

**DEATH PENALTY/LIFE WITHOUT PAROLE CASE**

IN THE SUPERIOR COURT OF GORDON COUNTY  
STATE OF GEORGIA

**FILED**  
Clerk Superior Ct., Gordon County

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STATE OF GEORGIA, )  
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v. )  
)  
JERRY WILLIAM JONES, )  
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MAY 19 2005  
Brian Brannon  
Clerk  
Indictment No. 16471

**MOTION FOR AN ORDER REQUIRING THE PRODUCTION  
OF ALL MATTERS INVOLVING VICTIM IMPACT EVIDENCE  
PURSUANT TO THE PROVISIONS OF O.C.G.A. §§ 17-10-1.1 AND 17-10-1.2**

JERRY WILLIAM JONES, through undersigned counsel, respectfully moves this Court, pursuant to the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution, Article I, § I, ¶¶ I, II, IV, V, VII, IX, X, XI, XII, XIII, XIV, XVI, XVII, XVIII, XXIV and XXVIII of the Constitution of the State of Georgia, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, December 10 1984, Art 14 and 16, 23 I.L.M. 1027 (Entry into force for the United States November 20, 1994), Inter-American Convention on Human Rights, November 22 1969, Art 4 and 7, 1144 UNTS 123, 9 I.L.M. 673 (Entry into force July 18, 1978), International Covenant of Civil and Political Rights, December 19 1966, Art 2(3) and 6 -7, 999 UNTS 171, 6 I.L.M. 368 (Entry into force for the United States September 8, 1992), Second Optional Protocol to the International Covenant on Civil and Political Rights, December 15 1989, UN GAOR Supp. (No. 49) at 207, UN Doc. A/44/49 (1989) (Entry into force July 11, 1991), Article 18, Vienna Convention on the Law of Treaties, May 23 1969, Art 18, 1155 UNTS 331; 8 ILM 679 (Entry into force January 27, 1980), O.C.G.A. §§ 17-

10-1.1 and 17-10-1.2, Turner v. State, 268 Ga. 213, 486 S.E.2d 839, 841 (1997), as well as statutory and jurisprudential authorities cited below, and all other applicable constitutional, statutory, treaty, customary international law, evolving international standards, jurisprudential authority for an order requiring the production of all evidence, testimony, argument, documents, and any other matters which the State intends to present, elicit, refer to, offer into evidence, or use in any manner during the State's case against him relating in any manner to victim impact matters.

In support, counsel states:

1. Jerry Jones is on trial for his life. The State, through the District Attorney, has announced its intention to kill Jerry Jones, a human being, by lethal injection.

2. "The fundamental respect for humanity underlying the Eighth Amendment's prohibition against cruel and unusual punishment gives rise to a special 'need for reliability in the determination that death is the appropriate punishment' in any capital case." Johnson v. Mississippi, 486 U.S. 578, 584 (1988) (citations omitted). It is well established that when a defendant's life is at stake, a court must be "particularly sensitive to insure that every safeguard is observed." Gregg v. Georgia, 428 U.S. 153, 187 (1976). This heightened standard of reliability is "a natural consequence of the knowledge that execution is the most irremediable and unfathomable of penalties; that death is different." Ford v. Wainwright, 477 U.S. 399, (1986).

Death, in its finality, differs more from life imprisonment than a 100-year prison term differs from one of only a year or two. Because of that qualitative difference, there is a corresponding difference in the need for reliability in the determination that death is the appropriate punishment in a specific case.

Woodson v. North Carolina, 428 U.S. 280, 305 (1976). The United States Supreme Court has repeatedly emphasized the principle that because of the exceptional and irrevocable nature of the

death penalty, "extraordinary measures" are required by the Eighth and Fourteenth Amendments to ensure the reliability of decisions regarding both guilt and punishment in a capital trial. Eddings v. Oklahoma, 455 U.S. 104, 118 (1982) (O'Connor, J., concurring). See also Beck v. Alabama, 447 U.S. 625, 637-38 (1980); Lockett v. Ohio, 438 U.S. 586, 604 (1978); and Gardner v. Florida, 430 U.S. 349, 357-58 (1977).

3 O.C.G.A. § 17-10-1.1 provides, in part:

(a)(1) A prosecuting attorney bringing charges against a defendant shall notify, where practical, the alleged victim or, when the victim is no longer living, a member of the victim's family of his or her right under certain circumstances to submit a victim impact statement....

O.C.G.A. § 17-10-1.2 provides, in relevant part:

(a)(1) In all cases in which the death penalty may be imposed, subsequent to an adjudication of guilt and in conjunction with the procedures in Code Section 17-10-30, the court may allow evidence from the family of the victim, or such other witness having personal knowledge of the victim's personal characteristics and the emotional impact of the crime on the victim, the victim's family, or the community. Such evidence shall be given in the presence of the defendant and of the jury and shall be subject to cross-examination. The admissibility of such evidence shall be in the sole discretion of the judge and in any event shall be permitted only in such a manner and to such a degree as not to inflame or unduly prejudice the jury.

(b) In presenting such evidence, the victim, the family of the victim, or such other witness having personal knowledge of the impact of the crime on the victim, the victim's family, or the community shall, if applicable:

- (1) Describe the nature of the offense;
- (2) Itemize any economic loss suffered by the victim or the family of the victim, if restitution is sought;
- (3) Identify any physical injury suffered by the victim as a result of the offense along with its seriousness and permanence;

- (4) Describe any change in the victim's personal welfare or familial relationships as a result of the offense;
- (5) Identify any request for psychological services initiated by the victim or the victim's family as a result of the offense; and
- (6) Include any other information related to the impact of the offense upon the victim, the victim's family, or the community that the court inquires of.

**(c) The court shall allow the defendant the opportunity to cross-examine and rebut the evidence presented of the victim's personal characteristics and the emotional impact of the crime on the victim, the victim's family, or the community, and such cross-examination and rebuttal evidence shall be subject to the same discretion set forth in paragraph (1) of subsection (a) of this Code section.**

(emphasis added).

4. Jerry Jones hereby Demands the production by the State of all evidence referred to in subparagraph (b) of O.C.G.A. § 17-10-1.2. The statutory language concerning cross-examination and rebuttal is meaningless unless the defendant is given an opportunity to prepare for cross-examination and rebuttal. The Unified Appeal Procedures by which defense counsel must prepare for trial demand that defense counsel seek out and interview all witnesses who will have relevant testimony in the guilt/innocence phase of the trial as well as at the sentencing phase of the trial. The evidence dictated by the provisions of O.C.G.A. § 17-10-1.2 is not evidence which is a part of the investigative file of the State's prosecutors nor is it evidence of any privileged nature. The requirement that defense counsel be prepared to "cross-examine" any victim impact witness and to "rebut" any evidence presented during the "victim impact" testimony demands that the State disclose before trial all such evidence. Without access to this information, defense counsel will be ineffective in his attempts to render assistance to Jerry

Jones. See Strickland v. Washington, 466 U.S. 688, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

5. The Georgia Supreme Court in Turner v. State, 268 Ga. 213, 486 S.E.2d 839, 841 (1997) recently analyzed the practical application of this statute and “provide[d] guidance in the use of victim impact evidence.” In Turner, “[p]rior to trial, the state provided the statements to [the defendant] and the court held a hearing, in which [the defendant] had an opportunity to challenge the content of the statements to remove language that might inflame passion or prejudice.” Id.

The Supreme Court held that

[t]he procedure used by the state and trial court in this case has much to commend it.... By providing a copy of the statement to the defense and the court before the sentencing phase, the trial court may ensure that the statement does not contain highly inflammatory statements.... [W]e conclude that this procedure best comports with the statute and minimizes undue prejudice and we approve its use in future cases.

486 S.E.2d at 842. See also Livingston v. State, 264 Ga. 402, 405, 444 S.E.2d 748 (1994):

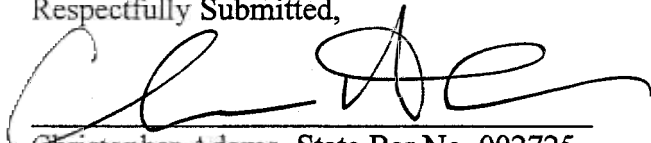
To help ensure that victim impact evidence does not result in the arbitrary imposition of the death penalty, we hold that the trial court must hear and rule prior to trial on the admissibility of victim impact evidence sought to be offered. This will, of course, necessitate that the state notify the defendant of victim impact evidence which it intends to offer ....

WHEREFORE, JERRY WILLIAM JONES requests that this Court enter an order:

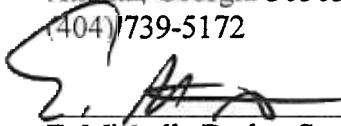
requiring the State to produce, at least 90 days in advance of trial, any “victim impact” evidence upon which it intends to rely; and  
providing such other and further relief as to this Court seems just and proper.

DATED this 15 day of May, 2005.

Respectfully Submitted,



Christopher Adams, State Bar No. 002725  
Georgia Capital Defender  
225 Peachtree Street NE Suite 900  
Atlanta, Georgia 30303  
(404) 739-5172

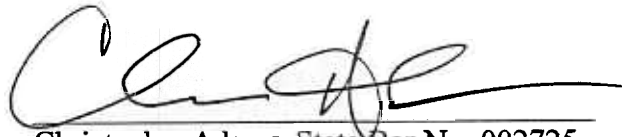


E. Michelle Drake, State Bar No. 229202  
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Counsel for Jerry Jones

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing motion has been mailed to The Office of the District Attorney for Gordon County via first-class United States Postal Service this 19<sup>th</sup> day of May, 2005.



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