

WRONGFULLY CONVICTED AND SENTENCED TO LIFE WITHOUT PAROLE

By: David R. Fleenor

Twenty-seven (27) years ago, I used deadly force as a justifiable means to resist an assault from an intruder after he unlawfully entered my home. Despite no evidence to the contrary, the State charged me with first degree murder.

The State's theory was that the intruder did not accomplish the burglary, he only attempted to enter my home. It was the State's contention that during the attempted burglary, I woke up so outraged that I grabbed a knife and chased the intruder to a second location where I stabbed him with the intent to cause his death.

The State's theory was based entirely on the opinion testimony of the medical examiner. The medical examiner testified that the second stab wound partially transected the intruder's spinal cord and concluded that as a result of the injury, the intruder dropped immediately paralyzed in both legs and arms where he was stabbed.

Relying on the medical examiner's expert opinion alone, the jury found me guilty of murder in the first degree and recommended punishment at Life Without Parole.

Years later, I had a Forensic Expert and a Neurologist review the autopsy report and the medical examiner's testimony and both discovered, separately and independently of each other, that the autopsy evidence did not support the medical examiner's conclusion. During the internal examination, the medical examiner noted that she observed microscopic damage to the outer sheath that surrounds the spinal cord. The outer sheath does not contain sensory or motor neurons. The actual spinal cord—the white and grey matter—WAS NOT DAMAGED.

In the interest of justice, both experts wrote an affidavit to the Parole Board/Governor attesting that the intruder was able to ambulate several city blocks and perform purposeful acts before collapsing as a result of the both stab wounds.

In September 2020, the Parole Board rejected the affidavits and denied my request for commutation; essentially resentencing me to Life Without Parole.

THE PUNISHMENT OF LIFE WITHOUT PAROLE

In 2016, SCOTUS defined Life Without Parole as the second most severe punishment allowed by law—second only to the penalty of death. The Court reasoned that Life Without Parole was the only punishment that shared inherent characteristics with the penalty of death—meaning that no matter what transformation may occur in the hearts and minds of those convicted, they will die in prison with no hope of release!

Although the Court's reasoning accurately depicts the fate of the person sentenced to Life Without Parole, it fails to consider the emotional, psychological, and mental trauma endured by the person who is held captive in a state of hopelessness until death in their ranking of the punishment. Based on the Court's omission, I believe that the only people who think that death is more severe than Life Without Parole, are the people NOT serving the sentence.

It is the arbitrary use of the punishment, combined with its design to inflict as much human suffering as possible, that has convinced me that Life Without Parole is the MOST severe punishment allowed by law!

1. At the age of 24, a jury recommended that I die in prison as a first-time offender for a non-aggravated crime;
2. The jury's punishment recommendation has foreclosed the possibility of me ever making a meaningful contribution to the outcome of my life;
3. The jury's punishment recommendation has also foreclosed the possibility of me ever experiencing a meaningful relationship. I will never know what it is to be a friend, a husband, a father, or a grandfather.
4. The only thing the jury's punishment recommendation did not foreclose was keeping me alive long enough to watch myself die in the hearts and minds of everyone who loved me prior to this incarceration!

Despite this irrevocable human forfeiture of everything that a free person calls life; I have become more than the hopelessness of my sentence. I have

become more because of the opportunities made available to me by the Oklahoma Department of Corrections:

1. I have become a college graduate. I earned an Associate Degree with honors from Rose State;
2. I have become a certified Paralegal; I earned my certification from Blackstone.
3. I have become a facility Law Clerk; I earned my certification from the Office of General Counsel;
4. I have become a published author. I've had two articles published in Parole News Magazine and the New York University Review of Law & Social Change;
5. I have become the Chairman of the Victims Restoration Fund. To date, we have donated \$7,000 in symbolic restitution to crime victims; and
6. I have become the facilitator of the Houses of Healing program. This is a program of The National Emotional Literacy Project for Prisoners.

RECOMMENDATION

In closing, I want to make my position clear—I am not in favor of abolishing Life Without Parole. I am in favor of a more responsible use of the punishment as a criminal sanction.

First, I would recommend that when Life Without Parole is a sentencing option, the jury be instructed on the legal definitions of "incorrigible" and "irreparably corrupt." Least we forget, our system of trial by jury does not require the jurist to have specialized training or knowledge—it only requires them to sit without an apparent conflict of interest; and

Second, I would recommend that every person sentenced to Life Without Parole be automatically reviewed for commutation after serving 20 calendar years in the Department of Corrections. This would not only incentivize the behavior of the inmate while in custody, it would also provide them with HOPE, which is necessary in motivating the desire to rehabilitate oneself.

Thank you!