

TABLE OF CONTENTS

TABLE OF CONTENTS..... 2

TABLE OF AUTHORITIES 3

ARGUMENT 5

I. Respondent incorrectly relies on the facts of Lynda Branch’s crime which are not at issue in the present habeas corpus action..... 5

II. Lynda Branch has a justifiable expectation of release on parole based on her protected liberty interest in the application of Parole Regulation 14 C.S.R. 80-2.010(4)(H) (2005) to her by the Missouri Board of Probation and Parole. 7

III. The Missouri Board of Probation and Parole’s denial of Lynda Branch’s parole based on the seriousness of her offense conflicts with Governor Holden’s commutation order. 14

CONCLUSION..... 20

TABLE OF AUTHORITIES

CASES

<i>Blackburn v. Missouri Bd. of Probation & Parole</i> , 83 S.W.3d 585 (Mo. App. W.D. 2002).	13
<i>Bousley v. U.S.</i> , 523 U.S. 614 (1998).	19
<i>Burnside v. White</i> , 760 F.2d 217 (8 th Cir. 1995).	11
<i>Cooper v. Missouri Bd. of Probation & Parole</i> , 866 S.W.2d 135 (Mo. banc 1993).	13
<i>Gettings v. Missouri Dept. of Corrections</i> , 950 S.W.2d 7 (Mo. App. W.D. 1997).	7
<i>Maggard v. Wyrick</i> , 800 F.2d 195 (8 th Cir. 1986).	13
<i>Marshall v. Mitchell</i> , 57 F.3d 671 (8 th Cir. 1995).	13
<i>McKown v. Mitchell</i> , 869 S.W.2d 765 (Mo. banc 1993).	9, 10, 13
<i>Parker v. Corrothers</i> , 750 F.2d 653 (8 th Cir. 1984).	7, 9
<i>People v. Morris</i> , 219 Ill. 373 (Ill. 2006).	15, 16, 17, 19
<i>Shaw v. Missouri Bd. of Probation & Parole</i> , 937 S.W.2d 771 (Mo. App. W.D. 1997).	8, 9
<i>Spencer v. Kemna</i> , 523 U.S. 1 (1998).	9
<i>State ex rel. Shields v. Purkett</i> , 878 S.W.2d 42 (Mo. 1994).	13
<i>Strickland v. Washington</i> , 466 U.S. 668 (1984).	19
<i>Watley v. Missouri Bd. of Probation & Parole</i> , 863 S.W.2d 337 (Mo. banc 1994).	9, 10, 12, 13
<i>Woosley v. U.S.</i> , 478 F.2d 139 (8 th Cir. 1973).	13

STATUTES

Mo. Rev. Stat. § 563.033 (2005).16

REGULATIONS

13 C.S.R. 80-2.010(5)(A)(5) (1982).9, 10

14 C.S.R. 80-2.010(4)(H) (2005)7, 8, 9, 10, 13

14 C.S.R. 80-2.010(9)(A)(2) (2005).15

14 C.S.R. 80-2.010(9)(A)(4) (2005).11, 15

OTHER AUTHORITIES

Carol Jacobsen, et al., *Battered Women, Homicide Convictions, and Sentencing:*

The Case for Clemency, 18 Hastings Women’s L.J. 31 (Winter 2007). 17

ARGUMENT

I. Respondent incorrectly relies on the facts of Lynda Branch's crime which are not at issue in the present habeas corpus action.

Respondent's Statement of Facts contains argument, and that argument is immaterial to this habeas corpus. (Respondent's Brief, p. 5-6). The facts of Lynda Branch's underlying offense, upon which the Missouri Board of Probation and Parole's (hereinafter "MBPP) may have relied in citing the seriousness of the offense as grounds to deny Lynda Branch parole, are not at issue. At issue in Point one is whether the MBPP's conclusion that the seriousness of Lynda Branch's offense is a valid reason, by itself, to deny her parole when she has a protected liberty interest. At issue in Point two is whether the MBPP exceeded its authority by ignoring Governor Holden's intent that the MBPP not consider the facts of Lynda Branch's crime, and by ignoring its own regulations. The facts of Lynda Branch's crime undergird the seriousness of her offense, but Lynda Branch has not challenged these facts themselves in her habeas corpus petition. Rather, she challenges the consideration of these facts in contravention of Governor Holden's intent and the applicable parole regulation.

Respondent further argues that Lynda Branch insists that the MBPP is obligated to accept her rendition of the facts of her crime. (Respondent's Brief, p.15, n.4). Respondent also argues that Lynda Branch created a new version of facts for the purpose of this habeas corpus petition. (Respondent's Brief, p.15,

n.4). Petitioner did not recite the facts of her crime in her habeas corpus petition, nor has she ever asked this Court to consider the facts of her crime. Petitioner discussed the facts of her crime to respond to Respondent's recitation of the facts from the Appellate Court opinion in his brief. His recitation of those facts embodies Lynda Branch's reason for seeking clemency in the first place. The heart of why battered women seek and obtain clemency is that evidence of abuse is typically excluded at trial. Therefore, the facts upon which courts decide such cases are incomplete, and such was the case of Lynda Branch.

As such, Respondent's recitation the facts of Lynda Branch's crime, as stated by the Missouri Court of Appeals, is particularly unjust because the exclusion of factual evidence, including eyewitness testimony of a babysitter, decedent's former wife's testimony, and medical records, provided a basis not only for Lynda Branch's clemency petition but also for the appellate court reversal of her first trial. That factual evidence was not admitted in her second trial either. So it has never been presented to a court. Such documentary and testimonial evidence was not and could not be invented by Lynda Branch nor does it have any place in this habeas corpus action based on a protected liberty interest and Governor Holden's intent when he granted her commutation.

II. Lynda Branch has a justifiable expectation of release on parole based on her protected liberty interest in the application of Parole Regulation 14 C.S.R. 80-2.010(4)(H) (2005) to her by the Missouri Board of Probation and Parole.

Respondent argues that the current parole *statute* creates no liberty interest in release on parole. (Respondent's Brief, p. 8). Petitioner does not claim a liberty interest in the parole statute, but instead relies on a parole *regulation*, 14 C.S.R. 80-2.010(4)(H) (2005), which meets the test set forth in *Parker v. Corrothers* for a regulation to create a protected liberty interest. 750 F.2d 653, 659 (8th Cir. 1984).

Respondent relies on *Gettings v. Missouri Department of Corrections*, to argue that the parole regulations are meant to be an aid to the MBPP in determining parole. 950 S.W.2d 7, 9 (Mo. App. W.D. 1997) (Respondent's Brief, p.8). However, in *Gettings*, the petitioner claimed a liberty interest in the parole guidelines, not a parole regulation. While the Court does at one point refer to parole regulations, the complete reading of the opinion makes clear that the issue, and thus, the holding was with regard to the parole guidelines. The parole guidelines do not apply to inmates with life sentences like Lynda Branch, and thus, Respondent's reliance on *Gettings* is misplaced. *Id.* (Petitioner's Brief, p. 32-36).

Respondent points out that no case law is reported analyzing the specific regulation upon which Petitioner relies. (Respondent's Brief, p. 9-10, n.1). This absence of case law is not determinative of the outcome, rather the holdings of the

United States Supreme Court, the 8th Circuit, and the language of this regulation are what demonstrate that Lynda Branch has a liberty interest in the correct application of this regulation, 14 C.S.R. 80-2.010(4)(H).

Respondent relies on the fact that the regulation at issue is subsumed in a section titled, “Minimum Parole Eligibility.” (Respondent’s Brief, p. 9). However, the section’s title does not change the language of the regulation itself. The regulation states, “the board considers the deterrent and retributive portion of the sentence to have been served when the inmate has completed fifteen (15) years of the maximum sentence.” 14 C.S.R. 80-2.010(4)(H) (2005). The language of the applicable regulation does set 15 years as the minimum period of incarceration before an inmate is eligible for parole; but it also imposes the minimum and the maximum period of incarceration for the purposes of satisfying the deterrent and retributive portions of a sentence required to compensate society for the seriousness of the offense. The language of parole regulation undeniably does more than set a minimum period of incarceration for parole.

Respondent cites *Shaw v. Missouri Board of Probation and Parole* to support his argument that the regulations do not limit the MBPP’s discretion. 937 S.W.2d 771, 772 (Mo. App. W.D. 1997); (Respondent’s Brief, p.9). The regulation at issue in *Shaw* stated that the offender did “not become eligible for parole *until* one-third of the maximum sentence ha[d] been served.” *Id.* (emphasis added). This regulation is materially different from the one in which Lynda Branch claims a liberty interest. The *Shaw* regulation creates only a minimum

amount of time to be served prior to the inmate being eligible for parole, which allows the MBPP to extend the incarceration. *Id.* It does not contain mandatory language nor does it significantly guide the discretion of the MBPP. *Parker* requires both to create a liberty interest. 750 F.2d 653. Respondent points out that in *Spencer v. Kemna*, the United States Supreme Court relies on *Shaw* for the proposition that the Missouri parole statute gives the MBPP almost unlimited discretion in whether to grant parole. 523 U.S. 1, 14 (1998); (Respondent’s Brief, p. 9). The operational phrase is ‘almost unlimited.’ Petitioner reiterates that the United States Supreme Court notes the MBPP does not have completely unlimited discretion, and where it does not have discretion is to ignore the content of 14 C.S.R. 80-2.010(4)(H) (2005), and use it alone to deny Lynda Branch’s parole.

Respondent asserts that the regulation applicable here serves only to define a minimum time in which an inmate may satisfy the deterrent and retributive portions of a sentence. Respondent points to 13 C.S.R. 80-2.010(5)(A) (1982), the regulation that preceded 14 C.S.R. 80-2.010(4)(H) in time¹, and cites *McKown v.*

¹ Respondent states that 13 C.S.R. 80-2.010(5)(A) (1982) is the predecessor regulation. For the purposes of this brief, Petitioner refers to 13 C.S.R. 80-2.010(5)(A) (1982) as the predecessor regulation to 14 C.S.R. 80-2.010(4)(H) (2005). However, Petitioner has not had sufficient time to determine whether the specific regulation cited by Respondent is the exact predecessor to the specific regulation at issue in this case.

Mitchell, 869 S.W.2d 765 (Mo. App. W.D. 1993) and *Watley v. Missouri Bd. of Probation & Parole*, 863 S.W.2d 337 (Mo. banc 1994). Both *McKown* and *Watley* were based on the predecessor regulation. 869 S.W.2d 765; 863 S.W.2d 337. (Respondent’s Brief, p. 10). The predecessor regulation stated, “[t]he parole board considers the deterrent and retributive portion of the sentence to have been served when approximately 25 percent of the maximum sentence has been served. 13 C.S.R. 80-2.010(5)(A)(5) (1982). The operational difference between the predecessor and current regulations is in the words “approximately 25%.” The predecessor regulation is not particularized (“approximately 25%”) or mandatory (“approximately”), and therefore, it does not satisfy the test for a liberty interest. The current regulation differs in that it provides clear cut criteria (no more and no less than 15 years), and imposes a mandatory point in the incarceration (fifteen (15) years), which satisfied the deterrent and retributive portions of a sentence. The predecessor regulation did not significantly guide the exercise of discretion as does the current regulation. 13 C.S.R. 80-2.010 (5)(A)(5) (1982); 14 C.S.R. 80-2.010(4)(H) (2005).

In determining that the former regulation created only a minimum requirement, the Court in *Watley* stated that each of the regulations in that section “clearly explain that an inmate ‘shall not be eligible for parole until’ a certain percentage of the maximum sentence has been served.” *Watley v. Missouri Bd. of Probation & Parole*, 863 S.W.2d at 339. The regulation applicable to Lynda Branch gives the MBPP no such option to extend incarceration because it contains

no such indeterminate language for the limited purpose of satisfying the deterrent and retributive portions of the sentence.

Respondent asserts that the parole statute does not allow the MBPP to release an inmate unless the inmate can be released without detriment to the community, and that a detriment to the community is implied in a denial based on depreciation of the seriousness of the offense. (Respondent's Brief, p.10-11). This assertion is inapposite to the present case because the parole regulation gave the MBPP no discretion to cite the only reason it provided, the seriousness of Lynda Branch's offense, to imply that she would be a detriment to society. Respondent relies on *Burnside v. White*, which states that a finding that release at this time would depreciate the seriousness of the offense contains an implicit finding that the inmate cannot be released without detriment to the community. 760 F.2d 217, 222-23 (8th Cir. 1995); (Respondent's Brief, p. 10). However, Lynda Branch cannot be a detriment to society because of the seriousness of her offense, because she has already compensated society for the seriousness of her offense. Thus, it is not a valid reason upon which to deny her parole. The regulations allow the MBPP to cite other reasons to deny parole, and specifically state that one reason for parole denial may be, "[r]elease at this time is not in the best interest of society." 14 C.S.R. 80-2.010(9)(A)(4) (2005). If the MBPP believed Lynda Branch was a detriment to society for reasons other than the seriousness of her offense, it had to deny her parole based on one of those bases.

Respondent has never disputed the fact that depreciation of the seriousness of the offense is equivalent to the unserved deterrent and retributive portions of a sentence. The MBPP regulations state that the deterrent and retributive portions of Lynda Branch's sentence were served at fifteen (15) years, and thus, Lynda Branch compensated society for the seriousness of the offense at fifteen (15) years. The regulations thus mandate that the inmate is no longer a detriment to society based on the seriousness of the offense at fifteen (15) years served. The MBPP could have listed other reasons indicating that Lynda Branch is a detriment to society in denying her parole, but it did not.

Respondent again relies on *Watley* to support his position that the regulation cannot create a binding maximum period of incarceration because it would conflict with the statutory language limiting release to cases in which, in the MBPP's opinion, release is in the best interest of society. (Respondent's Brief, p. 11). The MBPP clearly has discretion to determine when an inmate is no longer a detriment to society, but it cannot use the serious facts of an offense to undergird that determination when an inmate has already satisfied the deterrent and retributive portions of a sentence. The MBPP used its discretion when it created the regulation applicable to Lynda Branch, stating that the seriousness of the offense was served at fifteen (15) years. In that regulation, the MBPP removed its ability to find that the inmate is a detriment to society based on the seriousness of the offense after the inmate had served fifteen (15) years.

Respondent concedes no reported opinions deal with 14 C.S.R. 80-2.010(4)(H). Respondent cites *Watley* and *McKown*. They were cases challenging the Ex Post Facto application of Missouri's parole statute, and they involved the parole regulation which was the predecessor to the regulation in which Lynda Branch claims a liberty interest. 863 S.W.2d 337; 869 S.W.2d 765. Both cases were decided adverse to claimants but neither claimant had a liberty interest in a specific, particularized, substantive, and mandatory parole regulation. Lynda Branch's habeas corpus petition presents a question of first impression on the liberty interest in correct application of 14 C.S.R. 80-2.010(4)(H) (2005).

Respondent cites both *Blackburn v. Missouri Bd. of Probation & Parole*, 83 S.W.3d 585 (Mo. App. W.D. 2002), and *Marshall v. Mitchell*, 57 F.3d 671 (8th Cir. 1995), to support the proposition that due to the MBPP's broad discretion, it is not required to give the inmate its reasons for parole denial. (Respondent's Brief, p.9). Discretion, no matter how broad, does not legalize any and all actions of an agency. "In order to exercise discretion, a party must make a reasoned judgment based upon existing circumstances." *Maggard v. Wyrick*, 800 F.2d 195, 199 (8th Cir. 1986) citing *Woosley v. U.S.*, 478 F.2d 139 (8th Cir. 1973). Thus, the MBPP must make a reasoned judgment in making a discretionary decision. Furthermore, this Court has clearly stated that while it will not presume vindictiveness on the part of the MBPP when new hearings are granted, the MBPP "must give reasons beyond a recitation of the statutory and regulatory language." *State ex rel. Shields v. Purkett*, 878 S.W.2d 42, 48 (Mo. 1994) citing *Cooper v. Missouri Bd. of*

Probation & Parole, 866 S.W.2d 135, 138 (Mo. banc 1993). Thus, the MBPP must make a reasoned judgment, and such reasoned judgment must be made known to the person against whom the decision is aimed. Respondent's claim that the MBPP need not list its reasons for denial necessarily fails. Failure to provide reasons for its actions would make the MBPP immune to review even for constitutional challenges.

The MBPP's own regulations state that the seriousness of the offense is not available as a reason to deny parole to Lynda Branch or to claim that she is a detriment to society. Because the MBPP listed no other reason to detain Lynda Branch, a writ of habeas corpus should be granted. Because the MBPP's regulations meet the tests set forth by the United States Supreme Court regarding liberty interests, Respondent cannot argue that the MBPP is beyond the reach of claims like Lynda Branch's. The MBPP's position would mean that its determinations are beyond the reach of the holdings of the United States Supreme Court and beyond the scope of guarantees of the United States Constitution and the Missouri Constitution.

III. The Missouri Board of Probation and Parole's denial of Lynda Branch's parole based on the seriousness of her offense conflicts with Governor Holden's commutation order.

Respondent denies that the MBPP's parole denial conflicted with the Governor's commutation order. (Respondent's Brief, p. 12-13). Petitioner does not

assert that parole denial in itself necessarily conflicts with the commutation order; Petitioner asserts that the only reason given to deny parole, release would depreciate the seriousness of Lynda Branch's offense, conflicts with the Governor's commutation order.

Respondent asserts that "[i]t is not really the law that the Board must parole every inmate with a sentence of 45 years or longer or life, who does not have a mandatory-minimum term and who behaves in prison for fifteen years." (Respondent's Brief, p.13). Petitioner does not claim that every inmate with a life sentence and a clean prison record is entitled to release after fifteen (15) years. The parole regulation requires an inmate to serve fifteen (15) years to compensate society for the seriousness of the offense. The MBPP can maintain incarceration beyond fifteen (15) years for various other reasons including a belief that "there does not appear to be a reasonable probability at this time that the inmate would live and remain at liberty without violating the law," and that "release at this time is not in the best interest of society." 14 C.S.R. 80-2.010 (9)(A)(2), (4) (2005). It cannot, however, maintain incarceration based solely on the seriousness of the offense after fifteen (15) years is served.

Respondent argues that Governor Holden's commutation order must be taken on its face. (Respondent's Brief, p.13-15). He claims that only in the event of an ambiguity is a court permitted to review a governor's commutation. (Respondent's Brief, p.13). In stating this premise, Respondent misstates the facts of *People v. Morris*, 219 Ill.2d 373 (Ill. 2006); (Respondent's Brief, p.16, n.5).

Respondent claims that an ambiguity arose in *Morris* after Morris was sentenced to death a second time. This is inaccurate. The *Morris* prosecutor sought the death penalty a second time when Morris's first conviction was reversed. This produced an ambiguity in the interpretation of Governor Ryan's clemency order because he had commuted Morris's original death sentence, and the question became whether Governor Ryan intended to commute all death sentences for Morris or just the first one. Likewise, in the present case there was no apparent ambiguity in Governor Holden's commutation until the MBPP acted contrary to its own parole regulations, and later when the MBPP contravened the expressed intent of Governor Holden.

In *Morris*, Governor Ryan granted a blanket commutation in order to remedy an evil present in the Illinois criminal system. *People v. Morris*, 219 Ill.2d at 383. Governor Holden granted Lynda Branch's clemency in order to remedy an evil in the Missouri criminal system, i.e. the exclusion of factual evidence of abuse in the trial court². Governor Holden factored the facts of Lynda Branch's case, both those admitted and not admitted into evidence, into his clemency decision. After consultation with the MBPP, he determined that Lynda Branch was eligible for parole and had served sufficient time to compensate society for the seriousness

² This evil was subsequently remedied by the legislature in R.S.Mo. § 563.033 (2005).

of her offense, and he commuted her sentence. The MBPP then inexplicably postponed Lynda Branch's parole hearing for six months, denied parole for an unavailable reason, and now maintains its denial of parole in contravention of the intent of Governor Holden expressed in his affidavit. Thus, the ambiguity arose in this case when the MBPP acted in a manner contrary to its own regulations and contrary to Gubernatorial clemency authority. Because Governor Holden could not have anticipated the MBPP acting contrary to the law, he could not have known that the MBPP's denial would produce the ambiguity, which resulted in the need for Governor Holden to swear out an affidavit to clarify his intentions and protect the Gubernatorial clemency authority.

Morris is further applicable to this case because Governor Ryan saw a failure in the Illinois criminal system, which is analogous to the problem Governor Holden saw in the Missouri criminal system. At the crux of most gubernatorial clemencies for battered women is that these women are unusual recipients of life sentences. They do not have significant criminal histories, and they do have exemplary prison records.³ They are not the typical life inmate who has repeatedly shown disrespect for the law or the rules of the institution. Their release is not a

³ See Carol Jacobsen, et al., *Battered Women, Homicide Convictions, and Sentencing: The Case for Clemency*, 18 *Hastings Women's L.J.* 31 (Winter 2007). Demonstrating why battered women serving life sentences are distinct from other inmates serving life sentences, and why clemency is such an appropriate remedy.

threat to society as their criminal behavior is very circumscribed. Lynda Branch was a victim of the person she killed, and evidence of her victimization was excluded from both of her trials, which prevented the fact finders from hearing all of the relevant evidence. The Missouri legislature amended the evidentiary laws, and Governor Holden considered all of the admitted and excluded evidence in Lynda Branch's case to commute her sentence.

Because the MBPP has produced the ambiguity with regard to Lynda Branch's clemency, and because Governor Holden sought to remedy a failure in the criminal system as did Governor Ryan, the Illinois Supreme Court's method of clemency interpretation is applicable to the present case.

Respondent analogizes the MBPP's subjugation to Governor Holden's affidavit in the instant case to a lower court being bound by an appellate judge's affidavit stating what the judge intended to say in an opinion, but is contrary to the actual opinion. (Respondent's Brief, p.17, n.5) This analogy fails for three reasons. First, Governor Holden's affidavit is consistent with his commutation, which is also consistent with the applicable parole regulation. Governor Holden's intent with respect to the MBPP's consideration of the facts of Lynda Branch's crime in determining her parole is not clear on the face of the commutation order. Thus, Respondent cannot claim that Governor Holden's intent, as it is stated in his affidavit, is in any way contrary to the commutation itself. The affidavit explains the intent of the commutation. Second, judicial intent is not viewed in the same way as legislative intent, but higher courts do clarify earlier opinions in later

opinions when the meaning behind a decision has been misunderstood by lower courts.⁴ The United States Supreme Court regularly refers to what was intended in older opinions in order to end a split among circuits as to how a particular opinion is to be applied⁵. Third, *Morris* confirms that a commutation is more analogous to a statute than to a judicial opinion. 219 Ill.2d 373. Because of the similarity between a commutation and a statute, the Illinois Supreme Court properly deconstructed *Morris*'s commutation as the court would deconstruct a statute. Therefore, the lesson of *Morris* is that Lynda Branch's commutation should be deconstructed based upon Governor Holden's intent as the Court would deconstruct a statute based on the legislative intent.

The MBPP must respect the gubernatorial process and obey the clemency authority to consider parole consistent with the Governor's intent. The MBPP is susceptible to a charge of partisanship because it delayed her parole hearing for six (6) months, until Governor Blunt was in office and had replaced two (2) board members, and it denied Lynda Branch's parole during Governor Blunt's tenure

⁴ E.g., *Strickland v. Washington*, 466 U.S. 668 (1984). Supreme Court outlined previous decisions and those cases' standing as to the requirements for effective assistance of counsel as determined in *Strickland*.

⁵ E.g., *Bousley v. U.S.*, 523 U.S. 614, 618 (1998). Supreme Court granted certiorari in order to "resolve a split among circuits" as to the meaning of the Court's *Bailey v. U.S.*, 516 U.S. 137 (1995) decision.

after it consulted with Governor Holden in commuting her sentence in the first place. And, the MBPP has defied the power of the governor in its continued denial of Lynda Branch's parole in violation of its own regulations after Governor Holden clarified his intent.

Finally, Respondent argues that the commutation cannot be read as an order to the MBPP to release Lynda Branch on parole. (Respondent's Brief, p.15-16). Petitioner does not assert that Governor Holden had the power to release Lynda Branch on parole, nor that he necessarily intended for the MBPP to automatically release her on parole. Petitioner asserts that the MBPP was required to grant Lynda Branch a fair parole hearing in accordance with its own regulations. In doing so, the MBPP was precluded from considering the seriousness of the offense, but was entitled to consider any other factors it deemed relevant to determine whether or not to release Lynda Branch. But, the MBPP listed only the seriousness of the offense in denying her parole – the *only* reason unavailable to it.

CONCLUSION

Respondent has not denied that satisfaction of the deterrent and retributive portions of a sentence is equivalent to satisfaction of compensation for the seriousness of the offense. Respondent therefore has not denied that Lynda Branch has compensated society for the seriousness of her offense. Because Lynda Branch has a liberty interest in the parole regulation that indicates she has compensated society for the seriousness of her offense, the MBPP has not given a lawful reason

for her parole denial. Because Governor Holden has clarified that he intended the MBPP not consider the facts of Lynda Branch's crime, and that he relied upon the MBPP's fair application of their own parole regulations, the MBPP is acting beyond the scope of its authority in maintaining its denial of parole to Lynda Branch. A writ of habeas corpus should issue releasing Lynda Branch immediately.

Respectfully Submitted,

1/17/07
Mary Beck
Mo. Bar No. 33789
Attorney for Petitioner
University of Missouri – Columbia
School of Law
104 Hulston Hall
Columbia, MO 65211
(573) 882-9728
Fax (573) 884-4368
BeckM@missouri.edu

1/17/07
Richard Kroeger
Rule 13 Certified Law Student
University of Missouri - Columbia
School of Law
104 Hulston Hall
Columbia, MO 65211
(573) 882-9728
Fax (573) 884-4368
rlkbb7@mizzou.edu

1/17/07
Kelly King
Rule 13 Certified Law Student
University of Missouri - Columbia
School of Law
104 Hulston Hall
Columbia, MO 65211
(573) 882-9728
Fax (573) 884-4368
klkrz9@mizzou.edu

Certificate of Compliance

By submitting this brief, the undersigned counsel for Petitioner hereby certifies This brief complies with Mo. Rule of Civil Procedure 55.03. This brief complies with the limitations contained in Mo. Rule of Civil Procedure 84.06(b). This brief contains 4,885 words. The enclosed disc complies with Mo. Rule of Civil Procedure 84.06(g); the disc is a double-sided, high density, IBM-PC-compatible 1.44 MB, 3½" floppy disc; the disc has been scanned for viruses and is virus-free.

1/17/07

Mary Beck
Attorney for Petitioner
Mo. Bar No. 33789
University of Missouri – Columbia
School of Law
Family Violence Clinic
104 Hulston Hall
Columbia, MO 65201
573-882-9728
573-884-4368(FAX)
BeckM@missouri.edu

Certificate of Service

I certify that two true copies of the above and foregoing were served by the United States Postal Service to the Respondents' Attorney Michael J. Spillane, Assistant Attorney General, at P.O. Box 899, Jefferson City, Missouri 65102 on this 17th day of January, 2007.

_____1/17/07

Mary Beck
Attorney for Petitioner
Mo. Bar No. 33789
University of Missouri – Columbia
School of Law
Family Violence Clinic
104 Hulston Hall
Columbia, MO 65201
573-882-9728
573-884-4368(FAX)
BeckM@missouri.edu