

IN THE DISTRICT COURT OF FRANKLIN COUNTY, KANSAS  
FOURTH JUDICIAL DISTRICT

STATE OF KANSAS, )  
Plaintiff, )  
 )  
v. )  
 )  
KYLE TREVOR FLACK, )  
Defendant. )  
\_\_\_\_\_ )

Case No. 13 CR 104

**MOTION FOR VOIR DIRE RE: SENTENCE LENGTH**

COMES NOW, Kyle Flack, the Defendant, and moves this Court to permit voir dire regarding the panelist's beliefs about the meaning of a life sentence. Examination of the prospective jurors on this topic is essential to protect Mr. Flack's rights under the 8<sup>th</sup> and 14<sup>th</sup> Amendments to the Federal Constitution.

1. The length of time that Mr. Flack would spend in prison is a critical consideration for any jury evaluating whether death is an appropriate sentence in this case. Unfortunately, many jurors harbor inaccurate views of what it means to be sentenced to "life in prison." Statistical surveys clearly demonstrate that capital jurors greatly underestimate the time that a capital defendant would be required to serve in prison, and frequently sentence capital defendants to death in the erroneous belief that a death sentence is the only way to keep the defendant from reentering society. To avoid this result, a death sentenced based on unconstitutional grounds, Mr. Flack requests permission to voir dire the jury on the meaning of a life sentence. Mr. Flack further requests that the Court advise jurors on the law regarding the term of imprisonment for a non-death capital sentence under Kansas law.

2. One of the most significant factors in determining whether a particular defendant will receive a death sentence is his jury's conception of how long that defendant will

Doc#392

spend in prison if he is not sentenced to death. Jurors who believe that a defendant will soon be back out on the street if given a sentence of imprisonment are very likely to sentence defendants to death. Conversely, jurors who understand that a capital defendant will be required to serve a lengthy prison term are much less likely to sentence a defendant to death upon the mistaken assumption that they must do so to prevent that defendant from quickly reentering society. See T. Eisenberg and M. Wells, Deadly Confusion: Juror Instructions in Capital Cases, 79 Cornell L.R. 1 (1993) ("Refusing to inform jurors about the statutorily mandated length of non-death sentences appears to lead jurors to sentence to death when they would not do so if they were more fully informed of the law. There is no justification for executing people because the state has prevented jurors from learning the law governing a critical aspect of the case.")

Thus, jurors who possess a correct understanding of how long a defendant will be imprisoned if not sentenced to death are critical to a fair sentencing proceeding. Even those who strongly support the death penalty may consider a life sentence to be adequate punishment for a given defendant when accurately informed about the sentencing alternatives. See W. Bowers, A New Look at Public Opinion on Capital Punishment: What Citizens and Legislators Prefer, 22 Am. J. Crim. L. 77, 90 (1994) (In Kansas, support for the death penalty drops to 49% when people are presented with the alternatives of life without parole or life imprisonment with 50 years of parole ineligibility.)

4. Kyle Flack is charged with multiple crimes in addition to Capital Murder. The State of Kansas has announced its intention to seek "Hard 50" sentences for the homicides of Steven White and Andrew Stout. If so convicted, Mr. Flack faces the potential for an additional 101

years of incarceration, which could be ordered consecutively to an irreducible sentence of life without parole.

4. Unfortunately, many capital jurors harbor grossly inaccurate beliefs regarding how long a convicted capital defendant will spend in prison if not sentenced to death. As the federal Supreme Court has explained, “most juries lack accurate information about the precise meaning of ‘life imprisonment’ as specified by the States. For much of our country’s history, parole was a mainstay of state and federal sentencing regimes, and every term (whether a term of life or a term of years) was understood to be shorter than the stated term.” Simmons v. South Carolina, 512 U.S. 154, 169, 114 S. Ct. 2187, 129 L. Ed. 2d 133 (1994). Opinion surveys have consistently borne out the Supreme Court’s observations. A poll of capital-eligible citizens in Virginia found, for example, that most believed a convicted capital murderer would serve less than ten years in prison, even though Virginia law imposed a twenty-five year mandatory minimum sentence on such defendants. W. Hood, The Meaning of ‘Life’ for Virginia Jurors and Its Effect on Reliability in Capital Sentencing, 75 Virginia L.R. 1605 (1989); *See also* W. Bowers and B. Steiner, Death by Default: An Empirical Demonstration of False and Forced Choices in Capital Sentencing, 77 Texas L.R. 605 (1999) (collecting surveys of capital jurors and concluding that “there is a pervasive misimpression among jurors that convicted first-degree murderers not given the death penalty will be released on parole well before they actually are...that infects the capital sentencing process with excessiveness, in the use of death as punishment.”)

5. To alleviate the possibility that a juror’s misconceptions regarding a life sentence might infect any sentencing proceeding in this case, this Court should permit defense counsel to inquire of potential jurors on this subject. Should a juror possess misinformation about the

meaning of a life sentence in Kansas, Mr. Flack requests that the Court inform that juror that a life sentence precludes the possibility of any parole.

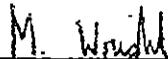
Respectfully Submitted,



Maban Wright, #23950  
Assistant Public Defender  
Death Penalty Defense Unit  
700 SW Jackson, Ste. 500  
Topcka, KS 66603  
Phone: (785) 296-4815  
Fax: (785) 291-3979  
E-Mail: mwright@sbids.org

**CERTIFICATE OF SERVICE**

I hereby certify that I delivered a true and correct copy of the foregoing motion to: the Clerk of the District Court; the Franklin County Attorney's Office, via FAX at (785) 229-8971; the Office of the Attorney General, via FAX at (785) 291-3875; and the Honorable Eric Godderz, Judge of the District Court, via FAX at (785) 448-3230 on this 14th day of December, 2015.



Maban Wright, #23950  
Assistant Public Defender