

**CLEMENCY PETITION FOR LEROY WHITE**



## Equal Justice Initiative

122 Commerce Street  
Montgomery, Alabama 36104  
334.269.1803

January 10, 2010

Governor Bob Riley  
Office of Governor Bob Riley  
600 Dexter Avenue  
Montgomery, AL 36130

Dear Governor Riley:

**Leroy White is scheduled to be executed this Thursday, January 13, 2011, at 6:00 p.m.** The circumstances of Mr. White's case are highly unusual, and present a uniquely compelling case for clemency.

Mr. White is facing execution for a tragic crime of domestic violence. However, almost no one believes he should be executed for this crime. **The victim's family members, who were most directly affected by this crime, strongly oppose Mr. White's execution.** In addition, the State of Alabama recognized from the outset that this case did not require the death penalty, and offered Mr. White a plea to life imprisonment without parole prior to trial. Because of misguided and inaccurate advice from defense counsel, no plea was accomplished prior to trial. Then, after hearing all of the evidence about the crime, the jury rejected a death sentence and returned a verdict of life in prison without parole, which was overridden by the trial judge.

In addition to these exceptional facts, Mr. White is presently facing execution even though his constitutional claims have never been reviewed by federal appellate courts because his volunteer lawyers unethically abandoned him while his case was pending in federal district court, and failed to file a notice of appeal when that court issued a decision against him in 2009.

**1. The Victim's Family Members Want Clemency in this Case and Fervently Hope this Office will Block this Execution.**

It is undisputed that Mr. White shot and killed his wife, Ruby White, and wounded Ruby's sister, Stella Lanier Walker, on October 17, 1988. This crime had extremely painful consequences for Ruby's family, and left her three children, Brian and Eric Garner, and Latonya White, without a mother. Brian, who was eleven years old at the time, and Latonya, who was just seventeen months old, were present when Mr. White shot their mother. According to the trial testimony of witnesses, Mr. White was holding Latonya when he fired

the fatal shot that killed her mother.

More than 22 years have now passed. Latonya White, who is the only child of Leroy and Ruby White, is now 23 years old. Although all of Ruby White's family members were deeply affected by Mr. White's crime, Latonya was uniquely affected, as it deprived her of the opportunity to know her mother *and* resulted in a death sentence for her father.

Over the years, Latonya has struggled to reconcile herself with the difficult circumstances surrounding this crime but, remarkably, has developed a relationship with her father. In her affidavit, which is attached to this letter, she describes the sadness she felt as a child growing up without knowing her mother and the gradual process that led her to reconcile with Mr. White and to find a path forward from this tragedy that has yielded a loving and critically important and valuable relationship.

Latonya has now developed a close and loving relationship with her father and has inspired all of the victim's family members shaken by this tragedy to support stopping this execution. She visits and corresponds with Mr. White regularly, and he is an important part of her life. She would be devastated by the execution of her only remaining biological parent. Her family is extremely concerned. Mary Fields, Latonya's paternal aunt, who raised her after the death of her mother, has submitted an affidavit offering her perspective on Latonya's relationship with her father and expressing her concern that Latonya would not recover from her grief if the execution takes place.

Ruby White's other two children, Brian and Eric Garner, and Ruby's sister, surviving victim Stella Lanier Walker, have also submitted affidavits attached to this letter. They unanimously support clemency. They state that the execution would not bring them any closure, and would only cause tremendous pain to Latonya, whom they love and support.

It is especially appropriate for you to exercise your executive power and commute Mr. White's sentence to life without parole under these circumstances because *the wishes of these four individuals have never been considered by any court*. Although the record indicates that there was victim opposition to the death penalty even at the time of Mr. White's sentencing,<sup>1</sup> the force and power of the victim's family's wishes has grown over time. This is particularly true of Latonya, who was too young to articulate her wishes at the time of Mr. White's trial and sentencing. Consequently, there has been no opportunity for a court to take the family's desires into account.

---

<sup>1</sup> See White v. State, 587 So. 2d 1218, 1234 (Ala. Crim. App. 1990).

**2. The Prosecutor and Jury Who Reviewed the Evidence Believed that the Appropriate Sentence in this Case is Life Imprisonment Without Parole.**

In addition to the wishes of the victim's family, two other key decision-makers in this case also believed that life without parole was the appropriate punishment for Mr. White: the prosecutor, who offered him a plea of life without parole prior to trial, and the jury, who returned a sentencing verdict of life.

Had the plea offer proposed by the prosecutor been achieved, Leroy White would not be facing execution today. However, his trial attorney wrongly advised Mr. White that Alabama law would not support the burglary element of his capital murder charge at trial based on a mistaken theory that a husband could not be convicted of burglarizing a marital residence. There was no legal support for the theory advanced by defense counsel from any Alabama court.<sup>2</sup> Relying on this erroneous and misinformed advice, Mr. White went to trial and was convicted of capital murder.

At the penalty phase of the trial, the jury heard mitigating evidence regarding Mr. White's lack of a significant history of prior criminal activity, his good reputation and character prior to the offense, his devotion and love for his daughter, the emotional pressure he was under at the time, and his cooperation with law enforcement after the offense. They also heard testimony from Mr. White, who expressed remorse for his actions and his willingness to accept whatever sentence the jury imposed.

After hearing all of the evidence, the jury overwhelmingly determined that Mr. White should be sentenced to life without parole by a vote of 9 to 3. Nevertheless, without articulating a reason for why the jury's verdict was not valid, the trial judge rejected it and sentenced Mr. White to death.

The trial judge's decision does not comport with the Alabama Supreme Court's current requirements for judicial override of a jury's life verdict in a capital case,<sup>3</sup> because it did not treat the jury's verdict as a mitigating circumstance, nor was it based on facts unknown to the jury. In fact, the only information that was known to the trial court and not to the jury was that there was support from the victim's family for a sentence of life without parole, a factor that must weigh *in favor* of a life without parole sentence under current

---

<sup>2</sup> See White v. Jones, No. 02-cv-00524, slip op. at 29 (N.D. Ala. Apr. 1, 2008) (noting that "Alabama law generally was not supportive of the petitioner's defense").

<sup>3</sup> See Ex parte Tomlin, 909 So. 2d 283 (Ala. 2003); Ex parte Carroll, 852 So. 2d 833 (Ala. 2002); Ex parte Taylor, 808 So. 2d 1515 (Ala. 2001).

Alabama law.<sup>4</sup> However, because Mr. White’s appeal preceded the cases that would now render his death sentence illegal, the legal system was not able to provide the remedy to which Mr. White is entitled. This is another reason why clemency in this case is particularly appropriate.

**3. Mr. White is Presently Facing Execution Even Though His Case Has Never Been Fully Reviewed by Any Federal Appellate Court.**

In addition to these extraordinarily compelling factors, the procedural circumstances of Mr. White’s case uniquely support a grant of clemency. In the typical case, by the time a request for clemency by a death row inmate facing imminent execution is made to a governor, all courts – state and federal – have reviewed and rejected the merits of the inmate’s constitutional claims. However, Mr. White currently faces execution despite the fact that **no federal appellate court has ever reviewed his case** because his volunteer lawyers unethically abandoned him while his case was pending in federal district court.

While his habeas corpus petition was pending in district court, Mr. White was represented by five attorneys from the Maryland-based law firm Saul Ewing, LLP, as well as an attorney from Huntsville, Alabama, who served as local counsel. One Saul Ewing attorney filed a motion to withdraw in 2006 after he was indefinitely suspended from the practice of law, leaving three attorneys from Saul Ewing along with local counsel to represent Mr. White. However, each of these remaining attorneys abandoned Mr. White without notifying Mr. White *or* the district court of their intention to discontinue their representation, in violation of the Alabama Rules of Professional Conduct, and in violation of their obligation to the district court set forth in the United States District Court for the Northern District of Alabama’s Local Rules.

As a result, Mr. White was completely unaware that the district court issued an opinion denying habeas relief in his case on June 26, 2009. Nor did he realize that these attorneys failed to file a timely notice of appeal on his behalf – behavior that the United States Supreme Court has acknowledged is “professionally unreasonable.”<sup>5</sup>

Indeed, until July 13, 2010, when he received a copy of the State’s motion to set his execution date, Mr. White believed that his case was still pending in the district court and that he was represented by attorneys.

---

<sup>4</sup> See Carroll, 852 So. 2d at 836-37.

<sup>5</sup> See Roe v. Flores-Ortega, 528 U.S. 470, 477 (2000).

When he received a copy of the State's motion to set his execution date, Mr. White immediately wrote to the Alabama Supreme Court opposing the State's motion, informing the court of his circumstances, and requesting the appointment of counsel. Mr. White also contacted undersigned counsel at the Equal Justice Initiative, who agreed to provide him with emergency legal assistance given these developments.

Soon after, undersigned counsel filed motions in both federal and state court explaining the circumstances of Mr. White's case and asking the courts to stay his execution and allow him to pursue his appeals. However, those efforts have thus far been unsuccessful. This is yet another reason why executive action is appropriate in Mr. White's case. Through no fault of his own, he has been deprived of a fair opportunity to present his case to all the courts to which he is entitled to appeal.

It would be unprecedented for the State of Alabama to execute a death row inmate where the victim's family unanimously and strongly supports clemency, where both the prosecutor and the jury believed that life without parole is an appropriate sentence, and where that inmate was unethically abandoned by his volunteer lawyers and never received any review of the constitutional claims in his case by any federal appellate court. Given these extraordinary facts, we strongly urge you to exercise your executive power to stop Mr. White's execution from taking place and commute his sentence to life without parole. Even if the courts grant a stay of execution, the likelihood of success has been permanently undermined and we would humbly request that you grant clemency in this case to bring some peace of mind to the victims and in accordance with the judgment of both the prosecutor and the jury.

Sincerely,



Bryan A. Stevenson  
Randall S. Susskind  
Kristen M. Nelson

*Attorneys for Leroy White*

## AFFIDAVIT OF LATONYA WHITE

My name is Latonya White and I am 23 years old. I am Ruby and Leroy White's only child.

When I was 17 months old, my father shot and killed my mother. They were having problems in their marriage, and my dad had been drinking that day. He came to my mother's house with a shotgun. My mother, my aunt Stella, my brother Brian, and I were all there. My father got into an argument with Stella, and took me in the car with him and drove off. When he came back, he shot through the front door and started fighting with my mother and aunt Stella. He eventually shot Stella in the arm and leg. Although I was too young to have a memory of this now, I am told that he was holding me when he fired the fatal shot that killed my mother.

I was raised by my father's sister, Mary Fields, but have remained in contact with my mother's family over the years. I do not remember my mother, but it hurt me deeply not to have my mother in my life as I grew up. It was very hard growing up knowing what had happened to her, and that my father was responsible for ending her life. My mother was a teacher. My family still tells me how smart my mother was, how pretty she was, and what a good person she was. I wish that I had had the chance to know her.

For a long time, I was very angry with my father for taking my mother away from me before I even had the chance to know her. When I was younger, I would go with my family to visit him, but I had a hard time talking to him. As I grew older and into my teens, I realized that being mad at my father would not bring my mother back. I started writing letters to my father, and asked him to explain what happened. He talked to me about what happened in great detail, and told me he was deeply sorry not only for taking my mother's life but for putting me through all that I have been through.

I now have a very close relationship with my father. I have grown to love him just as much as any child would love their parent. I visit with my father regularly, and he writes me letters very often, usually at least once a week. He gives me advice about a lot of different things, ranging from school to relationships, to life in general. He is an important part of my life. I know that he did a terrible thing by taking my mother's life, but I have forgiven him completely.

I am deeply opposed to my father's execution. He is the only thing that I have left that's a part of me. Taking away my only remaining biological parent will hurt me more than I can say. Executing my father will do nothing to bring my mother back. I would do anything in my power to stop this execution from taking place.

I believe that if I can forgive my father for what he did by taking my mother from me, the State should also be able to forgive and allow him to remain alive. I do not believe it would serve justice to execute my father. It would only bring a tremendous amount of pain to me and to my family. I pray that someone with the authority to do so will stop this execution from taking place.

I have read this affidavit. Everything in this affidavit is the truth. I swear under penalty of perjury that what is written in this affidavit is the truth.

  
Latonya White

1-5-11  
Date

Subscribed to and sworn to before me  
this the 5th day of January, 2011.

  
Notary Public

My commission expires: 02/03/2014.



## **AFFIDAVIT OF MARY FIELDS**

My name is Mary Fields. I am Latonya White's legal guardian and am Leroy White's older sister.

I came to be Latonya's guardian on the night of her mother's death, which took place in Huntsville. I was living in Hale County when it happened, and drove up to Huntsville along with my sisters as soon as I heard about the death. When we arrived, we immediately went to the hospital, where we learned that Latonya's mother, Ruby White, had been pronounced dead, and that Ruby's sister, Stella, was undergoing surgery after sustaining serious injuries, after my brother Leroy shot them both.

I took Latonya, who was seventeen months old at the time, home with me when I left the hospital that night. I still remember that she was only wearing one shoe when I arrived at the hospital. I still have that shoe to this day. I was the person who took Latonya to her mother's funeral. After the funeral, Ruby's aunt, Rose, said that I should keep Latonya with me. Eventually, my brother Leroy wrote me a letter also requesting that I raise Latonya.

I wanted to make sure my niece had a good home and was not separated from her family, so with my husband's support, I obtained a lawyer, who helped me become Latonya's legal guardian. I chose to become her guardian rather than adopting her because I didn't want her to have to change her last name.

My brother Leroy often wrote Latonya letters while she was growing up. When she was younger, she didn't open them. Eventually when she was six or seven years old, she began to travel with her aunts to visit her father. I do not know what happened during those visits because I did not go with them. At the time, I was still angry with Leroy for what he had done. It took me a number of years before I felt able to re-establish a relationship with Leroy and began visiting him myself.

At first, Latonya went with her aunts to visit her father every two or three months. Then eventually she began to visit once a month with me. Over time, I noticed she began opening the letters he sent, then reading them, then writing him back. Once she was fifteen, she sent him pictures and told him about her grades in school. Eventually, she began to visit him by herself.

As a child, she got along well with other children. I never had trouble from Latonya at school. She got along with other children and was an honor student, but I worried about her. She was a loner, and didn't talk much. When she got by herself, she would stare as if in a trance. I took her to a psychiatrist three times, but she did not seem to improve.

I noticed a significant change in Latonya's personality over the years as she became closer to her father. She seemed to be happier during visits with him. She once told me, "I wish he could have helped to raise me when I was a child." As recently as last fall, she said she was the happiest she had been in a long time, and many of our family members agreed.

This December, when we first learned that the State had set an execution date for Leroy, we became very worried about Latonya. She became so overcome with grief that I almost took her to the emergency room. She cried continuously. We feared she might commit suicide. Latonya told me, "I know he killed my momma, but if they kill my daddy, there ain't no need in me living because he is the only thing that is part of me."

After learning of the execution date, Latonya cried a lot. She even called her brothers, Eric and Brian, Ruby's other children, and told them she didn't want the State to kill her daddy. Her brothers called me very worried about Latonya. They told me that if there was anything they could do to prevent Leroy's execution, they would, because they love Latonya so much, and don't want her to go through that much pain.

I am afraid of what Latonya might do if the State of Alabama executes Leroy. It would be very hard for her if he dies. I have only recently come to realize just how strongly she loves him. I consider Latonya to be my child and I know she has hurt enough already. I know that Leroy did wrong, but Latonya shouldn't have to hurt from that anymore. She is a good-hearted person who has been through a lot. I hope that Governor Riley will understand the pain that this will cause Latonya, and will stop Leroy's execution from going forward.

I have read this affidavit. Everything in this affidavit is the truth. I swear under penalty of perjury that what is written in this affidavit is the truth.

  
Mary Fields

01-05-2011  
Date

Subscribed to and sworn to before me  
this the 5th day of January, 2011.

  
Notary Public

My commission expires: 02/03/2014.

**AFFIDAVIT OF STELLA LANIER WALKER**

My name is Stella Lanier Walker and I am 60 years old. Ruby White was my only sister.

I was there on the day my sister was killed and was also a victim myself. Leroy White shot me twice, first in the arm and then in the leg. I believe he thought that I was dead and was trying to kill me in addition to my sister. In addition to my own suffering, I also saw the pain that Leroy White caused to my nephews, Brian and Eric, and to my niece Latonya. We all faced a difficult life after the shooting. However, God brought me through those experiences and has helped rid me of any malice.

No matter what sentence Leroy has, it will not undo what happened. I support his clemency petition so long as he will never be released to commit such a heinous crime again. His death would be very painful for Latonya and will add to her pain without bringing any closure to our family.

I have read this affidavit. Everything in this affidavit is the truth. I swear under penalty of perjury that everything in this affidavit is the truth.

  
Stella Lanier Walker

  
Date

Subscribed to and sworn to before me  
this the 6th day of January, 2011.

  
Notary Public

My commission expires: 2/3/2014.

**AFFIDAVIT OF BRIAN GARNER**

My name is Brian Garner and I am 33 years old. I was 11 years old and present at my mother's home when Leroy White shot and killed my mother, Ruby White, and shot and wounded my aunt, Stella Walker, in 1988. My sister, Latonya White, was 17 months old and also present at the time. She is now 23 years old and has formed a relationship with her father during his time in prison.

Because I have already moved on and gotten past this tragic event, the execution of Leroy White would not make much of a difference to me. However, I know that my sister Latonya would be deeply hurt by the execution of her father, and for that reason I do not want it to go forward. It would be enough for me to know that he would live out the rest of his days in prison, for her sake; I would be fine with that outcome.

I have read this affidavit. Everything in this affidavit is the truth. I swear under penalty of perjury that what is written in this affidavit is the truth.

Brian Garner  
Brian Garner

1-6-2011  
Date

Subscribed to and sworn to before me  
this the 6th day of January, 2011.

Evan M. [Signature]  
Notary Public

My commission expires: 2/3/14.

**AFFIDAVIT OF ERIC GARNER**

My name is Eric Garner and I am 37 years old. Ruby White was my mother, and I was her eldest son. I was 15 years old when she was murdered by her husband, Leroy White. I was not present at the time, but I was a witness to many prior incidents of domestic violence that my mother suffered at Leroy White's hands.

The execution of Leroy White would not accomplish anything. It would not give me any joy or satisfaction, and would not achieve any closure. A sentence of life without parole would be sufficient. I spoke to my sister, Latonya White, immediately after the execution was scheduled and I was very concerned about the pain she expressed his death would cause her. She has developed a relationship with her father while he has been in prison, and that is very important to her. I would not want her to suffer because of his execution, especially since it would not accomplish anything for me.


Leroy White has been in prison for over 20 years and should remain there until his death. I believe that, rather than committing the time and resources necessary to execute Leroy White, the State of Alabama would be better off developing more effective law enforcement and social service responses to the earliest domestic violence incidents, so that no other families have to suffer the tragedy that mine has endured.

I have read this affidavit. Everything in this affidavit is the truth. I swear under penalty of perjury that everything in this affidavit is the truth.

  
Eric Garner

1/8/11  
Date

Subscribed to and sworn to before me  
this the 8<sup>th</sup> day of January, 2011.

  
Notary Public

My commission expires: **MONNIS FRIEDMAN**  
~~Notary Public~~ Chatham County GA  
My Commission Expires June 13 2011

AFFIDAVIT OF BRUCE GARDNER

My name is Bruce Gardner. In 1988, I was working for the Madison County District Attorney's Office, and was the lead prosecutor on the Leroy White case.

I prosecuted Mr. White for capital murder. His case involved a tragic crime of domestic violence, in which he shot and killed his wife and wounded his sister-in-law in the presence of his 17 month-old daughter and one of his wife's other sons.

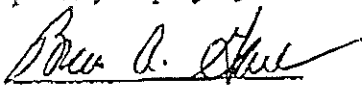
Nevertheless, there were some compelling aspects to the case that led the district attorney's office to believe that life without parole would be an acceptable punishment, and we extended this plea offer to Mr. White.

The case did not settle, and proceeded to trial. During the penalty phase, I asked the jury to return a verdict of death. However, my initial assessment that life without parole was an appropriate punishment was affirmed when the jury returned a verdict recommending life without parole over death by a vote of 9 to 3. The judge overrode this verdict and sentenced Mr. White to death.

About ten or twelve years ago, I received a very moving and unsolicited letter from Mr. White. In the letter, he talked about what he had been going through leading up to the crime, how his emotions overwhelmed him on the day of the incident, and how deeply sorry he was for killing his wife. His letter impressed me as very thoughtful and sincere, and reinforced my earlier sense that life without parole is a more appropriate sentence for him than death.

I can't take back the decision I made to seek the death penalty in Mr. White's case 22 years ago. However, I am very supportive of doing whatever I can to see that Mr. White is not executed. I support his clemency petition and believe it would serve the interests of justice to commute his sentence to life without parole.

I have read this affidavit. Everything in this affidavit is the truth. I swear under penalty of perjury that everything in this affidavit is the truth.

  
Bruce Gardner

1-11-11  
Date

Subscribed to and sworn to before me  
this the 11<sup>th</sup> day of January, 2011.

  
Notary Public

My commission expires: 7-1-2011