

IN THE DISTRICT COURT OF JOHNSON COUNTY, NEBRASKA

STATE OF NEBRASKA,)
)
) **Case No. CR 17-17**
)
) **Plaintiff,**)
)
) **v.**)
)
) **ORDER OF SENTENCE**
)
) **PATRICK W. SCHROEDER,**)
)
) **Defendant.**)

I. CASE HISTORY

Patrick W. Schroeder (the “Defendant”) was originally charged with certain crimes in the County Court of Johnson County, Nebraska. An order entered on April 24, 2017, by County Judge Steven Timm appointed the Nebraska Commission for Public Advocacy, by Ms. Sarah P. Newell and Mr. Todd W. Lancaster, to represent the Defendant in this matter. This matter was bound over from the County Court to the District Court on May 3, 2017. An order entered by this Court on May 3, 2017, appointed the Nebraska Attorney General and his designated Assistant Attorneys General as Special Deputy County Attorneys. An Information was subsequently filed on June 9, 2017, charging the Defendant with Count I, Murder–First Degree, a Class I or IA Felony, Neb. Rev. Stat. §28-303(1), and Count II, Use of Weapon to Commit a Felony, a Class II Felony, Neb. Rev. Stat. §28-1205(1).

On July 28, 2017, this matter came on for a hearing on the request of the Defendant to dismiss counsel and represent himself. The Defendant was present with appointed counsel Ms. Sarah Newell and Mr. Todd Lancaster. The State was represented by Mr. Douglas Warner, Mr. Michael Guinan, and Mr. Richard Smith. The Court made inquiry and found, beyond a reasonable doubt, that the Defendant was competent to waive his right to counsel, and that his decision to waive counsel and represent himself was made freely, voluntarily, knowingly, and intelligently. The attorneys appointed to represent the Defendant were discharged and Ms. Newell and Mr. Lancaster were then appointed to act as standby counsel. The Defendant represented himself for the remainder of the hearing, with Ms. Newell and Mr. Lancaster standing by. The Defendant next withdrew his pending Motion to Quash. The Defendant then requested that he be given leave to withdraw his prior plea of not guilty. Leave was granted by the Court.



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The Defendant was then re-arraigned and entered a plea of guilty to the pending charges. Inquiry was made as to his ability to understand the proceeding, he was advised of his rights, a factual basis was established and he was advised of the consequences of entering a plea. The Court made inquiry and found, beyond a reasonable doubt, that the Defendant was competent to plead guilty, that his decision to plead guilty was made freely, voluntarily, knowingly, and intelligently. The Court accepted the plea of guilty offered by the Defendant to the pending charges: Count I, Murder—First Degree, and Count II, Use of a Weapon to Commit a Felony. The Defendant was then found guilty of those charges beyond a reasonable doubt. No bond was set as the Defendant is serving another sentence at the Tecumseh State Correctional Institution ("TSCI").

At a scheduling hearing held on August 22, 2017, the Defendant waived his right to a jury determination of the aggravating circumstances as alleged in the Information, pursuant to Neb. Rev. Stat. §29-2520(3). The Court made inquiry and found, beyond a reasonable doubt, that the Defendant was competent to waive his right to a jury determination of the aggravating circumstances, and that his decision was made freely, voluntarily, knowingly and intelligently.

Pursuant to Neb. Rev. Stat. §29-2521(1)(a), a request was made to Michael G. Heavican, Chief Justice of the Nebraska Supreme Court, to appoint a panel for a sentence determination hearing. By Order of Chief Justice Heavican, dated August 30, 2017, the Honorable John H. Marsh and the Honorable Robert R. Otte were appointed to sit with the Trial Judge, the Honorable Vicky L. Johnson, as Presiding Judge of the sentencing panel (the "Panel").

A sentencing determination proceeding was held on April 19, 2018, pursuant to Neb. Rev. Stat. §29-2521(2). All three of the Panel members were in attendance. Representing the State ~~was~~ *wll* Mr. Douglas Warner, Mr. Michael Guinan, and Mr. Richard Smith. The Defendant appeared with standby counsel Ms. Sarah Newell and Mr. Todd Lancaster.

The sentencing determination hearing procedure for a three-judge panel is codified in Neb. Rev. Stat. §29-2521(2). Accordingly, the three-judge panel is to take evidence concerning aggravating factors and mitigating factors and hear arguments. Concerning aggravating factors, the Nebraska Rules of Evidence apply. The Presiding Judge makes determinations of relevant evidence regarding mitigating factors. After the sentencing determination hearing, written findings of fact are required based upon a defendant's finding of guilt ~~and~~ *uj* and the sentencing determination

proceeding, identifying which, if any, of the alleged aggravating circumstances have been proven to exist beyond a reasonable doubt.

The State alleged only one aggravating circumstance: that the Defendant was previously convicted of another murder or a crime involving use or threat of violence to the person, or has a substantial prior history of serious assaultive or terrorizing criminal activity. Neb. Rev. Stat. §2923(1)(a). The Panel has limited consideration to that single aggravating circumstance alleged.

At the sentencing determination hearing, the State called Dr. Robert Bowen, Joel Berman, State Patrol Investigator Stacie Lundgren, Dr. Michelle Elieff, Steve Wilder, Joseph Eppens and Joseph Weiner as witnesses. Exhibits 1-36 were offered by the State and received without objection from the Defendant. After presentation of evidence, argument was had by the State. The Defendant offered no evidence or arguments.

II. FACTS

Prior to the murder in this case, the Defendant had been incarcerated and housed at TSCI on a sentence imposed on August 13, 2007. Although housed in a cell intended for one occupant, the Defendant was asked in March of 2017, if he would consider a roommate due to overcrowding issues at TSCI. He agreed, but wanted a roommate who he found to be compatible.

Prison officials determined that Terry Berry, Jr. (Mr. Berry), age 22, would be his roommate. Mr. Berry had been convicted of the crime of Second Degree Forgery in Platte County, Nebraska on November 20, 2015. On January 15, 2016, Mr. Berry had been convicted of the crime of Confined Person Violation, contrary to Neb. Rev. Stat. §28-932. Mr. Berry was placed in the Defendant's cell on April 10, 2017. Mr. Berry was due for release approximately two weeks after being placed in the cell of the Defendant.

The facts about the death of Mr. Berry are taken generally from the statements made by the Defendant to prison staff after the killing and from the voluntary confession of the Defendant given on April 17, 2017, to State Patrol Investigator Stacie Lundgren. The Defendant described Mr. Berry as a constant talker, with extremely poor hygiene habits. The Defendant would attempt to dissuade Mr. Berry from talking and urge him to clean up after himself. On Thursday, April 13, 2017, the Defendant decided that if Mr. Berry was not moved by the next day, that "something

was gonna happen.” (Interview with Investigator Lundgren.) There is other evidence that suggests that the Defendant may have made up his mind to kill Mr. Berry much sooner.

On Saturday, April 15, 2017, Mr. Berry and the Defendant were watching UFC (Ultimate Fighting Championship) on television. According to the Defendant, Mr. Berry “would not shut up.” The Defendant instructed Mr. Berry to move his chair so that Mr. Berry was directly facing the television and so that Mr. Berry’s back was to the Defendant. The Defendant then placed his arm around Mr. Berry’s neck in a chokehold and locked his hands. He continued to choke Mr. Berry for about five minutes, until his arms tired. He then took a nearby towel and used it as a garrote around Mr. Berry’s neck, continuing to choke Mr. Berry. After about another five minutes, the Defendant let up on the towel, because he believed that Mr. Berry was dead. About 30 minutes later, the Defendant was able to alert a passing guard that Mr. Berry was on the floor. The Defendant stated that he did not summon the guard for Mr. Berry’s benefit but because he wanted Mr. Berry removed from the cell. The Defendant joked to the guard about watching wrestling and the murder.

Mr. Berry was transported to a medical facility. He died on April 19, 2017, having been declared to be brain-dead. Mr. Berry’s family donated his organs for transplant. Pathologist Michelle Elieff, M.D., performed Mr. Berry’s autopsy. She determined that the immediate cause of death was compressional asphyxia, or strangulation. The manner of death was determined to be homicide.

A search of the Defendant’s cell revealed a torn “kite” in the trash. A “kite” is a form that inmates use to communicate with prison staff. The kite was dated April 13, 2017, and said words to the effect, “you need to get him out of here before he gets hurt.”

At the time of his murder, Mr. Berry had seven days left to serve on his sentence.

III. EVIDENCE CONSIDERED BY THE PANEL

In making the Panel’s decision, the evidence adduced in support of the defendant’s guilt and the evidence adduced at the sentencing hearing must be considered. Neb. Rev. Stat. 29-2921 § (2).

Prior to the sentencing hearing, the Panel reviewed the evidence adduced at defendant's plea of guilty on July 28, 2017. The evidence presented to this Panel regarding Mr. Albers' murder was taken largely from the voluntary confession of the Defendant to Nebraska State Patrol officer Joel Berman (Exhibit 7). The balance of exhibits 1-~~35~~ were also considered.

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III. SENTENCING DETERMINATIONS

The Panel must consider (a) aggravating circumstances, (b) statutory mitigating circumstances, (c) non-statutory mitigating circumstances and (d) proportionality. Those factors are considered, in that order, below. The Panel notes that in assessing the weight to be given to the aggravating factors and mitigating factors, the Panel does not use a numerical process but applies reason and judgment. *State v. Moore*, 210 Neb. 457 (1982).

A. Aggravating Circumstances

Aggravating circumstances must be proven beyond a reasonable doubt. *State v. Victor*, 235 Neb. 770, 784 (1990). Neb. Rev. Stat. §29-2521(2).

In the Information, the State alleged one aggravating factor: that Defendant Patrick Schroeder was previously convicted of another murder or a crime involving use or threat of violence to the person, or has substantial prior history of serious assaultive or terrorizing criminal activity. The Panel has limited the review of aggravating factors to the single aggravating factor charged.

In *Moore, supra*, the Nebraska Supreme Court defines prior history as "...the individual's past acts preceding the incident for which he is on trial and 'substantial'...refers to an actual, material and important history of acts of terror of a criminal nature. It does not refer to the particular incident involving the homicide for which he is subject to sentence." *Id.* at 471.

In 2006, the Defendant committed the murder of 75-year-old Kenneth Albers ("Mr. Albers"). Mr. Albers owned a farm and formerly employed the Defendant. The motivation for the murder was financial gain; based on his prior employment by Mr. Albers, the Defendant believed that Mr. Albers had several thousand dollars in cash located in a lockbox in his home.

At approximately 3:50 a.m. on April 14, 2006, the Defendant left his wife at home in bed and drove to Mr. Albers' farmstead. The defendant rang the doorbell and entered the home, waking

Mr. Albers. The Defendant demanded money, utilizing threats and a blow to the head to compel Mr. Albers to cooperate. The Defendant used a nightstick to inflict the blow and there was a significant amount of blood found about the house. During these events, Mr. Albers had recognized the Defendant and called him by name.

After the lockbox was opened, the Defendant took Mr. Albers outside to an adjacent shop when Mr. Albers turned toward the Defendant. Using the nightstick, the Defendant struck Mr. Albers four or five times. After Mr. Albers fell to the floor, the Defendant dragged him out of the shop, tied him up with battery cables and placed him into the back of Mr. Albers' own pickup. The Defendant then drove Mr. Albers to an abandoned well on Mr. Albers' property, where he dumped Mr. Albers into the well. According to the Defendant's confession, Mr. Albers was alive at the time that he was shoved in the well.

The Defendant admitted that he probably made the determination to kill Mr. Albers a few days before the robbery; this is evidenced by the fact that he brought along additional clothes to wear. He clearly made that decision once they got into the shop.

The Defendant then cleaned up, dumped the clothes that he was wearing, drove home and made a pot of coffee. After his wife awoke and went to work, the Defendant took the several thousand dollars that he had taken from Mr. Albers and drove around the area, paying off bills and making purchases. The Defendant was arrested shortly thereafter and he made a voluntary confession to law enforcement.

Pathologist Robert Bowen, M.D., conducted an autopsy of Mr. Albers. He observed evidence of nine head injuries. Dr. Bowen concluded that Mr. Albers died of blunt force trauma to the head. Mr. Albers had a number of defensive wounds that were consistent with the admissions of the Defendant and the autopsy evidence.

The Defendant was found guilty of First Degree Murder (felony murder with the predicate crime being robbery), Use of a Deadly Weapon to Commit a Felony, and Forgery in the 2nd Degree by a jury on June 15, 2007. Such finding, by law, was beyond a reasonable doubt. He was given a life sentence for the murder of Mr. Albers. In the same case, the Defendant was convicted of a second charge, Use of a Weapon to Commit a Felony, in which he received a sentence of 20 years to 20 years one hour on the second offense. It was ordered to run consecutively to the first charge.

On a second case related to the first case, the Defendant was convicted of Forgery in the 2nd Degree. He received a sentence of 30 years to 60 years and such sentence was ordered to run consecutively to Counts I and II. He was found to be a habitual criminal.

Accordingly, the Panel finds that the aggravating circumstance alleged by the State has been proven beyond a reasonable doubt. The Panel finds that there is an aggravating circumstance as defined by law sufficient to support the death penalty.

B. Statutory Mitigating Circumstances

The mitigating circumstances as set forth in Neb. Rev. Stat. §29-2523(2) are viewed by the Panel based upon the evidence presented at the sentencing determination proceeding and the finding of guilt. Further, the Panel considered the Presentence Investigation (“PSI”) that has been prepared in this case. *State v. Bjorklund*, 258 Neb. 432, 484 (2000): “The State requested and the trial court agreed that the PSI report could be used to establish any statutory or non-statutory mitigating factor, but not aggravating factors.”

The State was allowed to present evidence that is probative of the non-existence of statutory or non-statutory mitigating circumstances, and did so. Similarly, the Defendant was allowed to present evidence that is probative of the existence of a statutory or non-statutory mitigating circumstance. *State v. Reeves*, 234 Neb. 711, 738 (1990). The Defendant chose not to present any evidence or argument on his behalf.

The statutory mitigating factors and the findings of the Panel are as follows:

1. THE DEFENDANT HAS NO SIGNIFICANT HISTORY OF PRIOR CRIMINAL ACTIVITY.

The Panel does not find any evidence of this mitigating circumstance.

2. THE DEFENDANT ACTED UNDER UNUSUAL PRESSURE OR INFLUENCES OR UNDER THE DOMINATION OF ANOTHER PERSON.

The Panel does not find any evidence of this mitigating circumstance.

3. THE CRIME WAS COMMITTED WHILE THE OFFENDER WAS UNDER THE INFLUENCE OF EXTREME MENTAL OR EMOTIONAL DISTURBANCE.

The Panel does not find any evidence of this mitigating circumstance.

4. THE AGE OF THE DEFENDANT AT THE TIME OF THE CRIME.

At the time of the commission of the crime, the Defendant was 39 years of age. The Panel has considered the evidence of the Defendant's age but does not find the Defendant's age to be a mitigating circumstance in this case.

5. THE OFFENDER WAS AN ACCOMPLICE IN THE CRIME COMMITTED BY ANOTHER PERSON AND HIS OR HER PARTICIPATION IS RELATIVELY MINOR.

The Panel does not find any evidence of this mitigating circumstance.

6. THE VICTIM WAS A PARTICIPANT IN THE DEFENDANT'S CONDUCT OR CONSENTED TO THIS ACT.

The Panel does not find any evidence of this mitigating circumstance.

7. AT THE TIME OF THE CRIME, THE CAPACITY OF THE DEFENDANT TO APPRECIATE THE WRONGFULNESS OF HIS OR HER CONDUCT OR TO CONFORM HIS CONDUCT TO THE REQUIREMENTS OF LAW WAS IMPAIRED AS THE RESULT OF MENTAL ILLNESS, MENTAL DEFECT OR INTOXICATION.

The Panel does not find any evidence of this mitigating circumstance.

In sum, the Panel does not find that any of the mitigating circumstances as defined by Neb. Rev. Stat. §29-2523(2) exist.

C. Non-statutory Mitigating Circumstances

Over the course of time, the Nebraska Supreme Court has also considered a number of *non-statutory* mitigating factors. In *State v. Moore*, 210 Neb. 457 (1982), the Nebraska Supreme Court specifically declared that the defendant could offer, on the issue of mitigation, any evidence, even though the mitigating factor offered was not specifically listed in the statute.

See, for example:

- *State v. Sandoval*, 280 Neb. 309 (2010) (bad childhood resulting from being raised in a dysfunctional family setting),
- *State v. Vela*, 279 Neb. 94 (2010) (disadvantaged upbringing, borderline intellectual functioning, and being a follower of a charismatic leader),
- *State v. Hochstein*, 262 Neb. 311 (2001) (emotional and intellectual immaturity and a history of being easily influenced or led),
- *State v. Reeves*, 239 Neb. 419 (1991) (nonviolent nature, passive person,

- out of character and lack of memory at the time of the crime),
- *State v. Otey*, 236 Neb. 915 (1991) (upbringing and psychiatric history),
 - *State v. Victor*, 235 Neb. 770 (1990) (conduct during prior incarcerations).

The Nebraska Supreme Court has stated that "the Constitution does not require the sentencing judge or judges to make specific written findings with regard to non-statutory mitigating factors." *Reeves, supra*, at 741, *judgment vacated*, 498 U.S. 964 (1990); *Bjorklund, supra*, at 481. However, for completeness, the Panel notes the consideration of the non-statutory mitigating factors outlined in the cases set forth above as well as other facts and circumstances that one might argue mitigate in favor of the Defendant.

After considering all evidence and the PSI, the Panel makes the following findings regarding non-statutory mitigating circumstances:

1. The Defendant pleaded guilty to the charge of Murder, thus sparing Mr. Berry's family the trauma of a trial. Johnson County was also spared the expense of a trial. The Panel also considered that the Defendant did not contest the State's case at the aggravation hearing and presented no mitigating factors. This mitigating factor is found to exist and weighs in favor of the Defendant.

2. The Defendant's childhood and family were dysfunctional. He was involved in the juvenile court at a young age. This mitigating factor is found to exist and weighs in favor of the Defendant.

3. The Defendant is not well educated. However, there is no evidence of a borderline intellect or diminished cognitive ability. He clearly knows right from wrong. This mitigating factor is found not to exist.

4. The Defendant takes medication for depression. However, there is no psychiatric or psychological history of significance that rises to the level of a mitigating circumstance. There was nothing to suggest that his depression contributed, in any way, to the actions taken by the Defendant toward Mr. Berry. This mitigating factor is found not to exist.

5. The record does not suggest that the Defendant has generally been a problem to officials during his commitment. However, his prior conduct during incarceration does not rise to the level of a mitigating factor. This mitigating factor is found not to exist.

The fact that the Defendant expressly welcomes a death sentence has not been considered by the Panel. It is the law, and not the Defendant's wishes, that compels this Panel's ultimate conclusion.

In sum, the Panel does find that there are two non-statutory mitigating circumstances as to the Defendant, as described above. Those factors have been considered by the Panel and while applicable, have been given little weight. These two factors do not approach or exceed the weight given to the aggravating circumstance. See Neb. Rev. Stat. § 29-2522(2).

D. Proportionality

The Panel is required to determine the propriety of a death sentence by conducting a proportionality review. Such sentence determination shall consider "whether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant." Neb. Rev. Stat. §29-2522(3). See *Vela, supra*, at 94; *State v. Mata*, 275 Neb. 1 (2008); *State v. Dunster*, 262 Neb. 329 (2001). This review requires the Panel to compare the aggravating and mitigating circumstances in the case before it with those present in other cases in which a death penalty was imposed. The purpose of this review is to ensure that the sentences imposed in this case are no greater than those imposed in other cases with the same or similar circumstances.

The Nebraska Supreme Court has stated that:

[A]proportionality review does not require that a court "color match" cases precisely. It would be virtually impossible to find two murder cases which are the same in all respects. Instead, the question is simply whether the cases being compared are sufficiently similar, considering both the crime and the defendant, to provide the court with a useful frame of reference for evaluating the sentence in this case.

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State v. Ellis, 281 Neb. 571, 613-14 (2011) [internal citations omitted].

The Panel has undertaken a review of Nebraska cases in which the death penalty was imposed as part of its proportionality review. The Panel has mapped and considered all cases contained on Exhibit 35. It has also considered the opinion of the sentencing panel in *State v. Jenkins*, District Court of Douglas County, Case Nos. CR 13-2768 and CR 13-2769 (2017). This

case is currently on appeal to the Nebraska Supreme Court.

The Panel first considered the Defendant's murder of Mr. Berry in relation to the murders in other cases in which the death penalty was imposed. The Defendant thought Mr. Berry was annoying and unclean of habit. Mr. Berry was very close to release from prison, which the Defendant knew. The fact that the Defendant did not give the kite found in the trash to the guards suggests a premeditative and depraved mentality. He did not ask that the victim be moved. He did not tell the guards that Mr. Berry was in mortal danger if he were not moved. The Defendant calculated this murder for several days, choosing no method of obviating his annoyance with his roommate. At the time of the murder, the Defendant set in motion a plan to commit the crime by having Mr. Berry face away from him. He then strangled him with his arm and then a towel. The Defendant did not call the guard to help with Mr. Berry's injuries but to have him removed from the cell. He evidences no remorse and the Panel finds nothing to suggest he is inclined to change. Mr. Berry's murder was disturbing in its own right and especially cruel, considering that Mr. Berry was due to be released in a week; a fact the Defendant knew well.

After a complete review of the cases referenced above, the Panel unanimously concludes that the murder of Mr. Berry, when compared directly to the murders in which the sentence of death was imposed, that a sentence of death in this case would not be excessive or disproportionate.

The Panel has also considered the relative proportionality of the prior conduct of defendants who were sentenced to death. The Defendant now stands convicted of two murders. Both appear to be premeditated, yet, there are any number of cases in which a defendant was sentenced to death where the prior conduct did not involve the murder of another.

Dunster, supra, is the case most analogous to the case under review. Dunster had two prior murder convictions. He was then convicted of murdering another inmate. Other cases involving more than one murder have been closely scrutinized. See *State v. Jones*, 213 Neb 1 (1982); *State v. Joubert*, 224 Neb. 411 (1986); *State v. Ryan*, 233 Neb. 74 (1989); *State v. Lotter*, 255 Neb 456 (1998); and *State v. Williams*, 253 Neb. 111 (1997). All of these defendants were sentenced to death.

For example, in *State v. Hessler*, 274 Neb. 478 (2007), Hessler was sentenced to death based in part upon findings that he had a substantial history of serious assaultive or terrorizing

criminal activity, that the murder was committed in an effort to conceal the commission of a crime, and that the murder was especially heinous, atrocious, cruel, or manifested exceptional depravity. Hessler had not been convicted of a prior murder.

Joubert, supra, involved a defendant convicted of two counts of first degree murder for the killings of two young boys. Joubert was sentenced to death in each case based partly on the findings that he had a substantial history of serious assaultive or terrorizing criminal activity. Joubert had not been convicted of a prior murder.

The Panel also notes that the death penalty was imposed in *State v. Gales*, 265 Neb. 598 (2003) and *Williams, supra*. Gales was sentenced to death based on findings that he had previously been convicted of a crime of violence as well as the particulars of the instant crime, but not of a prior murder. And Williams had previously been convicted of a crime of violence, but not a murder.

In summary, the Panel has conducted a thorough review of death penalty cases and considered whether the "...sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant." Neb. Rev. Stat. § 29-2522. The Panel has reviewed the nature of the murder in each case, as well as the past criminal conduct of the defendants, which supported the ultimate finding that the death sentence was appropriate in each of these cases. The Panel concludes that ~~the~~^a sentence of death for the Defendant is neither excessive nor disproportionate to the penalty imposed in similar cases.

V. CONCLUSIONS

First, the Panel finds that the State presented evidence, beyond a reasonable doubt, to support the Defendant's plea of guilty and the finding of guilt.

Next, the Panel finds, beyond a reasonable doubt, that the State has proven the aggravating factor alleged.

Further, the Panel finds that, giving the Defendant the benefit of all inferences, there are no statutory mitigating factors.

Further, the Panel finds the existence of two non-statutory mitigating factors; that the weight of the non-statutory mitigating factors, giving the Defendant the benefit of all inferences,

does not approach or exceed the weight to be given to the aggravating factor and does not mitigate against the finding of the aggravating factor alleged by the State.

Further, the Panel finds that a sentence of death is not excessive or disproportionate to the penalty imposed in similar cases, considering the murder of Mr. Berry and the past crimes committed by the Defendant.

All findings are made unanimously and beyond a reasonable doubt.

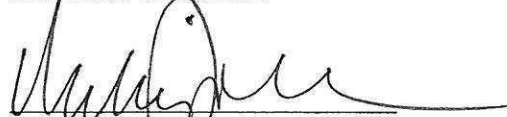
VI. SENTENCE

- A. Imposed by the Panel: On Count I, Murder–First Degree, Neb. Rev. Stat. §28-303(1), a Class I Felony, the Defendant is sentenced to death.
- B. Imposed by the Presiding Judge: On Count II, Use of a Weapon to Commit a Felony, Neb. Rev. Stat. §28-1205(1), the Defendant is sentenced to not less than forty five, nor more than fifty years, to run consecutively to Count I, and consecutively to the sentence imposed in Case Nos. CR 06-5 and CR 06-6 in the District Court of Pawnee County, Nebraska.

The defendant is given no credit for time served. Costs of \$232.34 are assessed to the Defendant. The Defendant is committed to the Nebraska Department of Correctional Services to serve his sentence. He is remanded to the custody of the Johnson County Sheriff to commence his sentence.

Dated this 15th day of June, 2018.

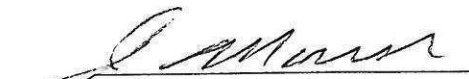
BY THE COURT:



Vicky L. Johnson
District Court Judge



Robert Otte
District Court Judge



John Marsh
District Court Judge

pc: Doug Warner, Todd Lancaster, Patrick Schroeder

Hon. Robert Otte, Hon. John Marsh