

COMMONWEALTH OF MASSACHUSETTS

Office of

District Attorney Joseph D. Early, Jr.

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August 28, 2014

Julie C. Pease, Executive Clemency Coordinator
Massachusetts Parole Board/Advisory Board of Pardons
12 Mercer Road
Natick, MA 01760

Re: Commonwealth's Opposition to Benjamin Laguer's
Third "Petition for Executive Clemency"

Dear Ms. Pease:

The District Attorney's Office strongly opposes inmate Benjamin Laguer's third "Petition for Executive Clemency" (hereafter "third Petition"), which he submitted to the Advisory Board of Pardons *pro se* in June, 2014.

In 1984, petitioner Benjamin Laguer was convicted of Aggravated Rape and several other crimes, and was sentenced on the Aggravated Rape conviction to life in prison with the possibility of parole. (Worcester Indictment Nos. 83-103991 to 83-103994). In his third Petition, petitioner "petition[s] for 'clemency' of the verdict imposed for said crime" (See copy of the third "Petition for Executive Clemency" attached as EXHIBIT A). Petitioner added a typed paragraph at the bottom of his third Petition stating in part that he is "requesting clemency on the basis of actual innocence"; claiming incorrectly that he "could have been freed 29 years ago if only [he] had pled guilty in 1983"; and referencing a separate "factual memorandum," which, to date, petitioner has not submitted. (See EXHIBIT A).

It is the Commonwealth's position that the *pro se* petitioner cannot be granted "'clemency' of the verdict," first, because no such relief exists; and second, because even if he had asked for a pardon or a commutation of sentence pursuant to the updated "Executive Clemency Guidelines" issued on January 13, 2014

(hereafter "the 2014 Guidelines"), the *pro se* petitioner has failed to meet the "Minimum Eligibility Requirements" for either a "pardon" or a "commutation." "The right of self-representation is not 'a license not to comply with relevant rules of procedural and substantive law.'" *Faretta v. California*, 422 U.S. 806, 834-35 n.46 (1975). "Despite their lack of legal training, *pro se* [petitioners] are held to the same standards as practicing members of the bar." *Commonwealth v. Jackson*, 419 Mass. 716, 719 (1995). Therefore, Benjamin Laguer's third "Petition for Executive Clemency" should be denied.

First, the relief requested by petitioner, "'clemency' of the verdict," does not exist. "Clemency" is "an umbrella term encompassing the authority of an executive official to grant pardons (which typically remove all consequences of criminal conviction) and commutations (which usually reduce a sentence). . . ." Douglas A. Berman, *Turning Hope-and-Change Talk into Clemency Action for Nonviolent Drug Offenders*, 36 New Eng. J. on Crim. & Civ. Confinements 59, 60 n.7 (2010). Section III of the 2014 Guidelines reflects this distinction by listing separate "Minimum Eligibility Guidelines" for "A. Pardons" and "B. Commutations."

Second, petitioner is not eligible for either a pardon or a commutation of his sentence. Under the 2014 Guidelines, petitioner is not eligible for a pardon because he is still serving a life sentence. See Guidelines III(A) (i) (2) (a) (any petitioner "confined under sentence during the past 15 years" on a felony charge is not eligible for a pardon). And petitioner also is not eligible for a commutation of his sentence, in part because he knowingly included false information in his third Petition by claiming: "I could have been freed 29 years ago if only I had pled guilty in 1983." (EXHIBIT A).

In 2012, a motion judge in Worcester Superior Court (Tucker, J.) dismissed petitioner's ninth Motion for New Trial after finding that petitioner had committed "a fraud on the court" by filing in support of that motion an "unauthentic" and unsigned letter allegedly written by the trial prosecutor offering petitioner "a twenty year Concord sentence in exchange of [sic] his guilty plea," in response to which both the trial prosecutor and petitioner's trial counsel submitted sworn affidavits affirming that no plea offer was made. (See copy of "Memorandum of Decision on Defendant's Motion for New Trial . . ." at pp. 12-17, attached as EXHIBIT B). By ignoring the motion judge's factual finding and knowingly including false information in his third Petition for clemency, petitioner has failed to meet the

"Minimum Eligibility Requirement" of "demonstrating, by clear and convincing evidence" that he "has made exceptional strides in self-development and self-improvement and would be a law-abiding citizen" See Guidelines III(B)(1)&(a).

The "Commutations" section of the 2014 Guidelines also states that "[t]he Governor will very rarely, if ever, grant commutation relief where: (a) there is an adequate administrative or judicial remedy available." See Guidelines III(B)(2)(a). Because petitioner is serving a sentence with the possibility of parole, and also has an ongoing appeal before the Massachusetts Appeals Court from Judge Tucker's denial of his ninth Motion for New Trial -- *Commonwealth v. Laguer*, Massachusetts Appeals Court Docket No. 2012-P-1785 -- his sentence should not be commuted.

Third, the statute that sets forth the powers and duties of the Advisory Board of Pardons, G.L. c. 127, § 154, states that the Board "shall not review the proceedings of the trial court, and shall not consider any questions regarding the correctness, regularity or legality of such proceedings, but shall confine itself solely to matters which properly bear upon the propriety of the extension of clemency to the petitioner." *Id.* (emphasis added). Because petitioner is "requesting clemency on the basis of actual innocence," and has asked the Board to "issue a recommendation that addresses those pertinent issues of fact" from his trial, such as the lack of "fingerprints or any other physical evidence" that could "place the defendant in the victim's apartment" (see EXHIBIT A), his requested relief is outside the scope of the Board's powers. In addition, petitioner's assertion of "actual innocence" is contradicted by the extensive factual record in his case. See, e.g., *Commonwealth v. Laguer*, 448 Mass. 585, 599, 600 n.34 (2007) (discussing "the powerful evidence that connected the defendant to the crime," and noting "the fact that a deoxyribonucleic acid (DNA) test, performed after the trial at the defendant's request and conducted by an independent forensic scientist of the defendant's selection, apparently 'pointed directly to the defendant's guilt.'" (quoting *Commonwealth v. Laguer*, 65 Mass. App. Ct. 612, 621 n.19 (2006))). For this reason as well, petitioner's third Petition should be denied.

In sum, because petitioner Laguer has not met the "Minimum Eligibility Guidelines" for either a pardon or commutation of his sentence under the 2014 Guidelines, and has raised a fact-based claim of "actual innocence" that the Board has no power to

review, his third "Petition for Executive Clemency" submitted in June of 2014 has no merit and should be denied.

Finally, in response to your request for "an official version of those incidents which culminated in the petitioner's arrest(s)," the Commonwealth has enclosed the Supreme Judicial Court's decision in *Commonwealth v. Laguer*, 448 Mass. 585 (2007), affirming the denial of petitioner Benjamin Laguer's eighth new trial motion.

Very truly yours,

Sandra L. Hautanen
Assistant District Attorney

enclosures (3)

cc: District Attorney Joseph D. Early, Jr.

Assistant District Attorney Jane Sullivan, Appeals Chief

John A. LaChance, Esq.