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COOK COUNTY, ILLINOIS

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Prisoner Review Board
State of Illinois
319 East Madison Street
Suite A
Springfield, Illinois 62701

Re: Petitioner: **MONTANEZ, Jacqueline – B473321**
Case #, Charge & Sentence: **92CR-13088, Murder (2 counts), NATURAL LIFE**
Docket: **Executive Clemency – April 2012**
Docket # 30488

Dear Members:

Anita Alvarez, State's Attorney of Cook County, opposes executive clemency for the above petitioner for the following reasons:

Petitioner, Jacqueline Montanez, is requesting commutation of the natural life sentence she received for her two 1999 convictions for murder. She is requesting clemency because she believes the mandatory natural life sentence she received is excessive and she believes that she has changed since she has been in prison and is now ready to become a productive member of society. This is the petitioner's first request for executive clemency.

The facts of the petitioner's convictions are as follows:

During the early morning hours of May 12, 1992, Jacqueline Montanez, age 15, met two of her fellow Maniac Latin Disciple street gang members near Cortez and Washtenaw Streets in Chicago. They were all upset over the recent murder by rival Latin King gang members of an affiliated gang member nicknamed "Mudo." They vowed revenge. Their plan was to obtain a gun and a car and then travel to Latin King territory near Beach and Spaulding Streets. Once

there, they would murder rival Latin Kings. The petitioner, known in her gang as "Loca D", borrowed a gun, while her co-defendant, Marilyn Mulero, obtained her brother's car. These two offenders and 16 year-old Madeline "Tuti" Mendoza then drove to the Beach and Spaulding area. Once there, they drove around for awhile before Jimmy Cruz and Hector Reyes appeared on the scene in their car. After talking for some time, they all agreed to go to Humboldt Park and party.

After a short drive, both groups met in Humboldt Park. Jimmy Cruz and Hector Reyes had been drinking earlier and both of their blood alcohol counts measured at .06, well below the legal level of intoxication. At some point, Cruz displayed his Latin King tattoo. In the park, the girls paired up with the boys, Jimmy Cruz with Mendoza and Hector Reyes with the petitioner. The petitioner walked with Reyes into a nearby public washroom. In the bathroom, as Hector Reyes was urinating, the petitioner fired one gunshot into the back of his head, killing him instantly. Montanez then walked out of the bathroom and handed the gun to Mulero.

Mulero walked the 100 feet or so to where Mendoza was walking hand in hand with Jimmy Cruz. Mendoza motioned to Mulero. Mulero walked to Jimmy Cruz, placed the gun within 1 to 5 inches of his head, and fired once. Cruz was also killed instantly. Mulero and Mendoza started to run to the car while the petitioner knelt over Cruz' body, pretending to be a concerned citizen as a car passed. The petitioner then kicked Cruz' lifeless body after the car passed and rejoined the other girls in the car. The three then returned to Cortez and Washtenaw, where they drank beer and celebrated with fellow gang members. The three bragged to their fellow Maniac Latin Disciples about what they had just done.

Two days later, both the petitioner and Mulero were arrested and both confessed to the murders of Cruz and Reyes. (See the court reported confessions of the petitioner and Marilyn Mulero attached as People's Ex A and Ex B respectively). As the petitioner was escorted out of the police station, during her transport to Cook County Jail, the petitioner was videotaped by a local news station. At that time, the petitioner shouted to the cameras, "We're Maniac K.K.", meaning she was a Maniac Latin Disciple who kills Latin Kings. She did this while making gang hand signs. This was the petitioner's way of demonstrating how proud she was of her actions.

Although the petitioner was 15 years-old at the time she committed the murders, Illinois law required, and still does, that her case be transferred to adult criminal court. In September of 1993, a jury convicted the petitioner of both murders. The petitioner was under 18 at the time of the murders and, therefore, could not receive the death penalty. Instead, the petitioner received the mandatory minimum sentence of natural life in the penitentiary under 730 ILCS 5/5-8-1(a)(1). The law requires that persons who have been convicted of two murders must be sentenced to natural life in the penitentiary.

The petitioner appealed her convictions and sentence. On June 30, 1995, the First District Appellate Court reversed and remanded her case for a new trial. The appellate court ruled that the petitioner's confession was not voluntarily made because she did not have an opportunity to converse with a concerned adult before she made her confession. (People v. Montanez, 273 Ill.

App. 3d 844, 652 N.E.2d 1271, (1995)) When the case returned to the trial court, the trial court conducted another hearing to determine whether, in light of the totality of the circumstances surrounding the petitioner's confession, the statement was voluntarily made. The trial court concluded that the confession was voluntary and allowed the presentation of the confession at the petitioner's retrial.

On November 3, 1999, a second jury convicted the petitioner of the murders of Jimmy Cruz and Hector Reyes. On December 1, 1999, the trial court once again imposed the mandatory minimum sentence of natural life in prison. The petitioner filed a direct appeal of her convictions and sentence. This time, the appellate court concluded that the trial court's admission of the petitioner's confession was proper, and affirmed the petitioner's conviction and sentence. (People v. Montanez, No. 1-99-4343, unpublished order under Supreme Court Rule 23, (2002)). In March of 2002, the petitioner filed a post-conviction petition which challenged the constitutionality of her convictions. On May 5, 2006, the trial court granted the State's motion to dismiss the petition and the matter went off the trial court's call.

The People strongly oppose a commutation of sentence for the petitioner. A pardon is an act of forgiveness. People v. Chiappa, 53 Ill. App. 3d 639, 641, 368 N.E.2d 925 (2nd Dist. 1977). Clemency is also an extraordinary remedy and must be reserved for the most extraordinary cases to have any meaning. Petitioner's case is not one of those circumstances.

The petitioner is essentially asking the Board and the Governor to contravene the legislature of this State and commute the petitioner's sentence. This would be a clear violation of the fundamental constitutional doctrine of separation of powers. Our legislature has determined that someone who is responsible for the homicides of two people should never rejoin society. The legislature's right to enact such laws has long been recognized and upheld. (See People ex rel. Daley v. Strayhorn, 518 N.E.2d 1047 (1988), where the appellate court confirmed the propriety of the law which required a mandatory natural life sentence for multiple murders. "It is constitutionally permissible for the legislature to fix a mandatory minimum penalty of natural life where it has determined that **no set of mitigating circumstances could allow a proper penalty of less than natural life for the commission of two or more murders.**" (emphasis added)). Id.)

The courts of this State have also determined that the application of the mandatory natural life sentencing provision to juveniles is not unconstitutional. In People v. Rice, 628 N. E.2d 837, (1993), the appellate court determined that the imposition of a mandatory life sentence upon a 16 year-old mildly mentally retarded defendant convicted of arson, aggravated arson and four counts of murder did not violate the Eighth Amendment's prohibition against cruel and unusual punishment.

Even the recent U.S Supreme Court case of Graham v. Florida, 130 S. Ct. 2011, 176 L. Ed 825 (2010), which found the imposition of a natural life sentence on a juvenile for a burglary conviction improper, reaffirmed the validity of mandatory natural life sentences for juvenile murderers. In Graham, the Court determined that a 16 year-old, who had been convicted of

armed burglary and attempt robbery and then sentenced to natural life on a violation of his probation, had received a sentence that was in violation of the Eighth Amendment's prohibition on cruel and unusual punishment. The Court found that sentence inappropriate, but noted that murder cases were different, observing that "serious nonhomicide crimes may be devastating in their harm but in terms of moral depravity and the injury to the person and the public, they cannot be compared to murder in their severity and irrevocability." Graham, 130 S. Ct. 2011 (2010) quoting Kennedy v. Louisiana, 554 U.S. 407 (2008).

Both the law and justice require that the petitioner remain in prison. She stands convicted of the cold blooded premeditated murders of two men. These men were no angels, but the petitioner has taken everything from them and eliminated any possibility to change that these men would ever have. Meanwhile, the petitioner continues to live and breathe. The People acknowledge that life behind bars is not something most people would want for themselves, but it is still more than the petitioner gave Jimmy Cruz and Hector Reyes.

It should also be noted that the petitioner has criminal history in addition to her two murder convictions. Prior to her arrest for the murders, she had approximately 18 contacts with the police for crimes ranging from possession of marijuana to auto theft. She was also arrested for punching her mother and hitting another individual with a hammer. She was eventually removed from her mother's custody and made a ward of the State. Both with her mother and in those placements, she was a constant runaway.

The petitioner has attempted to explain this behavior by claiming that she was the victim of physical and sexual abuse by her step-father, William Borrero. The Board should be aware that, as a juvenile in 1988, the petitioner accused Borrero of sexually assaulting her. The Department of Children and Family Services later "unfounded" these allegations when the petitioner recanted her claims.

The petitioner has continued her anti-social behavior since her incarceration. After her first conviction and while she was awaiting retrial, the petitioner was housed at the Dwight Correctional Center. In late November of 1997, the petitioner started a fire in her room in the Mental Health Center at Dwight. When members of the facility's staff tried to get the petitioner out of the room, she assaulted them. The petitioner was charged with aggravated battery of a correctional officer and found guilty but mentally ill. The petitioner was sentenced to 42 months in the Department of Corrections for the offense. It should be noted, that when the petitioner was retried on the murder charges in 1999, she did not raise an insanity defense, nor was there any issue regarding her fitness for trial.

The petitioner has an additional history of misconduct during her incarceration. The petitioner has been in the custody of the Illinois Department of Corrections since September of 1993, but the People have limited its review of the petitioner's disciplinary record to the period from 2000 to the present. Since 2000, the petitioner has received 105 tickets for misconduct. Twenty-eight of those tickets were for MAJOR violations and were punished by significant periods in segregation. (See attached Disciplinary Card for petitioner since 2000 identified as People's

Ex.C). Despite the petitioner's assertions to the contrary, she is not a changed or rehabilitated person. Actions speak louder than words and the petitioner's actions since she has been in the penitentiary confirm that she is still a remorseless criminal who should not be set free among the law-abiding citizens of this State.

The petitioner put a bullet in the back of a man's head while he was relieving himself at the urinal of a public washroom. She then handed the gun off so her co-defendants could shoot another man in the back of the head. The petitioner and her co-defendants then celebrated the murders with their fellow gang members. The petitioner later displayed the pride she took in her accomplishment to members of the news media. She deserved the sentence she received. Our State legislature has determined that this type of behavior should result in a sentence of mandatory natural life in prison. The courts of this land have upheld the legislature's authority to do so. The legislature's actions reflect the will of the people of this State and should not be contravened. Granting clemency to the petitioner would also be an injustice to the victims in this case and their families and loved ones.

Thus, for the reasons above, the People request that petitioner's request for executive clemency be denied.

Very truly yours,

Anita Alvarez
State's Attorney

Joe Magats
Deputy Chief, Criminal Prosecutions Bureau


Terrence Reilly
Assistant State's Attorney