

DATE TYPED: June 18, 2010
DATE PUBLISHED: June 22, 2010

IN RE: WILLIAM L. GARNER, MANCI #A264-900

**STATE OF OHIO
ADULT PAROLE AUTHORITY
COLUMBUS, OHIO**

Date of Meeting: June 14, 2010

Minutes of the **SPECIAL MEETING** of the
Adult Parole Authority held at 770 West Broad Street,
Columbus, Ohio 43222 on the above date.

IN RE: William L. Garner, ManCI #A264-900

SUBJECT: Death Sentence Clemency

CRIME, CONVICTION: Aggravated Murder with 3 aggravating circumstances specifications (5), Aggravated Burglary, Aggravated Arson (2), Theft , Receiving Stolen Property (2).

DATE, PLACE OF CRIME: January 26, 1992 in Cincinnati, Ohio

COUNTY: Hamilton

CASE NUMBER: B920826

VICTIMS: Mykkila Mason (age 8)
Deondra Freeman (age 10)
Markeca Mason (age 11)
Denitra Satterwhite (age 12)
Richard Gaines (age 11)

INDICTMENT: 2/3/1992: Counts 1-5: Aggravated Murder with 3 aggravating circumstance specifications, Count 6: Aggravated Burglary; Counts 7-8: Aggravated Arson; Count 9: Theft; Counts 10-11: Receiving Stolen Property.

TRIAL: 10/1/1992: Found guilty by Jury of counts 1-8; 9/25/1992: pled no contest, found guilty by Judge in counts 9-11.

DATE OF SENTENCE: November 5, 1992

SENTENCE: Aggravated Murder with 3 aggravating circumstance specifications (5counts): DEATH
Aggravated Burglary: 10-25 years
Aggravated Arson (2 counts): 10-25 years
Theft: 2 years
Receiving Stolen Property (2 counts): 2 years

ADMITTED TO INSTITUTION: November 12, 1992

JAIL TIME CREDIT: 290 days

TIME SERVED: 210 months (does not include JTC)

AGE AT ADMISSION: 20 years old
CURRENT AGE: 37 years old
DATE OF BIRTH: September 26, 1972
JUDGE: Honorable Thomas Nurre
PROSECUTING ATTORNEY: Arthur M. Ney, Jr.

FOREWORD:

Clemency in the case of William L. Garner, A264-900 was initiated by the Ohio Parole Board, pursuant to Section 2967.03 and 2967.07 of the Ohio Revised Code and Parole Board Policy #105-PBD-01.

On June 3, 2010, William Garner was interviewed via video-conference by the Parole Board at the Mansfield Correctional Institution. A Clemency Hearing was then held on June 14, 2010 with seven (7) members of the Ohio Parole Board participating. Arguments in support of and in opposition to clemency were then presented.

The Parole Board considered all of the written submissions, arguments, information disseminated by presenters at the hearing, prior investigative findings as well as judicial decisions and deliberated upon the propriety of clemency in this case. With seven (7) members participating, the Board voted seven (7) to zero (0) to provide an unfavorable recommendation for clemency to the Honorable Ted Strickland, Governor of the State of Ohio.

DETAILS OF THE INSTANT OFFENSE (B920826):

The following account of the instant offense was obtained from the Ohio Supreme Court opinion, decided November 22, 1995:

In the pre-dawn hours of January 26, 1992, three fires were intentionally set in the apartment of Addie F. Mack at 1969 Knob Court in Cincinnati while Mack was being treated at a local hospital emergency room. As a result, five children who had been sleeping on the second floor of the apartment died of smoke inhalation. Mack's oldest child, Rod (age thirteen), survived by escaping through a window. He was found at the scene by police officers: crying, upset and shoeless on the bitterly cold January night.

Later that morning, police interviewed Thomas J. Tolliver, a cab driver for the Yellow Cab Company. Investigators had been led to Tolliver based upon information provided by two police squad car officers who had observed a young man walking to a Yellow Cab waiting outside the 1969 Knob Court address just prior to the time the fire was reported.

Tolliver provided police with an address on Burnet Avenue to which he had delivered his

previous night's fare, who had identified himself as "William." Tolliver described picking "William" up at the same hospital emergency room where Mack had been treated, driving to 1969 Knob Court, and waiting while "William" entered the apartment and eventually brought several items to the cab. Tolliver told police he then drove his fare to a United Dairy Farmers ("UDF") convenience store and waited while "William" purchased several items. Police recovered a television set from Tolliver which "William" had removed from Knob Court, and which Tolliver accepted as collateral in lieu of payment of cab fare when "William" told him he could not pay cash.

Police obtained surveillance videotape from the UDF and showed Tolliver still photographs taken from it. Tolliver confirmed that the individual shown therein was his fare from the previous evening, although Tolliver made his identification on the basis of clothing rather than facial features. During this questioning, Tolliver was shown three photo arrays, two of which contained police photographs of William L. Garner. Tolliver identified Garner as the "William" he had transported the night before in both of the two photo arrays which included Garner's photograph.

As a result of the information received from Tolliver, police obtained a search warrant and searched the Burnet Avenue residence where "William" had been taken by Tolliver. Police there recovered several items which matched descriptions Tolliver had given of items his passenger had brought to the cab from the Knob Court address. Police recovered a VCR, a Sony "boom box," and a portable telephone, as well as a pair of gloves, a set of keys later identified as Addie Mack's, and copies of her children's birth certificates. Police photographed a UDF grocery bag in a trash can at the residence. During the search police arrested Garner, in connection with the fire, and advised him of his *Miranda* rights.

Garner was interviewed at police headquarters, where he provided a taped statement in which he described events of the previous night. He recounted having found Mack's purse near a pay telephone in the emergency room area of the hospital, and obtaining Mack's address, food stamps, and keys from the purse. He admitted calling a cab and being transported to the Knob Court address. Garner acknowledged that his intent in going to Mack's apartment was to "take her things." Garner described going through the rooms in the apartment, and noticing that a back bedroom was "full of girls". He described talking to one girl who asked him for water, and providing it to her. Garner said the girl then turned on a television set for a few minutes before going back to the room where the other girls were sleeping. Garner also admitted having been in the bedroom in which the two boys were sleeping.

Garner admitted taking a television set, a VCR, a telephone, and a "radio box" from the apartment, and putting them in the cab. He described telling the driver that he and his girlfriend had a "falling out," forcing him to move his possessions. He admitted setting one fire at Mack's apartment by throwing a lighted match onto a couch on the first floor, and confirmed watching a small flame ignite in the couch. He then left the apartment with the final stolen item (the television) and directed the cab driver to make a stop at a UDF convenience store. Garner said he there purchased several items before instructing the driver to take him to his residence at 3250 Burnet Avenue.

When asked why he had set the couch on fire, Garner stated that he had intended to create a smoke screen and to cover fingerprints he suspected he had left on the couch. He told police that he believed the children would smell the smoke and get out of the house, particularly as he believed one child to be awake, and that all of the children were old enough to get out.

Rod Mack, the sole survivor of the fire, testified that he and his friend, Richard Gaines, were sleeping in one of the upstairs bedrooms on the night of the fire, and that all four girls were sleeping together in a second bedroom. Mack testified that the "radio" (Sony boom box) found by police at Garner's residence was his, and had been in his bedroom on the night of the fire. He testified that the receiver portion of a two-piece cordless phone (later recovered during the police search of Garner's residence) had been located in the bedroom where all of the girls had been sleeping. He testified that the VCR recovered from Garner's residence had been located in a third bedroom, his mother's room.

Rod described being awakened by smoke, seeing fire in the hallway outside his bedroom, and hearing his sisters screaming in their room. Finding the hallway blocked by fire, Rod told his friend Richard to follow him out a bedroom window. As Rod exited through the window, Richard instead opened the door to the hall. As Rod continued his escape, he heard Richard fall to the floor, where his body was ultimately found by firefighters.

A smoke detector was found in the apartment after the fire, but did not contain a battery, and was thus inoperable.

Following the fire, Cincinnati Fire Division investigator Peter Frye concluded that, in addition to an intentional fire having been set in the living room couch, two other fires were intentionally set in the apartment. One fire was set in a bed in the mother's unoccupied bedroom, and one in a bed in the remaining unoccupied fourth bedroom. The latter two fires had smoldered but eventually gone out. Frye testified that the fire originating in the couch almost totally destroyed the contents of the living room, and resulted in heavy smoke filling the entire apartment.

Garner was indicted and charged with five counts of aggravated felony-murder. Each count included three death penalty specifications. In addition, Garner was charged with aggravated burglary and two counts of aggravated arson. A jury found Garner guilty of all charges, including the death penalty specifications. Thereafter the jury returned a recommendation that he be sentenced to death, and that recommendation was accepted by the trial court.

PRIOR RECORD

JUVENILE: William L. Garner has the following known juvenile arrest record:

William L. Garner, A264-900
 Death Penalty Clemency Report

<u>Date</u>	<u>Offense</u>	<u>Location</u>	<u>Disposition</u>
12/19/1983 (Age 11)	Theft	Cincinnati, OH	Adjudged, Placed on probation, house arrest and ordered to stay away from Downtown Department Stores.
9/12/1984 (Age 11)	Criminal Trespass Complicity to Burglary	Cincinnati, OH	Adjudged, restitution, to remain out of TT Newberrys Store, Hillcrest and house arrest.
9/27/1984 (Age 12)	Theft	Cincinnati, OH	Adjudged, restitution, Hillcrest and house arrest.
10/17/1984 (Age 12)	Assault, Violation of Court Order	Cincinnati, OH	Adjudged and house arrest.
02/06/1985 (Age 12)	Criminal Trespass Theft Breaking & Entering	Cincinnati, OH	Adjudged, restitution and Hillcrest.
02/28/1985 (Age 12)	Violation of Court Order	Cincinnati, OH	Adjudged and Hillcrest.
06/05/1986 (Age 13)	Burglary	Cincinnati, OH	Adjudged, restitution, permanent commitment to DYS.
12/18/1987 (Age 14)	Receiving Stolen Property, Misuse of Credit Card, Criminal Trespassing, Violation Court Order	Cincinnati, OH	Adjudged and permanent commitment to DYS.
02/21/1989 (Age 16)	Theft	Cincinnati, OH	Adjudged and restitution.
09/07/1989 (Age 16)	Theft	Cincinnati, OH	Adjudged and remain out of Lazarus Department Store.
02/09/1990 (Age 17)	Breaking & Entering	Cincinnati, OH	Adjudged, restitution, DYS.
02/17/1990 (Age 17)	Assault	Cincinnati, OH	Adjudged.

ADULT: William L. Garner has the following known adult arrest record:

<u>Date</u>	<u>Offense</u>	<u>Location</u>	<u>Disposition</u>
1/07/1991 (Age 18)	Receiving Stolen Property	Cincinnati, OH	3/15/1991: 3 months jail, costs remitted.
01/15/1991 (Age 18)	Drug Abuse (B910676)	Cincinnati, OH	04/15/1991: 1 year CRC and costs; 11/15/1991: Expiration of sentence.
02/17/1991 (Age 18)	Receiving Stolen Property (MV) (B911521)	Cincinnati, OH	04/15/1991: 1 year CRC; 11/15/1991: Expiration of sentence.
1/26/1992 (Age 19)	Aggravated Murder (5 counts) Aggravated Burglary, Aggravated Arson (2 counts), Theft, RSP (2 counts) (B920826)	Cincinnati, OH	INSTANT OFFENSE

Institutional Adjustment:

William L. Garner was admitted to the Department of Rehabilitation and Correction on November 12, 1992. His work assignments while incarcerated at the Mansfield Correctional Institution include porter and laundry porter. Garner was enrolled in GED classes from 4/1999 to 1/2002, when that program was discontinued. Garner did complete a smoking cessation program in 2006.

Since his admission, Garner has accumulated the following disciplinary record which resulted in placement in disciplinary control:

- 7/4/1993: Encouraging/creating a disturbance, malicious destruction of property, any act constituting a threat to security of institution, staff, inmates, or the inmate himself. Garner set fire to a blanket draped between the bars of his cell. He received 9 days in disciplinary control for this infraction.
- 10/01/1993: Causing or attempting to cause, physical harm to another. Garner threw bars of soap at another inmate. He received 8 days in disciplinary control for this rule infraction.
- 12/13/93: Encouraging or creating a disturbance. Garner tried to strike another inmate through the cell bars. He received 4 days in disciplinary control for this infraction.
- 12/14/1994: Causing or attempting to cause, physical harm to another with a weapon. Garner was involved in a fight with another inmate. He received 7 days in disciplinary control for this rule infraction.

- 04/09/1995: Causing or attempting to cause, physical harm to another. Garner assaulted another inmate with a lock on a string. He received 15 days in disciplinary control for this rule infraction and was also sanctioned to Administrative Control for an unknown period of time.
- 10/01/1996: Causing or attempting to cause, physical harm to another. Garner attempted to hit a staff member (lieutenant). He received 7 days in disciplinary control for this rule infraction.
- 01/09/1997: Disobedience of a direct order. Garner climbed the recreation cage, after being told not to. He received an unknown amount of time in disciplinary control for this rule infraction.
- 02/06/1997: Fighting – with or without weapons, including instigation of, or perpetuating fighting. Garner was involved in a fight with another inmate. He received 15 days in disciplinary control for this rule infraction.
- 07/22/1997: Threatening bodily harm to another, with or without a weapon. Garner threatened to hurt another inmate’s family if the inmate did not give Garner money. He received an unknown amount of time in disciplinary control for this rule infraction.
- 06/01/2000: Fighting – with or without weapons, including instigation of, or perpetuating fighting. Garner was involved in a fight with another inmate. He received 15 days in disciplinary control for this rule infraction.
- 7/18/2004 Consensual physical contact for the purpose of sexually arousing or gratifying either person. Garner was observed engaging in sexual activity with another inmate. He received 15 days in disciplinary control for this rule infraction.
- 06/11/2005: Consensual physical contact for the purpose of sexually arousing or gratifying either person. Garner was observed engaging in anal sex with another inmate. He received 15 days in disciplinary control for this rule infraction.
- 03/24/2010: Throwing any liquid or material on or at another. Garner used profanity toward a Corrections Officer and then threw ice water in the Correction Officer’s face. He received 15 days in disciplinary control for this rule infraction.

Garner has received approximately two (2) additional conduct reports for minor rules infractions since he was admitted to the Department of Rehabilitation and Correction in 1992. Both were handled informally.

APPLICANT’S STATEMENT:

William Garner was interviewed via video-conference by the Parole Board at the Mansfield Correctional Institution on June 3, 2010. Mr. Garner readily admitted his involvement in the offense, accepted responsibility, and acknowledged what he did was wrong. Mr. Garner requested commutation to a life sentence citing his acceptance of responsibility and suggesting his intention was not to harm the children. He initially related that he set a fire to cover involvement in the burglary. He was careless, made a “snap judgment” and believed the children would detect and escape the residence, as the couch where the fire was set was near a smoke detector. Their deaths, he believes, were accidental. He denied setting fires in the upstairs bedrooms. A secondary motivation for setting the fires was to draw attention to the squalid conditions in which the children were living which were

similar to his own experiences. Mr. Garner described his own difficult childhood. He related that he does not believe he is developmentally disabled and he knows right from wrong. He learned to read and write while in prison. Regarding his prison misconduct, Mr. Garner acknowledged same noting "I'm no angel" but that his last serious misconduct was in 1998.

ARGUMENTS IN SUPPORT OF CLEMENCY:

Assistant State Public Defenders Kelly L Schneider and Randall L. Porter submitted a written application with exhibits and, on June 14, 2010 provided testimony at the clemency hearing. Arguments in support of clemency include:

- A majority of the Ohio Supreme Court found "considerable mitigation evidence that is entitled to significant weight". Although upholding the convictions and death sentence, a single justice dissented and found that the aggravating circumstances did not outweigh the mitigating factors.
- Mr. Garner's mental age at the time of the offense warrants the granting of clemency. He should be afforded the same protections afforded individuals of limited mental ability and juveniles. Although nineteen at the time of the offense, Mr. Garner functions at the mental age of a juvenile.
- Although not mentally retarded, he suffers from the same mental limitations which a retarded person suffers. He is of limited intellect, with a history of developmental disorders since birth, and has brain impairment from lead poisoning. His adaptive functioning has consistently been measured within the defective range.
- Mr. Garner is the product of an extremely violent and dysfunctional family. Former Ohio Supreme Court Justice Wright concluded he "never had a chance at a normal life". At birth, he was hospitalized for many months. Later, he was constantly exposed, and subjected to, violence and sexual assault. His mother was seldom in the home. When she was home she assaulted the children.
- Mr. Garner's mother, Patricia Garner, provided testimony at the clemency hearing. She offered condolences to the families of the victims and asked that her son's life be spared. She described the complications Mr. Garner experienced at birth and her poor parenting skills. Although minimizing the extent of the separately documented physical and sexual abusiveness rampant in the home, she acknowledged having failed her son and that she should have done things differently. In discussing the offense with Mr. Garner, she reported that he experiences considerable remorse for his involvement in the offense and thinks about it daily.
- Mr. Garner's sister, Lisa Ross, provided compelling testimony concerning conditions in the Garner home. She acted as caregiver to the younger children since she was five years old. She described the extreme brutality she and her siblings experienced at the hands of their mother and older brother. Ms. Ross tearfully

described her frustration in being unable to protect her younger brothers. She believes her house was “evil” and that no child should have to endure similar circumstances. Ms Ross requested that her brother be granted clemency.

- Dr. Denis W. Keyes provided a written report appended to the clemency application and testimony at the clemency hearing. Dr. Keyes confirmed that Mr. Garner was, at the time of his crimes and at present, significantly lower in developmental, intellectual and adaptive behavior skills. Although nineteen years old at the time of his crimes, he was actually functioning at the behavioral and intellectual level of someone aged thirteen to fifteen years old.
- Mr. Garner was raised in a neighborhood without hope which offered no refuge from the horrors of his home life. Marked poverty, joblessness, and illiteracy were the norm. Food was in scarce supply, utilities were frequently disconnected.
- Ed Burdell, CEO of Applied Information Resources, provided written analysis and testimony at the clemency hearing concerning neighborhood demographics and the dismal and unhealthy conditions of the neighborhoods in which Mr. Garner was raised.
- Mr. Garner’s body was poisoned by lead which caused him irreparable injury. Both his physical and intellectual development was stunted. Severe behavioral problems and aggression are often associated with lead poisoning.

ARGUMENTS IN OPPOSITION TO CLEMENCY:

A written response and exhibits to Mr. Garner’s clemency application were provided by the Hamilton County Prosecuting Attorney and the Office of the Ohio Attorney General. Hamilton County Assistant Prosecutor Ron Springman and Assistant Attorney General Brenda Leikala provided testimony at the clemency hearing. Arguments in opposition to clemency include:

- William Garner knowingly murdered five children in selfish greed. He set multiple fires in a residence he knew was occupied by six children. Each of five victims suffered a horrendous death from smoke inhalation. Their last moments were permeated by immense fear. Mr. Garner entered each of the victim’s bedrooms in search of items to steal. He encountered one of the victims and, at her request, provided a glass of water.
- Although admitting he set the fires, Mr. Garner has never shown remorse. He maintains that he did not intend the obvious result: for the children to perish. Mr. Garner’s claim at his interview that he believed the children would escape is unsupported by the evidence. He set three fires in a manner that would impede their escape.

- The deliberate act of setting not just one but three fires as obstacles in their only escape route demonstrates not a lack of intent, but rather, premeditation. The removal of a cordless phone from one of the bedrooms further demonstrates efforts to impede any hope of escape.
- The five children never had a chance to live their lives and a sixth had his life destroyed. The lone survivor will perpetually be disturbed by the events he survived. His nightmare will have no end.
- State and Federal Courts have repeatedly affirmed Garner's conviction and sentence. The jury found the requisite intent for aggravated murder despite a jury instruction on the lesser included offense of involuntary manslaughter. Reviewing court's found no impropriety in the findings of the trial court. Garner's behavior during the commission of the offense infers his intent.
- The Ohio Supreme Court noted, "We unhesitatingly find that the natural, reasonable and probable consequence of Garner's having set three separate fires in an apartment occupied by six children age thirteen and under is that those children would die. There was thus sufficient evidence to support the jury's finding that Garner possessed the requisite mental elements of the crime of aggravated murder."
- The majority of the information in Mr. Garner's clemency application is cumulative to that which the jury heard, considered, and rejected. His upbringing, mental retardation, and brain impairment were presented at the mitigation phase of trial.
- Mr. Garner has an extensive criminal history. The current offense occurred seventy-one days after his release from a prison sentence. His prison record contains many rule violations to include fire setting, threats, and disobedience.

VICTIMS' REPRESENTATIVES:

Providing testimony in opposition to clemency were Rodriczus Mack, the sole surviving victim and brother; Marshandra Jackson, the mother of victim Markeca Mason; Addie Mack, the mother of victims Denitra Satterwhite, Deondra Freeman, and Mykila Freeman; Letha Mack, the aunt of five of the victims; and Carl Anthony Freeman, the father of victims Deondra and Mykila Freeman. Each provided insightful and compelling testimony recalling the lives and virtues of the deceased children. They described their horror and grief at the time of the offense, their sense of tremendous loss unabated by time, and the tremendous toll the offense continues to have on their psychological well being.

PAROLE BOARD'S POSITION AND CONCLUSION:

The Ohio Parole Board deliberated extensively on the documentary and testimonial evidence provided. Within a few months of release from a previous prison sentence, Mr. Garner committed an offense of unusual magnitude. Five children perished as a result of fires Mr. Garner set to cover up a residential burglary. Although claiming his intent was not

to harm or kill the children, his behavior in committing the offense reflects considerable calculation and purposeful conduct from the initial theft of a purse, travel to the residence while the owner received medical treatment, manipulation of a cab driver, and the theft of selected items prior to the setting of the fires. Setting the fires in three separate locations seems to ensure any avenue of escape would be removed and refutes Mr. Garner's claim that he believed the children would escape unharmed. Mr. Garner has a considerable prior record of criminal behavior since age eleven and a well documented inability to profit from interventional efforts to steer his behavior toward societal norms. His misbehavior continues while imprisoned. Considerable weight was afforded the considerable mitigation presented. It is clear Mr. Garner suffered developmentally and was raised in an exceptionally and horrendously abusive environment. However, we cannot conclude that the mitigating factors are significant enough to outweigh the aggravating circumstances of an offense resulting in the death of five innocent children.

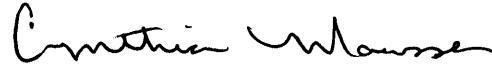
RECOMMENDATION:

The Ohio Parole Board with seven (7) members participating, by a vote of seven (7) to zero (0), recommends to the Honorable Ted Strickland, Governor of the State of Ohio, that executive clemency be denied in the case of William L. Garner, A264-900.

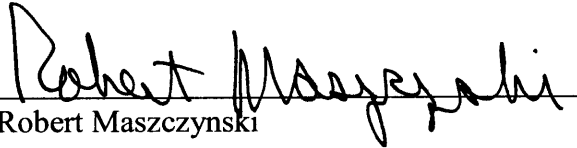
William L. Garner, A264-900
Death Penalty Clemency Report

Adult Parole Authority
Ohio Parole Board Members
Voting **Favorable**

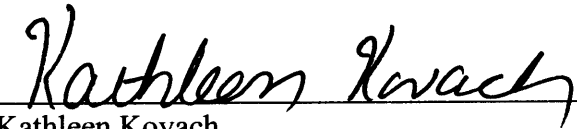
Ohio Parole Board Members
Voting **Unfavorable**



Cynthia Mausser, Chair



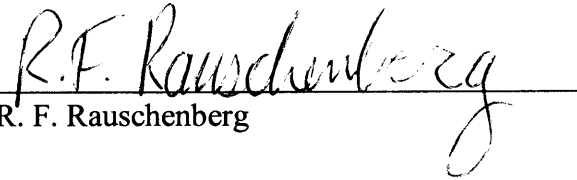
Robert Maszczyński



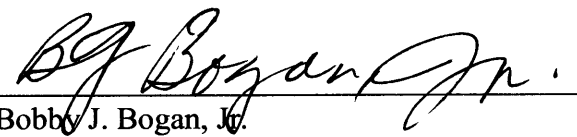
Kathleen Kovach



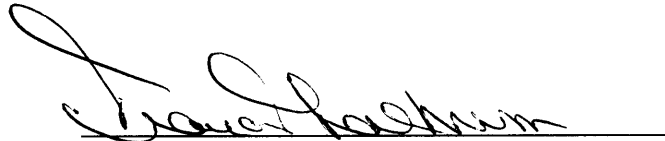
Ellen Venters



R. F. Rauschenberg



Bobby J. Bogan, Jr.



Trayce Thalheimer