

IN THE OFFICES OF THE MISSOURI GOVERNOR AND
THE MISSOURI BOARD OF PROBATION AND PAROLE

IN THE MATTER OF:)
)
RUSSELL E. BUCKLEW)
)
Potosi Correctional Center)
Route 2, Box 2222)
Mineral Point, Missouri 63660)
)
Applicant)

WARRANT OF EXECUTION

OCTOBER 1, 2019, at 6:00 PM

Petition Exhibit B

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PETITION FOR COMMUTATION
OF THE SENTENCE OF DEATH

TO: The Honorable Mike Parson
Governor of the State of Missouri

Missouri is preparing to execute Russell “Rusty” Bucklew on October 1, 2019, for the March 21, 1996 murder of Michael Sanders. This is Russell’s third execution setting and the third petition for clemency submitted to the Governor of the State of Missouri. This petition represents the most complete picture of Russell’s life history, medical circumstances and case for executive clemency.

Russell Bucklew comes before the Board of Probation and Parole and the Governor as a fundamentally different person than has been portrayed over the last 23 years. Russell committed a terrible crime and for that he remains incredibly remorseful for his conduct and the pain and suffering he caused the Sanders and Ray families. Russell cannot undo the terrible circumstances of March 21, 1996, but he has demonstrated through his words and deeds that his conduct on that day do not define him as a person. As this application, declarations and letters of support make clear, Russell Bucklew is a man of profound

Christian faith, a loyal and true friend, a caring son, and a man repentant for his crimes. Mr. Bucklew's life the past 23 years rebuts the very basis the state invited the jury to recommend death – that he was an unrepentant sociopath that would forever pose an ongoing threat to guards and inmates. Thus, the death sentence rests upon an unfounded, unreliable and factually inaccurate understanding of who Russell is as a person. Russell is now free from his debilitating prescription opioid addiction and steadied by the positive influence of faith. Russell Bucklew is a good man worthy of the Governor's mercy.

The last 23 years in prison have exacted a significant toll on Russell's physical and mental health. The intervening years and the progression of disease portend the incredible risks to proceeding with Russell's execution for all involved. Russell's compromised



medical condition make it highly likely that the state's protocol will cause a visually gruesome execution that will traumatize corrections personnel and witnesses alike.

Mr. Bucklew faces an excruciatingly painful death if the execution proceeds as planned. As the photographs of Russell reveal, his face is swollen by the bulging, blood-filled tumors in his face, head and throat. These unstable tumors are highly likely to hemorrhage during the stress of the execution, causing Russell to cough and choke on his own blood.

The ghastly execution process will be observed and documented by a mix of witnesses from the state, defense and media. The aftermath of Russell's execution will have a lasting impact on those present to witness the moment and will likely affect the public's attitude about the death penalty and, in particular, how this state carries out the ultimate punishment.

To support the Governor's consideration of Russell's clemency application, counsel has conducted a thorough investigation to support the request for clemency, including the submission of: (1) a written application, (2) extensive supporting materials, and (3) an in-depth video presentation featuring interviews with persons who have been close to Russell over the years and know his heart and character.

I. THE JURY'S DECISION TO RECOMMEND A SENTENCE OF DEATH WAS BASED ON AN INCOMPLETE, MISLEADING AND INACCURATE LIFE HISTORY.

Russell Bucklew's trial counsel conducted a wholly inadequate investigation regarding his background, upbringing and life experiences. Interviewing only a handful of witnesses, trial counsel accepted the shallow and inaccurate narrative provided by his parents rather than trying to uncover the true circumstances of his upbringing. (Exh. J, at ¶2; Exh. K, at ¶¶4-5). Their failure to thoroughly investigate Russell's life history led them to present evidence that was ultimately harmful to his case for life, rendered counsel unable to rebut the state's false and misleading narratives to the jury, and directly led to Russell being sentenced to death. (Exh. J, at ¶9; Exh. K, at ¶8).

It has long been understood and accepted that capital trial counsel are responsible for conducting a thorough investigation. *See Williams v. Taylor*, 529 U.S. 362, 396 (2000)

(ineffective assistance of counsel where capital counsel in 1986 trial “did not fulfill their obligation to conduct a thorough investigation of the defendant’s background.”) This investigation requires the trial team to investigate not only the circumstances of the crime, but of the defendant and his life history. (Exh. D, at ¶27). These inquiries must include the client’s childhood, upbringing, education, relationships, friendships, formative and traumatic experiences, personal psychology and present feelings. (*Id.* at ¶27). These investigations take significant time and effort to do properly. (Exh. C, at ¶22). And we know from the records that trial counsel did not undertake the kind of thorough and constitutionally mandated investigation necessary to uncover and develop complete or accurate mitigation case for Russell.

The utter failure of trial counsel’s efforts to develop witnesses in mitigation of punishment represents the largest flaw in their representation. While trial counsel gathered medical and school records, they talked to very few witnesses that actually had personal experience and interactions with Russell. (Exh. J, at ¶7). Trial counsel spoke with Russell’s parents on very few occasions prior to trial, but did not spend the time necessary to gain their trust. (Exh. J, at ¶7). They did not interview all of Russell’s siblings or extended family and they did not speak with a single teacher who knew Russell as a student. (Exh. J, at ¶7-8). They did not speak with any of childhood friends, many of whom would have shed light on the chaos and troubles in the Bucklew home. (Exh. P, at ___). And they did not collect any records for family members, which would have documented troubling issues in Russell’s family history including: drug addiction; domestic violence; psychological issues; medical history; military history; employment

history; etc. (*Id.*). This information is necessary to develop a full and complete portrait of the client's background. (Exh. D, at ¶27). Instead, the defense narrative provided by Russell's parents were based solely on their one to two brief meetings prior to trial. Defense counsel accepted their sunny and superficial narrative of life in the Bucklew home and presented it to the jury as fact. (Exh. O). As a result, Russell's trial counsel accepted, and the jury inaccurately heard, that Russell was the 'black sheep' of the family when, in reality, his challenges were shared by his siblings and were the result of being raised in an often violent and chaotic environment..

I.1 Trial counsel presented a false and materially harmful psychological diagnosis.

Trial counsel's lack of investigation ultimately informed the decision to retain and present Dr. Bruce Harry, a Columbia, Missouri psychiatrist. Dr. Harry did not conduct his own investigation. (Exh. E, at ¶6). Rather, Dr. Harry wholly relied on the misleading and incomplete information provided by trial counsel. (*Id.* at ¶3) Trial counsel's failure to interview relevant and available witnesses deprived Dr. Harry of essential and necessary facts about Russell's life crucial to an accurate diagnosis.

Perhaps most critically, trial counsel failed to disclose to Dr. Harry a letter written by Russell Bucklew to Ms. Stephanie Ray, Russell's former girlfriend (who is now deceased). Dr. Harry described the significance that this letter would have been to his evaluation and diagnosis:

Mr. Komp provided me a June, 1996, letter written by Mr. Bucklew to Ms. Stephanie Ray that was part of the trial discovery but not provided to me. (Attachment A). The letter provides valuable insight into Mr. Bucklew's thought process following the crime and demonstrate remorse for his

conduct. The remorse expressed in this letter is consistent with his expressions of remorse in my interactions with him and further confirms that *Antisocial Personality Disorder is not an appropriate diagnosis for Mr. Bucklew.*

(Exh. E, at ¶11) (emphasis supplied). In discussing his testimony at trial, Dr. Harry stated, “my testimony at the sentencing hearing that I had diagnosed Mr. Bucklew with Antisocial Personality Disorder is wrong.” (Exh. E, at ¶12) (emphasis added).¹ The diagnosis presented by *the defense* at trial was inaccurate and based on extremely limited information from the short-lived and superficial mitigation investigation.

Dr. Harry diagnosed Russell with a personality disorder called antisocial personality disorder (ASPD), even though he lacked the data and records to support the diagnosis. (*Id.* at ¶9; Exh. F, at ¶¶6-7). The trial attorneys then called Dr. Harry to testify about his findings – a decision that had a devastating impact on the jury’s consideration of Russell’s fate. (Exh. J, at ¶10; Exh. K, at ¶8). As trial counsel has now acknowledged, Dr. Harry’s inaccurate and unsupported diagnosis occupied center stage during the penalty phase and devastated the defense efforts to persuade the jury to reject the death penalty. (Exh. J, at ¶10; Exh. K, at ¶8)

Relying on Dr. Harry’s testimony, the state hijacked the ASPD diagnosis to argue that Russell was an unrepentant “sociopath” deserving of death. Indeed, the prosecutor stated in closing argument, “Their *own psychiatrist* diagnosed this man as a sociopath.” *State*

¹ Another defense expert, Dr. Michael Gelbort, noted that he reviewed the underlying data from Russell’s history and determined that he did not fit the clinical definition for ASPD. (Exh. F, at ¶¶6, 7). Dr. Gelbort noted that he was prepared to testify about his findings, but was not asked about them despite the prominent role the mis-diagnosis played in the trial. (Exh. F, at ¶¶6, 7).

v. Bucklew, Trial Transcript, p. 1160 (emphasis added). The state prosecutor then argued to the jury that Mr. Bucklew would pose a grave risk to inmates and guards even at the state's maximum-security prison because of his psychological diagnosis. *Id.* at p. 1165. The state's argument was devastating to Russell's case for life, but this argument was only possible because Russell's trial team presented a flawed and false diagnosis borne of a grossly substandard and incomplete mitigation investigation.

1.2 Trial counsel's inadequate and incomplete mitigation investigation led to the trial team's decision to present a false, misleading and damaging narrative of Russell's life history.

The trial team's mitigation presentation attempted to garner sympathy with the jury by presenting evidence of Russell's low IQ, his significant health issues, and his debilitating addiction. They undermined their own defense when they presented only two family witnesses – Russell's mother and father – to discuss his upbringing and the offered no testimony in support of the mitigation themes. (Exh. O, at pp. 2-3). While both Frances and Robert Bucklew, Sr. testified that they loved Russell and that he would remain an important part of their family if his life were spared, they offered no insight into the circumstances that led Russell to commit the crime. (*Id.*). Rather, they glowingly testified about Russell's siblings, their career accomplishments, Russell's positive and supportive upbringing all the while leaving the jury with the impression that Russell was simply a 'bad apple' or, in Dr. Harry's then-diagnosis, a "sociopath." Their testimony – and the impressions left with the jury – were false and utterly devastating to Russell's sentencing outcome.

Russell's path to this day was driven by a combination of genetics and the environment in which he was raised. Russell's family – unsurprisingly – had significant challenges as most families do. (Exh. P, at pp. 9-12). However, these challenges were obscured by the veneer of two seemingly happy and committed elderly parents. Russell struggles with addiction, health issues, and chaotic relationships were shared with his siblings and across others in his extended family tree. (Exh. S). These family challenges served to shape Russell and other members of his family. (Exh. P, at pp. 9-12). They were also discoverable facts, but only through a committed and thorough mitigation investigation. Trial counsel, though, failed to invest the time and energy to discover the key facts and, as a result, presented a false and damaging social history to the jury.

1.3 Russell's post-conviction team perpetuated and built on the false narrative developed at trial.

Given the chance at a new start in post-conviction with a new set of attorneys and new investigators, the hope and expectation would be a new, more accurate and complete narrative would be presented to the court. Instead, the state post-conviction lawyers built on the original false narrative without ever challenging the faulty underlying assumptions made by trial counsel. (Exh. H, at ¶6; Exh. I, at ¶6). Like the trial lawyers before them, post-conviction counsel failed to conduct a meaningful mitigation investigation and failed to develop a social history for Russell. (*Id.*). Rather, post-conviction counsel accepted the false, superficial narrative that Mr. Bucklew grew up in a tranquil, idyllic family environment. (*Id.*). A key opportunity to conduct the rigorous investigation necessary in these types of cases was again squandered.

With the false narrative firmly entrenched, post-conviction counsel sought to speak with additional witnesses. These attorneys conducted what they described as a superficial investigation. (Exh. I, at ¶6). While the team met with more people who knew Russell prior to the crime, they always entered the discussions with the underlying—and false—assumption that Russell had a good childhood this assumption caused them to ignore obvious red flags from their witness interviews. The interviews themselves were single-shot efforts that lacked the foundation to develop the necessary rapport to obtain the crucial details of Russell’s background and upbringing. (*Id.* at ¶5). Post-conviction counsel then had witnesses who offered only more platitudes and a singular focus on Russell’s positive life experiences. Counsel again failed to offer any explanation for Russell’s behavior, to humanize him, or offer any insight into what led a good person to commit a horrible act. This was another critical missed opportunity. And crucially for Russell, his last opportunity to present his true life story to a court of law.

2. RUSSELL BUCKLEW IS WORTHY OF A GRANT OF CLEMENCY.

The power to grant clemency rests with wisdom of the Governor, who may, in his discretion, extend mercy to a deserving individual. Indeed, the word “clemency” comes from the Latin word *clemens*, which translates to “merciful.” Clemency serves a vital role in the capital punishment system by acting as a “fail safe,” one last opportunity to present arguments for claims of leniency. *Herrera v. Collins*, 506 U.S. 390, 415 (1993). The ability to grant clemency, or commute a sentence, is deeply rooted in our criminal justice traditions. “A pardon is an act of grace, proceeding from the power entrusted with the execution of the laws. . . .” *United States v. Wilson*, 32 U.S. (7 Pet.) 150 (1833).

Russell Bucklew is deserving of mercy. Russell is now 51 years-old, suffers from a host of debilitating medical infirmities and has demonstrated through his actions that commuting his death sentence would be an act of compassion leading to a just punishment.

2.1 Russell Bucklew’s prison record demonstrates he is not a danger to others.

One of the state’s primary arguments in favor of the death penalty was the notion that Mr. Bucklew posed a danger to other inmates and corrections personnel were he allowed to serve out the remaining years of his life in a maximum-security prison setting. *State v. Bucklew*, Trial Transcript, p. 1165. However, 22 years of prison records prove that the state’s dire predictions of Russell’s character were completely without merit. (Exh. L).

The state’s argument was, in large part, based on the misdiagnosis by Dr. Harry that Russell was a “sociopath.” In describing Russell as a “sociopath”, the prosecutor left the impression with the jury that Russell was a man who would harm others without remorse. *State v. Bucklew*, Trial Transcript, pp. 1160-70. His incarceration record documented by the Missouri Department of Corrections, though, provides an entirely different story. (Exh. L). In fact, his records show not a single serious disciplinary write-up in the more than 22 years he has been incarcerated at Potosi Correctional Center. (Exh. L). Russell’s infractions largely consist of minor and technical violations, and those have decreased in frequency over time. (Exh. L). In fact, Russell earned the opportunity to live in the honor dorm – a privilege afforded to offenders with a documented history of good behavior and

positive institutional adjustment. Russell's institutional adjustment has been exceptional and stands in stark contrast to the state's predictions made to the jury.

Prison is a violent and dangerous place – trouble finds those who want it. Russell didn't engage in violent prison behavior because that is not who he is as a person. With more than 22 years served at Potosi Correctional Center we know definitively that Russell is a person that avoids confrontations, lives peacefully with his fellow inmates and corrections officers, and fundamentally follows the rules. He regularly attends Christian religious services and participates in programs through Kairos Prison Ministry. (Exh. O). This is hardly the record of a “sociopath.”

Russell's true character has been on display to his fellow inmates – men that interact with him day in and day out in an often tense and violent environment – and they know him as a man of warmth and character who is willing to help others rather than cause harm. The people who have had an opportunity to live with and around Russell for these past 22 years uniformly describe him in positive terms. A sample of the letters are as follows:

- “Rusty humbly recounted his crime to me, very clearly ashamed for what had happened. His contrition was so evident as he recounted these events that I nearly wept for his circumstance. Helplessness, hopelessness and depression are powerful emotions that cripple even the strongest and most stable men. Rusty was ever willing to reach out and help others, even when he had to sacrifice things for his own needs.” – **James Hardy**
- “Russell had this unique ability to identify with and understand another person's feelings or difficulties, which they were going through. Russell gave me a sense of hope with the way he opened up to me and made me feel that he really understood what I was going through. Russell has been one of the most loyal and honest friend (sic) I have ever had. Russell is an

asset to our Christian community here. He desires to be a productive person, spending his life trying to help those who or (sic) here, which will be returning to the streets, to understand the importance of esteeming others better than themselves.” – **Rodney Carr**

- “Meeting Russell has been eye opening. The positive attitude he has had knowing of his sentence has been eye opening. His spiritual growth has motivated me to face life in a different view. His lead is one I would follow. Knowing of this tremendous burden. I never seen him fuss instead, he continue (sic) to help fellow inmates.” – **Steve Lott**
- I would ask the powers that are in control of whether he lives or dies to not execute him. To do so would only create more victims – ie his family. Where this is life there is a chance for people to do good with their lives instead of hurting people.” – **Dewayne Fann**
- “He makes the people around him better. His smirk is infectious and like I said he’s always willing to help.” – **Chris Creed**
- “My family and friends came back into my life over (10-15) years of being alone. They get to visit me because Mr. Bucklew convinced me that my life was still worth living. It is very easy to smile and have a positive outlook when someone like Rusty creates it on his face. – **David Barnett**
- “If not for Rusty and the love I developed for him (as well as his parents- whom I wrote for many years) you would have let out a very dangerous and angry man still full of hate with a strong desire for some twisted vengeance and misguided retribution. Thus, I want you to understand the monster I could have become without the gentle, almost imperceptible guidance of Rusty upon my life when I needed it most. He saved mine. We never know what one deed can ultimately manifest as; seemingly nothing or obviously everything. People change.” – **Jeromy Davis**
- “If you allow Rusty to be executed you will remove a light that helps those entering society grow and become responsible citizens. Society suffers in this aspect if we allow Rusty to die. In a very emotional chapel service Rusty told us he has surrendered his fate into God’s hand and will accept your decision wheather (sic) it be to live or to die. Rusty is an

inspiration to me and teaches me to be thankful for the blessings I do have. I am a better man today because of how Rusty lives his life in here.”
– **Joshua Wolf**

- “His kindness and comfort towards others has been a blessing to see. He shares his life wisdom with people and his wisdom has even helped me with very important decisions I had to make. His kind words has brought joy and hope to my life.” – **Willie Rimpson**

Mr. Bucklew’s comportment while incarcerated is characteristic of the way he carried himself throughout his life. Indeed, the evidence establishing Russell’s character was available to Russell’s trial and post-conviction teams, but their deficient mitigation investigation failed to develop these crucial witnesses. Their stories – reflected in the letters of support and the attached social history – demonstrate that his actions on March 21, 1996, were an aberration fueled by a crippling addiction and not representative of his character. A sampling of these letters reveal the following:

- “My sons love their Uncle Rusty. I remember him spending hours playing with the boys out on top of the fruit cellar with their little toy soldiers. He had never been mean to them or unkind.” – **Janet Bucklew**, *Mr. Bucklew’s former sister-in-law*
- “Uncle Rusty came to live with us for approximately one year. During our time in Evergreen Colorado, I really enjoyed having him around. He spent a lot of time with my brother and I when we were children and we always looked up to him as a leader and the younger “Cool” uncle of the family. I recall a few memories of Uncle Rusty and I playing Army men in Colorado and exploring our in the woods. I also remembered how excited he was when he had his first child Brett and he brought him for Christmas at my Grandparent’s home. I will forever be thankful to him for the time we spent together.” – **Jason Bucklew**, *Mr. Bucklew’s nephew*

- “I remember Russell being an active boy who struggled with the basics in school: reading writing, and math skills. I remember him as a person who was sometimes bullied by other students.” **Patti Laffoon**, *Mr. Bucklew’s learning disabilities teacher in Troy*
- “Rusty was a mischievous, but not a malicious child. He was always in motion, kind of like an ant on a hot griddle. It was difficult to get him to sit still for long periods of time. I don’t remember ever sending him to the principal for being disrespectful or having severe anger issues with other pupils or myself.” – **Wanda Carter**, *Mr. Bucklew’s third grade teacher at Claude Brown Elementary School*

The letters of support combined with his prison records demonstrate the degree to which the state’s predictions were wrong about Russell. Rather than posing a significant risk to the guards and other inmates, Russell has demonstrated himself to be a compliant inmate and a kind and thoughtful friend. His conduct and actions demonstrates the false premise underlying the death sentence.

2.2 Russell Bucklew’s Upbringing Was Chaotic and more Complicated than Presented to the Jury.

Russell’s childhood was anything but the idyllic picture painted by his parents when they testified at trial. (Exh. P, at pp. 9-12). Russell was, and is, a product of his environment in both the positive and negative aspects. (Exh. P, at pp. 9-15, 23-24). Mr. Bucklew is the youngest of five siblings and, from the outside, the family appears to be an idyllic nuclear family. (Exh. P, at pp. 5-12). Russell’s parents remained married until his mother’s death in 2018 and his siblings all appear to be successful and well adjusted. (Exh. P, at pp. 10-11). Indeed, Russell’s trial attorneys presented to the jurors this inaccurate imagery, leading the jurors to rightfully wonder how he developed the way that he did.

We now know that Russell grew up in a household marked by violence, rage, explosive tempers, and adultery. (Exh. P, at pp. 9-12). That he would, as an adult, sometimes exhibit some of these traits – as would his siblings – is no surprise, but his trial counsel never offered any context or an explanation for Russell’s behavior. Instead, they allowed the misperception that he was an outlier to persist.

Russell’s parents were constantly fighting throughout his childhood. (Exh. P, at pp. 8-9). The center of the anger and violence in Russell’s childhood was his father, Robert Bucklew, Sr. Mr. Bucklew had a volcanic temper. (*Id.*). He was constantly screaming at Russell’s mother, Frances. (Exh. P, at p. 10). He threw chairs and destroyed other possessions during the arguments. (Exh. P, at p. 10). The Bucklew children were always on pins and needles, trying to avoid triggering their father’s rages. (Exh. P, at pp. 9-12). The primary target of his anger, though, was his mother. (Exh. P, at p. 10). The ongoing conflict and violent outbursts had disastrous effects for Frances and for her children.

Russell’s father had extra-marital affairs, which were the source of a great deal of conflict and tension in the family. (Exh. P, at p. 13). This situation was a widely known fact in the community. These affairs served as the basis for many fights, and ultimately, to Fran’s nervous breakdown and suicide attempt. (Exh. P, at p. 12). Russell, as the youngest child, was greatly affected by his father’s abuse, betrayal and abandonment. (Exh. P, at pp. 13-15). Unlike his siblings, Russell was at home with no support from other siblings amidst the chaos that engulfed his family. (*Id.*).

The chaotic nature of the home life also played a role in the lives of the other siblings. The impression at trial was that Russell was an outlier when in fact their home

environment also negatively affected his siblings. (Exh. P, at pp. 23-24). Ron Bucklew struggled in school. (Exh. P, at pp. 11). In response to behavior problems he was having, his parents sent him off to live with relatives in Ohio for more than a year. (Exh. P, at pp. 11). Once Ron was able to purchase a car, he spent as little time at home as he had to. (Exh. P, at pp. 11). Each of Russell's brothers enlisted in the Marines as soon as they were eligible despite knowing they would likely be sent to the frontlines in Vietnam. That these young men would choose an uncertain fate in war to remaining at their chaotic childhood speaks volumes about the conditions they were escaping. (Exh. P, at pp. 11).

The problems associated with Russell's family began well before his father's generation. Recent investigation revealed a family history of drug and alcohol addiction, physical abuse, and marital problems. ((Exh. R). The family history shows that Robert Bucklew, Sr., an only child, was subject to physical abuse at the hands of his father from a young age. His parents thereafter divorced but his childhood experiences set the tone for the way he would later raise his own family. Russell, as with others in his family, adopted methods they learned from their own childhood experiences even though they were, ultimately, destructive and counter-productive. This pattern carried through with issues of substance abuse in the Bucklew family. (Exh. R).

Many family members across both sides of the Bucklew family suffered from addiction to drugs and/or alcohol. (Exh. R). This pattern – present in Russell's immediate and extended family – was also a concern for him as he developed into adulthood. Mr. Bucklew, like several members of his immediate and extended family, struggled with

substance abuse. Russell's struggles were not isolated, but symptomatic of the troubled environment in which he and his siblings were raised. (Exh. P, at pp. 19-21).

Growing up, Russell was a friendly, fun-loving child who typically displayed an amicable demeanor. That amicable demeanor eventually eroded, however, as a result of a severe opioid addiction. (Exh. P, at pp. 19-21). His problems were due to severe prescription opioid addiction and not as a result of an innate psychological condition. (Exh. P, at pp. 19-21). Russell was laboring under a severe addiction at the time of the crimes. (Exh. P, at pp. 19-21). Russell was being treated for pain through a clinic located in Cape Girardeau, Missouri, in the months leading up to the crime. (Exh. P, at pp. 19-21). During that time, he lost a great amount of weight, his behavior became more erratic and he feared he would die from complications of the unstable, blood-filled tumors in his head. (Exh. P, at p. 21). He grew rail-thin and bled from his facial orifices, including his eyes, because of the tumors. (Exh. P, at p. 21). Russell's sister-in-law, Janet Bucklew, testified at trial that she checked on Russell each morning because she was fearful her young sons would find their uncle dead in their home. Family members traveled in from out-of-state to say good-bye to Russell because they firmly believed his condition had worsened so much that he would not survive long. While his tumors had indeed worsened, the effect of the prescription painkillers – and his severe addiction to them – were largely causing his physical and emotional deterioration.

Russell's addiction – and his erratic behavior – continued immediately after his arrest and continued until he tapered off the prescription opioids. Doctors continued to treat Russell's pain with further opioids even after his arrest on March 21. Only after he

was returned to custody and placed on a new pain regimen did Russell return to physical and emotional normalcy. Indeed, Russell's doctors now manage his pain without opioids and his behavior reflects the changed circumstances. He has a clean prison record – free of fights or major incidents – because this is a true reflection of who Russell is as a person. (Exh. L).

Russell's opioid addiction does not in any way lessen his responsibility for his conduct on March 21, 1996. Rather, this evidence is offered to properly contextualize his behavior. Russell is responsible for his actions and he deserves a just punishment based on a true and complete examination of his life. This evidence provides the complete narrative of Russell's life – a narrative neither the jury nor any court had at their disposal when they decided his fate.

2.3 The lethal injection protocol used in Missouri continues to pose a significant risk of a botched execution for Russell Bucklew.

Russell suffers from a rare and incurable disease – cavernous hemangioma – that causes large clumps of weakened, malformed vessels to grow in his head, face, neck, and throat. His condition is congenital, severe and progressive. The unstable tumors displace healthy tissue and are highly vulnerable to rupturing under stress or any rise in blood pressure. Indeed, small ruptures occur on a near daily basis, which Russell deals with by keeping gauze and a biohazard bag constantly at hand or by spitting out blood.

Russell has had this condition since birth, and his vascular malformations have grown progressively worse throughout adulthood, causing constant facial pain and pressure, labored breathing, and impairment of his hearing and vision. The tumors in

Russell's airway, including his grossly swollen uvula, have caused him to struggle to breathe, a problem only alleviated in part when he got a tracheostomy amidst a severe bout of meningitis in June 2018. Even with the tracheostomy, he has continued to suffer severe problems in his throat and head, including infections and regular hemorrhaging in his mouth and throat caused by rupturing tumors.

In May 2014, Russell filed a federal lawsuit against the director of the Missouri Department of Corrections and other DOC personnel. He raised claims under 42 U.S.C. §1983 and the Eighth Amendment, alleging that, during an execution by lethal injection, he is highly likely to suffer excruciating and prolonged pain in violation of the Eighth Amendment.

Russell's "as applied" challenge to Missouri's lethal injection protocol alleges that any execution under the protocol is likely to be especially gruesome and impose needless pain and suffering upon Russell. The appeal of his case was heard by the United States Supreme Court on November 6, 2018 and the Court issued its opinion on April 1, 2019. *Bucklew v. Precythe*, 138 S.Ct. 1112 (2019). While Russell lost his appeal on legal grounds concerning the requirement of establishing a feasible, alternative method of execution, the real world implications of his physical condition remain at issue during the execution. Indeed, some aspects of his condition have significantly worsened since 2014. Mr. Bucklew's tumors are larger—a fact readily observed simply by looking at his face, where his upper lip is distorted by a large purplish tumor, and at the right side of his nose, which is enlarged and swollen with a tumor.

Recent photographs show that Russell's hemangiomas have grown worse in recent months. The hemangioma on his upper lip is dark purple and the size of a very large grape. (See Exh. Q). The tumor distorts his features and makes it difficult for him to speak clearly. Four years ago, in 2014, the tumor was far smaller, with little effect on his facial appearance. (*Id.*)



Russell's tumors bleed intermittently throughout the day, requiring him to dispose of blood that pools in his mouth and throat. Russell's tumors are highly sensitive and rupture easily. This requires that he use gauze provided to him to stem the blood flow and as often is the case in highly stressful periods, for him to spit or swallow the blood that collects in his throat and mouth. Elevated levels of stress raise his blood pressure and cause his tumors to rupture more often, requiring more frequent interventions – techniques that will not be possible when he is strapped to a gurney during the execution process.

The Missouri DOC's precautions will be inadequate to reduce the pain associated with the execution nor to prevent a gruesome spectacle for the assembled witnesses. The DOC has agreed to elevate Russell's head during the execution, but this precaution will have no impact on Russell's ability to dispose of the blood that naturally pools in his mouth

and throat. This blood is likely to be spat out during the execution or, more painfully, result in Russell choking and struggling for breath all in full view of the witnesses. This execution is highly likely to be exceptionally painful, bloody and gruesome.

Because he will suffer excruciating and prolonged pain, including the inability to breathe, he requests that the governor grant clemency on this ground.

2.4 Other Governors have relied on similar circumstances to award executive clemency.

Russell Bucklew's request for executive clemency are not without precedent. Other Governors have utilized the inherent power to grant executive clemency where, as here, the facts and circumstances justify the outcome. Our research revealed several instances similar to Russell's:

- 1988, David Cameron Keith, Montana, Gov. Ted Schwinden granted clemency, in part, due to Mr. Keith's partial paralysis and blindness, remorse, religious conversion, and the possibility that he may have shot the victim as a reflex action.
- 1990, William Moore, Georgia, Gov. Joe Frank Harris commuted Mr. Moore's death sentence citing his exemplary prison record, remorse, religious conversion, and the pleas for clemency from the victim's family.
- 1999, Calvin Swann, Virginia, Gov. James Gilmore granted Mr. Swann's request for clemency noting that the jury had been misinformed about the degree of Swann's mental illness.
- 2004, Willie James Hall, Georgia, Gov. Sonny Perdue commuted Hall's death sentence to life without parole based on his excellent behavior in prison and lack of a criminal record prior to the murder.

- 2008, Samuel David Crowe, Georgia, Gov. Sonny Perdue commuted Mr. Crowe's death sentence after considerable testimony from fiends, pastors and even a former corrections officer was presented to the board emphasizing his exemplary behavior and deep remorse while on death row.
- 2009, Jeffrey Hill, Ohio, Gov. Ted Strickland commuted Hill's death sentence to 25 years to life, based, in part, on the views of the victim's family, the lack of adequate representation by counsel at Mr. Hill's sentencing, and the remorse demonstrated by Mr. Hill regarding his actions.
- 2012, Ronald Post, Ohio, Gov. John Kasich commuted Mr. Post's death sentence based on the inadequacy of his representation and, notably, concerns over the problems associated with Mr. Post's health issues that could lead to a botched execution.

CONCLUSION

Executive clemency has proved to be the "fail safe" in our criminal justice system. It is an unalterable fact that our judicial system, like the human beings who administer it, is fallible. *Herrera v. Collins*, 506 U.S. 390, 414 (1993). The clemency decision should be guided not only by an understanding of the crime, but also by a complete understanding of the full facts and circumstances that concern the person who faces society's ultimate penalty and who respectfully seeks the exercise of the Governor's power to grant mercy. The full and complete facts in this case demonstrate Mr. Bucklew worthy of a grant of executive clemency. We very much appreciate your time and consideration of these important issues.

Respectfully Submitted,

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