OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

August 9, 2010

Terry Jenks, Director
Oklahoma Pardon and Parole Board
120 N. Robinson Ave., Suite 900-W
Oklahoma City, OK 73102

Re: Jeffrey David Matthews.

Dear Mr. Jenks:

I am in receipt of a letter dated August 6, 2010, from the Federal Public Defender's Office requesting that the Pardon and Parole Board reconsider Jeffrey David Matthews's request for clemency during a second vote on the matter to be taken either in a special meeting or emergency meeting of the Board. I first received this letter from the defense at 8:40 a.m. on Monday, August 9, 2010.

The fundamental flaw with the defense request for reconsideration of the Board's previous vote on this issue, however, is that there is nothing new to support Matthews's claim of actual innocence. The OSBI forensics laboratory has completed its examination of the major case impressions submitted by the defense for Bryan Curry and Mark Sutton. There were no matches for these known prints of Curry and Sutton and the unmatched latent prints recovered from the crime scene. The same is true for the known fingerprint records in the OSBI fingerprint database for Curry, Sutton, Christopher Smith and Harry Clary that the lab compared to the unmatched prints from the crime scene. Again, there were no matches.

The defense writes that "[w]e have been in contact with Chris Smith and expect his full prints have been, or soon will be, provided to OSBI for examination as well." However, as of this date, major case impressions have not been submitted by the defense for Chris Smith.

At the urging of the defense, I contacted the Pottawatomie County Sheriff's Office last week about the existence of possible known print cards for Chris Smith. The defense represented to me that the sheriff's office there had major case impressions for Mr. Smith. However, when I spoke with the sheriff's department, they told me that even though Smith was booked into their jail on February 27, 2010, they actually had no fingerprint records for Smith, let alone major case

impressions. The jail could not even say whether Smith had been fingerprinted when he was booked in at their facility.

Last Thursday, the defense asked me to contact the Cleveland County Sheriff's Office to see if that agency had major case impressions. This was based on conversations the defense had with Chris Smith in which Smith supposedly stated that the sheriff there "took his full prints or major case impressions." The problem with this request, however, is that Cleveland County, like the Pottawatomie County sheriff, submits its fingerprint records automatically to OSBI's database using an electronic fingerprint scanning system. If major case impressions were taken from Smith by Cleveland County jailers using the electronic system, OSBI would have them. The OSBI laboratory confirmed this morning that they have no new known prints for Smith beyond those used by OSBI in its original June 2010 comparison. The book-in fingerprints obtained by local sheriffs prior to the use of the electronic fingerprint scanner utilizing the familiar "ink and roll" method simply did not include major case impressions. So, regardless of when Smith was booked into the Cleveland County jail, there is no point looking there for more phantom prints.

That is especially so now that Mr. Matthews's lawyers write in their August 9th letter that Smith, along with Curry and Sutton, may now be excluded as "suspects" in the Earl Short murder. Mr. Matthews's casual use of the term "suspects" is disturbing and should not go unnoticed by the Board. The Earl Short murder is not being reinvestigated or otherwise being reopened. As far as the State of Oklahoma is concerned, it is very clear who is responsible for his murder, namely, Jeffrey David Matthews and Tracy Dyer. After sixteen years of litigation in the form of two jury trials, multiple state and federal appeals, a clemency hearing and two reprieves from the Governor, Matthews's defense attorneys still present *no credible evidence* showing that Smith, Curry, Sutton or Clary were involved in the Earl Short murder.

Indeed, most of the arguments in the August 6th defense letter about Clary, whom the defense now styles "the lone suspected culprit left standing", have been made before either at trial, on appeal or to this Board during the clemency proceedings that concluded on May 26, 2010, when a majority of the Board members voted against recommending clemency.

In other words, there is nothing new here. Matthews complains that the Attorney General's Office has "inexplicably been unwilling to assist" the defense in completing the requested examination, thus frustrating his ability to develop new fingerprint evidence. I take exception to that assertion. On June 4, 2010, at the request of Matthews's counsel, I contacted the OSBI lab to double-check and see if they could find the unmatched prints. When those prints were located, I directed the OSBI lab to immediately conduct a comparison of all available known fingerprint records in the OSBI database for Smith, Curry, Sutton and Clary with the unmatched prints (incidentally, that examination was completed before the original execution date). I personally drove

to Purcell to obtain fingerprint cards from the McClain County Sheriff's Office for two of these individuals, then drove them to the OSBI lab for submittal. I have made several submissions to OSBI of known fingerprint cards given to me by the defense, each time driving to Edmond so I could personally submit the evidence to the laboratory. I did not oppose a defense request to view and inventory the property for this case in possession of the sheriff. I have made phone calls to the Department of Corrections, Pottawatomie County, McClain County and OSBI checking on available fingerprint records for the four men Matthews identifies as "suspects". Since June 4th, I have made numerous requests to OSBI fingerprint examiners to stop their existing work on pending cases that have yet been tried (or, worse yet, that remain unsolved) so they could do comparisons of the fingerprint evidence in Matthews's case, a case that has now been tried twice and for which all litigation has concluded.

Despite these efforts, I am unwilling to treat this case as though it is being reinvestigated or otherwise commit this Office to the constitutionally questionable pretext-style arrest envisioned by the defense here considering the potential civil liability that might entail and the history of this case. I enclose with this letter my July 14th correspondence to the Governor detailing the reasons for the State's unwillingness to accept Mr. Matthews's suggestions on how the State should obtain major case impressions in this case. Moreover, defense counsel's own words suggest the State would have no better luck finding Clary. According to Mr. Payne, his "well-trained and experienced investigators have been looking for Clary for years" but have been unable to locate him. A close relative told the defense "that Clary knows we are looking for him and he is not going to be found". It requires little imagination to understand why. Harry Clary testified at Matthews's first trial as a prosecution witness and has no doubt been pursued by defense attorneys and defense investigators for many years. He was named as one of the "real killers" by Matthews and his lawyers at both trials. That alone would be enough to cause Clary to avoid any contact with the defense, or anyone else associated with this case. Throw in an active misdemeanor bogus check warrant pending since 2008 and it is clear the State would have no better luck than the defense investigators in finding Clary, let alone navigating the logistical nightmare of legally obtaining major case impressions from him.

At bottom, then, Mr. Matthews is left with affidavits he presents from several relatives of Earl and Minnie Short stating their belief that Matthews should not be executed. Matthews claims that none of the victim representatives presented by the State at Matthews's clemency hearing "expressly sought death for Jeff Matthews", therefore that is a reason to hold another clemency hearing and give Mr. Matthews clemency. While I have not recently viewed the videotape from the clemency hearing, I do not recall it being quite as simple as represented by the defense. The family member who spoke, Virginia Cowan, was soft-spoken and not terribly comfortable speaking in public, especially on a topic such as this that so divided her family, something she mentioned in her statement to the Board. I can further report that this Office has been in constant contact with the

members of Earl and Minnie Short's family that appeared at the clemency hearing for the State. They are appalled that Matthews has not already been executed and want Matthews's execution to be carried out on August 17th. The following family members may be considered in this camp: Virginia Cowan (daughter), Joe Cowan (son-in-law), Tammey Smith (granddaughter), Jennifer Morgan (granddaughter), Tony Morgan (grandson-in-law), Billy Cowan (grandson), Carol Cowan (granddaughter-in-law), Shadley Cowan (great granddaughter), Amanda Cowan (great granddaughter). These family members are certain that the only way to hold Matthews responsible for his murderous actions is death by lethal injection.

Mr. Matthews criticizes the State's "last-minute reliance on the felony murder rule" in opposing his request for clemency. I do not recall this defense argument being made at the clemency hearing, even though the defense argued last and had an opportunity to rebut my argument. So, this is simply an attempt to improve upon the previous clemency performance of defense counsel. First, there is nothing "last-minute" about the State's reference to the felony murder rule. The prosecutor actually argued felony murder as an alternative basis for conviction during closing argument at the second trial, consistent with the Court's instructions, while maintaining that Matthews was nonetheless the triggerman. Second, Oklahoma law makes clear that a principal to the underlying felony committed by accomplices during the course of which a homicide occurs may be found guilty of first degree felony murder, even if he was not the triggerman and even if he was waiting in the getaway car outside the place where the murder occurred. Matthews's technical parsing of the written instructions given to his jury and his citation of Matthews's conspiracy conviction do nothing to help his cause. When the jury found that Matthews had conspired to commit the burglary at the Short residence, this fact, along with the shoe print evidence found on the county road next to the Short residence plus the balance of evidence in the case, allowed the jury to find Matthews guilty of, at the least, first degree felony murder and sentence him to death even if he was not inside the house and even if he was not the triggerman. See my detailed discussion of this at pages 3 and 4 of my July 14th correspondence to the Governor.

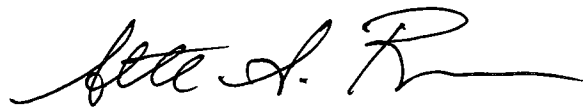
Matthews's counsel writes that "[t]he existence of serious concerns about the truth [of his guilt] is evidenced by the Governor's issuance of two reprieves to allow for further investigation." That remains to be seen. The Governor's issuance of two reprieves hardly suggests concerns about the validity of Matthews's murder conviction and death sentence beyond a desire to facilitate comparison of any available fingerprint evidence in the State's possession so as to settle once and for all the fingerprint issue raised by the defense. That process is now complete. No matches were made between the unmatched prints from the crime scene and the four men Matthews describes as "suspects".

Matthews presents nothing new for your consideration establishing his innocence for the murder. After sixteen years, two trials, multiple appeals, a clemency proceeding, and two reprieves from the Governor, there is no good reason to reopen, or otherwise reconsider, the Board's previous

vote rejecting Matthews's request for clemency. Indeed, such a move would virtually be unprecedented and draws no support from the Oklahoma constitutional provision addressing requests for clemency. Article 6, Section 10 of the Oklahoma Constitution makes no mention of multiple hearings and multiple votes on a clemency request, let alone suggest that such action would be appropriate where, as here, the defendant offers nothing new since the Board's first vote to support a claim of actual innocence.

All things considered, Matthews's request for a second clemency hearing should be denied so his execution may be carried out on August 17th. For the Board's convenience, I have enclosed with this letter my previous correspondence to the Governor about this case in general as well as the fingerprint issue specifically. I urge the Board to review these documents in light of the short period of time I had in which to draft this letter.

Respectfully,



Seth S. Branham
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attachments