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OFFICE OF THE GOVERNOR FOR THE STATE OF CALIFORNIA

In the Matter of Clemency for

CLARENCE RAY ALLEN

CDC No. B-91240

Glenn County Superior Court
Case No. 18240

California Supreme Court
Case No. S004483 (Crim. 22879)

Execution Date: January 17, 2006

REPLY TO OPPOSITION TO PETITION FOR CLEMENCY

I.

THE GOVERNOR SHOULD COMMUTE RAY ALLEN'S
DEATH JUDGMENT TO A SENTENCE OF LIFE
IMPRISONMENT WITHOUT POSSIBILITY OF PAROLE.

Ray Allen has petitioned the Governor to commute his death sentence as a
compassionate act of clemency. His principal justification for seeking that act of

grace resides in the fact that “his serious chronic diseases and age have left him enfeebled, incapacitated, near death, and a danger to no one,” so that [“h]is execution ... would not measurably advance any of the interests that the State relied upon to impose his death judgment.”¹ In that Petition he showed that the substandard physical conditions on Death Row had been deleterious to his health and that the chronically deficient health care system at San Quentin had accelerated his physical decline. He pointed out that his conforming and positive behavior on Death Row for more than two decades, coupled with his debilitated physical condition and incapacitation, guaranteed that he posed no danger to either institutional or public safety. He demonstrated that he had already suffered greatly from the privations of Death Row during the many years he had endured them, with the peril of execution like the sword of Damocles over his head the entire while. He showed that the punishment the State excruciatingly imposed upon him in the long twilight before his execution satisfied its interests in deterrence and retribution as fully as his summary execution would have, so that his execution now would be gratuitous and beyond the bounds of civilized conduct.

Ray Allen detailed in his petition how he had become a physical wreck in his old age. He is legally and functionally blind. He is hard of hearing. He has no feeling in his lower extremities. He cannot stand up on his own, and needs a walker to move about the tiny confines of his cell and a wheelchair when he is taken out of his cell. He suffers from the effects of a stroke, advanced diabetes, and an advanced heart condition that led to a massive heart attack and nearly killed him less than three months ago. He asked that the Governor act out of a “shared sense of humanity ... [to] spare [him] the torture of execution as the capstone to

¹ Petition for Clemency (“Petition”), p. 6.

the awful punishment that has already so diminished him”² He added that the appropriateness of compassionate relief from the death judgment was reinforced by the fact that there were fundamental flaws in the process leading to it, and that there remained a lingering doubt as to his guilt.

The State has filed an Opposition to Ray Allen’s petition for clemency that distracts attention from and avoids Ray Allen’s worthy bases for clemency. Instead, it provides an extensive and rhetorical exposition of the facts of the crime, augmented by photographs and video, to establish that he committed a grievous offense that justified the judgment of death, and that the judgment has withstood review by the courts. Those premises, however, are the starting point, not the end, of the Governor’s consideration of clemency. No question of clemency ever arises unless and until the individual has been found guilty of an offense so grievous that it qualifies for a death judgment, a jury has concluded that the individual deserves death, and the judgment has been found lawful after conscientious review at every court level. The State’s Opposition misses the point of clemency and instead confounds the discretionary nature of a grant of executive clemency with the more legally circumscribed nature of the judicial process.

As pointed out in a letter dated December 23, 2005, to the Governor from the Honorable Joseph R. Grodin, retired Associate Justice of the California Supreme Court, the question whether Ray Allen should be favored with clemency is a moral one that goes beyond issues of guilt and lawfulness of the judgment, to embrace compassionate consideration of all the facts – up to the present moment – that bear on the justice of his execution:

Now, twenty years later, the issue is no longer whether Mr. Allen was guilty or whether the procedures leading to his death

² Petition, p. 17.