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July 11, 2008

By Facsimile and Overnight Courier

The Honorable James E. Folsom, Jr.
Lieutenant Governor of the State of Alabama
11 South Union Street, Suite 725
Montgomery, Alabama 36130

Re: Thomas D. Arthur – Execution Date of July 31, 2008

Dear Lieutenant Governor Folsom:

We write on behalf of Thomas D. Arthur, a death row inmate who has steadfastly maintained his innocence. Mr. Arthur is scheduled to be executed on July 31, 2008, despite the fact that critical pieces of physical evidence from the scene of the murder of which he was convicted have never been subjected to DNA testing. Governor Riley has indicated that he has no plans to intervene to ensure that the evidence—which could prove that someone other than Mr. Arthur committed the crime—is tested. It would be a grave miscarriage of justice if the State of Alabama permitted Mr. Arthur to be put to death while questions about his guilt linger—particularly if subjecting physical evidence to DNA testing can put those questions to rest.

Mr. Arthur has pleaded several times with Governor Riley to order the State to release the physical evidence from the scene of Troy Wicker's murder for DNA testing, at no cost to the State. Although Mr. Arthur seeks nothing more from the Governor than this—a minimal effort that could resolve uncertainty about Mr. Arthur's guilt, and lend legitimacy to the ultimate punishment the State seeks to impose on him—the Governor has ignored Mr. Arthur's requests, and has even denied that he has the power to order the evidence released for this crucial purpose. That Governor Riley does have this power is acknowledged, however, by the Alabama Attorney General, who has stated that "there can be little doubt that the Governor can, in his discretion, order that

DNA testing be performed in connection with a commutation determination. . . . If the Governor wants DNA testing, the Governor gets DNA testing.”¹

Because Governor Riley has refused repeated requests to exercise his lawful authority in this case—an act that would require neither a commutation of Mr. Arthur’s sentence nor, at this point, a stay of execution—we appeal to you to do everything in your power to ensure that this evidence is tested and justice is rendered.

Mr. Arthur previously faced an execution date on September 27, 2007; the execution was postponed after the State decided just before that date to change its lethal injection protocol. As that date approached, and before the execution was postponed, we sent a letter to Governor Riley explaining in detail Mr. Arthur’s case and the importance of the critical act—not of mercy, but of justice—that was in the Governor’s power to perform. That letter, which went unanswered, is attached for your review.

Also attached is a letter to Bryan Taylor, Governor Riley’s Policy Director, from the Innocence Project, an organization whose work has repeatedly demonstrated the evidentiary power of DNA testing, and which has forcefully argued that the value of DNA testing here is unquestionable. As the letter reflects, the Innocence Project has supplied the Governor’s Policy Director with information regarding how requests for post-conviction DNA testing can be handled as a policy matter. The information provided to the Governor’s office shows that DNA testing is particularly appropriate in Mr. Arthur’s case, because (1) the results of the tests can potentially demonstrate Mr. Arthur’s innocence and identify the real killer of Troy Wicker, and (2) the test could be performed without any need to put off the scheduled execution date.

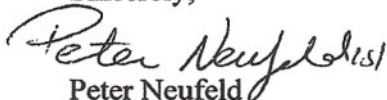
Governor Riley did not respond to either letter. Now, he has made clear that he has no intention of ordering testing. Through a spokesperson, he has said that the evidence of Mr. Arthur’s guilt is “overwhelming.” “Overwhelming” is a word frequently used by the Attorney General to characterize evidence that—as the letters describe, and the public record reveals—was both thin and unreliable. Although Governor Riley evidently did not consider these materials, we respectfully ask that you review them to determine for yourself whether the evidence against Mr. Arthur is in fact overwhelming, or whether DNA testing could shed needed light on Mr. Arthur’s case. If, after reading these letters, you believe that the State of Alabama is at risk of executing a man who may be innocent, we urge you to present the facts with Governor Riley and ask him to use his lawful authority to avert an unjust killing.

On Mr. Arthur’s behalf, we respectfully request that you act now so that the evidence that can resolve all doubt about Mr. Arthur’s guilt is tested without delay. Please let us know if you have any questions or would like any additional information.

¹ Defendants’ Reply to Plaintiff’s Memorandum of Law in Opposition to Defendants’ Motion to Dismiss at 17, 18, dated July 2, 2007, *Arthur v. King*, 07-cv-319 (M.D. Ala.).

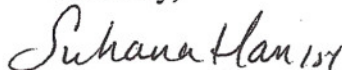
Suhana Han, Mr. Arthur's counsel, can be reached at (212) 558-4647 and Peter Neufeld, of the Innocence Project, can be reached at (212) 965-9380. We are both available to meet with you personally to discuss this matter. We are deeply grateful for your consideration of this matter and look forward to hearing from you before it is too late for justice to be done.

Sincerely,



Peter Neufeld
Innocence Project

Sincerely,



Suhana S. Han
Counsel for Mr. Arthur

(Attachments)

cc: Mr. Troy King, Esq.
(Attorney General of Alabama)

Mr. Scott Rouse, Esq.
(Deputy Legal Advisor, Office of the Governor)