

February 14, 2023

Chairman Reeves and Commissioners,

Thank you for the opportunity to provide the commission insight from a family member who has suffered through the compassionate release process, too many times. In June of 2000, my brother Jason and his girlfriend Amy were carjacked, kidnapped and shot execution style in Rhode Island, by five men.

While the proposed amendment to section 1B1.13 “medical condition of the defendant,” may be relevant to a compassionate release motion, its application should require the consideration of the nature of the initial crime and its application should be strictly limited to only those cases of NON- violent criminals. Otherwise, the proposal risks subjecting the families of these convicted criminals to an endless stream of meritless motions revictimizing them again and again.

In our case alone, the five defendants have tried to shorten their life sentence for murder because one defendant had “sleep apnea” another family was “struggling to pay bills’ and another had a terminal illness and wanted to be with family at the time of his death. Murder victims are not given the luxury to die surrounded by family members in a loving manner. Their murderers should not be provided with that privilege regardless of health condition. Life with no possibility of parole, should be just that. Family members left behind serve the same sentence, with no escape from the loss until their death. Violent criminals too must do the same- a term of imprisonment until they take their last breath. They should not be granted release to travel home to loved ones to spend time with them before passing. Dying in a prison will be humane, kind, and compassionate compared to deaths handed to their victims--deaths filled with fear, trauma, violence, and unrelenting evil.

Further, the proposed amendments should provide for the impact to victim’s and families be taken into account when considering these motions.

Families must first deal with the initial shock of the crime itself, and their whole world being turned upside down at the hands of criminals. Then the processing of anger, rage, and overwhelming grief if there was a loss of life. Then next comes the anxiety and dread that sets in over the trial process, the restructuring of one’s life as, jobs and other commitments are placed on hold as the trial takes center stage in their lives. Many of us must attend trials, and sentencing hearings, in my case, even plea agreement negotiations. Many bravely stand in a court room, like I had to, and face the defendant on the stand as they testify against these criminals. The ultimate goal, one would hope, would be the enactment of a fair, just and final sentence Fair sentencing offers punishment to criminals, but also allows families peace of mind and an ability to enter a healing phase of their lives. However, these compassionate release motions often filed years or

decades after the fact repeatedly drag the victims right back to the initial day of the crime and revictimize all over again.

My brother's murder case involved five defendants and five separate cycles of sleepless nights wondering if justice would be served. We lived in hell for five years with our fight or flight response heightened until the last defendant was sentenced. The pain of those five years brought what we thought, was a sense of justice and finality and a sense of relief that four out of five were sentenced to life in prison, the final defendant being sentenced to 30 years. We naively thought that was the end. But like too many other families it was not. Instead the sense of finality was only the start of the arguments of these criminals trying to get out of prison early by calling on the Step First Act.

The toll on families is brutal but rarely discussed; for some it takes years of therapy, for others they must find other ways to heal, or it will tear their lives apart. I have witnessed this in my own life, as my father held all the grief and sadness inside of him over his only son's murder. The weight of the burden he carried, killed him slowly. He passed away five years ago.

After my brother's death, my mother was suicidal. She has lived a shell of a life, refusing to celebrate holidays, birthdays, attend weddings or baptisms. She lost her faith in God and refused to go to church. Only recently, 23 years later, has she begun to live her life again, and celebrate things. Unfortunately, this process of the compassionate release motions and the appeal process opens wounds that never fully heal. Two weeks ago we were back in court for one of the defendants filing a motion for a new trial. My mother screamed in anguish on the phone with the Victim's Advocate when she notified us. She told the advocate, Ana Giron, that she wanted to just kill herself to be done with the pain of having to go through this process yet again.

All of that should be considered in the balance when a court is deciding these motions under section 1B.13

In addition, the regulations should require the consideration of the nature of the crime and previous backgrounds of offenders under these motions.

On November 20, 1998, while my brother was attending his first semester of college, Gregory Floyd, age 19, was robbing a family from Staten Island NY and stealing their car. He was charged with this crime on February 28, 1999. Four months later, on June 20, 1999, he stole another car and crashed it. For those crimes, Judge Mark Pfeiffer gave Floyd a five-year suspended sentence and five years' probation. But then on Sept 24, th 1999, Floyd was charged with possession of stolen goods. These were just some of the charges against him, but over and over he was let go. Finally, with numerous warrants looming judge Albert DeRobbio had him serve a 30-day jail term, in May 2000. Only a few days after his release, he carjacked, kidnapped, robbed, and murdered my brother and his girlfriend.

Harry Burdick, age 21 when he murdered my brother, had a previous record of armed robberies going all the way back to age 17. He was also arrested for domestic assault. He was on probation at the time of my brother's murder for larceny. Burdick was wanted on three warrants at the time

of his arrest for his involvement in killing my brother. He had robbed numerous people at knife point, a foot long knife no less, multiple times before the night of my brother's murder.

Raymond Anderson, age 19 at the time of the murders, had a record of drug charges. He was considered the least culpable in the eyes of the law and was sentenced to 30 years with 54 months being allowed to be shaved off his sentence for good behavior.

Samuel Sanchez, age 21 at the time, was stated to have been "a one-man crime wave" by local law enforcement. He had been involved in a series of robberies of gas stations earlier in 2000- leading the robberies of six different places over 8 days. He had previous convictions for robbery, conspiracy, and felony assault. He was on probation at the time of the murders.

Kenneth Day, age 21 at the time, tried to rape Amy the night of the murders. Before that he had a previous record for assault and was ordered to wear an ankle monitoring bracelet for 30 days. He was then given 12 months' probation-during which he failed to show up for his check ins with probation. He also had previous drug charges. He had committed numerous violent robberies prior to the night Jason and Amy's murder using both a baseball bat and a gun to rob his victims. He fled from North Carolina to get a "fresh start" from all his previous legal troubles and was in RI for two months before he actively participated in Jason and Amy's murder.

Several of these men had used the same exact gun in the murder of my brother and Amy to rob people at gunpoint prior to June 9th.

These criminal records are a critical factor in determining an early release under all of these amendments when a violent crime is involved. This factor should be considered to first reduce the likelihood that motions in similar situations will be filed and to ensure that even if they are filed, they are less likely to be granted.

One of the amendments in section 3 provides that "family circumstance of the defendant" should be considered such as the death or incapacitation of a minor child's other parent should be considered an "extraordinary and compelling" reason for compassionate release. In our case two of the defendants, both Anderson and Burdick had young infant children at the time of the murder. The possible passing of these children's mother, should by no means be a reason for them to get out of jail on compassionate release.

I wish I could say this is the first time I have spoken for my brother and other victims who no longer have a voice, but it is not and most likely will not be the last. I have stood before the Rhode Island senate and testified there. I have spearheaded a letter writing campaign sending thousands of letters back in 2000 to US Attorney Janet Reno. I have given multiple impact statements, time and time again as each defendant was sentenced. In 2020, the trigger man that murdered my brother filed for compassionate release under the First Step Act. He was given less than 6 months to live after being diagnosed with terminal brain cancer. I was notified on May 22, the Friday before Memorial Day weekend, and was told that my letter needed to arrive from my home in Massachusetts to the Federal Bureau of Prisons at Butner, in North Carolina by Tuesday the 26th in order to be considered as a determining factor in the murder's release. As I am sure you know, there is no mail service on Memorial Day. I had to frantically write a letter as

did all my brother's friends and our family and overnight them all to the prison on Saturday. We were shocked and stressed to think that they might not make it there in time for some reason. We called and left many messages in the voice mail box of the advocate assigned to the inmate. Thankfully, this motion was denied. I would ask of the commission some type of provision built in for a sufficient number of days of notice to the victim's family, so that their position can be heard on a potential release of an inmate.

Further, the original sentencing guidelines applicable at the time of initial sentencing should guide these motions. If a criminal is initially sentenced within guideline ranges, why should that then be amended later? Of course, where the sentencing judge exceeded those guidelines, review is justifiable. However, according to the most recent Compassionate Release Data Report only 2.5 % of granted releases were given to initial sentences that were above the guideline range. Perhaps part of the answer lies in the original sentencing guidelines and not completely in amendments to the Step First Act. I understand that these amendments are for people that have already been sentenced years ago but the initial sentencing should be taking into account as a factor in the consideration of these motions.

Finally, rehabilitation should guide how this commission shapes these proposed amendments so that the public is not placed at unreasonable risk of harm.

Recent reports of this by the Commission state a 64% recidivism rate within eight years of release. Lonnie Athens, a criminologist, researcher, author, and award winning professor, wrote the book "The Creation of Dangerous Violent Criminals." Mr. Athens wrote this book after doing years of research interviewing criminals. He discusses his theory of what he has coined the "Violentization" of criminals. He talks about the 4 stages criminals go through and once a criminal goes beyond a certain stage, stage 4, they lack the ability to return to society in a normal fashion.

The stages are, Stage 1 Brutalization, Stage 2, Belligerency, Stage 3, Violent Performances, and Stage 4 Virulency: "This stage defines the individual as violent and dangerous in which they use violence to gain control of others, earn respect, instill fear, and make others feel powerless, shamed, and humiliated." The theory, and many agree, is that there is no point of return after reaching stage 4. While this reality may be depressing, a better understanding of violent behavior, perhaps can potentially identify violent criminals and decrease the public health risk before it happens. I would urge you to consider these stages a benchmark when taking into account the actions of violent criminals and the inability of recidivism, for these types of people.

Thank you for your time,

Kellie Surdis, sister of slain Jason Burgeson