

PRESENTATION BEFORE THE GOVERNOR'S COMMISSIONERS FOR AN OPEN GOVERNMENT

AUGUST 22-23, 2007, TALLAHASSEE

I am honored to come before this Commission, which is reviewing and evaluating the policies, statutes and Article 1, Section 24 of the Florida Constitution. I am encouraged and grateful that Governor Crist listed the Office of Executive Clemency as a place where work is still held in secrecy and where he thinks reform could be examined. I hope that my story of the secrecy surrounding a Clemency proceeding will help you in the recommendations that you will make to Governor Crist.

Currently, clemency files are confidential in accordance with **Rule 16 and Section 14.28, of the Florida Statutes**, which states:

All records developed or received by a state entity relating to a Board of Executive Clemency investigation are exempt from disclosure; however, such records may be released upon the approval of the Governor.

For the protection of all parties, I will withhold the name associated with this case. He has been incarcerated for almost 15 years after being convicted of first-degree murder under the Felony Murder Rule at the age of 18. Under the Felony Murder Rule, every person associated in any way in a crime in which someone dies, whether intentional or not, is held responsible for that death regardless of the degree of participation.

In this case, the teenager, who is now a 32-year-old young man, had driven some recent acquaintances to get marijuana. He stayed outside in his car while the others went in to get the drugs. He turned his car off and waited for their return. He was not aware he was in the role of the "wheel man" he would soon be called. He heard gunshots and would later learn that one of the new acquaintances was a cold-blooded murderer on the run from another state. When the young man who had been shot died, my teenage friend, just three weeks away from his high school graduation, was charged with first-degree murder under the Felony Murder Rule as if he had pulled the trigger. He had no prior criminal record, was attending high school every day, and worked at two different stores after school and on weekends. He willingly gave a statement to the police without an attorney present. He had no understanding of the trouble he was in.

Because of mandatory sentencing under the Felony Murder Rule, the Judge was not allowed to consider him as an individual human being or his degree of participation in the crime, and he was sentenced to life in prison with no chance of parole for 25 years.

After 8 1/3 years in prison, he was eligible to apply for the Waiver of Clemency Rules. His request was denied. No explanation or reason given for that denial. This information is kept secret, rendering the inmate, family and friends, and even lawyers powerless to know what to correct in order to ever be approved.

Almost 12 years had passed when the inmate was finally granted a place on the docket for consideration of Clemency after new evidence surfaced from witnesses to the crime. All documentation from the prison, from his prison workplace, and from each educational program in which he had participated to advance his knowledge and skills showed a perfect record, academically and behaviorally. The parole officer who interviewed him gave every indication that his report would be very favorable. The officer who interviewed his father told him, "don't worry sir, your son is coming home." However, Clemency was denied.

Again, reasons and explanations for the denial were kept secret.

You can imagine the shock when the pro bono attorney was informed that the Parole Board had given an unfavorable recommendation. He tried but could not obtain the secret information that would have helped him understand why the Parole Board gave an unfavorable recommendation in spite of the fact their own investigators had been so positive. Though the Governor had the power to approve the release of the secret information, he would not grant the request. With their reasons kept in secret, they were not open to any challenge of fact.

I was devastated and also very confused. I had been the inmate's friend since he was five years old, so he was and still is like my own child. I knew that whatever the information was that we didn't know and could not find out had been very hurtful in the effort to obtain Clemency, and I also knew that Clemency was the only hope for relief in this case. It seemed that biased information must have been introduced in secret. This information was not open to the scrutiny of fact, yet it powerfully influenced the outcome of the inmate's plea for mercy and forgiveness - and for extra-judicial relief so that his sentence might be equal to that of his co-defendants.

After the death of the pro bono attorney, I was left completely on my own in this process. The incarcerated, whether guilty or innocent, are not entitled to advocates as are the family of a victim. I felt that if I could not help him, he would be in prison forever. So I kept telling his story and one day I found someone willing to help me. She heard about your new Commission the first day it was announced and encouraged me to testify before you. While my focus today has been on just one case, there are hundreds of other cases in our State's prison system that are like this case and would benefit from changes in the secrecy of the Clemency process.

The inmate I'm telling you about will soon be eligible to apply for clemency again, knowing the reasons he was denied before would help in preparing his new application yet again for the clemency process.

It is my hope that your recommendations to Governor Crist will include that the Board of Executive Clemency and the Parole Board operate openly to insure that the best interests of all parties is met. In a retributive system of justice, restorative justice seems unattainable in the absence of full information.

The records and reports that are used to decide the merits of an inmate's plea for mercy, forgiveness, and equity in sentencing should not be exempt from the Florida Sunshine Laws.

Thank you.