

1 **IN THE CIRCUIT COURT OF THE STATE OF OREGON**

2 **FOR MARION COUNTY**

3 TIFFANY EDENS, SCOTT (LNC), REBECCA) Marion Co. No. _____
4 ASHING, KENNETH EDENS, and)
5 BRENDA (LNC))
6)
7 Plaintiff-Relators,)
8)
9)
10)
11)
12)
13)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)

3 and)
4)
5)
6)
7)
8)
9)
10)
11)
12)
13)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)

3 MICHAEL D. SCHRUNK, Multnomah)
4 County District Attorney,)
5)
6 Plaintiff-Relator,)
7)
8)
9)
10)
11)
12)
13)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)

3)
4)
5)
6)
7)
8)
9)
10)
11)
12)
13)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)

3)
4)
5)
6)
7)
8)
9)
10)
11)
12)
13)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)

14 1.

15 Relator Tiffany Edens is the victim, Relator Scott (last name
16 confidential) is Tiffany Edens husband, relator Rebecca Ashing and
17 Kenneth Edens are Tiffany Eden's mother and father, relator Brenda
18 (last name confidential) is Tiffany Eden's aunt, and relator
19 Michael D. Schrunk represents the State of Oregon in the underlying
20 criminal case for which Troy Richard Gillmore is currently in the
21 Oregon State Correctional Institution, Multnomah County Circuit
22 Court No. 86-12-36764.

23 2.

24 Tiffany Edens together with her husband and relatives are
25 beneficially interested parties as victims whose rights are
26 guaranteed in the Oregon Constitution Art. I, §42 and 43 and ORS

1 144.120. The state is a beneficially interested party as
2 representative of the victim under Oregon Constitution Art. I, §43
3 and as the district from the committing jurisdiction. The adverse
4 party is The Oregon Board of Parole.

5 3.

6 On the evening of December 5, 1986, after returning home
7 from Junior High School, thirteen year old Tiffany Edens was
8 raped by Richard Troy Gillmore, who had broken into her home and
9 was hiding inside. Picking his moment, he overpowered the little
10 girl, threatened to kill her, and then raped her.

11 Between 1979 and 1981, Gillmore terrorized South East
12 Portland, in a series of similar rapes. He became known as the
13 "Jogger Rapist." Gillmore would select his victims while he was
14 out jogging, then knowing their home and habits, he would later
15 attack when it was dark, and he knew they were home alone.

16 Gillmore admitted to his attack on Tiffany Edens (as well as
17 eight of the Jogger Rapist attacks). The prior rapes could not
18 be prosecuted because of the then 3 year statute of limitations.
19 Gillmore was convicted by the Honorable Richard Unis of Burglary
20 I, Rape I and two counts of Sex Abuse. He was found to be a
21 sexually dangerous offender pursuant to ORS 426.675 and a
22 dangerous offender pursuant to ORS 161.725 and 161.735. On
23 October 23, 1987, Judge Unis imposed a 30 year term of
24 imprisonment on both the Burglary I and Rape I with consecutive
25 minimum terms of fifteen years imprisonment. Concurrent terms of
26 imprisonment were imposed on the Sex Abuse I convictions.

27 Page - 2 PETITION FOR ISSUANCE OF ALTERNATIVE WRIT OF MANDAMUS

28 Multnomah County District Attorney's Office, Portland, OR 97204 - (503) 988-3162

1 In sentencing Gillmore, Judge Unis specifically found that
2 consecutive sentences were "necessary because the offenses were
3 not merely incidental violations of separate provisions in the
4 course of the commission of a more serious crime." Judge Unis
5 also found that the offense "caused a substantial risk of causing
6 greater or qualitatively different loss, injury or harm to the
7 victim." He concluded that the "actual term of incarceration
8 would not otherwise be commensurate with the seriousness of the
9 total course of defendant's criminal conduct and the public would
10 not be adequately protected if a concurrent term of imprisonment
11 were imposed." Seven months later on May 26, 1988 without notice
12 to the victim, the Board of Parole with no factual basis found
13 the consecutive 180 month minimum "not an appropriate penalty for
14 the offense and the minimum term is not necessary to protect the
15 public." See attached Board Action Form (BAF) #1.

16 4.

17 On September 11, 2007, The Board held a Parole Consideration
18 Hearing. See Appendix A, pgs. 9-12, BAF #8. The Board found
19 inmate Gillmore a continuing danger but found that he could be
20 adequately controlled with supervision and mental health treatment
21 available in the community. The victim was not notified of the
22 hearing and did not attend. On October 4, 2007, The Board withdrew
23 BAF #8 and rescinded the parole release date of December 18, 2007.

24 See Appendix A, pgs. 5-8, BAF #9. The Board stated that it would
25 reschedule the Parole Consideration Hearing for October 23, 2007
26 and would be "considering all of the evidence and statements

1 entered into the record on that date, as well as
2 everything that was before the board for the September 11, 2007
3 hearing."

4 5.

5 On October 23, 2007, The Board held a Parole Consideration
6 Hearing. See Appendix A, pgs. 1-4, BAF #10. Present were the
7 Tiffany Edens, her husband, mother, father, aunt, and a friend
8 together with Multnomah County Senior Deputy District Attorney Russ
9 Ratto. Evidence presented at the hearing consisted of the
10 psychological evaluation of Dr. Frank Colistro dated June 22, 2007,
11 (see Appendix B, Transcript of 10/23/07 Parole Board Hearing) and
12 statements of Tiffany Edens, Mr. Ratto, and inmate Gillmore. The
13 Board found inmate Gillmore "has a mental or emotional disturbance,
14 deficiency, condition, or disorder predisposing him to the
15 commission of any crime to a degree rendering him a danger to the
16 health or safety of others." The Board then found that inmate
17 Gillmore "can be adequately controlled with supervision and mental
18 health treatment which are available in the community."

19 6.

20 This mandamus proceeding is timely because it is being filed
21 within 30 days of The Board's Order granting release on parole.
22 Inmate Gillmore is scheduled for a parole release date of
23 December 18, 2007.

24 ///

25 ///

26 7.

27 Page - 4 PETITION FOR ISSUANCE OF ALTERNATIVE WRIT OF MANDAMUS

28 Multnomah County District Attorney's Office, Portland, OR 97204 - (503) 988-3162

1 Other than petitioning for a writ of mandamus, the victims and
2 the state have no other plain, speedy or adequate legal remedy
3 available to contest The Board's order. Neither the victims nor
4 the State have a right of appeal in this situation.

5 8.

6 Plaintiff-relators allege six grounds for relief:

7 A. ORS 144.120(1987 laws) was violated by the Board on May 26,
8 1988 in its failure to provide notice to the victims and
9 access to the process, thus rendering invalid the order
10 overriding the consecutive 15-year minimum terms. In April
11 1988, relator Rebecca Edens requested notification of
12 Gillmore's hearings. Although the Board received her
13 request, the Board was unable to notify her of the May 26,
14 1988 parole consideration hearing ostensibly because of a
15 misspelling of Gillmore's name. If the victim and her
16 family had been present, they would have pointed out that
17 Judge Unis not only had the legal authority to impose a
18 consecutive minimum sentence but was in the best position
19 to access and appreciate the necessity of protecting "the
20 public." If the victim and her family had been present,
21 they would have challenged any Board -suggestion that the
22 minimum sentence should be over-ridden.

23 B. Article 1, §43(1)(a) and (4) and ORS 144.122(7) and the due
24 process clause of the 14th Amendment of the United States
25 Constitution were violated by the Board on September 11,
26 2007 in its failure to provide notice to the victim, thus

1 rendering invalid the presentation and consideration of
2 evidence at that hearing. The Board admitted that it
3 failed to notify the victim in its October 4, 2007 order
4 withdrawing and rescinding the decision of September 11,
5 2007 (Appendix A, pgs. 9-12, BAF #8). The Board admitted
6 the nullity of this proceeding by this October 4, 2007
7 order. The Board also conceded in this order that "its
8 statements at the hearing and the statement in BAF #8 do
9 not accurately identify the applicable law used at
10 offender's hearing." The net affect of the October 4, 2007
11 decision was acknowledgement of the Constitutional and
12 statutory violation necessitating a rehearing as then
13 scheduled for October 23, 2007.

14 C. Article 1, §42(1)(a) and (b), §43(1)(a) and ORS 144.122(7)
15 and the due process clause of the 14th Amendment of the
16 United States Constitution were violated by the Board on
17 October 23, 2007 in its failure to provide a reasonable
18 opportunity for the victim and her family to address The
19 Board, thus rendering invalid the decision of The Board.
20 The victim and her family were told by the Board that only
21 one witness would be allowed to address the Board and that
22 the one witness would be limited to three minutes (Appendix
23 B, pg. 8). OAR 255-030-0027 purports to legitimize this
24 practice. This provision and the conduct of the Board
25 offend constitutional and statutory protections afforded
26 the victim. Once the state establishes a right for a

1 party, including a victim, to participate in a contested
2 hearing due process requires that the state allow that
3 party a meaningful participation. Bell v. Burson, 402 U.S.
4 535 (1971). The Board's attempt to restrict the victims'
5 input to only one person is an affront to the very purpose
6 of victim's rights. The broad definitions of victim in
7 both statute and the state constitution were adopted so
8 that people who have been affected psychologically would
9 have the status of victims.

10 Furthermore, stating that only one person could testify
11 for 3 minutes, but that they would not be cut off has a
12 chilling effect on anyone's ability to adequately present
13 their side of the controversy.

14 D. Article 1, §42(1)(a) and (b), §43(1)(a) and ORS
15 144.122(7) and the due process clause of the 14th Amendment
16 of the United States Constitution were violated by the
17 Board on October 23, 2007 because of it's use and reliance
18 upon the September 11, 2007 evidence, hearing and record.
19 The October 23, 2007 record was in fact tainted by the
20 September 11, 2007 Constitutional and statutory
21 irregularities as acknowledged by The Board (see discussion
22 B above). That The Board then used the fruit

23 ///

24 ///

25 of this poisonous tree again October, 23, 2007 was then
26 another equally violative act of both Constitutional and

1 Statutory magnitude, and in need of reversal.

2 E. ORS 144.125(3)(b) and Board of Parole Oregon Administrative
3 Rule 255-036-0005 were violated by the Board on October 23,
4 2007 when ordering inmate Gillmore's release
5 notwithstanding that there was no evidence he could be
6 "adequately controlled with supervision and mental health
7 treatment and that the necessary supervision and treatment
8 are available." The Board correctly received the June 22,
9 2007 report of Dr. Frank Colistro. He concluded that
10 inmate Gillmore continued to suffer from a severe
11 personality disorder, one not amenable to community-based
12 treatment or supervision. Tiffany Edens testified that the
13 psychological scars and her fear of Gillmore endure and
14 will continue into the future. Senior Deputy District
15 Attorney Russ Ratto testified that all psychological
16 evidence before The Board (at Judge Unis' sentencing - Dr.
17 Colbach, Dr. Frazier, Dr. McCourtey, and Dr. Shannon, and
18 past Board evaluations - Dr. Colistro, Dr. Shelman, and Dr.
19 Stuckey) was consistent in describing inmate Gillmore as
20 dangerous and not amenable to treatment or supervision.
21 Inmate Gillmore offered no plan for treatment or
22 supervision or the availability of resources for their
23 provision. In fact, at the October 23, 2007 hearing, The
24 Board was presented with no evidence regarding the
25 availability of resources to treat or supervise inmate
26 Gillmore in the community. There was no basis for The

1 Board's finding that inmate Gillmore could be treated or
2 supervised in the community, much less adequately
3 controlled.

4 F. The Board failed to meet their burden that Gillmore could
5 be treated in the community. ORS 144.228(b) requires that
6 before a dangerous offender inmate is released the Board
7 must find either that, the person is no longer dangerous or
8 can be adequately controlled with supervision and treatment
9 and resources were available for this purpose. There must
10 be something in the record to support such a finding. In
11 the present case there is nothing in the record to support
12 the Board's finding. In 2001, 2003, and 2005 the Board had
13 considered this issue and found that Gillmore a "danger",
14 could not be treated and denied parole. There is nothing
15 in the record of the hearing on October 23, 2007 that shows
16 that anything had changed between 2005 and today. If
17 anything there was a new psychological report prepared in
18 2007 that showed Gillmore was more dangerous and could not
19 be treated in the community.

20 WHEREFORE, relator prays:

21 1. That this court issue an alternative writ, ordering The
22 Oregon Board of Parole to show cause why it should not vacate its
23 May 26, 1988 order and reinstate the consecutive 15-year minimum
24 terms of imprisonment pending the rescheduling of a hearing under
25 ORS 144.110 consistent with the requirements of the Oregon
26 Constitution and statutes.

27 Page - 9 PETITION FOR ISSUANCE OF ALTERNATIVE WRIT OF MANDAMUS

28 Multnomah County District Attorney's Office, Portland, OR 97204 - (503) 988-3162

1
2 **CERTIFICATE OF SERVICE**

3 I HEREBY CERTIFY that I served the foregoing PETITION FOR
4 ISSUANCE OF ALTERNATIVE WRIT OF MANDAMUS on the 21st day of
5 November 2007, by mailing a certified true copy thereof,
6 certified by me as such, in a sealed envelope, with first-class
7 postage prepaid, deposited in the United States Post Office,
8 addressed to:

9 Richard Troy Gillmore
10 #7278280
11 Oregon State Correctional Institution
12 3405 Deer Park Drive SE
13 Salem, OR 97310-9385

14 Oregon Board of Parole
15 2575 Center St NE, Ste 100
16 Salem, OR 97301-4621

17
18 J. Russell Ratto OSB 79131
19 Deputy District Attorney
20
21
22
23
24
25
26