

July 10, 2009

Honorable David Paterson
The Governor of the State of New York
Executive Chamber
State Capital
Albany, New York 12224

RE: Application in Behalf of Anthony Bottom 77A4283 for Clemency/Commutation of Sentence to Time Served and/or Parole to Warrant

Governor David Paterson:

Introduction

I respectfully submit for your review and consideration this Application for Clemency/Commutation of Sentence to Time Served and/or Parole to Warrant in behalf of Anthony Bottom, 77A4283, a NYS prisoner currently held in San Francisco County Jail on pending charges. The information presented will allow you to see past “the serious nature of the crime” and allow you to assess the blatant reality that Mr. Bottom has achieved rehabilitation within the thirty-eight (38) years he have been incarcerated. We also maintain that he is not a threat to society, and that he would be able to remain at liberty and lead a productive life once given the opportunity.

Mr. Bottom became eligible for parole in 2002, and has appeared before the NYS Division of Parole on 3 occasions, 2002, 2004, and 2006. Each of the parole denials were subject to the previous Pataki administration policy to deny discretionary parole for prisoners convicted of a violent offense. Under the Pataki administration, parole decisions had become a game of chance, and Executive Law §259i (2) (c) (a) (1) had been relegated to interpretation subverting the legislative intent of the statute. Mr. Bottom meets all the requirements to be released on parole pursuant to the guidelines of Executive Law §295i (2) (c) and N.Y.C.R.R. 8000.3 (1) (2) and (3). Furthermore, the U.S. Justice Department Bureau of Statistics has calculated an established means to diminish the probability of persons being release to recommit. Mr. Bottom fits the criteria of these statistics indicating that a person who has been in prison over ten years, received a college education, participated in rehabilitation, and is over 37 years in age, with a strong community and family support has less than 3% rate of recidivism.

I respectfully submit the following for consideration in regards to Anthony Bottom, the person that he is, and has become through thirty-six years of incarceration.

Case Summary

Anthony Bottom is the oldest of four children born to Richmond and Billie Jo Bottom on October 18, 1951, in Oakland, California. He was raised in a middle-class family in San Jose, California. In elementary school, he received a summer scholarship for a high school chemistry program. While in high school, he received a scholarship for a summer San Jose State University math and engineering program. When arrested on August 28, 1971, he was a high school graduate and working as a social worker with California Department of Human Resources program. In the course of growing up, he always had summer jobs, his first paper route job at age 11. While in high school, he became active in the Black Student Union and a student organizer for the NAACP. After the assassination of Dr. Martin Luther King, Jr., on April 4, 1968, Anthony Bottom began to look towards the Black Panther Party for leadership. Subsequently, he was recruited into the Party by childhood friends who had become BPP members. Because of his involvement in the Black Panther Party, he became known to the police, the federal government and was subject to COINTELPRO.

Past Criminal History

Mr. Bottom served three years probation for a burglary. On September 19, 1977, Anthony Bottom was parole from San Quentin having served five years for a shoot-out that occurred when arrested in California on August 28, 1971. On March 17, 2004, the Federal Bureau of Prison discharged Mr. Bottom pursuant to an application for nunc pro tunc designation on a 25 year sentence for the robbery of a Fidelity Savings and Loan bank.

Instant Offense

Presently, Anthony Bottom is being held in San Francisco County Jail, on an extradition warrant executed on or about April 4, 2007, transferred from Auburn Correctional Facility in New York State. His New York State sentence, and the subject of this Application, is based on a May 1975 commitment of 25 to Life sentence for the murders of New York police officers Waverly M. Jones and Joseph Piagentini on May 21, 1971. He was convicted in a second trial, the first trial ended in a hung jury favoring an acquittal, and Anthony Bottom continues to maintain his innocence. It is understood the parole board must evaluate an individual that has been convicted as being guilty of the crimes. However, it is becoming more and more apparent that there are people who are innocent that have been convicted of crimes. As it pertains to former members of the Black Panther Party who were COINTELPRO targets, many have read headlines of exonerations decades after their convictions. For instance, in California, Geronimo jija Pratt, who spent 27 years incarcerated before exoneration, and in NYS, Dhoruba bin Wahad, who spent 19 years incarcerated before exoneration, and who subsequently had been part of the investigation in this case. There is a great possibility the man for which this application is presented is truly innocent in this case. The case of Anthony Bottom is one of racial prejudice, and government corruption that was present in the Nixon-Hoover era.

At the time of Anthony Bottom's arrest, former Director of the FBI, J. Edgar Hoover implemented a counterintelligence program designed to target the African-American leaders of the Black Panther Party by infiltrating the movement. This program known as COINTELPRO

applied tactics such as framing members of the movement for crimes they did not commit to remove them from the community.

On May 26, 1971, five days after the murders of Jones and Piagentini, Hoover was summoned to the White House for a confidential meeting with President Richard Nixon and John Erlichman, the Domestic Affairs Advisor, to discuss the unsolved case. This meeting targeted the Black Panther Party as suspects in the murder of the two police officers. Appeals and post conviction challenges on this case has been filed and thus far have been unsuccessful. Judith M. Rosen, Esq., represented Anthony Bottom at an evidentiary hearing in 1992, attorney Rosen reported, *“At the evidentiary hearing before Judge Lasker in 1992, which I participated in, it was determined the Chief of Ballistics of New York City Police Department had committed a grave error as to the ballistics evidence that was the foundation of Mr. Bottom’s conviction. Although this was ruled harmless error I believe that decision was based more on political than legal grounds.”*

Prior to the July 30, 2004 NYS parole hearing, the son of the slain police officer Waverly M. Jones, presented a victim impact statement to Richard Dennison, former Chairman of NYS Board of Parole. In the formal interview with Richard Dennison, Waverly Jones, Jr., stated he did not believe Anthony Bottom (and co-defendant Herman Bell) were guilty of the murders, and if they were, that he and his family had forgave them, advocating for their release on parole. The July 2004 parole board ignored the Waverly Jones, Jr., victim impact statement, of which was taken on appeal to the NYS Appellant Court for the Third Department. Although the Third Department, on July 1, 2006, did not reverse the parole denial, the Court did admonish the NYS Division of Parole for its failure to consider the victim impact statement.

Victim Impact Statement and NYS Appellant Court Ruling

As directed by NYS Executive Law §259(i), a factor that must be considered when evaluating an individual for discretionary parole release is the victim impact statement. In this case, victim impact statement was given in favor of the release of Anthony Bottom. In the 2004 parole hearing, Mr. Waverly Jones, Jr., stated in pertinent parts:

“Me, personally, have forgiven these men for the positions that they took back then. I personally feel that when you think of the 60’s you think of a very turbulent time, not only in NY but throughout the country and we know historically black people of course, have been oppressed... I do not have hatred or revenge or anything for any of those individuals. I sincerely feel that I don’t particularly see them as a danger. I don’t see them as someone that’s going to come out of prison and commit violent crimes or anything of that nature.”

The transcript continues:

“Let me ask you this question sir. Will these gentlemen continually be sent to parole every two years and continually be denied because of the crime that they committed? It sounds like why even go before the Parole Board? It sounds like its humiliating to go before the Parole Board after so many years demonstrating your viability to society and then that be completely disregarded if the type of crime you committed in the eyes of the Parole Board is too atrocious to be released because of the nature of the crime is never going to change.

Dennison: Right.

Jones: Its almost like are they going to be every two years at the mercy of the whim of the members of the Board if they feel okay you served enough time? Is that the way they are going to deal with this? Or should it be that there would be so much overwhelming outside support from underneath that they are forced to let them go because there is so much support for this release that to deny him would be like a terrible message to society if there's so much support in favor of him being released? What will it take for the Parole Board to be moved to release them if the nature of the crime is never going to change?

Dennison: I really can't speak about them, I can speak about Mr. Bottom, because every case is a little bit different... I really can only speak about Mr. Bottom, he has been in prison a long time.

Jones: I feel that Herman Bell and Anthony Bottom were both victims as well of a much larger scheme which got them incarcerated to this day, and I feel that their sentence was twenty-five-to-life, and to me they have shown great resilience in prison, that their mind is still intact, that their spirit is still eager to do good, and I just pray that the Parole Board will look at the context and the time and send a message to me of healing. Both black and white need to heal from that moment in history because its still affecting us today, injustices that both suffered. We are the ones dealing with that today, and I feel that men like him who are in that time period and they may have did certain things in their life would send a message to me of forgiveness and healing and time to I say amend that period in history so that we can both enjoy good perpetuity on both sides. I think that keeping them in prison is only strengthening resentment among grassroots individuals and is producing a greater passion in them to pick up a weapon, and I believe that keeping them in prison in their eyes is almost like there is no justice if you will. I just don't think that's a good message to send out, and that's why I requested to meet with the NYS Parole Board."

In 2004, with this statement ignored, Anthony Bottom was denied parole. An appeal proceeded, but the transcript of the victim impact statement was not available at the time of the submission of the Article 7800 in the Supreme Court in Albany. However, it was made available at the time of the appeal to the NYS Appellant Court for the Third Department.

In The Matter of Bottom vs. The NYS Board of Parole, Index No. 98942 (3rd Dept., July 1, 2006), responding to reading the victim impact statement the Court held:

"Although the adult son of the slain police officer appeared at a victim impact meeting concerning petitioner and spoke at length in favor of his release, respondent's subsequent decision makes no mention of that statement and neither a transcript of the victim impact statement nor a report thereon appears in the administrative record. In fact, respondent affirmatively cited the negative impact of petitioner's actions upon the victim's families as one justification for denying him parole... Whereas here it is provided with a victim impact statement which advocates for the release of the prospective parolee, explicit reference to such an exceptional submission would facilitate intelligent appellate review."

Bottom(id).

In the August 1, 2006 NYS parole hearing, again, the Waverly Jones, Jr., victim impact statement was ignored, even though Anthony Bottom raised the issue. The parole panel conducting the hearing refused to discuss the victim impact statement, only inquiring as to how Anthony Bottom received a copy of the Waverly Jones, Jr. victim impact statement. Discretionary release on parole was summarily denied employing the same reasons for denial as had been applied in the two previous parole hearings of 2002 and 2004.

The NYS Appellant Division for the Third Department held the victim impact statement advocating for release must be seriously considered by the Parole Board or the decision will be reviewed by the Court. Unfortunately, as will be shown below, the Court will not review the Parole Board's failure to consider the positive victim impact statement.

Extraordinary Circumstances for Clemency/Commutation of Sentence

On or about April 4, 2007, Anthony Bottom was transferred from Auburn Correctional Facility pursuant to an extradition warrant to San Francisco charged in a felony complaint (not a Grand Jury indictment) with seven (7) other named defendants, for conspiracy and murder of a S.F. police officer on August 29, 1971. Consequently, because Mr. Bottom is not in NYS, the appeal of the August 1, 2006, parole denial has been deemed moot by the NYS Supreme Court of Albany County. Furthermore, according to Mr. Terrance X. Tracy, Counsel of NYS Division of Parole, future parole hearings will not be conducted until he is returned to NYS. While the S.F. felony complaint is based on a 38 year-old crime, the matter was not expected to proceed to trial for at least one year. Therefore, Anthony Bottom did not be in NYS for the scheduled July 2008 parole hearing, and there are no arrangements to hold the hearing by teleconference. In effect, Mr. Bottom has otherwise for two years been made ineligible for parole.

It must be noted the S.F. felony complaint as written is subject to many defense challenges. As a result of several pre-trial motion hearings, the substance of the S.F. felony complaint has been found to be inconsistent with the allegations proclaimed in the original extradition warrant. For instance, the prosecution now concedes there are no DNA matches to any of the defendants. The prosecution does not have the alleged murder weapon (the shotgun has been lost) and the latent fingerprint examination on a cigarette lighter found at the scene has proved inconclusive, with 4 previous exams (2 by the FBI and 2 by S.F. forensic experts) not matching any of the defendants. While DNA and another latent print were found on the cigarette lighter, none belonged to any of the defendants. The offenses charged in the S.F. felony complaint allegedly happened on August 29, 1971, but Anthony Bottom was arrested and in S.F. city jails on August 28, 1971, therefore not a direct participant in the alleged crime. While six of the eight defendants named in the S.F. felony complaint were released on bail the charge of conspiracy was dropped against five of the defendants, one of which conspiracy was his only charge and has been dismissed from the entire case. Given the fact, six of the eight defendants named in the S.F. felony complaint has been released on bail, Mr. Anthony Bottom, had a liberty interest in having his NYS sentence commuted to time served and/or parole to the warrant.

Then on July 6, 2009, on the day the preliminary hearing was to begin, the California prosecutor offered a plea agreement of no contest to conspiracy to commit voluntary manslaughter, sentence to 3 years probation, 1 year of jail time credited for time served, the

entire sentence to run concurrent with the New York State sentence. It was further offered that if Mr. Bottom accepted the plea agreement, four other defendants would be dismissed from the case for insufficient evidence. After 27 months in solitary confinement on 23 hour lockdown in San Francisco County Jail, Mr. Bottom, with no admission of guilt, pled no contest.

NYS Institutional Involvement

As reported at Mr. Bottom's previous application for parole, the highlights of his achievements while incarcerated include:

- In 1986, Anthony drafted a legislative bill for New York State prisoners to obtain good time off their sentence. The bill was submitted and introduced into the New York State Assembly – Committee on Corrections by former Assemblyman Arthur O. Eve.
- In 1994, while incarcerated at Shawangunk Correctional Facility, Anthony established the first Men's Council in the United States prison. His efforts were featured on television in Japan and written about in the NY Times. During this period, he also graduated from SUNY – New Paltz with a B.S. in Psychology and a B.A. in Sociology. Instead of resting on his success, he taught African Studies to a group of prisoners.
- On two occasions, he received commendations from prison officials for quelling potential prison riots, one in the mess hall at Great Meadow Correctional Facility and another time in the auditorium at Greenhaven Correctional Facility.
- From 1996 to 1999, Anthony was the office manager of the prison computer lab at Eastern Correctional Facility. His duties consisted of teaching prisoner's keyboarding skills and how to use computer software programs. Despite his busy schedule, he found the time to raise money from inmate accounts to support the charitable Children's Funds.
- In 1999, in Auburn Correctional Facility, Anthony established sociology, poetry, and a legal research and discussion classes under the auspices of the Lifer's Committee that he chaired.
- Anthony co-sponsored the Victory Gardens Project, a program which farmers in Maine grew tons of fresh produce for distribution to poor urban communities in New York, New Jersey and Boston, Massachusetts. In the four years of its existence, the Project distributed nearly 10,000 pounds of fresh produce in urban centers.
- In response to the tragedy of September 11, 2001, while in Auburn Correctional Facility, Anthony proposed raising funds from inmates to donate to the American Red Cross. Former Deputy Superintendent of Programs, R. Nelson acknowledged Anthony's efforts in a memorandum.

- While in Auburn Correctional Facility he worked as a Pre-GED Teacher's Assistant, earned a vocational certificate for Architectural Drafting and Anthony has proposed and gained the approval for a Life Skills Program for inmates.
- Anthony is a published poet and essayist; his writings are found in several University sponsored books of compilations of prison writers. He also written an unpublished novel and teleplay.

Parole Release Plans

In the event that Anthony Bottom's Application for Clemency/Commutation of Sentence is approve, and he is release on bail pending the resolution of present charges, he would live in either Syracuse, New York or Austell, Georgia. In Syracuse, he would apply for the Master's program at Maxwell School Syracuse University, to obtain a degree in Public Administration and a certificate in Health Services Management. In Austell, Georgia, he has an offer of employment in the construction field and a home that is to be provided by his mother.

Anthony Bottom has a 36-year-old daughter, two grandchildren and one great grand child. Over the decades of imprisonment, he has maintained a strong family relationship although they reside in California and Georgia. Throughout his years of imprisonment, there have been continuous family visit when they were able, including family trailer visits. As an example, in the November 2000, issue of Essence Magazine, Anthony Bottom, his daughter and granddaughter were featured in an article titled "Daddy Says," discussing father and daughter relationships. Mr. Bottom will continue to be involved in community service, particularly in regards to AIDS education. He once initiated a campaign to provide school supplies to AIDS orphans in Africa.

Conclusion

It should be noted that since his last parole appearance Mr. Bottom has obtained certificates of appreciation in the field of drafting. He hopes to use this training in construction work. In addition, he has participated in the aggression resolution-training program (ART); complimenting the certificate's he already received in aggression management, substance abuse and behavior therapeutics. It should also be noted that Mr. Bottom has not received any serious misbehavior reports since his last parole board appearance. It is my sincere hope that you will see past the political ramifications in this case, as Mr. Bottom is deserving commutation of sentence to time served and/or parole to the warrant.

In my opinion, the time is now to correct the wrongs that have been done to Anthony Bottom by the administration of this government as a result of COINTELPRO activities. Although convicted at trial, he has been robbed of his life solely because of his political beliefs and his involvement in the Black Panther Party.

Mr. Bottom has maintained his innocence for decades throughout his incarceration, but has accepted the circumstances and participated in the rehabilitation that was provided him by the NYS Department of Corrections. He has exceeded the guidelines depicted in NYS Executive

Law for parole release considerations. Mr. Bottom has been an asset and role model to many of the inmates. He has worked extensively throughout his incarceration to improve himself, to establish a peaceful environment in his otherwise chaotic environment, and to assist others in their rehabilitation. Mr. Bottom deserves his freedom and a chance to be an asset to his community from outside the walls of prisons.

Sincerely,

in behalf of Anthony Bottom, 77A4283