

**BEFORE THE
OHIO ADULT PAROLE AUTHORITY**

**IN RE: RAYMOND TIBBETTS
Chillicothe Correctional Institution # A363-178**

Clemency Hearing Date: January 17, 2017

APPLICATION FOR EXECUTIVE CLEMENCY

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INTRODUCTION

This application is being submitted on behalf of Raymond (Ray) Tibbetts, who is requesting a commutation of his death sentence to life in prison without the possibility of parole. Clemency is warranted in this case for numerous reasons. Ray suffered an utterly traumatic, abusive, and chaotic childhood. This caused severe psychological and emotional damage that continued to impair him in his adult life. In addition, Ray understood that he had a very serious drug and alcohol problem years before this crime took place, and he repeatedly made efforts to get help and overcome his addictions. He was unable to do so due in part to the emotional and psychological impairments that resulted from his abusive and traumatic childhood.

Furthermore, Ray's trial lawyers failed to provide him with adequate legal representation at the penalty phase of his trial. They abdicated their duty to investigate and present to the jury readily available and compelling mitigation evidence about Ray's upbringing and traumatic childhood, and as a result the jury saw an incomplete and inaccurate picture of Ray's deeply troubled life. Ray has also made an exemplary adjustment to prison, is not a disciplinary risk, and has developed close and positive personal relationships. Ray Tibbetts has accepted responsibility for these brutal crimes, and expressed remorse for what he has done. He is particularly remorseful for the pain he has caused the victims' families. Ray has changed his life and is no longer the person that committed these terrible acts. Ray's sentence should be reduced from death to life in prison without the possibility of parole.

Ray is not contesting his guilt or the brutality of the offense in his request for clemency, and he fully acknowledges that he is responsible for the deaths of Sue Crawford and

Fred Hicks.¹ Sue Crawford was Ray's wife, and she worked as a live-in caretaker at Fred Hicks' residence.² Ray lived in the home, as well. Sue spoke with her sister, Roseann, on the telephone at approximately 8:00 p.m. on the day of the crime, and she indicated that she wanted Ray to move out of the home because he was using crack cocaine. Roseann called the house again at approximately 10:00 p.m., but Ray answered the phone and said that Sue was asleep, and that he would tell her to call Roseann in the morning. The following day, Betty Fay Hoskins discovered the bodies of Sue and Mr. Hicks at the residence. Sue had died as a result of blows to the head from a baseball bat, and had also been stabbed multiple times. Mr. Hicks had died as a result of multiple stab wounds.

Ray was stopped by police on the evening of the homicides while driving Mr. Hicks' car in Covington, Kentucky, but he was not placed under arrest. The following day, Ray checked himself into the psychiatric unit at St. Elizabeth Hospital under the name "Ray Harvey." Nurses at the hospital recognized Ray from previous visits, and Ray was subsequently arrested. Ray was convicted and sentenced to death at trial, and his state and federal appeals have been exhausted. Ray Tibbetts now requests a commutation of his death sentence to life in prison with no possibility of parole.

¹ For the sake of clarity, this application will refer to the members of the Tibbetts family and the Crawford family by their first names.

² Sue Crawford's full name was Judith Sue Crawford, but her friends and family members referred to her by her middle name.

REASONS FOR GRANTING CLEMENCY TO RAY TIBBETTS

I. Ray Tibbetts suffered a traumatic and chaotic childhood.

Ray Tibbetts's childhood was traumatic and chaotic, and it severely damaged him psychologically and emotionally. Ray has four siblings: his older sister Suzanne, his older brother Rick, his older brother Archie, and his younger brother George.³ During the first two years of his life, Ray and his siblings lived with their natural parents, Stanley and Deanna. Stanley Tibbetts was an alcoholic and Deanna Tibbetts was a drug addict. Ray's older sister Suzanne has described their mother as one of the cruelest women she has known. (Ex. A, affidavit of Suzanne Freeman.)⁴ Suzanne, although only seven or eight years old, acted as a mother figure for the younger children, and she can remember constantly jumping into their crib to protect them from their parents' violence. (*Id.*) Stanley's alcoholism became so bad, and he did so little to support the family, that Deanna was forced to take a job working in a bar. (*Id.*) The children were left with a very young Suzanne to serve as their caretaker while the mother was at work, and even when she was in the home.

Stanley and Deanna had a tumultuous and violent relationship. Stanley brutalized Deanna, and on one occasion beat her bloody with the metal blades of a fan and a telephone when Suzanne was only five or six years old. (*Id.*) When Suzanne tried to help her mother, Stanley beat her as well. (*Id.*) The home was a place of constant violence. (*Id.*)

³ Some of the affidavits and records that have been submitted as exhibits refer to George as "Willie" or "Willard," which is his middle name.

⁴ Ms. Freeman's married name was Suzanne Terry when she signed her affidavit.

When Ray was just two years old, he and his siblings were removed from the home and placed in foster care with a family acquaintance, the Merriman family. (*Id.*) A report had been made to Children’s Services that Suzanne was alone with the younger children most of the time. When Children’s Services got involved, Deanna requested that the children be placed with the Merrimans, even though the Merrimans had not previously cared for any other foster children. (Ex. B, Hamilton County Human Services Records at 8.)⁵ This placement proved to be no better, and was in fact worse, than the Tibbetts’ life with their natural parents. One social worker noted early on that there were “too many conflicting and disturbing factors to make this a good placement for the children.” (*Id.*) The children were severely abused at the Merriman home, both physically and emotionally. (Ex. A, affidavit of Suzanne Freeman.) At night, Ray, George, and Archie would be tied down to a single bed with a rope so that they couldn’t move. (*Id.*; see also Ex. C, declaration of Rick Tibbetts.) There were no sheets or blankets on the bed, and the rope would dig into the children’s stomachs. (Ex. A, affidavit of Suzanne Freeman.) Suzanne would hear them calling for help, and often couldn’t do anything because she was afraid of the abuse she would receive. (*Id.*) During the day, the boys would be placed in the corner in the kitchen by the Merriman daughters and forced to stay there all day. (*Id.*) The Merriman children were fed normal meals, but the Tibbetts children were fed very little and became malnourished and grew very thin as a result. (*Id.*)

⁵ The pages from the human services records that have been cited in this application are attached as an exhibit. The complete human services records can be found on pages 170-301 of the clemency materials submitted by the State on August 5, 2014.

Mrs. Merriman used prescription drugs and left the caretaking of the Tibbetts children to her biological daughters. Mrs. Merriman permitted her daughters to physically abuse the Tibbetts children. (*Id.*) Three of the Merriman daughters were teenagers at the time the Tibbetts children were living at the home. (Ex.B, Human Services Records at 2 .) Ray, George and Archie would be kicked down the basement steps, have their fingers beaten with spatulas, and burned on register heaters. (Ex. A, affidavit of Suzanne Freeman.) George was burned so badly on one occasion that he needed treatment and was required to stay at the hospital for several days. (*Id.*) When the children were removed from the Merriman home in 1961, a social worker noted that George had “severe burns on his leg and arm,” which Mrs. Merriman claimed were the result of Archie putting George on the stove. (Ex. B, Human Services Records at 31.) Archie was six years old in 1961 and small for his age, so this explanation is extremely unlikely. When social workers visited the home, the Merrimans would put on a show to make it appear that the home was a safe and secure environment. (Ex. A, affidavit of Suzanne Freeman.) In reality, the home was a nightmarish place characterized by constant physical and emotional abuse.

Rick and Suzanne were removed from the Merriman home and returned to live with their biological mother Deanna, but she refused to take Ray, Archie, and George. Ray and George remained at the Merrimans until George suffered severe burns, and were subsequently placed with the Oswalds, another foster family, while Archie was sent to a different family. When they arrived at the Oswald home, Ray and George were “restless, hungry and continually rocked themselves to sleep at night.” (Ex. B, Human Services Records at 31.) The very brief respite the initial placement with the Oswalds provided from the Merrimans was short-lived,

because the Tibbetts children's biological parents would actually pick them up and take them back to the Merriman home for visits when given the opportunity to do so. (*Id.* at 24, 25, 26, 31.) The emotional trauma that this caused was evident every time Ray and George were returned to the Oswald home. (*Id.*)

As explained in one entry from the human services records:

Mr. and Mrs. Oswald were quite upset with Mr. and Mrs. Tibbetts. The Tibbetts had taken the boys for a week-end. While the boys were with the Tibbetts, they took Willie and Raymond to visit Mrs. Merriman. The problem erupted after the children had been returned to the foster parents. Willie and Raymond were quite restless, being unable to sleep at night. This kept the foster parents awake. Willie, during this period of time, wet the bed constantly while Raymond rocked himself to sleep. It took the foster parents about one week to help the children to readjust to their foster home placement. Mrs. Oswald informed me that if this was to continue every week they could not take it.

(Ex. B, Human Services Records at 25.)

The Oswalds provided a home that was filled with abuse and trauma for Ray and George. It was not until some years into the placement that the Oswalds were found to be unsuitable foster parents, with one case worker explaining that the "total lack of feeling these people show is quite overwhelming," and recommending "as for the Oswalds, they shouldn't get any more kids." (*Id.* at 67, 68.) Yet the Tibbetts boys remained at the Oswald home, despite Children's Services acknowledgement that this foster home was not an appropriate placement. Evidence of physical abuse also emerged. One case worker documented that George had been beaten with a belt by Mr. Oswald, and that the cuts and bruises that had resulted were deplorable. (*Id.* at 67.) Furthermore, George has alleged that he and Ray were subjected to a great deal of physical abuse at the Oswald residence that was not reflected in the human

services records. (Ex. D, declaration of George Tibbetts.) On one occasion, George was tied up and had rocks thrown at him. (*Id.*) Ray was forced to watch this. (*Id.*) On another, George and Ray were both beaten with a two-by-four piece of lumber, and George was knocked unconscious. (*Id.*) Furthermore, the Tibbetts children were treated as “slave labor,” and forced to do all of the household work. (*Id.*) George has also alleged that he suffered sexual abuse in the Oswald home, and that other foster children under the Oswalds’ care suffered sexual abuse as well. (*Id.*) On a number of occasions, Ray and George “ran away” from the Oswald home only to be returned. (*Id.*) The first time they left Ray was only nine years old, and George was eight. They hopped a train that took them into Kentucky, but they were found by law enforcement. (*Id.*) Ray and George were placed at “2020”, a juvenile detention facility and the Allen House for brief periods of time after their attempts to run away. The Tibbetts boys found both of these placements preferable to being returned to the Oswalds, despite each institution’s history of neglect and abuse of its charges.

George has stated that he once tried to tell his caseworker about the abuse in the Oswald home, but that it only lead to more punishment, so he did not report it to the caseworker or counselor again. Ray was removed from the Oswald home in January 1973 and placed at the General Protestant Orphan Home in Cincinnati. George was forced to remain at the Oswald home until August 1974. George was then also sent to the General Protestant Orphan Home. During the remainder of Ray’s teen years, he bounced around placements, including the Allen House and juvenile detentions facilities until being released to live on his own at the age of eighteen.

This board has recognized in other cases that people with an extremely traumatic childhood and deprived history are deserving of a positive recommendation for clemency. *See In re: Joseph Murphy, OSP #A199-042* (Sep. 23, 2011). Furthermore, the abuse in Ray's case came not only from his parents, but from the state foster care system as well. Ray Tibbetts is deserving of clemency and his sentence should be reduced to life in prison with no possibility of parole.

II. The physical and emotional abuse that Ray Tibbetts suffered as a child severely impaired him in his adult life.

The severe abuse and neglect that Ray suffered as a child interfered with his brain development, and this has continued to impair him throughout his adult life. As Dr. Patti van Eys explains in her report, "early brain development is critical to future brain development," and "critical neurodevelopment occurs through consistent and frequent interaction with a caregiver." (Ex. E, Report of Dr. Patti van Eys at 4.) "Of utmost importance in this critical early period is the brain circuitry formed through attachment with caregivers." (*Id.* at 4 (emphasis in original).) Ray did not receive the attachment with caregivers that he needed. Instead, "Ray Tibbetts had a neglectful and abusive early environment that compromised his ability to form healthy foundational and critical brain architecture, putting him at risk for poor outcomes socially/emotionally, cognitively, and behaviorally." (*Id.* at 4.) "During the time when his brain should have been laying down solid foundational neural circuitry for relationships, language / problem solving, and sense of self, Ray had no chance." (*Id.* at 5.)

Furthermore, "[t]oxic stress continued for Ray and his siblings during the next two years (ages 2-4) when development of the early brain is still at its peak." (*Id.* at 7.) "The damaging

effects of toxic stress on the developing brain have lifelong consequences and are not resolved without early, effective intervention which Ray Tibbetts did not receive.” (*Id.* at 9.) Ray’s middle childhood, older adolescence, and young adulthood were also very damaging. (*Id.* at 9-12.) The abuse Ray suffered in his earliest years impaired the development of his neural circuitry and his additional brain development in later years.

The trauma and neglect Ray suffered continued to impair him in his adult life. Ray has nine of the ten adverse experiences recognized in the 1995-97 Adverse Childhood Experiences Study (“ACES”). (*Id.* at 12.) Such a high score is correlated with many serious mental and physical health problems in later life. (*Id.* at 13.) Furthermore, “The toxic stress endured by persons with high ACE scores is known to change their early neurochemistry and even change their DNA expression. His mental health issues were severe; his ACEs added more risk on top of his genetic predisposition, as both parents were substance abusers and his mother had known mental illness.” (*Id.* at 13.)

In addition, “positive parental attachment is the strongest predictor of positive adult outcomes. Ray was raised with a neglectful/indifferent and abusive parenting style during his entire childhood.” (*Id.* at 14.) “Children of neglectful style parents have been shown to have the worst outcomes on behavioral and psychological measures out of all parenting styles.” (*Id.* at 15.) The lack of attachment in Ray’s early life left him at a severe disadvantage in his adult life.

As detailed in Dr. van Eys’ report, Ray’s young brain did not benefit “from the important attachment process that is critical for a person’s sense of self, trust in others, ability to learn, and ability to have self-control.” (*Id.* at 14.) Dr. van Eys finds that Ray became passive, withdrawn, and likely accommodating to a life of abuse when he was young; he escaped by

running away as a teen, and he used drugs to avoid feelings as an older teen and adult. (*Id.* at 16.) Ray failed to develop healthy coping skills in the face of stress. (*Id.*)

Dr. van Eys states that Suzanne and George (Willie) have discussed their frank dissociative experiences due to the extreme trauma of their childhood, and having to suppress their sense of helplessness and rage. (*Id.*) Ray, like his siblings, “appears dissociative as well; he has the early brain experience that lends itself to an automatic dissociative response.” (*Id.*) Ray has demonstrated periods of “blackouts” likely as a combination of dissociation and substance abuse. (*Id.*) For example, Ray cannot discuss his childhood, even with his sister. (*Id.*) He minimizes events in his early life. (*Id.*)

Dr. van Eys also explains:

A dissociative experience appears to lie behind the night of the murder. Ray seems to have lost time and memory that night and does not consciously know details of his actions. His mind, altered already with substances, but then confronted with trauma triggers; put him in survival mode where thinking is impossible. He admitted being afraid of Sue due to her previous attacks on him that resulted in serious lung puncturing and a leg wound. He remembers her screaming, knew that she had knives, and remembers her standing over him. He then appears to black out until coming to the next day in Kentucky.

(*Id.* at 18.)

Because Ray as an “infant/child was exposed to chaos, violence and neglect, his interpretation of sensory stimuli (e.g., sounds, sights, touch) likely became infused with danger.” (*Id.*) So it is likely that Ray internalized an automatic connection between an overwhelming sense of panicky helplessness and the frightening abuse. (*Id.*) “He may have experienced this kind of primitive triggering at the time of his crime, for example, if Sue became

aggressive toward him. It is highly likely that this man, with no prior history of aggression, acted from his primitive brain, without access to his thinking brain.” (*Id.*)

Ray is entirely confused about why he would have killed people that he liked and cared about, “and is bewildered by the dissociative reaction he experienced.” (*Id.*) Ray also experiences remorse for these crimes, and was not a violent person before the crimes occurred. (*Id.*) The records indicate that previously Ray was typically the victim of assaults, and not the perpetrator. (*Id.* at 18-19). The confusion Ray feels signals the likelihood that he was dissociative at the time of his crime “and that his brain, unfortunately wired to be overly sensitive to threat, went into survival mode.” (*Id.* at 19.)

Dr. van Eys concludes that “Ray’s development of delinquency and criminality may be largely explained by his history of a poor attachment foundation, early and chronic toxic stress that damaged his early brain development, chronically neglectful parenting style, violence and maltreatment in foster homes, genetic predisposition for substance abuse and mental illness, no caring adult in his entire history, an inadequate foster care system, and not being provided with therapeutic resources at any point in his life that would have effectively facilitated positive development.” (*Id.*)

Based on the extreme level of physical and emotional abuse, abandonment, and neglect he endured, it is not surprising that Ray Tibbetts’ life spiraled downward, and resulted in a very negative outcome.

III. Ray Tibbetts repeatedly attempted to overcome his drug and alcohol addictions but was unsuccessful due to his emotional and psychological impairments.

Like many other death row inmates, Ray Tibbetts struggled with severe drug and alcohol addiction for much of his adult life. Unlike most other inmates, however, Ray actually tried to do something about it, but was unsuccessful due in part to the emotional and psychological impairments that resulted from his abusive and traumatic childhood.

Ray began seeking help for his drinking problem as early as 1982 while he was incarcerated, and he was permitted to join the Alcoholics Anonymous (“A.A.”) group in London Correctional Institution. (Ex. F, Prison records.) In the early 1990s Ray continued to seek help from Alcoholics Anonymous. (Ex. G, affidavit of Donald Keith Riddell.) As Mr. Riddell has explained in his affidavit, by 1994 or 1995 Ray “seemed to be very serious and trying very hard and put together a period of sobriety.” (*Id.*) After Ray’s son was born, however, he began drinking again and “had a hard time putting his sobriety back together again.” (*Id.*)

In 1996, Ray was again seeking help from A.A., and he tried to have his employer adjust his work schedule so that he could take the city bus to attend evening meetings. (Ex. H, employer letter.) Ray was unsuccessful in remaining sober, however, and he started drinking and using drugs again that year. (Ex. I, hospital records at 22-23.)⁶ This happened shortly after

⁶ The pages from the hospital records that have been cited in this application are attached as an exhibit. The complete hospital records can be found on pages 303-944 of the clemency materials submitted by the State on August 5, 2014.

Ray was injured at work and given a prescription for painkillers. (Ex. J, Report of Dr. Glen Weaver at 2-3.) The painkillers led Ray back to severe substance abuse. (*Id.*)

On July 5th, 1997, Ray voluntarily admitted himself to St. Elizabeth's Medical Center in an attempt to stop drinking. (Ex. I, hospital records at 25.) He had now become homeless. (*Id.* at 21.) Ray told the staff that he had been drinking either two fifths of liquor or an entire case of beer every day, and that when he woke up that day he decided "I better get help because I am thinking about killing myself today." (*Id.* at 20.) Ray's drug screen also tested positive for cocaine, marijuana, benzodiazepines, and diphenhydramine. (*Id.* at 26.) He was discharged on July 9th, 1997, after telling staff that he wanted to get help at the Droege House treatment center in Kentucky. (*Id.* at 24, 26.)

On September 12th, 1997, less than two months before the deaths of Sue Crawford and Fred Hicks, Ray was readmitted to St. Elizabeth's after being found lying on a riverbank. (Ex. I, hospital records at 18.) He had been hearing voices telling him to kill himself. (*Id.*) These auditory hallucinations continued during Ray's hospitalization. (*Id.* at 2, 4, 18-19.) Some of the records suggest that he also experienced visual hallucinations while at the hospital. (*Id.* at 17.) When he was admitted, Ray told the staff "I can't stop drinking." (*Id.* at 30.) During his hospitalization he also told the staff that he attended A.A. but always ended up quitting and going back to being his "hopeless self," and that he felt "so low" due to his inability to abstain from alcohol. (*Id.* at 3.) He stated that he needed to participate in a residential substance abuse program "in order to get back on track and begin sober life." (*Id.*)

Ray was in an extremely unstable mental state during much of the September hospitalization. At various times he believed it was August of 1996 rather than September of

1997, he was found drinking water out of his urinal, and he thought that he was waiting for his friends to pick him up to take him fishing. (Ex. I, hospital records at 7, 17, 19.) Five days after his initial admission, he was described as having a staggering gait and slurred speech, being confused, disoriented, and unable to follow directions. (*Id.* at 11-13.) He attempted to commit suicide by hanging himself, and he was also observed banging his head against the wall. (*Id.* at 5, 9-10, 14-16, 19, 27-29.) As a result, he was placed in a seclusion room in full leather restrains. (*Id.* at 1, 6, 8, 15-16, 19.) Ray remained in the hospital for twelve days until he was discharged on September 24. (*Id.* at 18.) The Crawford and Hicks homicides took place approximately six weeks later.

Dr. Bob Stinson, a clinical psychologist and licensed addiction counselor, reviewed Ray's records, and interviewed Ray on two separate occasions. Dr. Stinson finds that Ray suffered from severe polysubstance use disorders such as: Severe Alcohol Use Disorder; Severe Cocaine Use Disorder; Moderate to Severe Cannabis Use Disorder; Mild to Moderate Amphetamine Use Disorder; and Mild to Moderate Hallucinogen Use Disorder. (Ex. K, Report of Dr. Bob Stinson at 14.)

Dr. Stinson states that Ray's "biological predisposition to drug and alcohol problems as well as depression and related psychological problems; early, persistent and severe childhood trauma; lack of appropriate mental health services; self-medication in an attempt to cope with anxiety, depression, trauma symptoms, and general life pain owing to the relentless maltreatment suffered in his childhood" contributed to the "not surprising" result of Ray developing severe alcohol and drug use disorders. (*Id.* at 17.) These disorders, which started

during his teen years and persisted through his adulthood, led to “significant mental health disturbances” and contributed to his current circumstances. (*Id.* at 17.)

The neglect and abuse that Ray was subjected to early in his life are known to alter brain development, “structurally and functionally,” which placed him at a greater risk for negative outcomes and left him biologically wired to be ineffective at coping with challenges that life brought throughout his adolescence and adulthood. (*Id.* at 18.) In addition, Ray had inadequate family and social supports along with his un-developed and under-developed internal coping mechanisms, which would have made it difficult, if not impossible, for Ray to be successful in maintaining his sobriety. Ray’s use of drugs and alcohol was a way to adapt and survive. (*Id.*) Dr. Stinson observed that Ray did in fact seek help by way of A.A., seeking out a sponsor, and repeatedly declaring to treatment providers that he needed help and intensified services. (*Id.* at 18.) As previously stated, Ray took himself to the emergency room while he was suicidal, severely addicted, and in a severely deteriorated mental state.

Dr. Stinson concludes that Ray was never offered or provided intensive residential substance abuse treatment and he was never provided what would have been the appropriate treatment for him—integrated dual diagnosis treatment (IDDT) for his mental health problems and his related substance abuse disorders. (*Id.*) Instead he was “repeatedly discharged from hospitals as soon as the physical detoxification was completed, and no attention to the obvious emotional and psychological needs.” (*Id.* at 18-19.) Rather, he was put back in the streets “homeless, hopeless and addicted.” (*Id.* at 19.)

Ray’s repeated attempts to deal with his alcohol and drug addiction should be given substantial weight in considering his request for clemency. Substance abuse is always a serious

issue when it is raised in these proceedings, but there is usually no indication that the inmate actively tried to get help prior to the offense that resulted in the death sentence. *See, e.g., In re: Billy Slagle, A203-172* (Jul. 16, 2013), at 25; *In re: Steven T. Smith, CCI#A369-054* (Apr. 10, 2013), at 15; *In re: Joseph L. Clark, OSP#183-984* (Apr. 14, 2006), at 15. However, clemency was granted in one case where the inmate made substantial, but unsuccessful, efforts over the years to address his addiction. *See In re: Richard Nields, OSP #A352-374*, (May 18, 2010), at 9, 19. As noted in *Nields*, an “inability to cope” with alcoholism is one factor that can weigh in favor of clemency. *Id.* at 19, citing *State v. Nields*, 93 Ohio St.3d 6, 44 (2001) (Pfeifer, J., dissenting).

Ray recognized that he had a problem at least fifteen years before the crime in this case occurred, and he repeatedly took steps to try to address it. The fact that he was unable to overcome his substance abuse problems does not mean that his efforts were insincere. People with drug and alcohol problems often regress into old patterns of abuse, but that doesn’t mean that they lack a genuine desire to permanently abstain.⁷ As explained by the Arizona Court of Appeals:

⁷ “It has long been known that addictive disorders are chronic and relapsing in nature. . .Recent estimates from clinical treatment studies suggest that more than two thirds of individuals relapse within weeks to months of initiating treatment.” Rajita Sinha, *New Findings on Biological Factors Predicting Addiction Relapse Vulnerability*, CURRENT PSYCHIATRY REPORTS, Vol. 13, Issue 5 (Oct. 2011) (citations omitted).

Recovery from drug addiction is a long-term process and frequently requires multiple episodes of treatment. As with other chronic illnesses, relapses to drug abuse can occur and should signal a need for treatment to be reinstated or adjusted. . . Unfortunately, when relapse occurs many deem treatment a failure. This is not the case: Successful treatment for addiction typically requires continual evaluation and modification as appropriate, similar to the approach taken for other chronic diseases.

State v. Shively, 323 P.3d 1211, 1214, n.5 (Az.App. 2014) (quoting *Principles of Drug Addiction*

Treatment: A Research-Based Guide (Nat'l Inst. on Drug Abuse, Nat'l Insts. of Health, U.S. Dept. of Health and Human Servs., eds., 3d ed.2012).

Ray's recognition of his substance abuse problem and his repeated attempts to overcome it sets him apart from many of the other inmates who have raised drug and alcohol addiction as a mitigating factor in these proceedings, especially viewed in light of his traumatic upbringing, and psychological impairments. Although it does not in any way excuse the deaths of Fred Hicks and Sue Crawford, it does provide a compelling basis for being merciful. Ray's sentence should be reduced from death to life without parole.

IV. Ray Tibbetts' trial attorneys abdicated their professional duty to investigate and present to the jury compelling mitigating evidence about Ray's upbringing and traumatic childhood during the penalty phase of his trial.

The Parole Board and the Governor have both recognized that inadequate legal representation in a capital case can provide a basis for granting clemency. See *In re Ronald Post*, FMC#183-812 (Dec. 14, 2012), at 19-21; *Kasich Commutes the Sentence of Ronald Post*, (Dec. 17, 2012), available at <http://www.governor.ohio.gov/Portals/0/pdf/12.17.12PostCommutation.pdf> (last visited Jan. 6, 2017). As Governor Kasich explained in Ronald Post's case:

Regardless of the heinous nature of their crime, a criminal defendant is entitled to an effective defense, especially in a death penalty case. The Parole Board's conclusion is that Ronald Post did not come close to receiving such a defense. After my own careful review, I agree. Therefore I am ordering that he spend the rest of his life in prison with no possibility of ever getting out. This decision should not be viewed by anyone as diminishing this awful crime or the pain it has caused.

(Id.)

The performance of Ray Tibbetts' counsel fell far below professional norms and as a result he did not receive adequate representation at the penalty phase of his trial; his death sentence should therefore be commuted to life in prison with no possibility of release. As Judge Moore explained in her dissent when Ray's case was before the United States Court of Appeals for the Sixth Circuit:

The constitutional infirmities that plagued the penalty phase of Tibbetts's capital trial are unfortunately frequent. Yet again in this Circuit, however, a majority of a panel casts aside obvious and prejudicial errors by upholding a death sentence issued by a jury that was not informed of key mitigation evidence that could have made a difference in whether the jury decided that Tibbetts should die for his admittedly horrible crime. For the reasons discussed above, I believe that Tibbetts has shown that his trial counsel was constitutionally ineffective during Tibbetts's penalty phase. Counsel was clearly deficient in his investigation of mitigating evidence. Although he hired a mitigation specialist and requested several records from a variety of educational and medical institutions, counsel failed to follow up on the specialists' leads and explain the relevance of the introduced documents. Moreover, counsel called only one mitigation witness, who was not properly equipped to discuss Tibbetts's childhood. Most disturbingly, however, counsel failed to interview Tibbetts's family and friends, despite their willingness to provide information. Counsel's performance was constitutionally deficient.

In addition, counsel's failure to uncover significant details about the abuse that Tibbetts suffered as a child was prejudicial. The information uncovered in post-conviction proceedings "paint[ed] a significantly more detailed picture of [Tibbetts's] troubled background" than the scant evidence introduced at the penalty phase, *Jells*, 538 F.3d at 499. The nonintroduced evidence provided numerous details of Tibbetts's abuse while in foster care and disclosed, for the first time, Tibbetts's abuse while under the care of his biological parents. In addition to providing additional substance, had counsel uncovered and presented the evidence disclosed during post-conviction proceedings, the jury would have heard the horrors of Tibbetts's upbringing from first-hand sources, and Tibbetts would have been able to stymie the State's attack on the truthfulness of Tibbetts's claims that he was abused. Presented with such evidence, the jury would have been provided with an alternative, much more compelling case for sparing Tibbetts's life. Because the Ohio Court of Appeals unreasonably applied clearly established law in concluding that counsel was not constitutionally ineffective, I would GRANT the writ of habeas corpus on this claim.

Tibbetts v. Bradshaw, 633 F.3d 436, 458-59 (6th Cir. 2011) (Moore, J., dissenting).

Ray's death sentence should accordingly be commuted to life in prison with no possibility of release. The jury at Ray's trial was provided with an incomplete and inaccurate picture of Ray's traumatic life. Ray's trial counsel failed to properly investigate and present mitigation evidence during the penalty phase. Most of the "shocking, disheartening, and utterly disturbing details about [Ray's] upbringing" were not considered by the jury. *Id.* (citation and internal quotation marks omitted). Although counsel did hire a mitigation specialist and request several records from educational and medical institutions, "counsel's preparation and investigation stands out more for what it utterly lacked." *Id.* at 448. Counsel failed to interview Ray's family and friends, investigate the many speculative statements found

in the introduced records that indicated Ray was abused, and explain the relevance of the introduced records to the jury.

Counsel knew the whereabouts of Ray's sister and father and, despite knowing their location, chose to have Dr. Weaver hastily interview Ray's sister the morning of the hearing and to ignore Ray's father altogether. *Id.* at 449. The mitigation specialist reached out to Ray's father, Stanley, to inform him that he would like to speak to him about Ray at a later date. Stanley was never again contacted. (Ex. L, affidavit of Stanley Tibbetts.) "No 'reasonable professional judgment' could have supported a decision not to interview Tibbetts's father...." *Tibbetts*, 633 F.3d at 448 (Moore, J., dissenting). Similar to Stanley, Ray's A.A. sponsor, Keith Riddell, and childhood friend, Sandra Nunley, were never contacted. (Ex. G, affidavit of Keith Riddell; Ex. M, affidavit of Sandra Nunley.) Both were willing to provide beneficial mitigation evidence. In fact, the specialist wrote a letter to counsel two months before the mitigation hearing explaining that they had "limited or no documentation" of Ray's involvement in A.A. and that someone still needed to interview Keith Riddell. (Ex. N, Crates letter.) This interview was never done. The testimony of Ray's family and friends would have impacted the jury more than Dr. Weaver's testimony because it would have come from first-hand sources.

Counsel did not interview Ray's family and friends, the "most obvious of mitigation witnesses," about Ray's childhood; instead, counsel relied solely on Dr. Weaver's limited knowledge of Ray's background. *Tibbetts*, 633 F.3d at 451-52 (Moore, J., dissenting.) Ultimately, Dr. Weaver's testimony lacked specific examples of abuse, which in turn failed to capture the sympathy of the jury. What sympathy Dr. Weaver was able to elicit from the jury quickly evaporated when Dr. Weaver stated, "[w]hen I saw [Tibbetts] for the first time, I guess I got a

little concerned about my own safety...when I looked at him, you know, I'm not going to cross him...This was even in the Justice Center...." (Trial Tr. at 1435.) Dr. Weaver failed to humanize Ray. A proper investigation by counsel would have revealed that "Tibbetts's father, his sister, his best childhood friend, and his AA sponsor could have each provided material details about Tibbetts's background and humanized Tibbetts to a degree that Dr. Weaver simply was not able to do." *Tibbetts*, 633 F.3d at 451-52 (Moore, J., dissenting).

Counsel provided the jury with Ray's school and medical records, but the fact that counsel "provided them to the jury does not overcome counsel's clear investigative deficiencies." *Id.* at 450. The documents in these records contained many red flags that suggested Ray was being abused. *Id.* 450-51. Counsel did not pursue these red flags. Furthermore, the condition and manner in which these documents were presented to the jury demonstrates that counsel lacked an investigation and mitigation strategy:

Many of them are illegible from years of copying; they are disorganized, at least as submitted in the record on appeal; and they cover literally decades of foster-care placements and admissions to various institutions without any accompanying explanation to place them in context.

Id. at 450.

A reasonable investigation and mitigation strategy does not consist of providing large quantities of documents to the jury without organization and explanation. *Id.* The jury cannot be expected to know how or why the documents are relevant. Counsel did not explain and organize these reports nor did he contact those closest to Ray to ask about the red flags. Counsel simply provided a single witness at the mitigation hearing who neither grew up with

Ray nor knew Ray's childhood. Counsel had a professional obligation to conduct a thorough investigation of Ray's background, which he did not fulfill.

V. Ray Tibbetts is a positive and productive member of the prison population and will continue to be so if his sentence is commuted to life in prison with no possibility of release.

Ray will continue to be a positive and productive member of the general prison population if his sentence is commuted. Ray can help younger inmates see the error of their ways, and encourage them to lead lawful and productive lives when they are released. Furthermore, Ray is a very devout Christian, and he already provides spiritual support to other inmates through correspondence. (Ex. O, letter from Richard Anderson; Ex. P, letter from James Dean.) As Mr. Anderson explains, "Ray let me see a side of hope that I had never experienced. He wrote about a hope that he called 'living hope.' He said that I needed to develop a hope that would carry me not only through my incarceration but for the rest of my life." (Ex. O, letter from Richard Anderson.)

Ray attends Bible study in prison and is committed to his own spiritual growth and the growth of others. As Dr. van Eys explains in her report, "Mr. Tibbetts was very well versed theologically in the Christian Word and was a believer since being in prison. It was important to Mr. Tibbetts to share his testimony with me. At this point in his life, Mr. Tibbetts appears to be genuinely gentle and concerned with salvation for himself and others." (Ex. E, Dr. van Eys report at 4.) Ray can provide hope and guidance to others in the general prison population. Allowing Ray to live out the rest of his natural life in prison will benefit others. Ray's sentence should be reduced to life in prison with no possibility of parole.

THE GOVERNOR SHOULD GRANT CLEMENCY

Ray Tibbetts should be granted clemency, and his sentence should be reduced to life in prison with no possibility of parole. Ray had an utterly traumatic and chaotic childhood, and this resulted in lasting damage that severely impaired his psychological and emotional health as an adult. Ray also understood that he had a serious drug and alcohol problem, and he repeatedly attempted to overcome it by seeking help. Furthermore, Ray's trial lawyers failed to provide him with adequate representation when they abdicated their duty to investigate and present readily available and compelling mitigating information to the jury at the penalty phase of his trial. Ray will also continue to be a positive and productive member of the general prison population if he is granted clemency. While these factors do not excuse the deaths of Sue Crawford and Fred Hicks, they do provide powerful reasons to be merciful in Ray Tibbetts's case. The Governor should grant clemency and commute Ray's sentence to life in prison with no possibility of release.

Respectfully Submitted,

s/ Jacob A. Cairns

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Application for Executive Clemency was electronically delivered to the following:

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on this 10th day of January, 2017.

s/ Jacob A. Cairns

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