

Board of Pardons Recommendation to Governor Markell Regarding Clemency of Robert Gattis

The Board has before it a very difficult decision as a human life hangs in the balance. By a four to one vote, the Board is recommending that Mr. Gattis's death sentence be commuted, provided that he agrees to spend the rest of his natural life in prison with no further appeals for relief.

We wish to set forth briefly in writing the essential basis for our recommendation.

The crimes committed by Mr. Gattis were horrific and we find no fault in how this case was handled by the prosecutors and judges involved. We also believe that the family of the victim has good reasons to argue that the sentence of death should be imposed.

State prosecutors and the Slay family are correct to harbor suspicions about some of the testimony on Mr. Gattis's background. The Board weighed heavily that Mr. Gattis did not come forward with the full extent of his sexual abuse until 2009 despite having used elements of a child abuse defense twenty years earlier. In considering the full record, we accept that if even half of what has been submitted about Mr. Gattis's childhood is true, he was victimized physically, emotionally, and sexually by family members who owed him a duty of care. There is evidence in the record that Mr. Gattis complained to medical professionals of mental illness and involuntary violent impulses over a year before Ms. Slay's murder. Although Mr. Gattis knew right from wrong and was guilty of first degree murder, we, in the exercise of

conscience required of us as members of this Board, believe that these are sufficiently mitigating facts to warrant consideration for clemency.

Three other factors, not specific to the Gattis case alone, also weigh heavily in the decisions of Board members. For all four of us, we are concerned that our death penalty statute permits the imposition of death on the basis of a non-unanimous verdict. In the Gattis case, two jurors who heard the trial in its entirety twenty years ago, both of whom were prepared to impose the death penalty if appropriate, would not do so.

Second, some of us share a concern about the disparity in the sentences that are meted out in serious murder cases. In our time on the Board of Pardons, we have considered other clemency requests arising from domestic disputes that resulted in brutal murders similar in some respects to the case before us. Though the crimes of Mr. Gattis are more serious, in those other cases, persons convicted not only were permitted to live but will likely one day be released from prison. The sentencing disparity in these cases has become too great and offends a moral sense of proportionality.

Finally, one of us believes even more fundamentally that once a prisoner has been incapacitated and poses no threat of future harm to society, then there is no moral justification for taking his life. When the taking of life is not required as a matter of self-defense, that member believes that one cannot ethically or morally take that act.

We also take into account the reality that Mr. Gattis is not an unusually problematic prisoner, although he is far from a model one. Within the structured setting of a prison, one thing emerges indisputably from the record: Mr. Gattis does not pose a threat of violence within the prison setting and is not regarded as dangerous by the Department of Correction. He appears to be viewed as a constructive prisoner by some of

the correctional employees who have worked with him over the years, and is not a security threat.

The recommendation for clemency was a very close call for several of us. One factor that made the decision so difficult is that Mr. Gattis did not take full responsibility for intentionally killing Ms. Slay until earlier this month, leaving doubt as to his contrition. Given that, and to ensure that the Slay family and the public do not have to go through this painful process again, we condition our recommendation for mercy, on the following: 1) Mr. Gattis shall forever drop all legal challenges to his conviction and sentence, as commuted; 2) Mr. Gattis shall forever waive any right to present a future commutation or pardon request and agree to live out his natural life in the custody of the Department of Correction.