

OFFICE OF THE GOVERNOR
STATE OF MONTANA

STEVE BULLOCK
GOVERNOR



ANGELA McLEAN
LT. GOVERNOR

April 23, 2014

Montana Board of Pardons and Parole
1002 Hollenbeck Road
Deer Lodge, MT 59722

Re: Barry Beach clemency application

Dear Members of the Board:

I understand that there has been some question as to my position on Barry Beach's application for clemency. Because of the nature of Mr. Beach's case, I have decided to take the unusual step of writing to you to express my position on the application. Please understand that I acknowledge and respect your responsibility to exercise your independent judgment. As you do so, I believe it is important that there are no misunderstandings of my position. While the submission of a letter from the Governor's Office is a departure from standard practice, there is, as you know, nothing standard about this case.

This is a much different matter than was considered by the Board in 2007. Beach is not seeking to be relieved of the legal consequences of his conviction for murder. The criminal justice system has thoroughly, with painstaking care, assessed this case and I have no reason to question its judgment.

Accordingly, the issue before this Board is not one of innocence. Rather, I view the issue as whether the statutory criteria for consideration of commutation of Beach's sentence – with the understanding and full awareness that he will continue to be under supervision of the Department of Corrections as a parolee – have been satisfied.

In brief, when considering the "social conditions of the applicant at the time the offense was committed, and at the time of the application for clemency," Mont. Code Ann. § 46-23-301 (2)(c), I believe the factors favor further consideration of commutation. Those factors include: (1) Beach's age at the time of the murder; (2) the fact that he has been incarcerated for over 30 years; (3) his record and performance while in prison; and (4) his record and performance during the period of his release, from December 2011 to May 2013.

In *Miller v. Alabama*, 132 S.Ct. 2455, 2464 (2012), the U.S. Supreme Court held that the Eighth Amendment forbids mandatory life-without-parole sentences for juvenile offenders. In reaching this conclusion, the Court recognized the growing body of research showing "fundamental differences between juvenile and adult minds," and in particular the propensity of juveniles towards transient rashness, proclivity for risk, and inability to assess consequences. 132 S.Ct at 2465. Life-without-

parole forecloses the possibility of rehabilitation, and is an “especially harsh punishment for a juvenile, because he will almost inevitably serve more years and a greater percentage of his life in prison than an adult offender.” 132 S.Ct. at 2466, quoting *Graham v. Florida*, 130 S.Ct. 2011(2010).

Mr. Beach has served more than 30 years in prison for a crime committed as a juvenile. Although there are differences between the sentencing of Mr. Beach and those at issue in *Miller v. Alabama*, the logic of the Court with regard to juvenile offenders applies with equal force to the circumstances here. The U.S. Supreme Court reasoned that juveniles in particular have the capacity to change. 132 S.Ct. at 2465. Under this reasoning, Mr. Beach should have an opportunity for rehabilitation outside of prison. It is my understanding that the average sentence for persons convicted of deliberate homicide in the Montana state prison system is 22 years, excluding those with life sentences.

The reasons for maintaining Mr. Beach’s 100-years-without-parole sentence at taxpayer expense diminish with each passing year. Mr. Beach has a good institutional record in the Montana state prison system. In his 18 months living and working in Billings, Mr. Beach demonstrated that he is capable of living a productive life and respecting society’s rules. Significantly, if you recommend commutation of his 100-year sentence, he will be a parolee under the continued supervision of the state; if he does not abide by the conditions of parole, he will be held accountable.

Lifting from this Board’s own description on its website:

The Board’s primary responsibility in making decisions is public safety. The law states the board may release any person committed to prison when the Board believes the person is able and willing to fulfill the obligations of a law-abiding citizen and when the Board believes the prisoner can be released without detriment to the prisoner or to the community.

I respectfully suggest that the hearing panel focus its consideration of Beach’s application on these parameters. Mr. Beach committed his crime as a juvenile, served over 30 years for that crime, has conducted himself appropriately both inside and outside of prison, and if his sentence were commuted, he would continue to be under state supervision. Therefore, if the hearing panel decides to forward a recommendation of clemency, I will carefully consider that recommendation pursuant to Mont. Code Ann. § 46-23-301(3).

Thank you for your important work.

Sincerely,



STEVE BULLOCK
Governor