impeached by post-trial statements, the state habeas court found Juror Gattie’s racist statements inadmissible and refused to consider them.<sup>42</sup>

Nearly 20 years later, on March 6, 2017, the United States Supreme Court changed that law. It held that the no-impeachment rule must have an exception where a juror makes a clear statement showing “overt racial bias.” *Pena-Rodriguez v. Colorado*, 137 S. Ct. 855, 869 (2017). This decision, combined with another recent Supreme Court decision that allowed reopening a

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<sup>42</sup> *Tharpe v. Hall*, Case No. 93-V-144 (Superior Court of Butts County) (Final Order, December 1, 2008).

federal case to resolve an issue of racial bias in another capital sentencing trial,<sup>43</sup> prompted counsel for Mr. Tharpe to move to reopen the case in federal district court on June 22, 2017. However, the day before Mr. Tharpe’s warrant issued, on September 5, 2017, the district court denied the motion.<sup>44</sup> It concluded that federal procedural rules prevented its review of a new Supreme Court decision, despite its relevance to Mr. Tharpe’s claim and to the fairness and constitutionality of his death sentence. While counsel for Mr. Tharpe continues to appeal the issue, there is a strong probability that higher courts will similarly be precluded from addressing the merits of the legal claim. Accordingly, Mr. Tharpe now turns to this Board to consider the racial bigotry of the juror who sat on Mr. Tharpe’s capital trial, and to show mercy in setting aside his death sentence. The credible and disturbing evidence that a juror who harbored profound racial animus against African Americans voted to impose the death penalty on Keith Tharpe, an African American man, should be considered as grounds for commutation by this Board.

#### **A. Relevant Background for This Board’s Consideration**

Attorneys Diana Holt and Laura-Hill Patton interviewed juror Barney Gattie at his home in Gray, Georgia, on May 16, 1998. The visit lasted approximately one hour. Laura-Hill Patton Aff. ¶ 2 (Ex. 48). Ms. Patton testified to her recollection of the interview:

Mr. Gattie expressed his feelings about the case in general. He stated that there are two kinds of black people in the world – “regular black folks” and “niggers.” Mr. Gattie noted that he understood that some people do not like the word

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<sup>43</sup> *Buck v. Davis*, 137 S. Ct. 759 (February 22, 2017) (holding that racial bias in capital sentencing proceeding could constitute “extraordinary circumstances” that warranted reopening a federal habeas case).

<sup>44</sup> *Tharpe v. Warden*, Case No. 5:10-cv-00433 (Middle District of Georgia) (Order, September 5, 2017).

“nigger” but that is just what they are, and he “tells it like he sees it.” According to Mr. Gattie, if the victim in Mr. Tharpe’s case had just been one of the niggers, he would not have cared about her death. But as it was, the victim was a woman from what Mr. Gattie considered to be one of the “good black families” in Gray. He explained that her husband was an EMT. Mr. Gattie stated that that sort of thing really made a difference to him when he was deciding whether to vote for a death sentence.

This was consistent with attorney Diana Holt’s recollection of the interview. Diana Holt Aff. ¶ 11 (Ex. 49). Ms. Holt further recalled: “Mr. Gattie said that he was congratulated for a good job as a juror on this case by some folks in the community. He said that one of the victim’s family members had even told him, ‘Thanks for sending that nigger to the chair.’” The interview ended cordially with Mr. Gattie’s wife offering the attorneys fried green tomatoes and inviting them to stay for dinner.<sup>45</sup> *Id.* at ¶ 13 (Ex. 49).

On May 25, 1998, Ms. Holt returned to Mr. Gattie’s house with another Resource Center attorney, Laura Berg, as well as a draft affidavit based on Mr. Gattie’s statements during the initial interview. Mr. Gattie asked the attorneys about other jurors they had sought to interview. When Ms. Holt mentioned they were having difficulty finding one juror, Tracy Simmons, who had moved out of state, Mr. Gattie stated: “you mean the nigger who used to live over by Juliette, Georgia. Yeah, I know who you are talking about, that nigger worked at the Bibb Company Plant in Forsyth until it closed.”<sup>46</sup> *Id.* at ¶ 14 (Ex. 49). Ms. Holt proceeded to ask Mr. Gattie to review the draft affidavit:

I asked Mr. Gattie if I could read his statement to him, explaining that it was my practice to read witnesses their statements, and he agreed. He asked what I was going to do with it, and I told him I wouldn’t do anything with it unless he

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<sup>45</sup> Both Ms. Holt and Ms. Patton are white women, as is Laura Berg, another lawyer from the Georgia Resource Center, who accompanied Ms. Holt on a later visit with Mr. Gattie.

<sup>46</sup> Tracy Simmons was one of the two African Americans who served on Mr. Tharpe’s jury. Barney Gattie Deposition p. 282 (Ex. 50).

approved it and confirmed the accuracy of it. He said, “well, go ahead. Let’s here [sic] what you got there.” I read the statement from beginning to end to him, including the preface declaring that Mr. Gattie was swearing to the following information. After each point, I looked at him and asked him if the statement was right. He nodded or said, “yes” after each point, except for one point related to the origin of integration. I corrected the statement on that point to reflect Mr. Gattie’s actual words. He confirmed the accuracy of every word of the rest of the statement. He did not request any further changes to his statement. At the conclusion of my reading of Mr. Gattie’s statement to him, I asked him if it was entirely accurate. He said it was. I also asked him if there were any changes he wanted to make to the statement. He said that there were not... I handed the statement to Mr. Gattie and asked if he wanted to read it. He said he didn’t have his glasses and what I read was what he had said. After Ms. Berg swore Mr. Gattie, he signed the statement in Ms. Berg’s presence, and she notarized it on the spot.

*Id.*<sup>47</sup> Ms. Holt’s recollection corroborates Mr. Gattie’s affidavit, sworn to and signed that day, which included his correction striking the term “interracial marriages” and replacing it with the word “integration,” which he wrote and initialed. Barney Gattie Aff. ¶ 3 (Ex. 46). The affidavit further summarized his racial views as he had described them to Ms. Holt and Ms. Hill-Patton during their initial interview:

3. I also knew the girl who was killed, Mrs. Freeman. Her husband and his family have lived in Jones county a long time. The Freemans are what I would call a nice Black family. In my experience I have observed that there are two types of black people: 1. Black folks and 2. Niggers. For example, some of them who hang around our little store act up and carry on. I tell them, “nigger, you better straighten up or get out of here fast.” My wife tells me I am going to be shot by one of them one day if I don’t quit saying that. I am an upfront, plainspoken man, though. Like I said, the Freemans were nice black folks. If they had been the type Tharpe is, then picking between life or death for Tharpe wouldn’t have mattered so much. My feeling is, what would be the difference? As it was, because I knew the victim and her husband’s family and knew them all to be good black folks, I felt Tharpe, who wasn’t in the “good” black folks category in my book, should get the electric chair for what he did. Some of the jurors voted for death because they felt that Tharpe should be an example to other blacks who kill blacks, but that wasn’t my reason. The others wanted blacks to know they weren’t going to get away with killing each other. After studying the Bible, I have wondered if black people even have souls. ~~Interracial marriages~~ started in Genesis. I think they are wrong. For example, look at O.J Simpson. That white woman wouldn’t have been killed if she hadn’t have married that black man.

*BJ*  
*Integration*

<sup>47</sup> Ms. Berg’s recollection is consistent with Ms. Holt’s. Laura Berg Aff. ¶ 3 (Ex. 50).

Two days later, Mr. Gattie signed a second affidavit, this time on behalf of the Respondent. It characterized his interaction with Mr. Tharpe's attorneys in a manner at odds with counsel's recollections of what occurred, suggesting that Mr. Gattie had not understood the purpose of their visit and had been intoxicated at the time he signed his prior affidavit. Barney Gattie Aff. at ¶ 1; 3 (Ex. 47). While he testified that the word "nigger" was not used during deliberations and denied discussing an alleged prior shooting with other jurors, Mr. Gattie did *not* deny using the term "nigger" generally, nor did he disavow his belief that black people could be divided into two categories of "good black folks" and "niggers."

Counsel for Mr. Tharpe subsequently deposed Juror Gattie, along with other trial jurors. The depositions were conducted on October 1-2, 1998. Juror Gattie again specifically denied only one statement contained in his initial affidavit – namely that he had disclosed, inaccurately, to other jurors that Mr. Tharpe was on probation for a prior shooting.<sup>48</sup> Barney Gattie Deposition p. 54-55 (Ex. 51). Although he maintained that Mr. Tharpe's counsel did not properly identify themselves, that he was intoxicated at the time he signed his first affidavit, and that some of the statements were "out of proportion," Mr. Gattie did not deny the accuracy of any other statements in his initial affidavit.<sup>49</sup> *Id.* at 118-19; 358 (Ex. 51).

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<sup>48</sup> Mr. Tharpe has never been accused of shooting anyone prior to Mrs. Freeman's death.

<sup>49</sup> Indeed, Juror Gattie readily admitted that he made and initialed the correction during his deposition testimony:

Q The affidavit as it originally reads, if you can read it underneath that line, says that interracial marriages started out in Genesis; is that what it says?

A Yeah, I see that.

Q That is the way that Ms. Holt originally read it to you; is that right? Before the line was written through it?

Mr. Tharpe also filed affidavits from the attorneys who had interviewed Mr. Gattie initially (Laura-Hill Patton and Diana Holt) and who were present when his affidavit was executed (Diana Holt and Laura Berg). Ex. 48; 49; 50. These affidavits, which were admitted into evidence, reaffirmed Mr. Gattie's bigoted attitudes and contradicted his testimony regarding the circumstances under which the affidavit was obtained. The attorneys also testified that they had introduced themselves to Mr. Gattie as attorneys who were working on Mr. Tharpe's behalf. Laura-Hill Patton ¶ 3 (Ex. 48); Diana Holt Aff. ¶ 4 (Ex. 49). Contrary to Mr. Gattie's suggestion in his second affidavit and his deposition testimony that he was significantly intoxicated at the time he signed his first affidavit, "Mr. Gattie did not appear to be tired or alcohol-impaired at any time throughout our visit. He was alert and animated as Ms. Holt read him the affidavit and afterwards, as we chatted with him." Laura Berg Aff. ¶ 8 (Ex. 49) *see also* Diana Holt Aff. ¶ 15; (Ex. 49). The attorneys further testified that Mr. Gattie was well aware of the contents of the affidavit, which he had corrected and signed on May 25, 1998.

Ms. Holt read the entire affidavit to Mr. Gattie in a clear, slow voice, stopping every couple of lines to ask Mr. Gattie to verify that what she had read was accurate. Every time Ms. Holt would stop for verification Mr. Gattie would tell her "that's right" or "I'm sticking to my story" or would reiterate the statement that Ms. Holt had just read.

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A I can't remember what all was read.

Q Do you recall, did you change interracial marriages to say read integration, which it says in the margin?

A I sure did.

Q Is that your initials there beside that?

A Yes, sir.

*Id.* at 44-45 (Ex. 51).

Laura Berg Aff. ¶ 3; (Ex. 49); *see also* Laura-Hill Patton Aff. ¶ 15 (Ex. 48).

After those proceedings, Mr. Tharpe's state habeas case languished for several years and changes in counsel on both sides occurred. In 2008, the state habeas court issued a final order denying relief on all claims. With regard to the juror bias claim, the state court ruled that all juror testimony in both affidavits and depositions was inadmissible under Georgia law:

The Georgia Supreme Court has made clear that the affidavits, such as those submitted by Petitioner to this Court, are not admissible. In *Spencer v. State*, 260 Ga. 640 (1990), the Georgia Supreme Court held: "The general rule is that affidavits of jurors may be taken to sustain but not to impeach their verdict." O.C.G.A. § 17-9-41. **Exceptions are made to the rule in cases where extrajudicial and prejudicial information has been brought to the jury's attention improperly, or where non-jurors have interfered with the jury's deliberations.** *See, e.g., Hall v. State*, 259 Ga. 412 (383 S.E. 2d 128) (1989) and cases cited therein. Compare FRE 606 (b). (Footnote omitted.) The affidavit here does not fit within these exceptions to the rule. Compare *Shillcutt v. Gagnon*, 827 F2d 1155 (II) (7th Cir. 1987). *See also Wright & Gold, Federal Practice and Procedure*, Ch. 7, § 6074 at pp. 431-32. ("Most authorities agree that **the rule precludes a juror from testifying that issues in the case were prejudged**, a juror was motivated by irrelevant or improper personal considerations, **or racial or ethnic prejudice** played a role in jury deliberations." (Footnotes omitted.)) . . . *Spencer*, 260 Ga. at 643.

*Tharpe v. Hall*, Case No. 93-V-144 (Final Order at 99-100) (emphasis original). Based on this analysis, the court concluded: "[A]s the juror depositions and Petitioner's affidavits with regard to these claims are inadmissible, Petitioner has failed to prove, with any competent evidence, that there was any juror misconduct...." *Id.* at 101.<sup>50</sup>

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<sup>50</sup> The state habeas court further ruled that, regardless, the juror misconduct claims, including the claim that Juror Gattie's racial prejudice invalidated the death sentence, were procedurally for failure to raise them post-trial or on direct appeal, although the new evidence did not come to light until state habeas proceedings.

**B. Mr. Tharpe Requests this Board's Consideration and Mercy Based on the Racial Bias in His Case that Has Been Barred from Review in the Courts on Procedural Grounds.**

Because of the court's ruling on the inadmissibility of this compelling evidence, this legal claim remained dormant for nearly 20 years.<sup>51</sup> As discussed above, in early 2017, the Supreme Court changed the law, requiring state and federal courts to consider statements of overt racial bias by jurors. While Mr. Tharpe has now brought his claim back to the courts, because of procedural rules barring new Supreme Court cases from applying retroactively, no court has yet considered Juror Gattie's racist statements and their impact on the fundamental fairness of his trial and death sentence. Mr. Tharpe therefore prays for this Board's merciful intervention.

While Mr. Tharpe does not contend that Juror Gattie's racist views reduce his own responsibility or culpability for his crime, they make clear that Mr. Tharpe was not afforded an impartial and unbiased jury to decide whether he should live or die. As other affidavits reflect, several jurors were conflicted about whether to impose a death sentence on Mr. Tharpe and did so largely because a life without parole sentence was not available at the time of his trial. James Stinson Aff. ¶ 3 (Ex. 36); Margaret Bonner Aff. ¶ 6 (Ex. 35); Tracy Simmons Aff. ¶ 4 (Ex. 34). That a man who brashly used the term "nigger" to describe Mr. Tharpe and other African Americans was permitted to decide whether Mr. Tharpe would live or die raises serious question as to the fairness of the proceeding and the outcome of the trial had all twelve jurors faithfully fulfilled their oaths of service.

Although Juror Gattie later tried to minimize his use of racial slurs, his deep-rooted racist views simply cannot be trivialized as irrelevant to his decision to sentence Mr. Tharpe to death.

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<sup>51</sup> Although it was raised in federal court, it was again for procedurally barred based on the state court decision.

Indeed, his later testimony that he used the term “nigger” for people of all races rings false, particularly in light of his other beliefs regarding African Americans. Mr. Gattie’s handwritten correction to his first affidavit not only corroborates that he did in fact review the affidavit’s contents before signing it, but that his racist views were so strongly held that he felt the need to correct a statement to make clear that “integration,” rather than “intermarriage” dated back to biblical times. Barney Gattie Aff. ¶ 3 (Ex 46).

Unquestionably, a juror harboring this type of racial animus has no place in our criminal justice system. Indeed, the guiding principal of the Supreme Court’s decision in *Pena-Rodriguez* allowing courts to consider such statements is to eradicate such racial bias. “It must become the heritage of our Nation to rise above racial classifications that are so inconsistent with our commitment to the equal dignity of all persons. . . . [D]iscrimination on the basis of race, odious in all aspects, is especially pernicious in the administration of justice. The jury is to be a criminal defendant’s fundamental protection of life and liberty against race or color prejudice.” *Id.* at 868. This principle becomes all the more critical in a case where life and death are at stake. Mr. Tharpe should not be executed simply because procedural barriers prevent his claim from being heard in the courts. Mr. Tharpe humbly requests your consideration and mercy in light of the racial bigotry that influenced his death sentence.

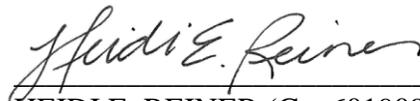
### **PRAYER FOR MERCIFUL INTERVENTION**

On behalf of Keith “Bo” Tharpe, corrections officers, community members, spiritual advisors, Mr. Tharpe’s friends and family, including those directly affected by his crime, undersigned counsel humbly ask this Board to take into account the wishes of the victims’ families to spare Mr. Tharpe’s life; the racism that unjustly infected Mr. Tharpe’s case but has been insulated from review by the courts; the conditions in which Mr. Tharpe spent his

childhood; the circumstances in Macon at the time of his crime; the path that started him on alcohol as a young child and led him to crack cocaine addiction in adulthood; and the transformed, God-loving, generous, and safety-enhancing man Mr. Tharpe has become during his nearly 27 in prison. We ask that you grant him the opportunity to serve out the remainder of his natural life in the Georgia prison system, where he will continue his journey of redemption, contribute to the peace and safety of his cellblock, and, by sharing his life lessons and strong belief in God, act as a positive influence on and presence in the prison system as a whole.

For all the reasons set forth above, and those found in the evidence and argument at the hearing on this Application, Mr. Keith “Bo” Tharpe respectfully requests that this Board intervene mercifully, and exercise its power to commute his death sentence.

Respectfully Submitted,



HEIDI E. REINER (Ga. 601909)  
LYNN M. PEARSON (Ga. 311108)  
Georgia Resource Center  
303 Elizabeth Street, NE  
Atlanta, Georgia 30307  
404-222-9202  
404-222-9212 facsimile

CHARLES E. COX, JR. (Ga. 192305)  
Charles E. Cox, Jr., LLC  
1950 Northside Crossing  
P.O. Box 67  
Macon, Georgia 31202

COUNSEL FOR MR. THARPE