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March 28, 2018

BY EMAIL & OVERNIGHT MAIL

Supervising Offender Rehabilitation Coordinator
Marlene Brooks
Shawangunk Correctional Facility
200 Quick Road
Wallkill, New York 12589-0750

Re: Addendum to Request for Suspension of Parole & Rescission Hearing:
Inmate: Herman Bell
DIN: 79C0262
Earliest Release Date: April 17, 2018

Dear Ms. Brooks:

We submit this letter as an addendum to our March 21, 2018 request for the suspension pending rescission of the release to parole of inmate Herman Bell.

Attached is a copy of the sentence minutes of the proceeding where the Hon. Edward J. Greenfield, J.S.C. sentenced Herman Bell on May 12, 1975 for the murder of Police Officers Joseph Piagentini and Waverly Jones. The Board admits that these minutes were not considered in their determination. As set forth below, the sentencing minutes contain significant information that was not considered by the Board of Parole ("Board") necessitating as a matter of law that Bell's release be rescinded and that consideration for parole be considered by a new Board *de novo*.

Criminal Procedure Law section 380.70 mandates that a copy of the sentencing minutes be delivered "to the person in charge of the institution to which the defendant has been delivered to be placed in the inmate's permanent file so as to be available for, *inter alia*, parole hearings." See, *Matter of McLaurin v. New York State Bd. of Parole*, 27 AD3d 565 (2nd Dept. 2006) lv denied 7 NY3d 708 (2006). Moreover, pursuant to Executive Law section 259-i(2)(c)(A)(vii), the Board was required to obtain and consider those minutes, as well as the recommendation of the sentencing court and district attorney contained within, prior to making its determination. See, *Matter of Standley v New York State Div. of Parole*, 34 AD3d 1169, 1170 (3rd Dept. 2006).

Since the Board is required to consider the sentencing minutes in making Bell's parole release determination and did not, the remedy is clear and non-discretionary. The matter must be remanded to the Board for a new hearing before a new Board. See *Matter of Lovell v New York State Div. of Parole*, 40 AD3d 1166, 1167 (3rd Dept. 2007).

I. THE SENTENCING MINUTES CONTAIN SIGNIFICANT INFORMATION NOT KNOWN TO THE BOARD AT THE TIME OF ITS CONSIDERATION.

Executive Law section 259-i(2)(c)(A)(vii) requires the Board to consider "the seriousness of the offense with due consideration to the type of sentence, length of sentence and recommendations of the sentencing court, the district attorney, the attorney for the inmate, ... as well as consideration of any mitigating and aggravating factors, and activities following arrest prior to confinement. As set forth below, the sentencing minutes contain significant information not known to the Board, mandating suspension and rescission of release to parole under Section 8002.5 of the Board's rules:¹

A. The Statement by the District Attorney:

1. Although the death penalty was in effect at the time of the commission of the murders of Police Officers Piagentini and Jones, it was not in effect at the time of sentence in 1975. The assistant district attorney stated, however, that if the death penalty was in effect, the District Attorney's recommendation would be that the death penalty be imposed. (Sentencing Minutes at pg. 126).
2. The assistant district attorney stated that based on the record of the case, the facts demonstrate that Bell and his co-defendants are "beyond redemption and can never be rehabilitated." (Sentencing Minutes at pg. 126).
3. The People recommended to the court that Bell be sentenced to the maximum that the law permitted, a sentenced of imprisonment of 25 years to life. (Sentencing Minutes at pp. 126-127).
4. The People further recommended, "so that every parole board who reads these sentencing minutes will know – that these sentences be consecutive with every sentence" faced by Bell and his co-defendants. (Sentencing Minutes at pg. 127).
5. The assistant district attorney stated, that "Nothing more clearly demonstrates what was in the minds of these defendants, and in fact they delayed their get-away in order to take their guns off the bodies of the slain patrolmen. They were not guns belonging to two individuals, they

¹ The following are non-exhaustive examples of "significant information" not know to the Board at the time of its determination.

were trophies, demonstrating how these defendants had stuck out against law and society.” (Sentencing Minutes at pg. 126).

6. The assistant district attorney stated, “And that is why Herman Bell, instead of getting rid of Officer Piagentini’s gun, chose instead to bury it in a safe place where he could go to retrieve it because that was his trophy.” (Sentencing Minutes at pg. 130).

B. The Statement of Herman Bell:

1. Herman Bell stated, “Until we have justice, we will fight. We will fight authority, those who represent authority.” (Sentencing Minutes at pg. 132).

2. Herman Bell stated, “I have a lot to say, not to them but to you, the people. I have a lot to say but I am a man of deeds, not words.” (Sentencing Minutes at pg. 132).

3. Herman Bell stated, “They didn’t know that we existed, but here we are and more is to come until justice’ [sic] is administered to all the people of the land, the wealth is distributed to all the people of the land, not just for a select few.” (Sentencing Minutes at pg. 134).

C. The Statement of William Mogulescu, Esq. [one of the defense attorneys]:

1. Counsel stated, “These men [referring to Bell and his co-defendants] perceive that they are at war and men are killed at war.” (Sentencing Minutes at pg. 170).

2. Counsel stated, “They [referring to Bell and his co-defendants] are beyond rehabilitation. There is no question of that because they feel unless our society is restructured and overthrown, that there is no justice, that there is no hope, that there is no way.” (Sentencing Minutes at pg. 171).

D. The Statement of Justice Edward J. Greenfield, the Sentencing Judge:

1. By the Court, “I deal necessarily [in considering the sentence] with the men who are before me but I deal also with the men who have fallen and whose memories have not been obliterated by bullets.” (Sentencing Minutes at pg. 173).

2. By the Court, “The law, as it stood at the time of the commission of these acts, does not permit of [sic] capital punishment. The Supreme Court of the United States has declared that given the way that capital punishment was applied at the time it violated due process because it was random and arbitrary. But these defendants, although they are spared the risks of capital punishment, had no aversion to inflicting capital punishment upon others in a fashion which was random and arbitrary.”

“And they inflicted that capital punishment not for the crime of murder but because Patrolman Waverly Jones and Patrolman Joseph Piagentini, a black man and a white man, were guilty of representing the People as members of the police department of their municipality.”

“They [referring to Officers Piagentini and Jones] were guilty of the crime of coming to the aid of an injured woman who had called for help.”

“They [referring to Officers Piagentini and Jones] had committed no wrong, real or fanciful, against these defendants. These defendants, who came from California for the purpose of shooting police officers, Patrolman Jones and Patrolman Piagentini weren’t trying to destroy their political activities in California, They were doing their job in New York.”

“And they met their death on a call to help someone.”

(Sentencing Minutes at pp. 174-175).

3. By the Court, “How was it done [referring to the execution of Officers Piagentini and Jones]?”

“There were no charges preferred against them. No trial. They had no defense and they will never be afforded the opportunity of an appeal.”

“What they faced was the instantaneous snuffing out of their lives, coldly, impersonally and savagely.”

“Acts which were then followed by a celebration that the enemy, unaware, had been slain.”

“That is what we are dealing with here.”

(Sentencing Minutes at pg. 175).

4. By the Court, “And Herman Bell was convicted in California of robbing a Jack-In-The-Box restaurant with a cap pistol and taking fifty dollars [a crime considered as an armed violent felony offense under Article 160 of the NYS Penal Law].” (Sentencing Minutes at pg. 177).

5. By the Court, “These men already have compiled extensive records for burglary, assault, attempted murder, robbery.” (Sentencing Minutes at pp. 179-180).

6. By the Court, “The Court notes ... that Bell is facing a charge of 25 years, having been convicted in Federal Court in California;” (Sentencing Minutes at pp. 180-181).

7. By the Court, “With respect to any and all such charges, as to which the defendants have previously been convicted, the sentences here imposed will be consecutive to any sentences

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imposed in any other jurisdiction, and consecutive to any sentences imposed for any other crime.” (Sentencing Minutes at pg. 181).

II. CONCLUSION

Based on the failure to consider the sentencing minutes, the Board’s determination is contrary to the law and the matter must be remanded to the Board for a new hearing before a new Board. Accordingly, pursuant to 9 NYCRR 8002.5 [b] [2] [i], Bell’s release date must be immediately rescinded.

Respectfully submitted,

WORTH, LONGWORTH & LONDON LLP

Mitchell Garber

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Enclosure