**CLEMENCY PETITION ON BEHALF OF MR. XXX**

*The dignity of the human spirit is that no person is as bad as the worst thing they've ever done.*

*- Sister Helen Prejean*

INTRODUCTION

After serving almost twenty-three years of the sentence of life without the possibility of parole imposed by Snohomish County Superior Court after Mr. XXX was convicted of his third "strike" offense, Mr. XXX makes this request for clemency and asks that the remainder of his life sentence be commuted.

Mr. XXX's crime of Attempted First Degree Robbery, which resulted in his sentence of life without the possibility of parole, was committed on May 9, 1994, shortly after I-593 was approved by the people of Washington State. In the years since Mr. XXX's conviction, Washington policymakers have learned much about the broad power conferred by I-593. With this experience and data, prosecutors have developed a clearer sense of which offenses and offenders truly warrant this extraordinary sanction. They have looked especially closely at cases involving robbery allegations in which neither weapons nor injuries are involved. Although it is possible that today Mr. XXX's case would be handled exactly as it was in 1994, it is also possible that he would be offered a chance to resolve his case without a mandatory life sentence.[[1]](#footnote-1) Whatever might have happened to Mr. XXX today, it is clear that in the 24 years since this statute was enacted, it is no longer applied to every case that could be a "third strike."

The specifics of Mr. XXX's strike offenses and criminal history will be discussed in greater detail later in this petition. In considering this petition, it is important to note that Mr. XXX never used a weapon against or seriously injured any of his victims during his crimes. While Mr. XXX does have some disciplinary history within the Department of Corrections (hereinafter "DOC") during his many years in custody, none of his infractions are for violent offenses and his most recent infraction is from 2013. His infractions will also be discussed in more detail later in this petition.

If released, Mr. XXX will return to a large and supportive family that has stayed in contact with him during his time in custody. His wife, Mrs. XXX has stayed married to Mr. XXX since the life sentence imposed on him in 1994. She is prepared to welcome him back into their home. Their two sons, children when Mr. XXX began serving this sentence, are now adults and one has a child of his own. They have remained in contact with their father and he has had the opportunity to spend time with his grandchild. Mr. XXX has siblings, a mother, an uncle and other extended family members who will be involved in his life, will help him adjust, and will hold him accountable if he is released.

Mr. XXX is now 64 years old, walks with a cane and has chronic back pain since a work-related injury within the Department of Corrections in 2007. Mr. XXX's medical condition will be discussed in further detail later in this petition. This petition will also discuss Mr. XXX's place in the aging prison population in this state and country and data related to the risk of recidivism in elderly prisoners. In addition to considering Mr. XXX's specific and personal circumstances and whether they warrant the extraordinary remedy of clemency, data about elderly prisoners is an important factor to consider in evaluating the level of risk Mr. XXX poses to the community at this point in his life, if he is released.

Mr. XXX has grown and changed profoundly since the period of his life when he became a drug addict and committed robberies to fund his drug addiction. By his own account, he has changed from a self-involved, defiant and manipulative drug user who put his habit above all else, to a reflective and soft-spoken man who accepts full responsibility for his actions. Mr. XXX's personal history and journey to the man he is today will be discussed in more detail in this petition. Perhaps most important is Mr. XXX's clear-eyed view from where he stands today that his criminal activity was related to his drug addiction and that he will always be an addict. To that end, Mr. XXX's release plan will include substance abuse treatment. Mr. XXX will have no objection to lifetime supervision with drug testing, should he be released.

A copy of this petition has been served on the Snohomish County Prosecutor's Office. Counsel for Mr. XXX met with Snohomish County Prosecutor Mark Roe on February 24, 2017, before drafting this petition to discuss Mr. XXX's case. During the meeting, Mr. Roe indicated a willingness to consider not opposing Mr. XXX's petition for clemency. Mr. Roe has since met with Mr. XXX in person, as well as had meetings with family members and other people in Mr. XXX's support system. Mr. Roe helped set up a substance abuse evaluation for Mr. XXX inside the DOC, which took place May 17, 2017. That evaluation is provided with this petition and has also been provided to Mr. Roe. Beginning in June 2017, Mr. XXX will have access to substance abuse treatment at the Monroe correctional facility that has not been available to him until now. Mr. XXX and his counsel are incredibly grateful for the time Mr. Roe has put into his case and the access to programming these efforts have provided.

Mr. Roe has indicated that, after reviewing the substance abuse evaluation and treatment plan and meeting with Mr. XXX and his support system and reviewing other information about Mr. XXX provided by counsel, he is not opposed to Mr. XXX's release on certain conditions. Those conditions are: 1) that Mr. XXX be placed on lifetime supervision upon release; 2) that he continue the recommended substance abuse treatment upon release; 3) that he not possess or consume controlled substances; 4) and that he have no violations of law while out of custody. Mr. XXX does not oppose the imposition of any of these conditions upon release.

OFFENSES RESULTING IN LIFE SENTENCE UNDER I-593

XX-X-XXXXX-X Snohomish County

This conviction is the subject of Mr. XXX's petition for clemency. Mr. XXX was charged in Count 1 with an Attempted First Degree Robbery of Victim #1. He was charged in Count 2 with Second Degree Robbery of Victim #2 on the same day. Mr. XXX's conduct with Victim #1 was a departure from his usual *modus operandi* of pretending to have a gun in his pocket (by using his pointed finger to create the impression of a weapon) during all of his previous robberies. During the crime against Victim #1, Mr. XXX came into contact with her as she carried a cash deposit bag in her hand, which she was taking to the bank. Mr. XXX used physical force to grab the bag away from her.[[2]](#footnote-2) She was not seriously injured in the robbery but was understandably frightened.[[3]](#footnote-3) Witnesses held Mr. XXX at the scene until police arrived and arrested him. In the robbery of Victim #2, Mr. XXX pretended to have a gun in his pocket and took less than $100 from the till of a cash register. At trial, Mr. XXX was convicted of the Attempted First Degree Robbery of Victim #1 charged in Count 1. Count 2, involving Victim #2, was dismissed.

Mr. XXX was sentenced on November 14, 1994 to life without the possibility of parole by Snohomish County Superior Court for his conviction in Count 1.

Mr. XXX has spoken about his particular remorse over his offense against Victim #1. Without minimizing his other offenses, he has said that he is especially ashamed to have committed an offense in which he used physical force against his victim. He stated that this crime was different than his other crimes in which he pretended to have a gun because he happened to cross paths with Victim #1 in a parking lot in his neighborhood as she was carrying a bag of money to the bank. It was a crime of opportunity rather than a planned offense. He noted that he did not realize how young she was and felt especially badly for how scary this must have been for her. He also said that, while he did not know her personally, he committed this crime in his own neighborhood and feels ashamed for victimizing someone who was part of his community.

Documents regarding this case are attached to this petition.

XX-X-XXXXX-X King County

In this case, Mr. XXX was initially charged with two counts of Second Degree Robbery. Later in the case, two additional counts of Second Degree Robbery were added to the Information. In Count 1, Mr. XXX pretended to have a gun and took about $80 in cash from a Winchell's Donut House employee. In Count 2, Mr. XXX pretended to have a gun, grabbed a Shell employee by the back of the head to compel her to open the cash register and took about $150 in cash. In Count 3 it was alleged Mr. XXX went into a hair salon and demanded money from an employee at the salon, pretending to have a gun in his pocket. The salon employee emptied the cash register and gave Mr. XXX the money inside. In Count 4, Mr. XXX went into a store and pretended to have a gun in his pocket and demanded money from the sales clerk. The employee opened the cash register and Mr. XXX took all the money inside and left.

Mr. XXX pled guilty to all four counts and received a sentence of 60 months.

Documents regarding this case are attached to this petition.

XX-X-XXXXX-X King County

In this case, Mr. XXX was charged in Count 1 with Robbery in the Second Degree. In this count, Mr. XXX entered a store and pretended to have a gun in his pocket and took about $100 in cash while the employee working at the store was made to lie on the floor. In Count 2, Mr. XXX was charged with Attempted Second Degree Robbery for allegedly entering a flower store, pretending to have a gun and demanding money. When the store employee refused to give Mr. XXX money, he left the store. Mr. XXX was charged in Count 3 with Robbery in the Second Degree for allegedly entering a store and pretending to have a gun in his pocket. Mr. XXX allegedly demanded money from the register and the store employee gave him about $600 from the till.

Mr. XXX pled guilty to Count 1 and the State moved to dismiss Counts 2 and 3. Mr. XXX received a sentence of 38 months.

Documents regarding this case are attached to this petition.

XX-X-XXXXX-X King County

This is a case where Mr. XXX also faced a possible mandatory life sentence from King County. In this case, two counts of Second Degree Robbery were alleged. In both counts, Mr. XXX was alleged to have pretended to have a gun and demanded cash from employees working at store cash registers. However, this case was ultimately dismissed.

MR. XXX'S PERSONAL HISTORY

Childhood and Family

Mr. XXX was born in Seattle to his mother, Mrs. YYY, who was a stay-at--home parent, and his father, Mr. YYY, who worked in the Coast Guard. His mother and father divorced when Mr. XXX was in second grade and eventually Mr. XXX's mother remarried Mr. ZZZ, Mr. XXX's stepfather. Mr. XXX's father was only sporadically present in his life and Mr. ZZZ became more of a steady father-figure to Mr. XXX. Both Mr. XXX's father and step-father have passed away, however his mother is still living.

Other than his parents' divorce, Mr. XXX describes his family life as stable. His mother had some health issues when Mr. XXX was in the 8th or 9th grade. Mr. XXX's mother raised him, his sister and his three brothers as well as raising a couple of his cousins, including one cousin with down syndrome. Mr. XXX describes her as a good parent and still has a relationship with her today, though she is 82 years old and in poor health. Mr. XXX has indicated that neither his parents nor his step-father had substance abuse issues.

According to Mr. XXX, he began acting out when the family moved from Seattle to Everett to take over a family home in the area. Mr. XXX found himself, "the odd one out," as an African American kid in an overwhelmingly white part of town. Rather than making friends with the kids who were serious students and who played sports, he felt more accepted by the "bad kids," who smoked and used marijuana.

Mr. XXX's family life continued to be an anchor for him in this difficult time. He was raised in the Faith Lutheran Church and was involved in retreats and weekly church activities, as well as being an alter boy. By time he was in high school, he was no longer involved in the church. Sadly, Mr. XXX was hit by a car on his way home from basketball practice when he was in 8th or 9th grade and fractured his leg and pelvis. He was in tremendous pain and was given morphine to manage the pain. He believes that this early exposure to narcotic pain medication may have played a role in his later addiction. He remembers thinking even before he left the hospital that he wanted to find a way to feel the way he felt on the pain medication.

Mr. XXX attended Olympic View Junior High School in Mukilteo and Cascade High School. He attended high school until the last quarter of his senior year when he was convicted of a marijuana-related offense. He felt humiliated, returning to school after having been in jail, and dropped out before graduating. He later completed some political science and composition classes through Everett Community College and also earned his GED, through the college. He stopped school short of earning a college degree to work and started an apprenticeship in carpentry.

Drug Use

Mr. XXX began using marijuana at about 15 years old. He was in high school in the 1960's and was exposed to mescaline and other psychedelic drugs. He began using heroin at about 17 years old and heroin became his drug of choice. Mr. XXX began using heroin on and off until the time of his final arrest in 1994. At the time, he did not recognize that he was an addict, though it is absolutely clear to him now. Mr. XXX began living a double life while he was using - trying to pretend while he was with the people that he loved and hiding his addiction, and then leaving his family for days at a time and lying to them to facilitate his drug use. He did this to keep his family, who did not use drugs, apart from his drug use and the people he associated with while using drugs. He can see now that the lying and pretending to support his addiction was a huge betrayal of the people he loved. When speaking about his drug use today, Mr. XXX is clear that he will always be an addict and he recognizes the harm he did, not only to the victims of his crimes, but to the people who love him.

Mr. XXX did do some drug treatment in the late 1970's or early 1980's at Genesis House. He was in inpatient treatment for about a year but did not graduate from the program. He has had no further drug treatment other than Narcotic Anonymous meetings and seminars on substance abuse while in custody. However, on May 17, 2017, a substance abuse evaluation of Mr. XXX was conducted at Monroe Correctional Center at the urging of prosecutor Mark Roe. Mr. XXX is scheduled to begin substance abuse treatment within the facility by June 20, 2017 or earlier. He is committed to making the most of this opportunity. If released, Mr. XXX will continue treatment at the Lynwood branch of Evergreen Recovery Centers in order to maintain his sobriety. A letter from Evergreen Recovery Centers is provided with this petition.

It is clear from the Court documents on all of his "strike" offenses that Mr. XXX was struggling with substance abuse issues while he was committing his crimes. In his judgment and sentence on XX-X-XXXXX-X (King County), the judge imposed an exceptional sentence below the bottom of the sentencing range and noted in the findings of fact of Appendix D of the judgment, "the defendant is addicted to heroin and cocaine. That the present offenses before the Court resulted from the defendant's addictions....That further incarceration without treatment would not affect the defendant's future behavior." The Court ordered that the last 12 months of the sentence be served in an inpatient treatment facility. That order was never carried out and Mr. XXX received no drug treatment at the end of this sentence.[[4]](#footnote-4)

In the Snohomish County case that is the subject of this petition, many letters were submitted by family and friends on Mr. XXX's behalf. All of the letters submitted discussed Mr. XXX's long-standing battle with substance abuse and need for treatment. Mr. XXX's wife, Mrs. XXX, spoke in her letter of the hope sparked by the King County Judge's court order that Mr. XXX complete inpatient treatment at the end of his sentence. She also wrote about her realization that, because Mr. XXX never received the treatment the Court saw was needed, Mr. XXX returned home with the same substance abuse problems he had struggled with before serving his 60 month sentence.

In Mr. XXX's own letter to the Court in Snohomish County, he discussed his drug addiction and the lack of treatment centers available to indigent defendants. He asked the judge to sentence him to the death penalty, rather than to a life sentence without the possibility for parole, asking the Court to use the money saved from keeping him alive in prison to "save just one young man or woman" from his fate. He also pointed out that he had a loving wife who would never remarry, despite his efforts to convince her to do so, and children who would therefore grow up without a father.

A copy of the letters submitted by the defense at Mr. XXX's sentencing on the Snohomish County case are provided with this petition.

Mr. XXX's Wife and Children

Mr. XXX first met his wife in junior high school. Slowly they became friends and would spend time together. Mr. XXX reports, "I liked her but I hid it." Later, in high school they began to spend more time together and even went on a trip to Canada with another friend. As they completed high school, Mr. XXX was considering attending Pacific Lutheran University. However, by 1972 Mr. XXX was in the full hold of a drug addiction and began committing crimes to pay for drugs. Before they were married, Mrs. XXX (then D) appeared at Mr. XXX's sentencing in 1972 for his first offense and was there in 1974 when he got out. Mr. XXX went back to prison again shortly after his release. Mr. XXX wanted to be close to D, but found himself pushing her away because he did not her involved or affected by his drug use and criminal conduct. While Mr. XXX was incarcerated, D married someone else and had her son T. However, D remained in Mr. XXX's life and when Mr. XXX's brother Ricky was shot and killed in 1979, Mr. XXX was touched that D came to his brother's funeral. While he was in prison, he reached out to her and she began visiting him and they rekindled their relationship. They married in 1986 and Mr. XXX became step-father to D's son T, who was six years old at the time. They had another son together, A, who was three when Mr. XXX received his mandatory life sentence and is now 26 years old, with a daughter of his own.

Both T and his wife, who live in Olympia, visit Mr. XXX and stay in touch with him. A and his girlfriend also visit Mr. XXX and sometimes bring his granddaughter to see him.

Mrs. XXX was interviewed about Mr. XXX's assertion at his sentencing hearing in Snohomish County that she would never divorce him, even after a mandatory life sentence. She discussed her decision to stay with Mr. XXX through all the years he has been incarcerated. Although Mr. XXX believed she would never leave, Mrs. XXX said she was furious with her husband after he received his life sentence and left her alone to raise and provide for two small children. She indicated it was not at all a foregone conclusion that she would stay married to her husband in 1994 when he began serving his sentence. In fact, for some period of time after he began serving his sentence, Mrs. XXX did not stay in contact with her husband. Over a period of a couple of years, she said, through letters and phone calls and discussions during visits, Mr. XXX made it clear to his wife that he understood the situation he had put her in and the anger and betrayal she must have felt. While Mr. XXX served his sentence, they began rebuilding their relationship. For Mrs. XXX to stay married to her husband and remain supportive of him, she needed to see personal growth. Mrs. XXX was able to stay married to her husband though 23 years of incarceration and a life sentence because he demonstrated personal growth, self-reflection and gained maturity over the years of his incarceration.

Mrs. XXX remains a strong source of support for Mr. XXX and she supports his release. She is realistic about the challenges of a transition from incarceration to freedom after 23 years. She will support a release plan that includes substance abuse counseling, drug testing, life skills classes and individual and/or family counseling to help with Mr. XXX's reintegration back into the family. Mrs. XXX was recently diagnosed with colon cancer. She has had surgery and is in the midst of treatment. She is scheduled for a second surgery in October 2017. It appears her prognosis is good and that she will be able to return to work. She has indicated that Mr. XXX will live with her if he is released and she will be in a position to support them both if he is not able to work full-time, either because of his medical condition, which will be discussed later in this petition, or because he may choose to devote time to taking care of several family members who have serious medical issues.[[5]](#footnote-5)

MEDICAL CONDITION

Mr. XXX turned 64 years old on March 11, 2017. Mr. XXX's main medical issue stems from a back injury while working at a printing press within DOC custody in 2007. Since the injury, Mr. XXX has experienced back and leg pain (down to the bottom of the right leg) and has intermittent numbness. Mr. XXX's injuries have affected his ability to sit for long periods of time, lay in bed and walk. Mr. XXX has had two back surgeries, two nerve block procedures and has been on a host of pain medications to control his chronic pain since 2007. He relies on a cane to get around Monroe, which is an institution with a lot of stairs. He often stays in his cell because of his issues with pain, the trouble he often has walking, and the pain he gets with sitting for long periods of time. A report which discusses Mr. XXX's back injury is provided with this petition. It should be noted that there are about 150 pages of medical records relating to his back injury and treatment within the Department of Corrections. Those medical records document chronic pain, trouble walking and sleeping and a host of issues related to the pain medications administered over the years for his back pain. Upon request, these medical records can be provided to anyone reviewing this petition. In 2014, Mr. XXX worked with medical staff to wean himself off of some of the more serious pain medication he was taking because of side-effects and concerns about long-term use of narcotic pain medication by someone with substance abuse issues -- a concern Mr. XXX shared with the DOC medical staff. He now manages his back pain with ice and Ibuprofin. If released from custody, Mr. XXX has indicated he would seek physical therapy, acupuncture and other alternative forms of pain relief that are not available to him while in custody.

COSTS AND RISKS POSED BY ELDERLY PRISONERS

A request for clemency must always be balanced against the risk that the petitioner will reoffend. Mr. XXX's individual profile suggests that he will pose a low risk to society if released, notwithstanding some risk factors such as his history of substance abuse and criminal history extending back to 1972. Mr. XXX has good family support, mentors who have made the transition from incarceration to freedom, and a release plan, which will be discussed later in this petition. He is also disabled and walks with a cane. Mr. XXX's individual risks for release should also be assessed against the backdrop of data that is available about elderly prisoners, since Mr. XXX is 64 years old.

The American Civil Liberties Union Conducted an exhaustive report, parts of which are attached to this petition. The report was entitled *At America's Expense: The Mass Incarceration of the Elderly* and was conducted in 2012. The report was based on extensive research and gathering of data nationwide. The report reached certain conclusions in 2012:

- A prisoner is "aging" or "elderly" at 50 years or older;

- In 2012, 16% of the national prison population was age 50 or older and there were 246,600 aging prisoners nationwide;

- The population of prisoners age 55 and older is expected to increase by 4,400% from 1981 to 2030;

- While white prisoners comprise the largest segment of aging prisoners (42% in 2012), Black (33% in 2012) and Hispanic (15% in 2012) prisoners are overrepresented, meaning they make up a far higher percentage of the aging prisoner population than they do the general U.S. population;

- Research has shown conclusively that by age 50 most people have significantly outlived the years in which they are most likely to commit crimes. For example, arrest rates drop to just over 2% by age 50 and are almost 0% by age 65;

- In 2012, it cost $34,135 per year to house an average prisoner, but $68,270 to house a prisoner age 50 and older. Fiscal analysis shows that it saved states an average of $66,294 per year to release an aging prisoner.

The full report by the ACLU can be accessed online. Portions which support the assertions made above are provided with this petition.

CONDUCT WHILE IN CUSTODY IN DEPARTMENT OF CORRECTIONS

Disciplinary History

Mr. XXX has been found guilty of 22 infractions since his first incarceration within the department of corrections 45 years ago in 1972. Not a single infraction has been for violent conduct within the DOC. He has had some infractions for positive drug tests (in 2009) and controlled substances (in the mid-1980's), which certainly reinforce Mr. XXX's admitted need for substance abuse treatment to maintain sobriety if released.

Any records regarding disciplinary offenses will be produced to the Snohomish County Prosecutor, the Clemency Board or the Governor's Office if requested. In an effort not to inundate those reviewing this petition with too many records, this petition will focus on the most recent infractions from 2012 and 2013 and some records regarding those offenses will be provided with the petition.

On 6/21/2012, Mr. XXX was found to be in possession of parts of a disposable lighter. He was found guilty of a reduced infraction of unauthorized possession.

On 6/23/2012, Mr. XXX received a brown bag from another offender which contained chocolate bars and powdered juice mix bags. Mr. XXX was found guilty of unauthorized borrowing/lending.

On 7/26/2012, Mr. XXX had his coat draping off of the top bunk, partially obstructing the view of the bottom bunk. He did not comply with the order to move his coat and was found guilty of refusing an order.

On July 27, 2013, Mr. XXX passed a bag of Taster's Choice coffee to another inmate, and was found guilty of unauthorized lending/borrowing.

On October 11, 2013, Mr. XXX had been given medication for his back pain and instead of taking the full dose of medication, threw one pill in the trash.

When asked about this infraction, Mr. XXX has explained he felt he did not need the full dose of medication in the morning and intended to save the second pill for later, if he needed it.

Rehabilitation

Mr. XXX is a modest man who is more comfortable discussing what he has done wrong and what lessons he has learned, than what he has done right in the years since his crime in 1994. It has taken a lot of time to get Mr. XXX to speak of his accomplishments and the positive steps he has taken in his years in custody. However, with prodding and encouragement, he has been willing to share information about his efforts to better himself and others during the last twenty-three years.

Since 2009, Mr. XXX has demonstrated a serious commitment to sobriety.[[6]](#footnote-6) He has attended Narcotics Anonymous meetings within the Department of Corrections and has also attended seminars on substance abuse.

Mr. XXX has been limited in his programming within the Department of Corrections because of his sentence, and has limited mobility within Monroe because of his back injury and reliance on a cane. However, he does attend both Concerned Lifers meetings and Black Prisoner's Caucus meetings regularly. He also recently received a substance abuse evaluation at Monroe in connection with this petition. He will begin substance abuse treatment at the facility by June 20, 2017.

Perhaps more significant than Mr. XXX's formal activities within the DOC, are the roles he takes to better himself and those serving time with him. Mr. XXX was referred to by Sergeant LG, who used to work at Monroe, as "Bishop Tutu" for his peacekeeping nature within the facility. Over the many years he has spent in custody, he has been able to make relationships work with even the hardest inmates and was even able to help keep peace between inmates who were rivals.

Mr. XXX spoke of a time he was assigned two younger cell-mate from rival gangs. It was a tense situation and Mr. XXX sat them both down and let them know they had to figure out how to make it work peacefully between them. Though they both had tough demeanors, Mr. XXX saw them as young people who could still better themselves. Mr. XXX noticed that one of the two young men sucked his thumb at night and suspected this was someone who needed encouragement and support. He urged his cellmate to pursue education while incarcerated. Although he was met with resistance, he kept pushing the young man to attend school and asking why he would not. His cell mate eventually disclosed to Mr. XXX that he had never learned to read. Mr. XXX began checking books out of the library and teaching the young man to read. Eventually, the young man could read enough that he had enough confidence to pursue his education.

Mr. XXX has both sought mentors during his time at the DOC and has also offered mentorship to younger people serving time with him. These relationships have been and will continue to be very important to Mr. XXX. Mr. XXX will look to two inmates in particular for guidance if he is released. OA and DAM are inmates who were at Monroe Correctional Center with Mr. XXX for many years before their release. They each served long prison sentences before being released and going through the long and difficult process of adjusting to freedom and release into a society that is fundamentally different than the one they both left. Mr. XXX has stayed in touch with both Mr. A and Mr. AM and both men will be part of Mr. XXX's support system if he is released. Letters from both men are attached to this petition.

During his time in custody, Mr. XXX has tried to reach out to younger inmates to help them learn lessons that he learned too late. He has looked for opportunities to discuss his situation with younger inmates before their release dates. His message to these inmates was: do not be like me. He has tried to impress upon younger inmates that seemed open to hearing him the need for them to turn their lives around while they still have the chance. During these discussions, he has openly discussed his addiction and the price he has paid for realizing too late that his addiction was running his life. He has discussed his anger and defiance as a younger man and his realization that the person he was angriest at was himself. He has discussed his crimes and his victims and how scared they must have felt when confronted with his younger, drug-addicted self. He has also discussed with younger inmates the pain he has caused by essentially abandoning his wife, young sons and the rest of his family, especially as they age and deal with illness and need his support.

One of the many inmates positively affected by Mr. XXX was DM, who wrote a letter on Mr. XXX's behalf. Mr. M spoke in his letter of Mr. XXX's "profound ability to influence individuals of diverse backgrounds toward a positive light." He also spoke of how Mr. XXX assisted him and others to "overcome the obstacles of incarceration and the ripple effects of our choices."

It has become important to Mr. XXX to hold himself up as an example of what not to be to prevent others from throwing their lives away and hurting the people they love. His ability to communicate his message even to the most hurt, angry and closed-off of people is a gift. Mr. XXX has indicated that if released, he hopes to continue speaking to young people in schools and communicating his message. Mr. XXX has made it clear that it would be worth his time to speak in schools even if he only reaches one young person in every one hundred he speaks to. If he can divert even one person off of the path that he followed, he feels his time would be well-spent.

MR. XXX'S STATEMENT

Mr. XXX has submitted a statement in support of his request for clemency. His statement demonstrates that he is a man who has been rehabilitated during his many years in prison. Mr. XXX directly apologizes to the victims of his crimes in his letter. He also talks about how his "reckless, selfish and irresponsible ways of life" were a betrayal of his family and even his sense of self. Mr. XXX does not present himself as a finished work, but talks about how he is still "working at bettering myself and influencing those around me in a positive manner." Mr. XXX speaks in his statement of the shame he felt as he began his mandatory life sentence. He says, "[n]ow I look in that mirror and I am no longer ashamed, but proud of the reflection I see. For what it's worth, I am a better man today for it. And I want to continue striving to be an even greater man."

LETTERS OF SUPPORT

One of Mr. XXX's greatest assets as an inmate requesting consideration for clemency is his strong network of family and friends. This includes inmates who served time with him and who have made the transition from incarceration to freedom. Mr. XXX is lucky to have such a large support system still in place after having served nearly 24 years in custody.

Mr. XXX's support system is made up of his wife, mother, sister, brother, sons, other family members, friends and inmates who served time with Mr. XXX who are no longer incarcerated. The letters on behalf of Mr. XXX show that the members of his support system understand that a transition from incarceration to freedom after 24 years in custody will not be easy for a man in his 60's. They are aware that he has a history of substance abuse and uniformly support his participation in substance abuse treatment. They are realistic that Mr. XXX may need some individual and family counseling to facilitate his re-entry into family life and some life skills classes to help him adjust to a society that has changed since the time he was sentenced. Mr. XXX's support system does not have illusions about him or the possible difficulties that may come with a transition to freedom. At the same time, Mr. XXX is clearly precious to his family and friends and they are prepared to be there for him if he is given the opportunity to be released.

The many letters on behalf of Mr. XXX describe him as kind, loving, generous and loyal. His sons felt he was a father to them even though he was incarcerated through most of their childhoods. They have felt enough of a connection to him to continue visiting and staying in touch and to bring Mr. XXX his first grandchild to meet. The many letters on his behalf attest to Mr. XXX having matured, and gained wisdom and insight in his years in custody. The letters attest to his having thought about the impact of his drug addiction and crimes on his victims, his family and society.

Mr. XXX's support network is loyal and will be there for him if and when he is released. While their letters make clear that they will support him, it is also clear they will hold him accountable. They expect him to participate in substance abuse treatment and other counseling. They want him to learn life skills to be self sufficient when released. They will count on him to contribute by helping sick family members. They want to see him educate kids about the perils of drug use and to use his own story as a cautionary tale. They will demand that he finally be a contributing member of family and his community.

RELEASE PLAN FOR MR. XXX

Mr. XXX's release plan includes a substance abuse evaluation at Evergreen Manor in Lynnwood, and participation in any follow-up treatment recommended. Mr. XXX will agree to lifetime supervision and drug testing if he is released, as well as the other conditions proposed by Mr. Roe.[[7]](#footnote-7) Mr. XXX will also seek a combination of individual counseling and family counseling to assist him in the transition back into his family after years of living apart from them. Mr. XXX believes he would benefit from some technology and/or life skills classes that would aid him in becoming self sufficient and able to function in a society that is much different than the one he left in 1994. Mr. XXX will seek physical therapy, chiropractic treatment and/or acupuncture to help him manage his back and leg pain without the use of pain medication. Mr. XXX expects that much of his time will be spent helping aging and sick family members and speaking in schools. His wife, Mrs. XXX indicated he does not have to work, but can work or volunteer, as he wishes, once released. Mr. XXX with live with his wife in Lynnwood.

CONCLUSION

There are prisoners who are angry that they have been in custody so long and who feel entitled to relief. Mr. XXX is not such a man. He knows that he is responsible for the life sentence that he received and is aware that clemency is an extraordinary remedy that is only granted to a few people. He has expressed gratitude that anyone would even take the time to look at his case, let alone pursue a petition for clemency on his behalf.[[8]](#footnote-8)

Whatever the outcome of this petition, Mr. XXX will be grateful and, frankly, in some disbelief that so many people donated time to evaluating whether he is a candidate for the extraordinary remedy of clemency. He has thanked his counsel and expressed surprise every time she has made the trip to see him at Monroe. He was surprised and impressed to hear that the elected Snohomish County prosecutor would take time away from the demands of his job and life to visit him in Monroe and meet his family and he will be grateful if his case is deemed worthy of a hearing.

Should he eventually be granted clemency he will take such an outcome as the gift that it truly is and will make the most of another chance to be a positive member of his community and to give back to the family that loves him so much.

1. *See, Seattle Times Editorial: Time to reform state's 'three strikes' law* (originally published January 22, 2013)(quoting King County Prosecutor Dan Satterberg that prosecutors have learned to use the "three strikes" law in a more reasonable way, since the 1990's). [↑](#footnote-ref-1)
2. According to the Affidavit of Probable Cause filed in the case, Mr. XXX accosted Victim #1 as she was walking to the bank with a cash deposit bag in her hand. He threw her to the ground and attempted to take her bag. When she wouldn't release it, he began striking her and beating her head into the ground until witnesses came to her aid. [↑](#footnote-ref-2)
3. The Affidavit of Probable Cause did not outline any injuries to Victim #1. In addition, although her Victim Impact Statement described the very real emotional toll the crime took on her, the statement did not describe any physical injuries as a result of the crime. Finally, the Judgment and Sentence did not impose any restitution on Mr. XXX. [↑](#footnote-ref-3)
4. A letter is provided from the Department of Corrections confirming that Mr. XXX received no assessments or drug treatment while at DOC or while on supervision. [↑](#footnote-ref-4)
5. Mr. XXX's brother was recently diagnosed with stage 4 lymphoma. His sister has multiple sclerosis and uses oxygen and a wheelchair, and his 82 year old mother is in assisted living. [↑](#footnote-ref-5)
6. Mr. XXX did have two infractions for positive drug tests in 2009 for using marijuana. [↑](#footnote-ref-6)
7. Counsel for Mr. XXX spoke with Ms. M, who wrote the letter from Evergreen Recovery, about how services for Mr. XXX would get paid for. She indicated that under the current system, Mr. XXX would qualify for coverage of an assessment and any follow-up treatment services through Medicaid (Apple Care in Washington) through 65 years of age. At 66 years old, Mr. XXX would need to apply for Medicare and would have access to outpatient services needed on a sliding scale. [↑](#footnote-ref-7)
8. See Christmas card from Mr. XXX to counsel (sent while Mr. XXX's case was still being evaluated), "Thank you again for taking your time to look into my situation and possible [sic] help in it." [↑](#footnote-ref-8)