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Governor Kay Ivey
Alabama State Capitol
Montgomery, Alabama 36130

Re: Alabama Death Row Inmate Robin Myers

Dear Governor Ivey:

I understand that efforts are underway to persuade you to commute Robin Myers's death sentence. I am writing to urge you, in the strongest possible terms, not to do so.

More than thirty years ago, Myers brutally murdered Mrs. Ludie Mae Tucker and stabbed her cousin, Mrs. Marie Dutton, during the course of a robbery and a burglary in Decatur, Alabama. Myers was convicted of capital murder and sentenced to death for that offense. There is no doubt that Myers committed this horrendous crime and is deserving of the death penalty.

Myers now asks you to grant clemency. If one knew nothing of Myers's case, then his clemency letter could give one pause. The letter, however, is a retread of litigated claims and vague yet breathless allegations of impropriety. While this response to the letter is admittedly lengthy, I hope it sets your mind at ease about the propriety of Myers's death sentence and of the Alabama Supreme Court's decision to authorize you to set a date.

I. Myers's Crime and Litigation History

On October 4, 1991, Marie Dutton left her house in Moulton and drove to Decatur to visit Ludie Mae Tucker. R. 608-10.[1] The two elderly women spent the day in Huntsville, had dinner at a restaurant, and then returned to Tucker's home.

[1] "R." citations refer to the trial transcript. "C." citations refer to the clerk's record on direct appeal.

R. 610. Dutton was tired, so Tucker made up the bed in the spare bedroom, which was located next to the front door. R. 612-13, 623. Tucker's bedroom was at the back of her house. R. 615, 623. The women went to sleep around 11:00 p.m. R. 614.

In the night, Dutton woke to hear the doorbell ringing. When it kept ringing, she rose to check on Tucker, only to find Tucker at the door, speaking to someone. Dutton returned to bed but left her bedroom door open. R. 614-15, 623-24.

From her room, Dutton heard a man say that he had been in a wreck and needed to contact his family. Tucker asked him for a telephone number and offered to call for him. When the man answered, Dutton could tell by the sound of his voice that he was inside the house. R. 615-16. Dutton thought the man began to dial the phone, but then:

> I could hear a racket and it was like he was talking to somebody. I thought well, he got in touch with his family. Then I heard [Tucker] say, "My husband is back in that room," and then just a pop second and she went to screaming, "Marie, Marie," and I knew he was doing something to her.

R. 616 (punctuation added). Dutton said that Tucker sounded scared—"He was doing something to her." *Id.* Frozen in terror, Dutton remained in bed until, "after just a split second," a "short chunky guy" ran into her room and stabbed her in the right side, and then "out the door he went." R. 616-18, 682.

Dutton did not know how long she lay in bed after the man stabbed her, but she managed to get up and searched for Tucker. She found her cousin on the couch, clutching the phone and saying, "Hurry, hurry, hurry." R. 618. Dutton ran to lock the front door, then looked back at Tucker:

> [S]he had got up and started down the hall and I seen where he had stabbed her in the shoulder. When she went on into the dining room, I went in behind her and she just fell right in the floor. She throwed the phone and was laying there stretched out like this (indicating). She never would—I called to her and she never would respond or answer to me.

R. 619.

Shortly thereafter, the police arrived. *Id.* Officer James Tilley was the first on the scene and discovered the two injured women. R. 681. He put Dutton, who was bleeding, on the couch; he testified, "[S]he seemed to be very upset and she was

trying to give me some facts about a black male that had just left and that he had stabbed her and she was trying to tell me what was going on[.]" R. 682. Officer Tilley radioed for backup and an ambulance, then heard groaning and found Tucker on the floor. R. 682-83. Though she was gurgling and in pain, Tucker managed to tell him that her assailant was "a dark black male," "short and stocky, who "was wearing possibly a plaid shirt and a white tee shirt with blood on it." R. 684-85.

Paramedics rushed Tucker to the hospital. R. 651, 659. She was "conscious throughout the entire trip but she was screaming hysterically," and she could not answer further questions. R. 653-54. Tucker died in the emergency room that morning. R. 660.

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Robin "Rocky" Myers lived near Tucker, but the two were barely acquainted, if that. Myers claimed that he had been on Tucker's porch twice to borrow ice for his children but that he had never been inside her home. R. 1321-22, 1373.

Apparently, Myers had a crack habit. *See* R. 891. In October 1991, he had made the acquaintance of Butch Madden, who sold crack from the home of his girlfriend, Annie Sue Crittendon; Crittendon also illegally sold alcohol from her home. R. 791, 882. On the afternoon of October 4, Myers bought a $20 crack rock from Madden. R. 895. He returned that evening to buy another $20 rock, paying Madden in cash. R. 897. Myers returned again an hour later in search of more crack, but he had no money. R. 898. Madden informed Myers that he "don't do no credit," but he offered to accept something as collateral. R. 899. Myers asked what Madden needed, then specifically asked whether Madden needed a VCR. *Id.* He left the house in an agitated, angry state. R. 900.

That night, Tyrone Elliot had to go to the emergency room with his girlfriend and their son. R. 781-83. They were not discharged until late, and after Elliot dropped off his son and the boy's mother, he decided to drive to a store for beer with two friends who had accompanied them to the hospital. R. 783, 786. While waiting at a traffic light, they saw a man carrying what looked to be a piece of stereo equipment, acting suspicious. R. 791. The store was closed, so they went to Crittendon's home to try their luck. *Id.* As Elliot was purchasing beer, the suspicious person from before—a short, stocky black man—came up to the house to sell a VCR. R. 792, 797. Madden testified that the man was indeed Myers, who offered the VCR for two $20 rocks. R. 902-03. Madden gave him one, and Myers left. R. 903.

Eventually, the police learned of the VCR and visited Crittendon's house. R. 906. Madden told them that he got the VCR from a man named Rocky, whom he did not know well. R. 908. But Madden's friend Willie Rayban told the police that the VCR had come from Anthony "Cool Breeze" Ballentine; Madden eventually signed a statement agreeing with Rayban's story, but he testified that it was false, he had been pressured by the police, and he believed Rayban was angry with Ballentine. R. 908-10. Ballentine, 5'11" and 157 pounds, was neither short nor stocky. R. 1002.

Myers gave a statement on November 8, 1991. R. 1099. He claimed that he had never been in Tucker's house, that he had never "touched her telephone or nothing," and that while he sold her VCR, he did not kill her. R. 1105-08. He said that he had found the VCR forty minutes before the police arrived at the house; when told this was impossible, he said he had found it ten minutes before the police arrived, then said he did not remember when he found it, but it was in an alley behind his house, which he later changed to atop a fencepost in his backyard. R. 1109-10.

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The evidence presented at trial "established that Myers gained entry into the victim's house by deception, that he pretended to use the telephone, that he stabbed and killed his victim, and that he took the victim's VCR to trade for crack cocaine." *Ex parte Myers*, 699 So. 2d 1285, 1291 (Ala. 1997).

In January 1994, a Morgan County jury found Myers guilty of the capital offenses of murdering Ludie Mae Tucker during the course of a robbery and during the course of a burglary, in violation of sections 13A-5-40(a)(2) and (a)(4) of the Code of Alabama. C. 15, 19. The jury recommended nine to three that Myers be sentenced to life without parole. *Id.* at 15-16, 19. Exercising its independent authority under section 13A-5-47(e), however, the trial court found that the aggravating circumstances outweighed the mitigating circumstances and sentenced Myers to death. *Id.* at 19-29.

In his clemency letter, Myers writes, "After his conviction, Mr. Myers's lawyer abandoned him in the midst of his appeals." Clemency Letter at 2. This is a gross misstatement of the procedural history of this case. In fact, Myers was represented by counsel throughout his direct appeal, first by Becky Meyer, Brent King, and Sherman Powell, Jr., in the Alabama Court of Criminal Appeals, then by King and law professor Bernard Harcourt in the Alabama Supreme Court, and then by law professor Daniel Givelber in the United States Supreme Court. Myers's convictions and death sentence were affirmed on direct appeal. *Myers v. State*, 699 So. 2d 1281 (Ala.

Crim. App. 1996), *aff'd*, 699 So. 2d 1285 (Ala. 1997), *cert. denied*, 522 U.S. 1054 (1998) (mem.).

There is no guarantee of counsel in state postconviction, but in December 1998, Myers filed a Rule 32 petition for postconviction relief with the assistance of pro bono counsel, Tennessee attorney Earle Schwarz. He filed an amended petition, which the State answered. The circuit court ordered the parties to submit evidence in the form of affidavits and denied Myers's amended petition on November 27, 2001. Schwarz appealed the denial, but the Court of Criminal Appeals affirmed. *Myers v. State*, CR-01-0778 (Ala. Crim. App. Feb. 21, 2003).

Where Myers lost his counsel was *after* the Court of Criminal Appeals disposed of the case. Admittedly, Schwarz did not inform Myers of the decision or file a certiorari petition in the Alabama Supreme Court. On February 13, 2004, the Office of the Attorney General wrote to Schwarz, telling him that the State planned to seek an execution date because Myers had no remaining avenues of appeal. A copy of the letter was also sent to Myers.

Represented by new counsel from the Federal Defender's Office, Myers filed an untimely 28 U.S.C. § 2254 petition in the Northern District of Alabama on March 25, 2004. The State answered and moved to dismiss his petition, arguing that it was time-barred by the one-year statute of limitations. *See* 28 U.S.C. § 2244(d)(1)(A). On September 13, 2005, the district court found that Myers's petition was time-barred. The court would have been within its discretion to end the matter at that point, but instead, the court referred Myers's case to Magistrate Judge T. Michael Putnam with instructions to determine whether Myers could show that he was entitled to equitable tolling of the statute of limitations—in other words, that he was entitled to have the federal court consider his untimely claims.

Myers argued that the statute of limitations should be tolled because of his "cognitive deficits." Relatedly, he argued that he is ineligible for the death penalty under *Atkins v. Virginia*, 536 U.S. 304 (2002), as he is intellectually disabled. The magistrate judge granted discovery and held a three-day evidentiary hearing in October 2006, then concluded that Myers is not intellectually disabled and recommended that the district court deny his *Atkins* claim and request for equitable tolling. Report & Recommendation, *Myers v. Campbell*, 5:04-cv-00618 (N.D. Ala. Aug. 24, 2007), ECF No. 102.

But that was not the end of the matter. The magistrate judge held a ***second*** evidentiary hearing in August 2008, this time to determine whether Myers exercised due diligence in discovering the factual predicate of his facially non-meritorious

claim that the State withheld evidence in violation of *Brady v. Maryland*, 373 U.S. 83 (1963). After considering the evidence presented at the hearing and the depositions taken by the parties, the magistrate judge found that Myers had not exercised any diligence ***at all*** and again recommended that the district court deny his request for equitable tolling. Report & Recommendation, *Myers v. Campbell*, 5:04-cv-00618 (N.D. Ala. Mar. 9, 2009), ECF No. 139.

In April 2009, the district court accepted and adopted the magistrate judge's findings of fact and conclusions of law and dismissed Myers's time-barred petition. Memorandum Opinion, *Myers v. Campbell*, 5:04-cv-00618 (N.D. Apr. 3, 2009), ECF No. 142. Following briefing and argument, the Eleventh Circuit affirmed. *Myers v. Allen*, 420 F. App'x 924 (11th Cir. 2011). The United States Supreme Court denied certiorari. *Myers v. Thomas*, 567 U.S. 918 (2012) (mem.).

On September 11, 2014, the State moved the Alabama Supreme Court to set an execution date for Myers. The Alabama Supreme Court granted the State's motion on March 10, 2015. Myers then moved for a stay of execution pending the United States Supreme Court's decision in *Glossip v. Gross*, 576 U.S. 863 (2015). The State did not oppose the motion, and the court granted it.

On December 3, 2024, the State again moved the Alabama Supreme Court to authorize the execution of Myers's sentence. Myers filed his response on January 9, 2025, and the State replied on February 6. On February 21, the Alabama Supreme Court granted the State's motion.

II. Myers's Clemency Letter

In his present letter, Myers makes several claims, none of them warranting clemency.

A. The claim that Myers is innocent

Myers contends that you should grant him clemency because there are "overwhelming indications of [his] innocence." He says the prosecution's case "was full of holes," which "have only gotten larger and more numerous." But he identifies not a single such hole or any indicia of his innocence. He alleges only that "a key witness has admitted he lied under pressure from police—they let him walk on a car theft case if he gave them a name." Clemency Letter at 2. His failure to identify the witness by name or offer any supporting details speaks volumes about the sincerity of his "innocence" claim and is reason enough to deny his request for clemency.

Given Myers's prior litigation, I can only assume that this unidentified witness is Marzel Ewing. If that is, in fact, the case, then Myers exhaustively litigated his "Ewing *Brady* claim" in the federal courts. For background, his claim consisted of two parts. Report & Recommendation at 3 n.2, *Myers*, ECF No. 139. First, Myers alleged that Ewing committed perjury when he testified that he saw Myers trade a VCR to Madden for crack on the night of the murder. Second, Myers alleged that the prosecution violated *Brady* by failing to disclose that Ewing made a statement identifying Myers as the man who traded the VCR to Madden on the night of the murder after Ewing was arrested in a stolen vehicle, and that Ewing was released and not charged with auto theft in return for his statement implicating Myers.

Myers's claim is facially non-meritorious because other witnesses, ***including Myers himself***, testified at trial that he traded a VCR to Madden for crack on the night of the murder. As the district court found:

> Although it is true that Ewing now says he did not see the face of the man with the VCR the night of the murder, at least two other witnesses identified petitioner as the man with the VCR. More important, petitioner admitted to police that he traded a VCR for crack cocaine, but said he found it under a bush in an alley. In short, Ewing's false testimony that he saw the petitioner trade the VCR is not material for *Brady* purposes because it did not affect the outcome of the trial. Even if Ewing had never testified, the same evidence—that petitioner traded a VCR for cocaine the night of the murder—would have been heard by the jury.

Memorandum Opinion at 18 n.6, *Myers*, ECF No. 142. The Eleventh Circuit affirmed. *Myers*, 420 F. App'x at 928 ("The testimony that Myers sought to impeach with the withheld *Brady* material comprised the following: that Myers was the person who sold the victim's VCR on the night of the murder. However, Myers himself told the police he had sold the VCR, explaining that he had found it in some bushes. Moreover, he and other witnesses testified to the same facts at trial."); *id.* at 926 n.4 ("Myers himself—and two other witnesses—had testified to the very facts that he alleged the withheld *Brady* material would have undermined.").

That's not all. In the federal evidentiary hearing in 2008, Myers called Ewing as a witness; his testimony is attached for your reference. The evidence refuted Myers's allegation that Ewing was pressured by the police into identifying Myers as the man with the VCR or that Ewing made that statement in exchange for leniency. As the magistrate judge found:

> Ewing testified that he did not consider his treatment regarding the car theft as being related to his statement identifying Myers. He was asked: "Then you don't consider or you don't believe that you were offered anything to testify in the Myers case, do you?" He answered: "No." (Transcript, Vol. 1, p. 38) Petitioner's investigator, [Johnny] Johnson, further testified that Ewing told him he thought the police had "let him go" on the car theft because of the detective's relationship with Madden, not because of his statement identifying Myers. [*Id.* at 124] Finally, in the context of both Ewing's and Johnson's testimony, it appears that Ewing gave a statement to police that incriminated Myers, and only after he gave the statement did he learn that he wasn't being charged with auto theft. Neither Ewing nor Johnson indicated that there existed any causal connection between his statement and the fact that he was never charged in connection with the stolen car. Indeed...Ewing was never charged with the theft of the Blazer and, likely, was not considered by police a suspect in the theft.

Report & Recommendation at 16, *Myers*, ECF No. 139.

Myers has given you no reason to doubt his long-established guilt for the brutal murder of Ludie Mae Tucker. At most, Myers rehashes the same evidence and defense theories that the jury heard and rejected at trial. His request for clemency should be denied.

B. The claim that Myers is intellectually disabled

Myers contends that you should grant him clemency because he is intellectually disabled and ineligible for the death penalty under *Atkins v. Virginia*, 536 U.S. 304 (2002). The federal courts thoroughly reviewed his *Atkins* claim and found that he is not intellectually disabled.

As noted above, the federal magistrate judge granted discovery and held a three-day evidentiary hearing on Myers's *Atkins* claim in October 2006. In preparation for that hearing, the State retained Dr. Glen King, a clinical psychologist, and Dr. Susan Gierok, a neuropsychologist. Dr. King evaluated Myers and found that he is not intellectually disabled. Dr. Gierok conducted her own evaluation and likewise found that Myers is not intellectually disabled. Both of their expert reports are appended for your reference

Dr. King evaluated Myers on March 1, 2006. King Report at 1. He administered the Wechsler Adult Intelligence Scale, Third Edition (WAIS-III), and Myers

obtained a Verbal IQ score of 84, a Performance IQ score of 86, and a Full Scale IQ score of 84. *Id.* at 5-6. Myers's scores place him "just inside the borderline range of intellectual functioning and just below the low average range of intellectual ability." *Id.* at 6. Achievement testing revealed that Myers reads at a fourth-grade level and functions at a third grade level in spelling and arithmetic. *Id.* Dr. King found that Myers's test scores "indicate the presence for learning disabilities, which would have resulted in poor achievement scores in formal academic settings," and he cautioned that those "conditions should not be confused with mental retardation." *Id.*

Dr. King further found that Myers "demonstrates good development in independent functioning, physical development, economic activity, language development, ability to use numbers and time, domestic activity, vocational activity, self-direction, responsibility, and socialization." *Id.* at 8. Dr. King explained, "It is simply not true that [Myers] lacked adaptive abilities." *Id.* Importantly, Dr. King also found "no evidence for mental retardation prior to age 18." *Id.*

Dr. King concluded that "Myers functions in the low average to borderline range of intellectual functioning with low average being most likely." *Id.* at 7. Myers does not suffer from "any significant cognitive difficulties that would make it the least bit difficult for him to consult with his attorneys in his own defense or proceed with a reasonable understanding of the legal proceedings against him." *Id.* at 8.

Dr. Gierok evaluated Myers on July 21, 2006. Gierok Report at 1. She administered the Wechsler Abbreviated Scale of Intelligence (WASI) and a battery of neuropsychological tests. *Id.* at 4-5. Myers obtained a Verbal IQ score of 77, a Performance IQ score of 97, and a Full Scale IQ score of 85 on the WASI. *Id.* Dr. Gierok explained that Myers's IQ "scores fall in the Borderline, Average, and Low Average ranges, respectively, using the Wechsler classification system." *Id.* at 5. She noted that his IQ scores on the WASI "are consistent with those obtained during the administration of the WAIS-III by Dr. King," and she found that they are indicative of "a learning disability in the verbal domain." *Id.* at 7.

Dr. Gierok concluded that "Myers *does not* suffer from Mental Retardation." *Id.* at 8. She found instead that his "intellectual functioning ranges from Borderline to Average, and his cognitive abilities appear consistent with [his] intellectual abilities." *Id.* Further, she determined, based on his performance on the neuropsychological tests, that Myers "should have no difficulty planning, organizing, and conceptualizing information." *Id.*

Following the evidentiary hearing, the magistrate judge recommended that Myers's *Atkins* claim be denied, finding that "[t]he evidence in this case does not

present a close question as to whether Mr. Myers is currently mentally retarded." Report & Recommendation at 50, *Myers*, ECF No. 102. The magistrate judge found that Myers "has not presented any evidence to contradict Dr. King's finding that [he], in 2006, scored an 84 on a valid IQ test" and that "Dr. Gierok's test results and testimony support the finding that [his] IQ is approximately 84." *Id.* In fact, the magistrate judge found that Dr. Charles Golden, Myers's expert witness, "does not believe that [he] is *currently* mentally retarded, and does not dispute the validity of the 84 score received in 2006." *Id.*

Having "reviewed all of the transcripts and evidence," the district court accepted and adopted the magistrate judge's factual findings and legal conclusions. Memorandum Opinion at 4-5, *Myers*, ECF No. 142. The district court held that Myers's "claim that he is exempt from execution under *Atkins v. Virginia* is unsupported by the evidence in the record, in that he simply does not qualify as mentally retarded." *Id.* at 26 (cleaned up). Before the Eleventh Circuit, Myers "concede[d] that he is not currently mentally retarded." *Myers*, 420 F. App'x at 928 n.6.

In short, Myers is not intellectually disabled, and his claims of low intelligence do not give rise to grounds for clemency.

C. The claim concerning jury override

Myers contends that you should grant him clemency because he was sentenced to death via judicial override. While Myers is correct the Alabama law changed in 2017 to eliminate override, *see* Clemency Letter at 2, override has never been deemed unconstitutional. Consider the Court of Criminal Appeals' statement from this past September:

> First, the legislature's decision to repeal judicial sentencing in favor of jury sentencing in the capital-sentencing procedures does not mean that the legislature renounced capital punishment under that scheme or that it had concluded that the judicial-sentencing procedure has no "legitimate penological objective." Indeed, as this Court recently held, when the legislature enacted the new jury-sentencing scheme for capital murder, ***it expressly preserved sentences imposed under the judicial-sentencing procedure by not applying the new scheme retroactively***, and it expressly declined to apply the jury-sentencing scheme to any defendant who had been charged with, but not yet convicted of, capital murder before the effective date of the act....

Second, the legislature's adopting a jury-sentencing procedure does not render the judicial-sentencing procedure unconstitutional. Indeed, no court has ever held Alabama's judicial-sentencing procedure to be unconstitutional. As this Court has explained:

> "The Alabama Supreme Court in *Ex parte Bohannon*, 222 So. 3d 525 (Ala. 2016), held that Alabama's override scheme remained constitutional after *Hurst*[*v. Florida*, 577 U.S. 92 (2016)], and this Court has repeatedly held that Alabama's capital-sentencing scheme, including judicial override, remained constitutional after *Hurst*. See, e.g., *Hicks v. State*, 378 So. 3d 1071, 1127 (Ala. Crim. App. 2019); *Lindsay v. State*, 326 So. 3d 1, 55 (Ala. Crim. App. 2019); *Knight v. State*, 300 So. 3d 76, 128-30 (Ala. Crim. App. 2018)."

State v. Mitchell, 377 So. 3d 94, 125 (Ala. Crim. App. 2022).

Scheuing v. State, CR-2022-0684, 2024 WL 4314860, at *50-51 (Ala. Crim. App. Sept. 27, 2024) (emphasis added). In other words, not only is override *not* unconstitutional, but the Legislature expressly declined to vacated sentences imposed due to override.

The sentencing order in Myers's case is attached for your reference. The trial court found the existence of two aggravating circumstances: that Myers was on probation (and thus under a sentence of imprisonment) when he murdered Tucker, and that he committed the murder during a robbery and burglary in the first degree. C. 20. The court found no statutory mitigating circumstances but noted that Myers was a loving father, was generally non-violent, was afflicted by a substance abuse problem, expressed remorse (but stopped short of accepting responsibility for the murder), and asked for mercy "so that he could us the rest of his life to counsel others from his prison cell." C. 22-23. The court then considered the jury's nine-to-three life recommendation:

> Given that only one-fourth of the jury recommended death following their conviction of the defendant, the jury's verdict indicates a strong consensus that life without parole is the most appropriate punishment.
>
> The Court cannot pretend to know why the jury reached the recommendation that it did; however, it is the opinion of the Court that the

testimony of the defendant and his family, offered at the sentencing hearing, was an important factor.

C. 23-24. After reweighing the aggravating and mitigating circumstances, however, the trial court override the jury's recommendation:

> With regard to robbery, it is the opinion of this Court that robbery is an aggravating factor because there is something inherently disturbing about an individual who is willing to kill in order to acquire the property of others. Individuals who place a higher value on chattels than human life pose a real threat to public safety.
>
> In the instant case, the evidence indicated that Robin Myers stabbed the victim while attempting to abscond with her VCR. His ultimate goal was to exchange the VCR for a quantity of "crack" cocaine. At some point during the commission of this offense, Robin Myers reckoned that Ludie Mae Tucker's life was less important to him than a temporary, drug-induced euphoria. At some point during the commission of this offense, Robin Myers reckoned that Ludie Mae Tucker's life was less important to him than a used VCR. It is the conclusion of this Court that the defendant views the life of other individuals as a relatively worthless commodity.
>
> Another disturbing aspect of this offense was the senseless application of force. The victim in this case was an unarmed, elderly woman. There was no evidence presented which indicated that she presented any threat of physical harm to her younger, more vigorous assailant. Robin Myers could easily have taken the victim's property and left without having to use deadly force. His conduct represents the kind of behavior that distinguishes a thief from a cold-blooded murderer.
>
> The flagrant and unjustified use of deadly force is the single detail of this offense that provides the Court with the greatest insight into the defendant's propensities. Because Myers killed when he did not have to kill and killed without provocation, the Court is inclined to believe that he killed merely for the purpose of insuring that he would not later be identified by the victim. It is the fear of being identified that is the only logical explanation for the defendant's violent assault on the victim's house guest. Instead of fleeing after stabbing the victim, the defendant went into Mrs. Dutton's room and stabbed her also. The

factual setting of this offense indicates to this Court that Robin Myers was willing to kill to conceal his guilt.

With regard to burglary, it is the opinion of this Court that burglary is an aggravating circumstance because people are more vulnerable when they are at home with their guard down, and have a right to expect that their home, above all other places, is safe. Mrs. Tucker had to venture no farther than her front door to meet her demise at the hands of the defendant. She was an elderly woman at home; it was late, and she had no reason to suspect that she was in danger. Evidence indicated that Robin Myers was acquainted with the victim, having met her once before. He was residing in her neighborhood. Robin Myers picked a vulnerable victim, at a vulnerable time and in a vulnerable location. The Court is persuaded that Robin Myers is an opportunist who has no regard for the sanctity of another's dwelling.

Second, the fact that the defendant was under a sentence of imprisonment at the time of the offense gives the Court significant insight into the defendant's regard for the rule of law and his ability to conform his conduct thereto. Robin Myers was, prior to this offense, given a second chance. He refused to take advantage of it. The threat of potential incarceration did not discourage the defendant from committing another more serious offense. It is apparent that, for whatever reason, the defendant does not, himself, regard imprisonment as a highly effective curb to illegal behavior.

[...]

Just as there is no doubt in the Court's mind that the jury felt compelled to return the verdict which they did, the Court is equally satisfied that the sentence of death is the appropriate sentence under the facts of this case. This decision has not been reached without great difficulty. However, the Court believes that this offense was precisely the kind of offense that the legislature intended to be punished capitally.

When considered together, the five mitigating factors dealing with the defendant's character and the sixth dealing with the jury's recommendation, do not, in the undersigned's opinion, outweigh the aggravation in this case.

C. 24-27.

There is nothing unconstitutional or unjust about Myers's death sentence, and I would encourage you to read the trial court's sentencing order in full. That Myers was sentenced via jury override does not constitute grounds for clemency.

D. The claim concerning trial counsel

Finally, Myers alleges that he:

> went to trial as an intellectually disabled Black man with a trial lawyer who maintained a public connection to a white supremacist hate group for many years before representing him. Mr. Myers's attorney had acted as that group's representative in several legal cases, including the 1987 high-profile civil trial that followed the criminal trial for the lynching of Michael Donald in 1981.

Clemency Letter at 2. This is nothing but an unwarranted attempt to muddy the waters—indeed, Myers does not claim in his letter that his trial counsel did anything worse than describing the neighborhood where he and the victim lived as "like looking into the very pit of hell."

Myers was represented at trial by John E. Mays. Attached to the clemency letter are nine newspaper articles from September 1977 through February 1987; eight of them[2] mention Mays, identifying him as an attorney for the Ku Klux Klan and a speaker at various Klan rallies. The last article concerns *Donald v. United Klans of America, Inc., et al.*, a 1987 civil action in Mobile County in which the UKA was found liable for the lynching of Michael Donald under an agency theory and was effectively bankrupted. Mays represented the UKA in that action, calling Donald's murder a "gross and horrible atrocity" but trying to distance the UKA from the killing.

I do not presume to know Mays's thoughts on his time representing the Klan, nor will I speculate. What I can tell you is that since 1987, Mays has worked largely in criminal defense, an area in which he continues to practice. In 2004, the Alabama Criminal Defense Lawyers Association bestowed on him the Roderick Beddow Award, that organization's highest honor, for his work. In 2014, Mays and defense attorney Richard Jaffee coauthored an article in *Champion*, the magazine of the National Association of Criminal Defense Lawyers, entitled "History Corrected—The Scottsboro Boys are Officially Innocent." If Mays harbors racial animus, it is unapparent from his defense work.

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[2] There is no reference to May in the October 26, 1978, article.

As for Myers, Mays testified in 2008 about his work in the case, the transcript of which is attached for your reference. Myers was represented in habeas by counsel from Strook & Strook & Lavan but also by Kacey L. Keeton, the author of his clemency letter. Back in habeas, rather than excoriate Mays for his work with the Klan, Myers's counsel brought out his bona fides and the work he had done at trial. Between that testimony and Mays's 2001 affidavit (also provided for your reference), Mays has stated:

- Mays is board certified in criminal trial practice by the National Board of Trial Advocacy and attended the National Criminal Defense College. In 2008, Mays wrote a column in the ACDLA's magazine, *Defender*, and had published seven law books. Tr. 47.

- Mays tried his first capital case in 1978. At the time he was appointed as Myers's counsel, Mays had represented seven other capital defendants. Affidavit at 1. By 2008, he had tried sixteen or eighteen capital cases, and Myers was his only client on death row. Tr. 46-47.

- Mays was appointed to Myers's case with Larry Madison, another defense attorney. He hired Keith Russell, whom he considered to be highly competent, as a defense investigator. Tr. 48-49. At Mays's instruction, Russell attempted to interview all of the prosecution witnesses. Tr. 56; Affidavit at 2.

- Mays met Myers within forty-eight hours of his appointment. Affidavit at 1. Mays met with Myers at least ten times prior to trial, even visiting the crime scene with him and Russell. *Id.*; Tr. 49.

- Mays filed twenty-six discovery motions for Myers and moved for open-file discovery of the prosecution's files. Tr. 51-53.

- Mays stated that he provided the best defense possible. Tr. 57; Affidavit at 3. In the defense's investigation, they even "discovered evidence, not discovered by the State, that would have been prejudicial to [Myers]." Affidavit at 1-2. Mays explained that they "tried to point the finger at Anthony Ballentine," that Russell investigated other potential suspects, and that as the trial judge had presided over very few capital cases, they had no way of knowing that he would "consistently impose the death penalty." *Id.* at 3.

Myers comes to you now with no actual evidence of Mays's wrongdoing as trial counsel. Instead, he points to Mays's past and insinuates that because Mays

once represented the Klan, he could not have fairly represented a black man. Not only does Myers offer no proof of ineffective assistance, but his previous filings show that Mays provided him with competent representation. Keeton's personal attack on Mays, which relies purely on innuendo, is unwarranted. If she had a problem with his representation of Myers, then she could had brought it to the federal court's attention in 2008 instead of offering testimony that Mays did his best to defend Myers.

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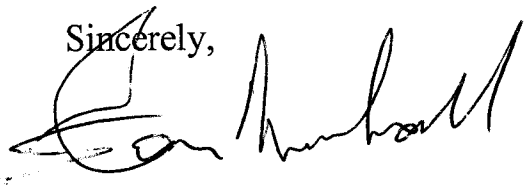
Along with his supporting documents, Myers comes to you now with twenty-five letters of support from various people and organizations. I will note that fifteen of these letters are form letters, that the full names of some of the signatories are illegible, and that none of the signatories of these form letters purport to have any connection to Myers. Of the unique letters, one comes from a mitigation specialist (2015); one from habeas counsel (2015); two from the Arc, an intellectual disability organization (2016); one from a New Jersey minister (2016); one from Progressive Women of Northeast Alabama (2016); one from the Alabama chapter of the National Association of Social Workers (2016); one from the host of a true-crime podcast (2021); one from an attorney (2024); and one from a former ADOC employee who last saw Myers in 2013 (2024). Myers is not innocent, and he is not intellectually disabled. Judicial override is not unconstitutional, and indeed, it was warranted in this case. And while Myers may have been a decently behaved inmate, that does not overcome his crime against Tucker and Dutton, stabbing two women in the dead of night and stealing a VCR to buy $20 worth of crack.

Governor Ivey, I hope this letter has resolved any questions raised by Myers's clemency letter. If you have further concerns that my staff or I may address, I welcome the opportunity. But if this letter has accomplished its purpose, then I trust you will schedule Robin Myers's execution with all due expeditiousness.

Sincerely,



Steve Marshall
Attorney General