

Docket No. _____

Before the

ILLINOIS PRISONER REVIEW BOARD

Winter Term, 2008

ADVISING THE HONORABLE ROD BLAGOJEVICH, GOVERNOR

In the Matter of

MARCUS A. LYONS

PETITION FOR EXECUTIVE CLEMENCY BASED ON ACTUAL INNOCENCE

Oral presentation requested

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If we make a mistake, we want to make sure we correct it. As far as I'm concerned, Marcus Lyons deserves to have his record cleared.

-- DuPage County State's Attorney Joseph Birkett. Ex. 1.

I. INTRODUCTION

Today, it is incontrovertible that Marcus Lyons is innocent of the 1987 rape of which he was convicted. Thanks to recent DNA testing, Marcus Lyons has been exonerated, his conviction for criminal sexual assault has been vacated, and he now hopes to receive official recognition of his innocence.

In the winter of 1987, [Name Deleted], a woman living in the same apartment complex as Mr. Lyons, was raped by a black man. In what State's Attorney Birkett recently referred to as "a perfect storm," the investigation focused on Marcus Lyons, the only black male living in the complex. Ex. 1. He was charged with the rape of [Name Deleted], and despite some evidence showing that Mr. Lyons could not have been the attacker, he was convicted. Since then, Mr. Lyons has engaged in an exhausting battle to establish his innocence.

After being wrongfully convicted of criminal sexual assault, Mr. Lyons went from being regarded as a valued citizen to being either dismissed as a convicted felon or feared as a sexual predator. Because the conviction is reflected in his criminal record, Mr. Lyons has continuously been denied jobs for which he is qualified and has resorted to washing cars and delivering pizzas to make ends meet. Even today, after DNA testing has proved that Mr. Lyons is an innocent man, the stigma of his conviction remains.

Executive clemency would help Mr. Lyons move forward in his life as a productive citizen. Unlike the unceremonious vacation of Mr. Lyons's convictions, a gubernatorial pardon based on actual innocence would serve as formal acknowledgement that Mr. Lyons's convictions were unfounded and that he is actually innocent of the crime of which he was convicted. It is

respectfully requested that this Board recommend that Governor Blagojevich grant Marcus Lyons a full pardon based on innocence specifically authorizing expungement for his convictions, later vacated, in DuPage County Case No. 87 CF 2344 (two counts of criminal sexual assault and one count of unlawful restraint). The State has indicated it has no objection to Mr. Lyons seeking a pardon based on innocence for his convictions relating to the rape of [Name Deleted].

II. BIOGRAPHICAL INFORMATION AND PERSONAL HISTORY

Before his arrest, Marcus Lyons lived comfortably and was well respected. His family and friends thought very highly of him. *See* Ex. 4. He worked as a computer operator for Bell Labs and drove a brand new Buick Grand National. He was just a year away from a bachelor's degree in computer science and also served as a reservist in the U.S. Navy. He planned to finish his education and return to active service in the Navy, where he would work towards an officerial rank. His Department Chief in the Navy respected Mr. Lyons's ability and integrity. *See* Ex. 5. Mr. Lyons was supported in these endeavors by his long-time girlfriend and his loving family. But, before his dreams could be achieved, Mr. Lyons's life took an unexpected turn. He was accused of a crime he did not commit, and all the opportunities for which he had worked so hard vanished from view.

A. Educational History and Naval Experience

Marcus Lyons was born on December 13, 1957 in Gary, Indiana. He grew up with his mother, his father, and three brothers. Mr. Lyons attended Charles R. Drew Elementary School, Gary Pulaski Middle School, and Gary Emerson High School, where he participated in a special program for students planning to pursue further education in fields related to technology.

After graduating from high school, Mr. Lyons enrolled in Michiana College, where he earned an associates degree in computers and accounting. Mr. Lyons then returned to Gary and enlisted in the U.S. Navy where he worked, in part, as a data processor. He spent three years in active service, and then three years as an active reservist. After six years of service, Mr. Lyons received an honorable discharge. *See Ex. 9.*

Mr. Lyons so enjoyed his time with the Navy that he decided to pursue a career as a naval officer. Mr. Lyons reenlisted as an inactive reservist and also enrolled in Wheaton College, where he began coursework toward a bachelor's degree in computer science. Mr. Lyons then transferred to DuPage College, where he took classes at night while working for Bell Labs during the day. At the time of his arrest, Mr. Lyons's grades were strong and he was only a year away from receiving his bachelor's degree.

B. Criminal Record

Before his wrongful conviction for sexual assault, Marcus had never before been convicted of a crime. Additionally, he had no arrest record.

C. Employment History

Before his wrongful conviction, Marcus Lyons worked as a computer operator for Bell Labs. He held an associates degree in computer science and accounting and was trained as a data processor while serving in the U.S. Navy. Since being released from prison, Mr. Lyons has strived to put these skills to use, but has found it very difficult to find work related to computer science given his prior conviction record. Nonetheless, Mr. Lyons has worked continuously since being released from prison.

While incarcerated, Mr. Lyons worked at the Vienna Correctional Center's water treatment facility. There, he demonstrated his work ethic and his ability to learn new skills, and

the prison staff granted him considerable responsibility. After being released, Mr. Lyons completed a one-year certification program in water and waste water treatment at Southern Illinois University in Edwardsville. With his certificate in hand, Mr. Lyons began to look for employment and eventually found a job with the Gary Sanitary District, where he worked for three years, eventually serving as president of the union. After working at the Gary Sanitary District, Mr. Lyons applied for employment with the Shedd Aquarium in Chicago. Given his experience and certification, Mr. Lyons was hired and began work. After only a month of employment, however, the aquarium management learned of Mr. Lyons's prior conviction and sent Mr. Lyons a letter terminating his employment.

Mr. Lyons then spent two years washing cars and delivering pizzas, while continuously looking for better work. After being turned down by a number of agencies, including the Naperville Sanitary District, Mr. Lyons was finally hired as a waste water treatment operator at Langenfelder and Sons, which was later bought out by Multi Serve. Mr. Lyons has worked full-time for Multi Serve for the past eleven years. When asked if he feels frustrated by the fact that his computer science training is not being utilized in his current job, Mr. Lyons said the following: "After all this time you change modes. You go from living to trying to survive - all the opportunities I worked so hard for are gone."

D. Family Background

Mr. Lyons has never been married and does not have children. He is the second of four sons, and continues to be in close contact with his three brothers, all of whom now live on the west coast. Mr. Lyons has two nieces and a nephew, who he enjoys seeing on occasion and talking with on the phone. Mr. Lyons is also very close to his mother, who lives nearby. Mr. Lyons is very involved in helping his mother maintain her independence. He sees her everyday,

and often drives her to the store, helps her with various errands, and performs chores around her home.

III. PROCEDURAL HISTORY AND OTHER REQUIRED INFORMATION

On December 16, 1987, Marcus Lyons was charged by indictment in DuPage County Case No. 87 CF 2344 with two counts of criminal sexual assault and one count of unlawful restraint in connection with the rape of [Name Deleted]. After a jury trial, he was found guilty of all charges, and on October 19, 1988, he was sentenced to six years imprisonment. No appeal was ever filed in his case. Though Mr. Lyons retained the services of Attorney George C. Howard for the purposes of filing an appeal, Mr. Howard neglected the case and the opportunity to file the appeal lapsed. *See* Ex. 6. The Attorney Registration and Disciplinary Commission later suspended Mr. Howard's law license after finding that he had neglected his clients' criminal appeals, failed to communicate with his clients, and failed to refund their money.

Mr. Lyons spent three years in prison, completing his prison term in one half-time due to good behavior credit. He was released on March 15, 1991.

On December 23, 2005, Marcus Lyons filed a motion pursuant to 725 ILCS 5/116-3 requesting post-conviction DNA testing of the evidence collected from his case. The motion, which was unopposed, was allowed, and the results of the testing proved that Mr. Lyons was not [Name Deleted] assailant. *See* Ex. 2.

On July 27, 2007, Mr. Lyons filed a petition for post-conviction relief under 735 ILCS 5-2-1401, based on this evidence of actual innocence. *See* Ex. 3. The State did not oppose this petition, and on September 5, 2007, the Honorable Robert J. Anderson entered a judgment vacating Mr. Lyons' convictions. *Id.* At the next status hearing on September 18, 2007, the State dropped the charges against Mr. Lyons. *Id.*

Mr. Lyons was convicted under the name of Marcus A. Lyons. His social security number is [Deleted]. Mr. Lyons has never used any aliases. Mr. Lyons' mailing address is as follows: Marcus Lyons c/o Jane Raley, Center on Wrongful Convictions, Bluhm Legal Clinic, 357 East Chicago Ave., Chicago, IL 60611.

IV. STATEMENT OF THE FACTS OF THE OFFENSE AND INVESTIGATION¹

[Name Deleted] was alone at home on the evening of November 30, 1987. That day, she left work at 4:30 p.m., ran some errands, and came home at about 7:00 p.m. R. 16-17. After putting away the groceries she had bought, she took off her work clothes, changed into underwear and a slip, and began organizing her bedroom; she had just moved to the Maple Lakes apartment complex only two weeks earlier. R. 17. After about an hour of organizing her new apartment, she sat down to watch television. R. 18.

At about 8:30 p.m., [Name Deleted] heard a knock on the door from a man who identified himself as "Mr. Williams, from downstairs." R. 18. [Name Deleted] put on a bathrobe and cracked open the door. R. 19. The man, an African-American, asked to borrow a plunger. R. 19. [Name Deleted] responded that she did not have one. R. 20. The man then asked if she had a hanger he could have. R. 21. [Name Deleted] left the door open and went to get a hanger. R. 21. When she returned, the man asked to use her bathroom. R. 21. She allowed him to do so. Then, she went back to sit on her couch where she lit a cigarette. R. 21-24.

[Graphic Description Deleted]

When the police arrived, [Name Deleted] described her attacker as a black male, five foot nine or ten inches tall, about 200 pounds with a large belly and hips, between 25 or 30 years old.

¹ A complete transcript of the trial is not available. For the Board's convenience, a copy of a partial transcript of the trial is attached under separate cover.

R. 230. He had a mustache and an afro, and he wore tight fitting brown polyester pants and the blue ski jacket with the fur collar that [Name Deleted] had burned with the cigarette. R. 231-32. Police officer Bruce Schnizlein arrived at the hospital where [Name Deleted] was taken, and made a composite sketch. R. 32. [Name Deleted] testified that officer Schnizlein chose the features that comprised the sketch. R. 33.

On December 1, Detective James Grady took the composite sketch and went back to the apartment complex to interview potential witnesses. He showed the sketch to Laura Pekich, who managed the apartment complex. R. 236. She said that it looked like “Malcolm Lyons,” who lived in the building adjacent to where the crime took place. Ms. Pekich showed the detective Mr. Lyons’s lease agreement, which listed Mr. Lyons’s place of employment as AT&T. R. 238. [Name Deleted] next door neighbor, [Name Deleted], also said that the composite sketch looked like a man who lived in the neighboring building on the first floor.

After speaking with the two women, Detective Grady went to AT&T and obtained an employee ID photo of Mr. Lyons. R. 238. On December 3, he used the photo as part of a 6-picture photo array that he showed to [Name Deleted]. R. 239-41. The other 5 photos were booking shots of African-American men who had been arrested. R. 239. Mr. Lyons was the only subject that was wearing a dress shirt and a tie. R. 289-90. Upon viewing the array, [Name Deleted] identified Mr. Lyons as the man who had attacked her. R. 241. Detective Grady and Detective Don Janus then went to the adjacent building to find Mr. Lyons. R. 243.

The detectives knocked on the door and Mr. Lyons answered. R. 244. The detectives identified themselves and told him why they were there. R. 244, 246. They asked to search his apartment. R. 250. Mr. Lyons said, “You can do whatever you want, because I didn’t do this.” R. 250. The detectives entered and began a search for clothing that matched the description

given by [Name Deleted]: tight brown polyester pants that would fit a man of 200 pounds, and a fur trimmed blue ski jacket that she had burned with a cigarette on the collar. R. 251.

In a pile on the floor, the detectives found a pair of brown polyester pants. R. 251. The pants had a size 32 waist and were tight on Mr. Lyons's 165 pound frame. R. 252, 353. The detectives asked Mr. Lyons if he had a blue nylon jacket. Mr. Lyons went to the hall closet and retrieved one. R. 253. The jacket neither had a fur trim, nor a cigarette burn near the neck. Despite the disparity in [Name Deleted]'s description of the clothes, the detectives took the items. They asked Mr. Lyons if he would submit to blood and saliva tests and appear in a lineup. Mr. Lyons agreed. R. 255.

The next day, December 4, Mr. Lyons went to the police station to try to settle the matter. He was taken to the county jail. R. 257. He was one of six men put in a line up for [Name Deleted] to view. R. 258. He was the only man out of the six that was also in the photographic array shown to [Name Deleted] the day prior. R. 309. She again picked Mr. Lyons out of the line up as her attacker. R. 259.

Assistant State's Attorney Brian Telander and Detective Grady interrogated Mr. Lyons after the line up. R. 261. They asked him about his activities the day of the assault. R. 264. Mr. Lyons told them that he had been in his apartment by himself most of the day, until he reported to AT&T at midnight for his work shift. R. 264. Grady testified that they were not satisfied with Mr. Lyons's alibi, but they released him and asked him to return the next day for a polygraph examination. Mr. Lyons again agreed to return. R. 270.

The next day, December 5, Mr. Lyons returned to the police station. R. 270. He was brought into a room with Detective Grady and a Mr. Richard O'Brien, who administered a polygraph examination. R. 270. Mr. Lyons again asserted his innocence in the examination. R.

270. After the polygraph, Mr. Lyons was again released, but was arrested later that evening. On December 7, 1987, Mr. O'Brien issued a report stating that, in his opinion, the polygraph results showed deception when Mr. Lyons denied having committed the crime.

V. DNA EVIDENCE OF INNOCENCE

We will never know for certain what made [Name Deleted] identify Marcus Lyons as the man who attacked her. Perhaps it was the fact that Mr. Lyons's photo in the initial array was different from the others. His smiling face and shirt and tie in his employment ID photo set him apart from the mug shots of the other five men. Perhaps [Name Deleted] had seen Mr. Lyons, the sole African-American male in his building, in the laundry room of their complex. When the detective showed her his picture, it may have sparked her recognition, and she may have mistaken him for the man who committed the crime. And when she saw him in the physical line up a day later, she remembered his face from the photo the day prior. Human memory can be influenced by many factors. Its malleability is no doubt a reason why mistaken identification features in so many DNA exonerations, as it does here.

We do know for certain that [Name Deleted]'s identification was mistaken. New DNA evidence discovered in 2006 and 2007 shows that Mr. Lyons's unwavering assertions of innocence had always been true: Mr. Lyons was positively excluded as the source of semen found on the clothing the victim wore the night of the assault.

On December 23, 2005 Marcus Lyons filed a motion for post-conviction DNA testing under 725 ILCS 5/116-3. The motion asserted that the still extant physical evidence in his case could be analyzed using DNA testing that was unavailable in 1987, and provide new proof of Mr. Lyons's longtime claim of actual innocence. The State did not oppose the motion, and on June 26, 2006, the court entered an order to have the physical evidence from the case released for

testing. *See* Ex. 3. The DuPage County Sheriff's Office Lab issued three reports. The first report, issued July 10, 2006, identified the presence of semen on the bra that the victim wore the night of the crime. *See* Ex. 2. The semen was left by the attacker, and the DNA profile it contained was the key to Marcus's claim. The second report, issued January 11, 2007, was an analysis of samples taken from Marcus Lyons. *Id.* A complete DNA profile was created using the Polymerase Chain Reaction (PCR) technique. The third report, issued January 16, 2007, was an analysis of the semen found on the bra from the crime scene. *Id.* The analysis used the same PCR technique as was used to analyze Marcus's DNA. A comparison of the two profiles was unequivocal evidence. The lab's single conclusion: "The semen identified in [the bra] could not have originated from Marcus Lyons." *Id.*

Now armed with incontrovertible evidence that he was not the attacker, Mr. Lyons filed a petition for post-conviction relief requesting that his convictions be vacated. On September 5, 2007, without objection from the State, the court granted his motion and vacated his convictions. *See* Ex. 3. On September 18, 2007, on the State's motion, the court dismissed all of the charges against Mr. Lyons. *Id.*

On October 22, 2007, Joseph Birkett, who prosecuted Mr. Lyons 20 years ago and is now the DuPage County State's Attorney, was quoted as saying, "As far as I am concerned, Marcus Lyons deserves to have his record cleared." *See* Ex. 1.

VI. POST-CONVICTION DERIVATIVE OFFENSE

Prior to his wrongful conviction for the rape of [Name Deleted], Mr. Lyons had no criminal record. He had never before been convicted of a crime and had never before been arrested. After he was released from prison, however, Mr. Lyons was charged with three misdemeanor offenses in DuPage County Case No. 91-CM-1942: aggravated assault of a police

officer, simple assault and disorderly conduct/ breach of the peace. These offenses all stemmed from a single incident, which itself arose from Mr. Lyons's wrongful conviction. Therefore, Mr. Lyons requests clemency for these misdemeanor offenses as well.

After his release on March 15, 1991, Mr. Lyons's family urged him to put the past behind him and move on with his life. But Mr. Lyons could not move on. He felt he needed to have the injustice he had been put through made clear to the world. On March 28, 1991, in frustration and desperation, Mr. Lyons tried to make a statement that would garner him the attention he felt he needed. He constructed a cross made of railroad ties, dressed in his Navy uniform, went to the Wheaton courthouse, and attempted to nail himself to the cross. *See Ex. 8.*

Mr. Lyons now explains that, at the time of this incident, he felt he had been metaphorically crucified by the county. He felt that, by accusing him of such abhorrent physical conduct and then imprisoning him, DuPage County had degraded his physical being beyond repair. Mr. Lyons's attempt to literally crucify himself was a way to communicate this pain. He thought that by wearing his Navy uniform, the Navy might take notice and help him uncover the truth.

Mr. Lyons had just begun his demonstration when the police arrived. One officer grabbed the stake Mr. Lyons had driven into his foot and said, "Come on nigger, your fifteen minutes of fame are over." Mr. Lyons was forcibly removed from the cross and was transported to Central DuPage Hospital for treatment. After receiving treatment for his foot, Mr. Lyons was taken back to the courthouse, where he was charged with the above-noted three misdemeanor offenses. Mr. Lyons posted bond for the misdemeanors, was given a court date, and was released on his own recognizance.

Mr. Lyons was then taken to the Elgin Mental Health Center (EMHC). The exact reason why he was taken to the EMHC is unclear. Mr. Lyons says that after he left court, two police officers put him into an empty room, where they attempted to restrain him again. When Mr. Lyons resisted, he was struck on the head, and as he recalls, “the next thing I know I’m in the back of a van.”

The reports from the EMHC do not reveal who brought Mr. Lyons there, or on what authority. The reports do, however, describe Mr. Lyons as “co-operative,” and exhibiting of “appropriate behavior... not depressed nor is [his] affect blunted.” *See* Ex. 7. The intake report concluded that Mr. Lyons did not express any psychotic symptoms, paranoid ideation, or aggressive behavior, and recommended his release without restriction. *Id.* Every other report repeated this evaluation. Unable to identify any reason for continuing to keep him against his will, EMHC released Mr. Lyons on April 9, 1991. *Id.*

Mr. Lyons eventually pled guilty to aggravated assault of a police officer and simple assault; the disorderly conduct and breach of the peace charge was dismissed. Mr. Lyons was admitted to probation for a period of one year as a result of his guilty plea. According to the DuPage County Clerk’s Office, Mr. Lyons successfully completed his probationary term which included paying a fine and undergoing mental health counseling.

The cross incident misdemeanors came about only as a result of Mr. Lyons’s wrongful conviction and wrongful imprisonment. But for the wrongful imprisonment that disrupted his life so profoundly, Mr. Lyons would have never been at the DuPage County Courthouse that day and would never have been charged. Marcus Lyons is and has always been a law-abiding citizen, and Mr. Lyons deserves clemency for these derivative offenses just as he deserves clemency for the wrongful criminal sexual assault conviction. For all of the above-reasons, it is

requested that this Board recommend that Governor Blagojevich grant Mr. Lyons a general pardon (as opposed to an innocence pardon) for his misdemeanor convictions, and that the Governor specifically authorize expungement of the records of the arrest and convictions.

VII. REASONS FOR GRANTING CLEMENCY

DNA testing has now established that Mr. Lyons is innocent of the rape of [Name Deleted]. We, therefore, respectfully request that this Board recommend that Governor Blagojevich grant executive clemency to Mr. Lyons in DuPage County Case No. 87 CF 2344 in the form of a full pardon based on innocence, which specifically authorizes expungement.

Additionally, based on the unique circumstances of Mr. Lyons subsequent misdemeanor convictions, we respectfully request that this Board also recommend that Governor Blagojevich grant executive clemency to Mr. Lyons in DuPage County Case No. 91 CM 1942 in the form of a general pardon, which specifically authorizes expungement.

Respectfully submitted,

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EXHIBITS OMITTED

