

# APPLICATION FOR EXECUTIVE CLEMENCY

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IN THE MATTER OF:

**SHAWN PAUL HUMPHRIES**

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ADDRESSED TO:

**The Honorable Mark Sanford**

Governor of the State of South Carolina

Columbia, South Carolina

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Shawn Paul Humphries is scheduled to be executed by the State of South Carolina at 6:00 p.m. on Friday, December 2, 2005. He requests that you grant him clemency, which would simply reduce his sentence to life imprisonment without parole.

His request is not one based on claims of innocence, mental illness, or any of the other usual justifications for the grant of clemency. Rather, he simply asks you to judge him for who he is and what he did – and to then consider that in light of what we, as a society, generally consider to be an appropriate sentence in these circumstances.

Shawn Humphries was a young man, who foolishly decided with a companion, after drinking all night, to rob a convenience store, using a gun they had stolen that same, unfortunate night. The situation, however, turned very, *very* bad when the clerk, Mendal “Dickie” Smith, grabbed his own gun from under the counter. Shawn Humphries panicked, pulled his gun out of the waist band of his pants, and fired one shot in Smith’s direction. The shot did hit Smith and killed him. Shawn then ran out of the store and was apprehended later that day. For these foolish acts he accepts his guilt and deserves punishment. He has never argued to the contrary. He does not, however, deserve the death penalty. Shawn Humphries is not one of the “worst of the worst,” who we, as a society, should execute to express our moral outrage. And this is a situation that you alone can now correct.

Shawn Humphries’ convictions and sentence have been upheld through the appellate process and collateral court proceedings and found to be *legally* appropriate. He does not contest that now. It is, however, important for you to remember that federal habeas review is *extremely* limited and the denial of habeas does not establish that the state action was constitutionally *right*; it only establishes that the state decision is not patently and directly inconsistent with controlling Supreme Court precedent. The Fourth Circuit Court of Appeals was deeply divided on this matter, with Judge

Wilkinson passionately arguing that Shawn Humphries was denied the most fundamental of constitutional rights during the sentencing phase of his trial. The South Carolina Supreme Court, moreover, since deciding Shawn Humphries' case, has apparently shifted its position on the narrow legal question that has so absorbed the courts in this case.<sup>1</sup> This is of no immediate concern to you, but you simply *cannot* decline to exercise your legitimate executive power on the grounds that the technical, legal result was *conclusively* right – for, indeed, it was not; it was a tightly contested matter.

That, however, is not the issue here. Shawn Humphries asks you, as the Governor of this State, to transcend all these narrow, legal technicalities and to do *justice* in the broader moral sense. In the words of the Prophet Micah, “What does the Lord require of you, but to do justice, and to love kindness, and to walk humbly with your God?” [Micah 6:8] In making this moral decision, Shawn Humphries urges you to remember that

[e]xecutive clemency exists to afford relief from undue harshness . . . in the operation or enforcement of the criminal law. The administration of justice by the court is not necessarily always wise or certainly considerate of circumstances which may properly mitigate guilt. To afford a remedy, it has always been thought essential in popular governments, as well as in monarchies, to vest in some other authority than the courts power to ameliorate or avoid particular criminal judgments. It is a check entrusted to the executive.<sup>2</sup>

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<sup>1</sup>See *Hall v. Catoe*, 360 S.C. 353, 601 S.E.2d 335 (2004).

<sup>2</sup>*Ex parte Grossman*, 267 U.S. 87, 120-21 (1925).

In ancient times, appeals for mercy to the King of England were heard by the Lord Chancellor, who came to be known as "the keeper of the king's conscience."<sup>3</sup> The "king's conscience" in this country is now exercised by the Executive.

Put differently, executive clemency "is the historic remedy for preventing miscarriages of justice," and provides "the 'fail safe' in our criminal justice system. . . . [because] [i]t is an unalterable fact that our judicial system, like the human beings who administer it, is fallible."<sup>4</sup> It has also been said that "[t]he executive clemency process is a vehicle for mercy"<sup>5</sup> or an "act of grace."<sup>6</sup> In short, the authority and power to "temper . . . Justice with mercy"<sup>7</sup> lies with you.

We submit that Humphries should be granted clemency both to prevent a miscarriage of justice and as a matter of mercy.

**I. The evidence and arguments supporting Humphries' convictions and death sentence.**

During the evening of New Year's Eve and the early morning of January 1, 1994, Humphries, age 22, and Eddie Blackwell, age 19, were out riding around drinking beer. They stole a weapon during that time and then hatched the plan to commit a robbery.<sup>8</sup> Humphries' intent was only to commit a robbery. He had no intent to kill anyone.

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<sup>3</sup>Thomas O. Main, *Traditional Equity and Contemporary Procedure*, 78 Wash. L. Rev. 429, at 441 (May 2003).

<sup>4</sup>*Herrera v. Collins*, 506 U.S. 390, 412, 415 (1993).

<sup>5</sup>*Ex parte Tucker*, 973 S.W.2d 950, 952 (Tex. Crim. App. 1998).

<sup>6</sup>*Crooks v. Sanders*, 115 S.E. 760, 762 (S.C. 1922).

<sup>7</sup>John Milton, *Paradise Lost*.

<sup>8</sup>See Attachment (Humphries' Statement).

Shortly after 7:00 a.m. on January 1, they entered the Max-Saver convenience store in Fountain Inn, South Carolina, which was operated by Mendel “Dickie” Smith. When they entered the store, their “plan” was so poorly conceived that it apparently still took them some time to figure out what they were going to do, as evidenced by the other store clerk’s testimony that they talked and Humphries kept saying “shit.” Even when Shawn Humphries approached the counter, he did not take the gun out of the waistband of his pants. He only showed it to Smith, who then reached for a handgun. Only then did Shawn Humphries pull out his gun. He fired a single shot in Smith's direction and fled from the store, without harming or threatening the other employee who witnessed the crimes and without even knowing whether his shot had even hit Smith. In short, Shawn Humphries fired only in the direction of the victim for self-protection and not with the intent to kill. Unfortunately, however, the bullet fired by Shawn Humphries struck Smith in the head, killing him. Meanwhile, Blackwell slumped to the ground in the store.

The police arrested Blackwell at the scene and apprehended Shawn Humphries later that day. Even though he still had the pistol on him, he made no attempt to harm the arresting officers and told them that the pistol was in his waistline. He also immediately confessed and remained cooperative with officers throughout the pretrial and trial proceedings. During the trial, he conceded his participation in the attempted armed robbery and the shooting.

During sentencing, the State presented documentary evidence concerning Shawn Humphries’ prior juvenile and adult criminal record, which included a juvenile adjudication in 1985 for two breaking and enterings, 1989 convictions in Anderson County, South Carolina for burglary and larceny (for breaking into a church to look for food because he had been living on the street for a week), and a 1990 larceny conviction in Alabama.

The State also presented “victim impact” evidence, which the United States Supreme Court has held is permissible to offer “a quick glimpse of the life” of the victim to demonstrate the “uniqueness” of the victim, the “loss to the community,” and “the specific harm caused by the crime in question.”<sup>9</sup> The Court, however, expressly rejected the notion that such evidence “permits a jury to find that defendants whose victims were assets to their community are more deserving of punishment than those whose victims are perceived to be less worthy.”<sup>10</sup> Shawn Humphries’ case was one of the first in this State in which a Solicitor used victim-impact evidence, and in this case the Solicitor *pushed the envelope* to, if not beyond, the permissible maximum.

Specifically, the Solicitor presented substantial victim impact testimony and then used that evidence to compare the lives and worth of Smith and Shawn Humphries in urging the jury to sentence Humphries to die.

The State presented testimony from Smith’s brother and his wife. This testimony established that Smith was one of eight children, who grew up in poverty. His father died when he was nine years old and he picked cotton, hunted, and worked numerous part time jobs to help support the family. While he was still in high school, he got a full-time job working nights in a textile mill and bought a car for the family. After graduation, he worked for Union Carbide for 15-16 years. He then moved to Kemet Electronics, where he met his wife. He married in 1985 and his daughter was born in 1988. While working full-time, he went back to school and got an electrical and mechanical degree that enabled him to get into supervision. He then went back to school and got his residential home builders license. For a while, he continued working full-time at Kemet and built houses on

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<sup>9</sup>*Payne v. Tennessee*, 501 U.S. 808, 822-23 (1991).

<sup>10</sup>*Id.* at 823.

the side. He then shifted to building homes in the community full-time. Finally, just a few years before his death, he opened the Max-Saver Convenience Store. In general, he was a kind, caring, religious man, who was devoted to his daughter, and well-respected in the community. No one disputes that, and under Supreme Court precedent this evidence was clearly relevant to the loss the community suffered by his death. But the Solicitor was not content to leave it with that – as will be discussed below.

In mitigation, Shawn Humphries’ counsel also presented testimony concerning his deprived background. Without belaboring the point, the evidence revealed that Humphries’ parents separated about the time of his birth and he and his older brother lived with his mother and grandmother for a while, but his mother, who was on welfare at times, was unable to adequately feed them or care for them. She even abandoned Shawn to a friend when he was only a baby. When he was around two years old, he and his older brother were taken into the home of his father and his alcoholic grandparents, who grew marijuana in their backyard and had the children to assist them.

Humphries’ father drank alcohol and huffed paint in front of his children daily and encouraged them to do the same. He was extremely mentally abusive to his children and physically abusive even to his own parents. They lived in extreme poverty and mostly ate beans and “poke salad.” By the time Shawn Humphries and his brother were seven to eight years old, their grandparents would have the children dig in dumpsters looking for things they could use or sell. They got clothes, shoes, and even food to live on from other people’s trash. When Shawn was twelve, his grandfather, who was afraid at times to leave his son alone with his wife and the children, took Humphries and his brother back to live with their mother due to the increasing violence by Humphries’ father. By that time, Shawn was getting in trouble with the law and using substantial

quantities of alcohol and drugs, including huffing paint. When Shawn was confined following a juvenile adjudication, a counselor described him as pleasant, respectful, and passive.

The Solicitor, however, used the victim impact evidence and Shawn Humphries' mitigating evidence to create a comparison between the human worth of Shawn Humphries and that of Smith. In closing arguments, the prosecutor described Smith's merits in detail and argued that despite his impoverished upbringing, he struggled to make something of himself. He also repeatedly and deliberately drew comparisons between Smith and Shawn Humphries and compared Smith's accomplishments with Shawn's chronology of petty crimes. In other words, the jury was being told to disregard Humphries' mitigation evidence because Dickie Smith suffered from some of the same hardships, but overcame them. The Solicitor then chronicled certain events in Dickie Smith's life and compared them with what Humphries was doing at the same time.

- ◆ “And in 1984 he met Pat, and they fell in love, and they got married. **That's the same year Shawn Paul Humphries committed two house break-ins at 13.**”
- ◆ Similarly, “In 1986 Dickie makes a pretty drastic move. He decides he's going to quit Kemet and go build houses full-time, and he goes out, and he starts building homes in the community he had grown up in. **That's the same year Shawn Paul Humphries is up for his second probation violation and sent down to Columbia.**”
- ◆ And, “In 1988 Ashley is born. **That's the same year Shawn Paul Humphries went to jail for two years.**”

Then, in a direct comparison of the victim with Humphries regarding the propriety of the death penalty, the Solicitor said, “I would submit, **when you look at the character of [Humphries],**

**and when you look at Smith [the victim], . . . how profane to give this man a gift of life under these circumstances.”**

The Solicitor concluded his appeal for a death sentence by noting that Humphries acted under aggravating circumstances and with no mitigation and added, “[I]f not in a case with a character like this [Humphries], if not in a case when somebody like [Smith] is taken, when are you going to do it?” Neither of Humphries’ trial counsel objected to this argument and Humphries was sentenced to death.

**II. Clemency should be granted because no death sentence should ever be based on either a comparison of a defendant’s and victim’s worth or a comparison of their lives – regardless of whether such a sentence is *technically* constitutional or not.**

To be sure, the Solicitor made an emotionally compelling argument for the jury, but it simply shocks the conscience that the State should stoop to the level of making such a comparison. As

Judge Wilkinson on the Fourth Circuit put it:

Human worth comparisons are the hallmarks of totalitarian governments. They do not belong in our country. Societies have gotten into the deepest sort of trouble by making these comparisons an explicit basis for the imposition of death. The most terrifying regimes of the Twentieth Century were those in which governments weighted the value of the lives of their citizens as a prelude to executing them.<sup>11</sup>

In his view, it is a perversion of justice to base a death sentence on the fact that the defendant is “condemned simply for being deemed, over the long trajectory of life, a less estimable human being than his victim.”<sup>12</sup> Similarly, as the South Carolina Supreme Court put it in a later case, it is improper “to compare the worth of the life of the defendant with that of the victim” and to base a

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<sup>11</sup>*Humphries v. Ozmint*, 397 F.3d 206, 249 (4<sup>th</sup> Cir. 2005) (*en banc*) (Wilkinson, J., dissenting).

<sup>12</sup>*Id.* at 245.

death sentence on that comparison.<sup>13</sup> We agree and urge upon you the view that this is an intolerable notion in any civilized society – particularly a society that is rightly cautious about the life-and-death powers that the State asserts, and can so easily abuse. A murder that deserves the death penalty should not and must not depend on whether a “worthy” individual or an “unworthy” one (in comparison to the defendant) is killed.

While the South Carolina Supreme Court and the majority of the Fourth Circuit en banc felt constrained by various dry, technical, legal constraints from granting relief to Shawn Humphries, you, as Governor, are not so constrained. You alone must determine whether a sentence of death is warranted – in the broader sense of what is *just* and what is *right*. It is for you now to determine finally whether Humphries should die simply because the jury perceived the person he killed to be “worth” more to his community than Shawn Humphries was “worth.” That is an unspeakable, pernicious result, and one that we should not tolerate – whether it is strictly *legal* or not.

### **III. A death sentence is excessive for Humphries’ crimes.**

Almost 30 years ago, in holding that the death penalty is not an unconstitutional punishment, the United States Supreme Court described the death penalty as “an extreme sanction, suitable to the most extreme of crimes.”<sup>14</sup> In other words, on a practical level, the death penalty is not permitted for any and all murders.

Shawn Humphries was convicted of murder, the only offense for which a person can be sentenced to death in South Carolina. But this was based only on the *inference* of malice from his

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<sup>13</sup>*Hall*, 360 S.C. at 363, 601 S.E.2d at 341.

<sup>14</sup>*Gregg v. Georgia*, 428 U.S. 153, 187 (1976) (Opinion of Stewart, Powell, and Stevens, JJ.).

commission of the felony of an attempted armed robbery and from his use of a deadly weapon. He had no intent to kill and expressed no “malice aforethought,” which is a required element of murder. He pulled out his weapon and fired one time because he panicked after Smith reached for a weapon. But, because he killed Smith with a deadly weapon during an attempted armed robbery, he was convicted of murder. The sole statutory aggravating circumstance (which made Shawn Humphries legally eligible for a death sentence for his murder conviction) was also the attempted armed robbery.

If the facts were changed so that Shawn Humphries had not been attempting to rob the store, but for some reason had malice in his heart and walked into the store, approached the counter, put his gun to Smith’s head, and shot him six times before leaving, Shawn Humphries would not be eligible for the death penalty. Thus, because of the anomaly of the *felony murder rule* allowing the inference of malice and a statutory aggravating circumstance, Humphries will be executed, if you do not grant clemency, for an unintentional killing – while a murderer who kills in a cold, calculated, and premeditated fashion (but who has no legal aggravating circumstance) is not even eligible for a death sentence. This cannot be right, particularly under the facts of this case.

In short, the legal system failed to achieve justice in the broader sense in this case because this murder and attempted armed robbery, as horrible as these crimes were, are not “extreme” crimes that should distinguish Shawn Humphries from the numerous people who are not sentenced to death for far more cold-blooded, calculated crimes.

Indeed, out of the 997 people executed in this country (from 1977 to the present) almost none of them were sentenced to die based on facts such as this where there was no intent to kill, where the defendant simply panicked during an attempted felony when the victim grabbed a gun, and where the defendant had no violent criminal record or additional statutory aggravating circumstances. The

undersigned counsel have been able to find only six cases out of 997 where defendants were executed based on even arguably similar circumstances.<sup>15</sup> What this means is that prosecutors clearly are not seeking death in similar cases or, if death is sought, the overwhelming majority of American jurors are rejecting death as the appropriate punishment for crimes such as those committed by Humphries. Thus, Shawn Humphries' death sentence is an anomaly and a miscarriage of justice.

Clemency is warranted under these circumstances to avoid this "undue harshness" and arbitrariness.

#### **IV. Clemency should be granted as a matter of mercy.**

While we believe that clemency should be granted to correct the injustices in Humphries' death sentence and impending execution, apart from these arguments, we humbly urge you to spare Shawn Humphries' life. There will be no justice in executing him and no purpose served. Executing him will not bring Dickie Smith back to life. It will not ease the pain for Smith's family. It will only add additional victims because Shawn Humphries is a loved brother and son to his family. While Humphries will, without your mercy, be executed, the pain of execution will fall primarily not on him but on his family members and loved ones who will live on. At some point, the killing and pain must stop. We are at that point. You, and you alone, can see that it does stop.

Your job is not an easy one and we realize that fact. The burden of making life and death decisions and tempering justice with mercy can never be easy. Nonetheless, in this situation, we submit that there is only one acceptable decision to make in these circumstances. Here, "justice and

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<sup>15</sup>These cases are summarized in the Stay Application and Appendix submitted to the U.S. Supreme Court, a copy of which has been provided to your legal counsel.

mercy” go hand-in-hand. To do “justice,” Humphries’ death sentence must be commuted because it is an unfair anomaly that resulted from improper comparisons of human life. To show “mercy” as an act of grace, when you have literally been given that power under the law and by the majority of South Carolinians in electing you as the final “conscience” to make this decision, can never be improper.

The quality of mercy is not strain’d.  
It droppeth as the gentle rain from heaven  
Upon the place beneath:  
It is twice blest;  
It blesseth him that gives, and him that takes.<sup>16</sup>

We ask that you temper justice with mercy to Shawn Humphries and his family and grant clemency, which would commute Humphries’ death sentence to a sentence of life imprisonment without possibility of parole.<sup>17</sup>

Respectfully submitted,

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<sup>16</sup>William Shakespeare, *The Merchant of Venice*.

<sup>17</sup>S.C. Const. Art IV, § 14; S.C. Code § 16-3-20(A).