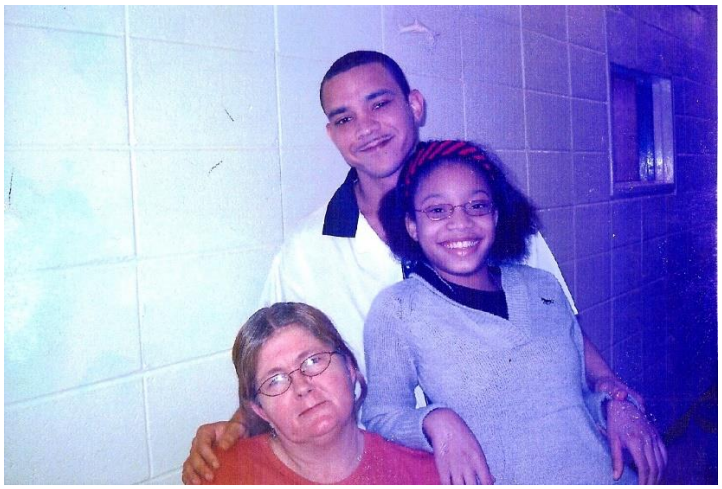
Application to the

Georgia Board of Pardons and Paroles

on Behalf of

Marion Wilson



Autumn N. Nero PERKINS COIE LLP 1 East Main Street, Suite 201 Madison, Wisconsin 53703 Telephone: 608-663-7460 Facsimile: 608-663-7499 Brian Kammer (Ga. 406322) 241 East Lake Drive Decatur, GA 30030 Telephone: 678-235-4964	Mark E. Olive (Ga. 551680) 320 West Jefferson Street Tallahassee, Florida 32301 Telephone: 850-224-0004 Facsimile: 850-224-3331 Marcia A. Widder (Ga. 643407)* 303 Elizabeth Street, NE Atlanta, Georgia 30307 Telephone: 404-222-9202 Facsimile: 404-222-9212 Attorneys for Petitioner, MARION WILSON *Counsel of record.

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On the night of March 28, 1996, Donovan Parks was killed by a single shotgun blast to the back of his head. Marion Wilson, who was nineteen at the time, and Robert Butts, also a teenager, were seen getting into Mr. Parks' car at the local Walmart, Butts in the front passenger seat and Marion in the back. Mr. Parks was found a short time later, lying face down in the street with a wound to the back of his head. Based on evidence linking them to Mr. Parks at the Walmart, Marion and Butts were arrested a few days later.

From the day of his arrest, Marion has maintained that it was Butts who forced Mr. Parks out of the car, made him lie on the ground and then shot him in the head with Butts' sawed-off shotgun, while Marion sat in the backseat of the car. *Butts v. State*, 273 Ga. 760, 761-62 (2001). For his part, Butts, within weeks of his arrest, confessed to his Baldwin County detention center cellmate that he was the triggerman. Although, the prosecutor was able to establish that Marion was implicated in Donovan Parks' murder, based on Marion's admission that he knew in advance that Butts had a gun and intended to rob someone, there has never been any evidence that his role went beyond that. While the evidence is sufficient to support Marion's conviction, it does not establish a compelling case for execution.

The prosecutor, Fred Bright,[1] certainly believed that Butts was the more culpable party—well before Marion's trial was set to begin, he offered Marion a parolable life sentence. Had Marion taken the plea offer, he would now be applying for parole, rather than clemency. Instead, largely out of fear that, as a young, small-statured inmate, he would be endangered in general

[1] District Attorney Fred Bright, who obtained the death penalties for two men despite the existence of only one bullet, had the dubious distinction of being the most zealous death-penalty prosecutor in Georgia, obtaining more death sentences than any other Georgia prosecutor from 1995 to 2004, having sought the death penalty in twenty-one of thirty-one eligible murders. Ex. 1 (Sonji Jacobs, *A Matter of Life or Death: Where Cases Diverge*, Atlanta J.-Const., Sept. 24, 2007, at A-9).

population at a maximum-security prison, Marion declined the offer. Tellingly, Bright never offered Butts a plea, though his lawyer "begged" for one.

His offer spurned, prosecutor Bright sought the death penalty for *both* Marion and Butts. Marion went to trial first, and in his summation in the penalty phase, Bright, without a shred of evidence, accused Marion of being the shooter, the man who "sent 50 pellets . . . into the back of [Mr. Parks'] head." The jury then imposed the death penalty on Marion, who Bright claimed was the killer of Donovan Parks.

Having obtained the death penalty against Marion, Bright did an about-face. At Butts' trial, Bright told the jurors at the conclusion of the guilt phase: "We proved—and we don't have to—we proved that the man that actually, in fact, pulled the trigger and blew out the brains of Donovan Corey Parks is the defendant, Robert Earl Butts, Jr." Butts too was sentenced to death by a jury who had been told by Bright that *Butts* was the killer of Donovan Parks.

Years later, Bright testified under oath that he personally believed Butts to be the shooter. Although he acknowledged that it was "probably" inconsistent to argue that both Marion *and* Butts fired the single shot that killed Donovan Parks, Bright did not see any "issue or problem" about his opportunistic use of inconsistent arguments to the defendants' two separate juries.

As a prosecutor charged with the administration of justice, Bright *should* have seen a major problem with accusing both men of being the triggerman—particularly in light of Bright's belief that the evidence implicated Butts, and *not* Marion, as the shooter. Moreover, Bright's misconduct extended well beyond misrepresenting Marion's role in the shooting. Bright's presentation of Marion's juvenile record during sentencing was rife with hyperbole and outright falsehoods. Similarly, the testimony by the prosecution's so-called gang experts and the speculation surrounding Marion's gang involvement was highly misleading. Because of trial

counsel's failure to adequately rebut the prosecution's wild claims, Bright's misstatements proved to be highly effective; he was able to create an image of a vicious, antisocial teenage predator who would pose a menace to society even while behind bars. Defense counsel's failure to challenge this evidence allowed the prosecution's grossly distorted version of Marion's teenage years and gang involvement to become his official life story, a story that has been adopted in its entirety by the higher courts.

There are other reasons that support clemency. Marion Wilson's life—from conception to incarceration—was characterized by instability, neglect, abuse and trauma. Teachers, social workers, and family friends remember a warm, intelligent and creative child yearning for a nurturing environment but trapped in a hopeless situation. Subjected to racism throughout his childhood by his extended family, school, and the broader community for his biracial identity, Marion struggled to find himself and gradually succumbed to the self-destructive lifestyle that resulted in his imprisonment as a juvenile offender at the age of seventeen. What makes Marion's childhood even more tragic is that it is clear that for a few brief periods in his life when he actually had a modicum of stability, security, and emotional and moral support, he was able to thrive.

The jury that sentenced Marion to death was wholly unaware of his history of pervasive and prolonged abuse and neglect at the hands of numerous adults in his life, as well as evidence of impaired cognitive function and organic brain damage.[2] In fact, a juror from Marion's trial

[2] Evidence presented in state habeas proceedings established that, likely as a result of his mother's substance abuse during her pregnancy with him and/or the toxic environment in which he was raised, Marion has organic brain impairments that, among other thing, hinder his executive functions, such as judgment, decision making, abstract reasoning and planning skills, and impulse control. *See, e.g.*, Ex. 19 at 74-100 (Affidavit and C.V. of Jorge A. Herrera, M.D., Ph.D.); Ex. 19 at 40-73 (Affidavit and C.V. of Renee S. Kohanski, M.D.); Ex. 19 at 103-115 (Affidavit and C.V. of James I. Maish, Ph.D., P.C.).

testified during state habeas proceedings that the jury "did not hear anything in detail about the circumstances of [Marion's] upbringing," was left "in the dark" about whether Marion "might have some problems with his brain," and expressed "disappoint[ment] that [the jury] never got to hear from his father or other family members." Ex. 2 (Affidavit of Geneva Liggins). Moreover, the juror testified that "if [she] had heard this information at the sentencing trial, it would have made a big difference to [her]. This is the kind of information that [she] wanted to hear about. It would have helped [her] understand better how [Marion] could have ended up in this mess." *Id.* at 790. The juror concluded her testimony stating, "[i]f I had heard from the witnesses who provided these statements [coming forward for Marion] and the brain damage evidence, *I would not have voted for the death penalty*." *Id.* (emphasis added).

Many have argued that the death penalty can be arbitrary and capricious, and it is difficult to avoid the conclusion that that has been the case here. By virtue of the prosecutor's misconduct and his trial counsel's incompetence, Marion Wilson faces death while others, far more culpable, are spared. 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), Marion Wilson, by and through the undersigned, asks this Board to grant clemency and spare his life. The Board has the unique opportunity to afford Marion a chance to accept the deal he did not have the maturity or foresight to take over twenty years ago, and allow him to prove himself worthy of parole from general population. Alternatively, we ask the Board to grant clemency and re-sentence him to life in prison without parole (a sentence far heavier than the one prosecutor Bright offered him pre-trial). We also request a 90-day stay of execution to provide the Board sufficient time to fully consider Marion's petition.

I. THERE IS NO CREDIBLE EVIDENCE THAT MARION WILSON KILLED OR PLANNED TO KILL MR. PARKS.

On March 28, 1996 around 3:00 p.m., Marion arrived by taxi at the Milledgeville Manor, a local housing project, after dropping off his girlfriend at her job. Ex. 3 (Angela Johnson, Butts TT 1798). Robert Butts arrived sometime in the evening and eventually he and Marion decided to drive around town in Butts' car. (Wilson HT PE 51 at 1765). Marion and Butts had become acquainted over time, but the two were by no means close. (Wilson HT PE 51 at 1777 (where Marion states that he hasn't been to Butts' house and "[doesn't] know nothing about his family period")).

Marion and Butts decided to drive to the Milledgeville Walmart, a local hangout spot and pulled into the Walmart parking lot at around 9:30 p.m. (Wilson Statement to police, 04/02/1996). There Marion spotted a girl he knew, Felicia Ray. She remembers Marion walking over to her car and resting his forearms on the roof of her car as he spoke to her through the open window, and also remembers seeing Butts walk off soon after she began talking with Marion. She noted that Marion seemed relaxed. (Wilson HT PE 25, Affidavit of Felicia Ray (EFC No. 14-9) at 3183).

While Marion was chatting outside with Felicia, Butts entered the Walmart, saw a man he worked with at a fast food restaurant, Donovan Parks, and waited to check out, purchasing a pack of gum right after Mr. Parks completed his purchase Ex. 4 (Butts TT 1467–68 (testimony of Walmart cashier Chassica Manson). Once outside, Butts asked Mr. Parks for a ride home and gestured to Marion to join them. (Wilson HT PE 51 at 1782). Mr. Parks cleared some room in the back, so Marion could fit. (Wilson HT PE 51 at 1767). Marion then got into the backseat, Butts sat in the passenger seat, and Mr. Parks drove off. (Wilson HT PE 51 at 1749).

Butts directed Mr. Parks to drive out towards his home. Blenk Supplemental Report, Garza interview 04/17/1996. While on a desolate stretch of road about six miles from the Walmart, Butts told Mr. Parks to stop the car. (Wilson HT PE 51 at 1760).[3] When Mr. Parks pulled over, Butts took a sawed-off shotgun out of the sleeve of his Colorado Rockies jacket and told Mr. Parks to give him his money. (Wilson HT PE 51 at 1750-51). Mr. Parks complied, at which point Butts ordered him to get out of the car. (Wilson HT PE 51 at 1752, 1782). Butts then ordered Mr. Parks to lie face down on the pavement and fired a single shot into the back of Mr. Parks' head while Marion sat in the backseat. (Wilson HT PE 51 at 1760).

In his initial statement to the police, Marion admitted that he suspected Butts intended to rob "somebody," but had no idea that Butts intended to harm or kill anyone. (Wilson HT PE 51 at 1764-65). Marion naively felt that because he did not actively participate in the robbery or murder he hadn't done anything wrong. (Wilson HT PE 51 at 1781). Marion does not contest his presence in the car with Butts and Mr. Parks before the murder, nor that he helped Butts dispose of the car and the murder weapon afterwards. (Wilson HT PE 51 at 1782).

At trial, the prosecution presented no evidence that it was Marion who murdered Mr. Parks. Indeed, in his opening statement in the first (guilt) phase of the trial, prosecutor Bright conceded that "the State cannot prove who pulled the trigger in this case. I'll tell you that point blank. I wasn't there. We weren't there." (Wilson TT 1815). In closing argument in the guilt phase, Bright again told the jury that "the State cannot prove who pulled the trigger in this case." (Wilson TT 1815).

[3] A Google map shows the scene of the crime is about equidistant between Walmart and the Butts home and is clearly en route to the Butts family home. Prosecutor Bright admitted as much in his opening statement. *See* Ex. 5 (Butts TT 1261) ("So the direction they were headed towards would have been towards [Butts'] house, as opposed to [Marion's].")).

That all changed during the penalty phase of Marion's trial. In his zeal to impose the death penalty, Bright now accused Marion of being the shooter:

> [T]hat man right there [Marion] took that shotgun and fired it and into the night—into the night, it sent 50 of these pellets—50 of them—that flash of light streaming out of this cartridge aimed right in the back of that man's head, 50 of them. So first, a hole, not just a wound, a hole in the back of his head, to leave him there on the ground with his brains—in a pool of blood with his brains—that's his brains right there—with his brains splattered on the ground. And there are those pellets in the man's head. That's what he did. That's what I want you to picture him doing.

(Wilson TT 2483-84). It should be no surprise then that the jury, told by prosecutor Bright in no uncertain terms that Marion pulled the trigger, killing Mr. Parks, imposed the ultimate penalty of death.

A year later, in the subsequent trial of Robert Butts, prosecutor Bright also sought the death penalty, because, he claimed, *Butts* was the actual shooter. Bright told the jurors at the conclusion of the guilt phase: "We proved—and we don't have to—we proved that the man that actually, in fact, pulled the trigger and blew out the brains of Donovan Corey Parks is the defendant, Robert Earl Butts, Jr." Ex. 6 (Butts TT 2604); *see also* Ex. 7 (Butts TT 1263) (prosecutor Bright telling jury in guilt phase opening statement that "you will hear some evidence from which you ... can conclude that the one that held the sawed-off shotgun, the one that aimed it at the back of the head of Donovan Corey Parks, and the one whose finger was on that trigger, that squeezed that trigger that sent that shot rifling down that barrel from about three feet away from the back of Donovan Corey Parks' head . . . you'll have some evidence from which you can conclude, is his [Butts'] finger"). And, in his summation in the penalty phase of Butts' trial, Bright used words strikingly similar to those he had used with Marion's jury:

> [T]his man took this sawed-off shotgun on that dark and rainy night and I want you to picture in your minds the last sounds that Donavan [sic] Cory Parks heard before he left this earth. He sent these forty something pellets with this 1

> shot roaring through the night into the head of poor, innocent Donavan [sic] Parks, blowing his brains out on the road and on the back of his coat.

Ex. 8 (Butts TT 2909). Butts was also sentenced to death.

Later, in Butts' state habeas proceedings, Bright stated under oath that he believed that Butts was the triggerman. "I do have an opinion as to who I think probably was the trigger man which was Butts. Am I a hundred-percent positive, no, I base it on the evidence . . . Who do I think pulled the trigger, I think based on the evidence probably it was Butts. . . in my opinion Butts was probably the trigger man, yes." Ex. 9 (Bright Dep. in Butts Habeas, 2282, 2285, 2295). The "evidence" cited by Bright in support of his conclusion that Butts was the shooter presumably includes Butts' admissions to that effect.

During Butts' trial, the prosecution called Randy Garza to testify about statements made to him by Butts, with whom he shared a cell while Garza was awaiting a court date. According to Garza, Butts told him that he entered the Walmart alone, that Butts was holding the shotgun "up his sleeve in a big jacket," and that Butts "actually pulled the trigger that killed [Parks]." Ex. 10 (Butts TT 2113-14). Garza's account included details that could only have come from Butts. For example, Butts told Garza that he (Butts) had purchased a pack of gum in the Walmart.[4] Garza's statements were corroborated by Detective Russell Blenk and memorialized in a report written by Detective Blenk following an interview with Garza. Ex. 11 at 2968-72 (Blenk Supplemental Report). Detective Blenk specifically noted that Butts told Garza that "Butts pulled a gun out of his sleeve," that Butts "shot [Parks] in the head and killed him," and that Marion "was in the back seat." *Id.* at 2971-72.

[4] Garza swore under oath that he had not obtained any of these details from Marion. Butts TT 2119, 2129, 2142.

Circumstantial evidence further supports the conclusion that Butts, not Marion, planned and orchestrated the murder. As the Georgia Supreme Court pointed out in its opinion affirming Butts' conviction:

> The fact that Butts asked the victim for a ride, even though he had driven his own automobile to the store, shows that he was involved in the motor vehicle hijacking from the beginning. The evidence also suggested that Butts carried the shotgun with him in the store as he sought out a victim. Testimony at trial showed that Butts had worked with the victim previously, suggesting that Butts intended from the beginning to murder the victim in order to ensure the victim's silence.

Butts v. State, 546 S.E.2d 472, 484–85 (2001). The evidence was strong enough for the Georgia Supreme Court to conclude that after Mr. Parks was forced out of the car, "Butts then fired one fatal shot to the back of Park's head with the shotgun." *Butts v. State*, 546 S.E.2d 472, 477 (2001).[5]

Prosecutor Bright conceded that convincing the jury of the defendant's factual culpability for a homicide is critical to obtaining a death sentence: "Does it make a difference who pulled the trigger? Of course it does." Ex. 13 (Bright, Butts HT 575). Bright testified that in a case like this the death penalty is usually only sought for the shooter: "Usually, I will tell you this, in a death penalty case, which is unique by its own definition, it usually will be the shooter [for whom the death penalty is sought], it usually will be." Ex. 13 (Bright, Butts HT 577).

And there is good reason to believe that the jury would have reached a different outcome had Bright not falsely claimed in Marion's case that Marion was the shooter. One of the jurors later testified that "[k]nowing that Marion Wilson, Jr.'s co-defendant, Robert Earl Butts,

[5] Marion's desperate attempt to persuade Butts to write a confession in the event Butts received the first execution date (as he did), *see* Ex. 12 (Butts Clemency Application, Exhibit 10), only shows that Marion continues to maintain that he was not the shooter, even in the face of impending execution. Although inartful, the letter does not detract from the fact that the evidence the State assembled against the two defendants clearly implicates Butts as both the shooter and the more culpable party.

confessed . . . that he had panicked and shot Mr. Donovan Parks would have made a difference to me at the trial. This may have persuaded me to vote not guilty of murder. Even if I still voted for guilty of murder, I may not have voted for the death penalty had I heard this information." Ex. 2 (Affidavit of Geneva Liggins at 789).

The approach employed by Bright in the two trials has been condemned as unethical and a violation of due process.[6] The United States Supreme Court has repeatedly held that the death penalty is constitutional only when restricted to "offenders who commit 'a narrow category of the most serious crimes' and whose extreme culpability makes them 'the most deserving of execution.'"[7] Over the past several decades, there has been a clear historical movement towards restricting this narrow category of the most serious crimes to homicides, and those most deserving of execution to adults without mental handicaps who were actively involved in the crime.[8] Even within the category of homicides, in 1982 the Supreme Court held that the death penalty is a disproportionate sentence for any defendant whose crime did not result in the death of the victim.[9]

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[6] Ex. 22 (Affidavit of Bruce Green); Ex. 23 (*Prosecutorial Accountability 2.0 by Bruce Green and Ellen Yaroshefsky*, https://scholarship.law.nd.edu/ndlr/vol92/iss1/2/); Ex. 26 (Anne Bowen Poulin, Prosecutorial Inconsistency, Estoppel, and Due Process: Making the Prosecution Get Its Story Straight, 89 Cal. L. Rev. 1423 (2001)); Ex. 24 (Michael Q. English, A Prosecutor's Use of Inconsistent Factual Theories of a Crime in Successive Trials: Zealous Advocacy or Due Process Violation, 68 Fordham L. Rev. 525 (1999); Ex. 27 (Steven F. Shatz & Lazuli M. Whitt, The California Death Penalty: Prosecutors' Use of Inconsistent Theories Plays Fast and Loose with the Courts and the Defendants, 36 U.S.F. L. Rev. 853 (2002); Ex. 25 (Barry Tarlow, Limitations on the Prosecutor's Ability to Make Inconsistent Arguments in Successive Cases, 21 Champion 40 (1997).

[7] *Roper v. Simmons*, 543 U.S. 551, 568 (2005)(quoting *Atkins v. Virginia*, 536 U.S. 304, 319 (2002)).

[8] The Supreme Court barred executions for rape in 1977 and child rape in 2008. The execution of the mentally retarded and juveniles were declared unconstitutional in 2002 and 2005 respectively.

[9] *See Kennedy v. Louisiana*, 554 U.S. 407, 420 (2008).

Moreover, a murder defendant who did not himself kill is not eligible for the death penalty unless he had a sufficiently culpable state of mind at the time of the murder. In *Enmund v. Florida*, 458 U.S. 782, 797 (1982), the Supreme Court held that the Eighth Amendment bans execution for one "who aids and abets a felony in the course of which a murder is committed by others but who does not himself kill, attempt to kill, or intend that a killing take place or that lethal force will be employed." *See also Tison v. Arizona*, 481 U.S. 137, 158 (1987) (holding that "major participation in the felony committed, combined with reckless indifference to human life, is sufficient to satisfy the *Enmund* culpability requirement"). And, since 1996, the year that Mr. Parks was killed, only three men nationwide have been executed as accomplices to felony murder, despite not being the actual killer in the crime for which they were convicted.[10] Of these three, two had confessed to committing other homicides, while the third had actively participated in a home invasion and child rape before his accomplice massacred a family of four.[11] Since the death penalty was reinstated in 1976, the state of Georgia has executed one person who did not

[10] Ex. 14 (Death Penalty Info Center data: https://deathpenaltyinfo.org/those-executed-who-did-not-directly-kill-victim).

[11] Dennis Skillicorn was executed in Missouri in 2009 after participating in a kidnapping that led to murder. Prior to his execution, Skillicorn had been convicted of three other murders. Ex. 28 (Jim Salter, *UPDATE: Missouri executes Dennis Skillicorn*, Missourian (May 20, 2009) https://www.columbiamissourian.com/news/update-missouri-executes-dennis-skillicorn/article_c457e704-e1f4-5d65-b6a7-0a79a60e7c86.html). Robert Thompson, was executed in Texas in 2009 for his role in a convenience store robbery in which he shot a clerk who survived, and his accomplice shot a clerk who died. Thompson was alleged to have been involved in eight other robberies during the sentencing phase of his trial, several of which resulted in homicides. Ex. 29 (Allan Turner, *Houston killer executed after Perry rejects panel's advice*, Houston Chronicle (Nov. 19, 2009) https://www.chron.com/news/houston-texas/article/Houston-killer-executed-after-Perry-rejects-1743147.php). Steven Hatch was executed in Oklahoma in 1996 after participating in a home invasion that occurred while a family of four was sitting down to dinner. The two men hogtied the parents and 16-year-old boy and forced them to listen while they raped the 12-year-old daughter before eating the meal that was still sitting on the dinner table. Hatch's accomplice then shot all four in the back. Ex. 30 (Diane Plumberg, *Killer Executed for Couple's '79 Murder*, The Oklahoman (Aug. 9, 1996) https://oklahoman.com/article/2549248/killer-executed-for-couples-79-murder).

directly kill the victim and that defendant, Kelly Gissendaner, was instrumental in planning her husband's murder and covering up the crime.[12]

Today it is plain that Bright *never* thought that Marion was the actual killer of Donovan Parks and could win a death sentence for Marion only by falsely claiming that he was. Such conduct has no place in a criminal justice system that prides itself on just outcomes, particularly when a young man's life is at stake. Due to the severe restrictions on state and federal habeas corpus practice, Bright's misconduct has never been properly considered by a reviewing court, This Board can rectify this grave injustice by granting Marion a sentence more reflective of his culpability in the crime.

II. THE PROSECUTOR EXAGGERATED MARION'S JUVENILE RECORD AND GANG-AFFILIATION IN ORDER TO GET A DEATH SENTENCE.

A. JUVENILE RECORD EXAGGERATIONS

The prosecutor's embellishments in Marion Wilson's case extended well beyond Marion's role in the actual crime. The presentation of Marion's juvenile record by the Fred Bright during sentencing was rife with hyperbole and, because of trial counsel's failure to adequately rebut many of the prosecutor's claims, highly effective. The same can be said of the testimony of the prosecution's so-called gang experts and the speculation surrounding Marion's gang involvement. The combined effect was to create an image of a vicious, antisocial teenage predator who had rapidly risen through the ranks of a nationally infamous street gang to head the

[12] Kelly Gissendaner was executed for planning her husband's murder and helping cover up the crime. Ex. 15 (State Board of Pardons and Paroles, *News Release: Parole Board Denied Clemency for Kelly Renee Gissendaner* (Feb. 25, 2015) https://pap.georgia.gov/press-releases/2015-02-25/parole-board-denies-clemency-kelly-renee-gissendaner; Ex. 16 (American Bar Association, *Georgia* (Dec. 11, 2017) https://www.capitalclemency.org/state-clemency-information/georgia/.

Baldwin County contingent. *See Wilson v. Warden, Georgia Diagnostic Prison*, 774 F.3d 671, 683 (11th Cir. 2014).

Prosecutor Bright grossly exaggerated the misdeeds of Marion's childhood and teen years to bolster his argument that Marion was worthy of execution. For example, Bright opined that "[Marion] tried to burn down a duplex apartment" when he was 12 years old. (Wilson TT 2467-68). However, the record showed that Marion and two other unsupervised 12-year-olds were playing in an abandoned unit of a duplex when they foolishly tried to warm themselves up by starting a small bonfire with discarded paper and rags; there was no evidence that Marion either started the small fire or intended to cause any harm. (Wilson TT 2031). The first-on-the-scene police officer confirmed to investigators that there was "not enough accelerant" on the smoldering rags and papers to do any damage and that the "fire never really caught."[13]

Similarly, a neighbor known for "call[ing] the police to his residence numerous times" because of "problems with juveniles," who "was in an intoxicated condition" when the officer arrived, complained of an alleged threat by Marion against him and his mother—yet he also told an investigator that he actually pitied Marion because Marion's mother was negligent and either never around or hollering constantly at her son when she was. (Wilson HT PE 44, Juvenile Records from TC File). Here, Marion's defense counsel did nothing to contextualize or rebut the prosecution's account. (Wilson TT 2049-51)

At fifteen years old, Marion faced his first serious charge in the shooting of Jose Valle on December 16, 1991. (Wilson HT RE 90). However, Marion has consistently denied shooting Mr. Valle, Valle himself identified someone else as the shooter, and Marion was never convicted of the crime. In fact, the sole witness against Marion was Brian Glover, a 17-year-old facing felony

[13] Ex. 18 Interview with Cpl. Robert Harvey DA file notes.

drug charges and prison if convicted. Glover had a dead docketed murder charge from 1994—meaning prosecution had been postponed indefinitely but could be reinstated at any time—and was serving a 10-year prison-term for marijuana distribution. Ex. 17 (Brian Glover Docket); (Wilson TT 2041–43, 2115); (Wilson HT, RE 90 3271–72); (Wilson TT 2115). It was this convicted felon, who had murder and felony drug charges hanging over his head, who was the only witness to deliver the chilling line that Marion shot Mr. Valle because "he wanted to see what it felt like to shoot somebody." (Wilson TT 2061). However, the victim, Mr. Valle, had told police he did not know who had shot him, but had identified Glover as the boy who had hit him over the head. (Wilson TT 2037-44, 2115). Another witness on the scene testified he did not know who had shot Valle and had not heard Marion say anything about wanting to see what it felt like to shoot someone. (*Id.* at 2088, 2091-92, 2095-96).

The prosecution also tried to accuse Marion of shooting and killing a small dog. (Wilson TT 1981-82). However, on cross-examination, the police officer testifying to the incident admitted that the owner of the dog had identified another boy, not Marion, as having abruptly shot her dog with a gun he pulled out of his waistband. (*Id.* at 1983).

The prosecution likewise stretched trivial youth scrapes into supposed evidence of Marion's criminal proclivities. These tales included one where Marion supposedly wrestled with a much bigger guard at the Claxton Regional Youth Development Center following the Valle shooting. But the record shows that it was the guard who kneed Marion in the groin and pushed him against a wall. (Wilson TT 2131, 2136). And another incident included an adolescent school fight between the 15-year-old Marion, Daniel Rowe, and another classmate for which Daniel Rowe was suspended for two days while Marion was not even punished—making it likely that

Marion was the victim, not the aggressor. (Wilson TT 2126, 2128). Again, the prosecution's presentations of these incidents went unrebutted by defense counsel.

It is not until the summer of 1993 that Marion begins to get into serious trouble. During this period Marion began to sell drugs and carry a gun, and was indisputably engaged in reckless, criminal behavior. It was during this summer that Marion was charged with possession of crack with intent to distribute and shooting Robert Underwood. There is no way to excuse or justify this conduct, for which Marion took responsibility and spent twenty months in Milledgeville Regional Youth Detention Center (RYDC). While in RYDC, however, Marion took steps to turn his life around, including earning his GED, and, despite the severity of his crimes, earning a "highly unusual" early release. (Wilson HT 420). Indeed, Georgia Department of Juvenile Justice Administrator Lorr Elias indicated that "everyone at the [R]YDC must have been rooting for Marion." (Wilson HT 419–21).[14] Once again, the defense did not call Marion's case manager to testify or even point out to the jury that Marion's behavior as an inmate at the Milledgeville RYDC was so exemplary that he earned an almost unprecedented early release.

After his release from the RYDC in March 1995, Marion stayed in Milledgeville and started attending Georgia Military College. But in violation of state law, he was left unsupervised during his release, resulting in the reprimand of an employee who failed to assign his case. (Wilson HT 421-22, 425). Because Marion was unsupervised, no one took notice of his difficulties (e.g. driving without a license, getting into scuffles), and his community placement was not revoked, as it should have been. *Id.* at 425. While his record was not perfect, the State's account of another particular incident during sentencing is highly suspect. On May 25, 1995,

[14] In fact, Lorr Elias, Marion's case manager while he was at RYDC, now a supervisor at the Department of Juvenile Justice supervising a 44-county area in Southeast and Central Georgia, said that she has only recommended two kids for early release in her entire career. (Wilson HT 418).

Georgia College Department of Public Safety officers responded to a call to find a group of African-American boys in a shouting match with some white students in a parking lot. The police moved the African-American boys along, and the group moved to another parking lot where they allegedly got into another verbal confrontation with some students. When Sergeant Brandon Lee arrived at the scene and asked the students to leave, Sergeant Lee testified that Marion refused, became belligerent, and shouted "gang language" in his face. (Wilson TT 2139–42). Sergeant Lee claimed that when he went to place Marion under arrest, Marion charged at another officer, Sergeant Morgan, and attempted to grab the officer's handgun. (Wilson TT 2143–45). While this made for dramatic testimony at Marion's penalty phase trial, with Bright having the officer demonstrate the "bear hug" that Marion allegedly used in his attempt to grab the other officer's weapon (Wilson TT 2147–49), it is conspicuously absent from both Sergeant Lee and his colleague's police reports filed just after the altercation.[15] Neither officer makes note of Marion reaching for Morgan's weapon, nor was Marion charged with violating OCGA 16-10-33: Removal or attempted removal of weapon from public official. Instead, Marion pled guilty to obstruction of an officer and failure to leave the facility of a university system when directed, for which he was sentenced to probation. The omission of such a brazenly aggressive, almost suicidal, action is odd, to say the least; yet the defense did not attempt to rebut the prosecution's account by referencing the police reports of the two officers and, instead, attempted to imply, without evidence, that the officers were biased in focusing on the African-American boys as the troublemakers. (Wilson TT 2149-65).

In the Eleventh Circuit's opinion in this case, Judge Ed Carnes details many of the accusations that were leveled at Marion during his adolescence, without mentioning the contrary

[15] Wilson HT RE 6, 2893-2905.

or mitigating facts described above, to emphasize the extent of Marion's "wholehearted commitment to antisocial and violent conduct from the age of 12." *Wilson v. Warden, Georgia Diagnostic Prison*, 774 F.3d 671, 683 (11th Cir. 2014). While Marion's troubled childhood and anger management and impulse control problems admittedly led to several poor decisions during his teenage years—decisions that led him to plead guilty to several serious crimes and complete lengthy spells in detention facilities—many of the charges leveled at Marion do not withstand basic scrutiny. Judge Carnes's characterization of Marion and his life is an embellished distortion of Marion's record written solely to advance the state's execution of a man who has never actually killed anyone.

The United States Supreme Court has held that the death penalty may not be imposed for crimes committed as a juvenile. *Roper v. Simmons*, 543 U.S. 551 (2005):

> The susceptibility of juveniles to immature and irresponsible behavior means their irresponsible conduct is not as morally reprehensible as that of an adult. Their own vulnerability and comparative lack of control over their immediate surroundings mean juveniles have a greater claim than adults to be forgiven for failing to escape negative influences in their whole environment. The reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character.

543 U.S. at 570.

Here, while Marion was not a juvenile at the time of Mr. Parks' murder (he was 19), he was sentenced to die partly on the basis of his juvenile record, which stretched back to his preteen years. The same considerations that militate against the imposition of the death penalty for crimes committed as a juvenile should apply to using juvenile conduct as an aggravating factor in the imposition of the death penalty for crimes committed as an adult. This is particularly true in this case where the prosecution chose to distort and exaggerate Marion's juvenile record while incompetent trial counsel sat by and did nothing.

B. GANG EXAGGERATIONS

The prosecution's most egregious and damaging exaggerations were those painting Marion as the leader of the so-called FOLKS Gang. Here the prosecution, however, took several statements of youthful bravado and presented them out of context, playing on the county's prevalent gang paranoia to present a hyperbolic image of the gang menace facing the community. Yet the crime at-issue here was not even gang-related.

Chief Deputy Sills and Det. Horn testified that Marion was the leader of the FOLKS gang in Milledgeville—despite their own records documenting that he was only the alleged head of a subdivision (or "set") of the FOLKS gang, one consisting (according to Marion) of *only two individuals*: Marion and a boy named Kunta Kinte. (Wilson HT PE 51, Marion's Statement to Sills, April 2, 1996). Worse, during Marion's trial, Det. Horn claimed that there were at least 300 FOLKS gang members in Baldwin County, and likely more, despite a computer roster of gang members in the Milledgeville area from November 1996 showing that only about 80 of 120 named gang members were associated with FOLKS, and Horn later admitted that these were only *suspected* gang members. (Wilson HT 92, 41–42). Horn further testified that he had "regret" about making this "rough guess." (Wilson HT 4890).

Fred Bright, in particular, is notorious for bad faith attempts to inject gang elements into criminal cases. In two cases contemporaneous with Marion's, Bright was found by the Georgia Supreme Court to have acted in bad faith in arguing to the jury that a murder was gang-related but offering no meaningful evidence to prove it. *See Alexander v. State*, 270 Ga. 346 (1998); *Hartry v. State*, 270 Ga. 596 (1999). Bright, in both cases, attempted to argue that the defendants and their cohorts were, specifically, members of the Folks gang. *See Alexander*, 270 Ga. at 348; *Hartry*, 270 Ga. at 598. And in both cases, where Bright failed to offer evidence of gang activity,

the Supreme Court of Georgia held that such statements were not made in good faith. *See Alexander*, 270 Ga. at 350; *Hartry*, 270 Ga. at 599.

During Marion's 2005 state habeas hearing, habeas counsel introduced testimony from sociologist Dr. John Hagedorn, gang/youth violence researcher, and author of *People & Folks,* a book focused on the FOLKS gang. Dr. Hagedorn provided testimony regarding Marion's custodial statements and stated that although Marion claimed to be in a gang, it was small potatoes—Marion and a few teenagers who hung out at the Milledgeville Manor playacting as big city gangsters. He also testified that there was no evidence that Mr. Parks' murder had anything to do with gangs (i.e., that anyone had ordered his killing). (Wilson HT 141-43, 155, 165, 199).

Dr. Hagedorn also offered persuasive rebuttal to the State's argument that gang members typically move up in rank by committing progressively more violent crimes. Rather, he testified, it is exceedingly rare for a leader to order lower ranking members to commit violent acts. *Id.* Dr. Hagedorn opined that a gang member's random acts of violence against "citizens" would be viewed as reprehensible and dangerous within the gang, subjecting gang members to disciplinary measures rather than advancement. *Id.* at 145. Finally, by simply looking at official Georgia Bureau of Investigation crime statistics for Baldwin County, Dr. Hagedorn was able to show that, in direct contrast to Deputy Horn's testimony that Baldwin County was plagued by thousands of gang-related murders, kidnappings, and armed robberies in the 1990s, Baldwin County's violent crime rate actually declined during the period in which the FOLKS gang was supposed to have been terrorizing the populace—not what one would expect if a serious gang problem existed in the county. *Id.* at 173-74.

III. MARION'S CHAOTIC AND ABUSIVE UPBRINGING AND YOUTH AT THE TIME OF THE CRIME MILITATE TOWARDS A LIFE SENTENCE.

Although the jury that sentenced Marion to death heard little about his childhood, the deprivations and abuse he suffered as a misfit biracial child being raised by an impaired, neglectful white mother and her series of violent, substance-abusing boyfriends led Marion to seek refuge in the streets and set the stage for his youthful delinquency and, ultimately, his involvement in this offense—a particularly poignant outcome for a child many recognized to have an innate sweetness and the potential to excel when, for brief periods, he was offered a respite from the chaos of his home life.[16] Yet, Marion's life story offers an essential context for this Honorable Board's consideration of his actions on the night of March 28, 1996, as well as his youthful mistake, prior to trial, in failing to appreciate the value of the plea offer that Fred Bright made to him.

Marion was born in Brunswick, Georgia on July 29, 1976. His mother, Charlene Cox, was twenty-years-old and had been working as a prostitute at the time. (Wilson HT PE 17, PE 21, PE 22). She did not realize she was with child until four or five months into the pregnancy and drank and used drugs while Marion was in the womb. (Wilson HT PE 21, PE 13). The identity of his African-American father has never been determined with certainty and was actually a source of dispute between Marion and his mother. (Wilson HT PE 6). Charlene's

[16] Marion's trial attorneys did not conduct a searching investigation of his childhood in large measure because each lawyer assigned to the case believed the other was responsible for planning the mitigation case. (Wilson HT 456–457). At trial, they presented only one fact witness to testify about Marion's upbringing, his mother Charlene Cox, and her direct examination testimony, spanning a mere six pages of trial transcript, barely scratched the surface. In federal habeas proceedings, the district court observed that "the conduct of Wilson's trial attorneys with regard to their investigation and presentation of mitigation evidence is difficult to defend." *Wilson v. Humphrey*, No. 5:10-CV-489 MTT, 2013 WL 6795024, at *1 (M.D. Ga. Dec. 19, 2013) *aff'd sub nom. Wilson v. Warden, Georgia Diagnostic Prison*, 774 F.3d 671 (11th Cir. 2014), *reh'g en banc granted, opinion vacated* (July 30, 2015), *on reh'g en banc*, 834 F.3d 1227 (11th Cir. 2016), *rev'd and remanded sub nom.*

Caucasian family wanted nothing to do with him or Charlene after he was born, so Charlene was left to raise Marion without basic parenting skills and with little support. (Wilson HT PE 13).

Marion lived an almost nomadic childhood in southeast Georgia, staying in many different places as Charlene went from relationship to relationship, each time living with men who shared a penchant for drugs, alcohol, and abusive behavior, and who neglected or abused Marion and Charlene to varying degrees. Charlene prioritized her relationships to these men over her son's well-being, and they introduced Marion to deviant behaviors and a criminal lifestyle at a very tender age. (Wilson HT PE 6).

The first of these "father figures" was Arthur "Pat" Kimp, an alcoholic who would hit Marion to try to stop his crying when he was a toddler. (Wilson HT PE 13). Kimp always had guns lying around the house and once, when he left a loaded pistol sitting on the kitchen table unsupervised, Marion picked it up and accidently fired it. (Wilson HT PE 13; PE 18). Charlene and Kimp were unable or unwilling to keep any order in the home, and their living conditions were "atrocious." (Wilson HT PE 14). Charlene and Kimp only had water in the house intermittently—as well as heat and electricity—and when it was out, Kimp would urinate in empty soda or milk bottles, lining them up around the walls. (Wilson HT PE 13).[17] Marion's aunt recalled, "[t]he stench of the house was overwhelming . . . . There was garbage and piles of dirty clothes all over." (Wilson HT PE 14). It was so bad that the neighbor would make her daughter wash her hands and change her clothes any time she visited the house. (Wilson HT PE 23).

After a particularly bad fight between Charlene and Kimp when Marion was two, Marion was rescued by an aunt who took him into her home for six months. (Wilson HT PE 14). The

[17] As their neighbor observed, "It was if they were saving up their piss. It was horrible. There was rotten food and garbage everywhere." Ex. 19 at 194 (Wilson HT PE 23).

aunt was a nurse and stated that when she brought Marion home she "discovered that he had one of the worse [sic] cases of diaper rash and chafe that [she] had ever seen. He was filthy and hungry, and it was clear that no one took care of the baby the way they should." (Wilson HT PE 14). Charlene and Kimp eventually came to get him back, because without Marion in the house, their food stamps were cut off. (Wilson HT PE 14, PE 18). Kimp would often have friends over to drink and party and would neglect to feed or clean Marion. (Wilson HT PE 13). Charlene left Kimp when Marion was about five or six-years-old, after an incident in which Kimp put a gun to Charlene's head while Marion watched. (Wilson HT PE 13).

Shortly after leaving Kimp, Charlene moved in with Reginald McCloud. He was also an alcoholic who would bring late night parties back to the house. During these parties, Marion "would be running around the house completely unsupervised, while all these people were there getting drunk and smoking marijuana and crack. There would be empty liquor and beer bottles lying everywhere, and crack pipes and other drug stuff all over the place. Couples were kissing and making out on the couch right in front of [Marion]." (Wilson HT PE 13).[18] Marion starved for basic nutrition as Charlene and McCloud never had food in the house or provided regular meals. (Wilson HT PE 20). He would often run away in search of food and basic care—as often as several times per week—and sometimes his mom and McCloud would not even notice. (Wilson HT PE 20).

Charlene spent a lot of time out of the house working during this period and Marion was largely on his own when not in school from the age of six or seven. (Wilson HT PE 13). He was hit by cars twice when running and biking around unsupervised as a little boy. (Wilson HT PE 13). School, though, did offer some respite from his chaotic home life. His teachers recall a

[18] This may have been the reason that Marion was caught drawing pictures of adults fornicating while at Sunday school as a five or six-year-old. (Wilson HT PE 14).

smart, creative child who had difficulty focusing, but they felt as though he could be successful if he were provided a supportive environment. (*See* Wilson HT PE 1, 3, 4). Marion's first grade teacher stated that "Marion was a sweet, sweet boy with so much potential, and I believe that if he had gotten that support, that love, that attention, and that encouragement, that he might not have turned to this kind of destructive behavior." (Wilson HT PE 1). While in elementary school, his teachers tried to get Marion into a special education class to help with his behavioral problems, and to put him on Ritalin to control his ADHD—but his mother, bowing to McCloud's disapproval, refused. (Wilson HT PE 19, PE 43 [Denial of Parental Consent document]). Multiple teachers reflected on the sorrow they felt knowing how easy it would be for Marion to thrive yet seeing how unlikely it was that he would ever get the basic familial support most children receive as a matter of course. (*See* Wilson HT PE 1; Wilson HT PE 3; Wilson HT PE 4).

This difficulty was compounded by Marion's biracial identity. When at school in Brunswick, Marion's status as a mixed-race child led to him being "teased and ridiculed and rejected at every turn," by teachers as well as students. (Wilson HT PE 14). Marion was largely left to sort this out on his own because he was certainly not going to receive any guidance at home. As Marion's first grade teacher stated, "Marion's mother did not appear to me to have any ability to communicate with her son in a way that would help him deal with his complicated identity as a child of mixed-race parentage." (Wilson HT PE 1). Before he had turned ten-years-old, one of his teachers remarked that she "felt that Marion was in a boat in the river all by himself, and it made me sad." (Wilson HT PE 1). Another of Marion's teachers recalled "telling one of the other teachers that Marion didn't stand a chance growing up in such circumstances." (Wilson HT PE 4).

In 1984, Charlene left McCloud and took Marion with her to Oklahoma City, where her father was living. The stay only lasted a few months, however, as Charlene's father still had trouble accepting his mixed-race grandson and would beat Marion for no discernable reason with a thick leather belt. (Wilson HT PE 13). After an incident in which Charlene needed to restrain her father while he was beating Marion, she decided to return to Brunswick and move back in with McCloud again. McCloud now had a terrible crack habit to go along with his alcoholism, and Charlene soon left him, only to move in with another man with drug problems.[19] This man (named Glenn) would also beat Marion, once threatening him with a knife. (Wilson HT PE 13).

When Marion was about twelve or thirteen, Charlene moved him out of Brunswick to Meridian, a rural community outside of Darien, about thirty miles north, to live with a new boyfriend, Lindell Sullivan. He was another alcoholic with a crack addiction who was abusive to Charlene and would also hit Marion. (Wilson HT PE 13). According to Marion's juvenile lawyer, Sullivan was "a violent drunk and reputed to be a drug dealer." (Wilson HT PE 5, PE 13). During this period in Meridian, Marion "had essentially no parents and no home" and was continually running away to Brunswick to be with McCloud (whom he believed was his biological father), even though "neither 'parent' was providing anything approaching a decent home." (Wilson HT PE 5).

When he was fifteen years old, the McIntosh County office of the Department of Family and Children received a report of maltreatment and neglect and investigated Marion's home life. (Wilson HT PE 6). The Social Services Specialist who visited the home noted Charlene had "very limited parenting or coping skills in raising her son," and that Marion's home situation was "extremely unstable." (Wilson HT PE 6). She reflected feeling sad for Marion knowing that "he

[19] McCloud estimates that by the time he finally sought treatment, he was spending $500 a week on crack cocaine. (Wilson HT PE 19).

never knew where he was going to lay his head at night, and I did not feel that he had any sense of a future for himself." (Wilson HT PE 6). This same year Charlene finally told Marion that McCloud was not his real dad, and that his biological father was a man named Marion Wilson, Sr. (Wilson HT PE 13). That information had a devastating effect on Marion and left him feeling that he had no one to turn to for help—he was on his own. He, thus, began to try to provide for himself in the only ways that he had ever known: by hustling and trying to get a foothold as a two-bit drug dealer. This lifestyle led to several offenses that landed Marion in the Milledgeville RYDC in October 1993.

Despite the instability and violence that marred his childhood and warped his development, there were fleeting periods when Marion was removed from his situation, given some stability, and immediately flourished. When Marion was fifteen, he and his mother spent a semester with an aunt in Jesup, approximately forty miles northwest of Brunswick. While in Jesup, living in a supportive family structure in a stable household, Marion began to demonstrate his potential. He got good grades at school, made friends with other children living in healthy, nonviolent homes, and stayed out of trouble completely. (Wilson HT PE 15). At the time Charlene decided to relocate Marion back to Meridian to live with Sullivan in the autumn of 1992, in the middle of his freshman year in high school, Marion was getting four As, a B and a C in his first semester. (Wilson PE 40). The social worker who visited Marion's home in Darien noted that Marion "very much wanted a stable home environment," "seemed genuinely to not want to be on the street," and, simply put, "wanted acceptance, nurturing and a family." (Wilson HT PE 6).

Likewise (as noted above), Marion responded well to the structured environment at the RYDC, where he earned his GED, began taking college classes, and received a rare early release

so he could attend Georgia Military College in March 1995. (Wilson HT 419-21). Unfortunately, he began to falter shortly after his release from the stable environment of the RYDC. While he had maintained a high GPA at Georgia Military College during his time at the YDC, his grades dropped markedly during the four months he attended school following his release. (Wilson HT PE 41 at 1085-86). Left on his own,[20] he fell back on what he knew to survive, returning to low-level drug dealing in one of Milledgeville's poorest areas, the Manor Apartments. During this period, he began a relationship with Angela Johnson, a Milledgeville resident nearly ten years his senior; he moved in with her and she became pregnant with his child. (Wilson HT PE 24). But Marion lacked the maturity and self-control to stay on the straight and narrow, and, by November of 1995, he was sent to I.W. Davis for a series of misdemeanor offenses. After his release, Marion moved back in with Angela shortly before Donavan Parks' murder. Their daughter Tykecia was born a month after Marion was arrested for the crime.

This evidence paints a picture of a bright child stunted in his development by neglect, abuse, and constant exposure to criminality, who was given limited, almost exclusively negative models for behavior and few, if any, tools for functioning in the world.[21] Such evidence has profound relevance in considerating the appropriateness of his death sentence. As the Supreme Court has explained, "evidence about the defendant's background and character is relevant because of the belief, long held by this society, that defendants who commit criminal acts that are attributable to

[20] Following his release from the RYDC, Marion's case should have been transferred from McIntosh County to Baldwin County and, by law, he was required to be intensively supervised by the Department of Juvenile Justice. (Wilson HT 421-23, 437-38). Instead, Marion's case somehow fell through the cracks and "[h]e had no DJJ supervision from November 15, 1995 to March 28, 1996." *Id.* at 422.

[21] As noted, neuropsychological testing conducted during state habeas proceedings also revealed that Marion suffers from impaired brain function, particularly in his frontal lobes, which govern executive functions such as judgment, decision making, abstract reasoning and planning skills, and impulse control. *See, e.g.*, Ex. 19 at 74-88, 101-102 (Affidavits of Jorge A. Herrera, M.D., Ph.D.).

a disadvantaged background ... may be less culpable than defendants who have no such excuse." *Wiggins v. Smith*, 539 U.S. 510, 535 (2003) (internal citation omitted). Perhaps Marion's caseworker put it best when she observed that, "if you live with violence, you will learn to be violent. If you live with guns around, you will learn to have guns around. If you live with criminals, you will learn to hang around criminals or be a criminal. We cannot avoid the way we are brought up." (Wilson HT 413).

The deprivations and hopelessness that characterized Marion's childhood and youth, moreover, help to explain why, as a young man facing the severest of charges, he lacked the insight *and* the foresight to accept the plea agreement the prosecutor offered him prior to trial. At that point in his stunted development, Marion was unable to fully comprehend how his actions on the night of March 28, 1996, made him an agent in Mr. Park's death and therefore to accept his guilt for that death; at the same time, Marion lacked any vision of a meaningful future that would allow him to appreciate the value of becoming a present and supportive parent to his child in the free world, even in his forties. On Marion's behalf, we urge the Board to consider Marion's rejection of the plea deal as the unsurprising response of an immature youth whose abysmal childhood and accompanying lack of judgment led him to make poor choices about the course of his life.

CONCLUSION

The United States Supreme Court has cautioned that, "[t]he State's ultimate sanction … must be reserved for those whose culpability is greatest." *Tison v. Arizona*, 481 U.S. 137, 171 (1987). Marion Wilson admittedly should not have been in Donovan Parks' car that night, but he was not the man who shot Mr. Parks causing his death. That man, Robert Butts, has been executed. That the prosecution falsely maintained that Marion was the shooter in order to obtain the death penalty was, and still remains, highly unethical and contrary to the State's higher duty

of probity and truthfulness in any criminal proceeding. Coupled with the prosecution's exaggerations and outright falsehoods concerning Marion's juvenile record and his trial counsel's failure to present to the jury substantial mitigating evidence about Marion's distressing upbringing and organic brain damage, it seems that in this case the legal system has failed. This Board, as the last line of defense against such miscarriages of justice, is Marion's only hope.

For all the reasons set forth above, and those found in the evidence and argument at the hearing on this Application, Mr. Marion Wilson respectfully request that this Board intervene mercifully and exercise its power to commute his death sentence.

Respectfully submitted this 12th day of June, 2019.

Marcia A. Widder (Ga. 643407)*
GEORGIA RESOURCE CENTER
303 Elizabeth Street, NE
Atlanta, Georgia 30307
Tel: 404-222-9202
Fax: 404-222-9212
**Counsel of record.*

Autumn N. Nero
PERKINS COIE LLP
1 East Main Street, Suite 201
Madison, Wisconsin 53703
Tel: 608-663-7460

Mark E. Olive (Ga. 551680)
Law Offices of Mark E. Olive P.A.
320 West Jefferson Street
Tallahassee, Florida 32301
Tel: 850-224-0004

Brian S. Kammer (Ga. 406322)
241 East Lake Drive
Decatur, GA 30030
Tel: 678-235-4964

ATTORNEYS FOR APPLICANT