

**TESTIMONY OF SHERRADA FIELDER  
TO THE LEGISLATIVE COMMISSION'S SUBCOMMITTEE  
TO STUDY SENTENCING AND PARDONS, AND PAROLE AND PROBATION**

**EXHIBIT I**

Tuesday, March 21, 2006  
Legislative Building  
401 South Carson Street, Room 3138  
Carson City, Nevada

Committee Members and Honorable Legislators:

My name is Sherrada Fielder and I am here representing my husband and our family to provide testimony to seek improvements to sentencing, pardons, and the parole process and share with you our experience in working with the system of sentencing, pardons and parole.

Our experiences and involvement surrounds the conviction, sentencing and incarceration of my husband Duane Fielder, an inmate at the Northern Nevada Correctional Center here in Carson City. Duane was sentenced to two consecutive 5-to-life sentences in November 1989 and would have been eligible for parole on the first offense in 1994 followed by parole eligibility on the second offense in 1999 for a total of a minimum of 10 years incarceration. In November this year, he will have served 17 years. During his sentencing hearing, the Honorable Judge Wright expressed concern regarding the sentence recommended on the enhancement charge. She expressed concern that a specific time would be better than the uncertainty of the 5-to-life sentence. Two months prior to Duane's conviction and sentencing, the Supreme Court had made a case ruling that would have stayed the weapons enhancement charge, but knowledge of the case ruling was not submitted to the court by the DA's office. They pushed for conviction on both offenses knowing well that the weapon's enhancement charge could be in violation of the Sixth Amendment, which provides a right to trial by jury.

Since 1994, Duane has had 5 parole hearings. In meeting the terms for eligibility and consideration along with recommendation by his caseworker, he was granted parole in 1999 on the first offense of second-degree murder. Since that time, he has continued to be a model inmate with no serious offenses or write-ups and over the years, he has continued to work and program as required, yet he still continues to be denied parole without cause or explanation of any sorts.

Our last hearing was held on January 31 of this year for an RPO - Review of Prior Order. The hearing was granted based upon our second request to the Parole Board for re-consideration and review of certain legal matters that would warrant granting of parole or a change or commutation of his

sentencing. However, once again, his parole was denied, and we continue to stand by to see other inmates who have had recent offences, write-ups and corrective actions on their record granted parole and released back into the community, always wondering what are we doing wrong. Why are so many others whose behavior and character you would find as highly questionable released into the community. Recently, other family members of inmates tell us that within the next year, 2500 inmates are to be paroled. We would be happy for those persons, but with Duane's exemplary behavior and being a model inmate, we would be more sincere in sharing their joy if Duane was included on the list.

It was odd that during the Parole Hearing and after asking only three questions and with no real evidence of any review of the documentation presented to the parole board, that they made their decision to deny parole. The questions asked included: (1) what has changed since the last parole hearing; 2) what medications are you on and how long have you been on them; and (3) what programming has he done since the last hearing. That was it. No mention of the legal issue regarding the enhancement sentence was considered and even with a full room of 13 family members, friends and community supporters who were not allowed to say anything let alone be acknowledged, he was denied an opportunity for a second chance at showing that he can be a productive and contributing member to our community.

In preparation for the parole hearing, we documented every facet possible for Duane's Plan of Release. A copy of the documentation was included in your packet submitted in January. He had two jobs available and now we have a third one available, he has a place to live, and a wife and family to come home to. He has medical care and counseling readily available to him and he has the full support and encouragement family and friends as well as community support groups and services to help in his transition back into society. How many other parolees are this prepared or have this much support? How many others are granted parole and released into the community with no money, nowhere to go and no support let alone a substantiated release plan?

The current scoring method of evaluating an inmate for parole, especially individuals with two or more offenses do not allow credit for being granted parole on an initial offense followed by subsequent exemplary or good behavior and programming. Additionally, there is no credit or consideration given individuals involved with the Native American Sweat Lodge and Native American Spirituality. The Native American "religion" are not identified as a viable method applied and used as a mode of counseling, corrective reformation and behavior modification, yet Christianity, Catholicism, and other religions are consider as valid forms of belief used to develop appropriate behavioral modifications.

In closing, I would submit the following recommendations:

**1. Recommendations regarding Sentencing:**

- A. At the time of indictment, and prior to sentencing require a procedure to document that weapon enhancement sentencing matters are tested against the most current case law and supreme court rulings on record in protection of the Sixth Amendment right to jury trial
- B. Consider provisions for new or revised law and regulations to be developed to clearly layout a specific timeframe for enhancement sentences rather than to leave the determination of length of time to be served up to the parole board such as a 5-to-life situation.

**2. Recommendations regarding Pardons:**

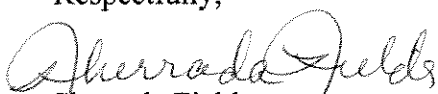
- A. Review and update or develop clear guidelines on the application submission, agenda selection and review process
- B. Develop regulations to provide a clear and specific separation of the Pardon's Board review process from the Parole Board's staff and processes to remove any appearance or potential for conflict of interest.

**3. Recommendations regarding Parole:**

- A. Require the Parole Board to document and provide at least a general guideline for inmates as to the cause of denial and recommendations for them to improve chances of parole at next eligibility date.
- B. Make provisions where the Nevada Department of Corrections and correctional officers and other staff could, upon request by the parole board via request of parolee, provide some form of input or recommendation for parole.
- C. Require Native American religious and spiritual activities to be included and given the same considerations as other recognized religions in evaluating character and behavior modification programming of Native American inmates.
- D. Provide regulations to give credit to individuals who have been granted parole on an initial offense at the review of the second offense.

Thank you for your time and consideration.

Respectfully,



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**Attachment**  
**Detail of Testimony of Sherrada Fielder**  
**to the Legislative Commission's Subcommittee**  
**to Study Sentencing and Pardons, and Parole and Probation**

1. Firstly, regarding Sentencing, specifically Weapon's Enhancement sentencing.

In the case of my husband, during his sentencing on November 19, 1989, he agreed to a plea agreement that would sentence him to a sentence of 5-to-life for second-degree murder and to an additional 5-to-life sentence for a weapon's enhancement charge, to run consecutively. At the time of his conviction and sentencing, the judge in the case, Judge Wright was concerned of having to sentence Duane to an additional 5-to-life sentence for the enhancement charge as recommended by the District Attorney's office as she felt that, with some help regarding his alcoholism, Duane could be a productive and contributing citizen of the community. She also expressed that she would rather be able to issue a timed sentence rather than to have a 5-to-life sentence and his release be dependent on the parole board.

Based upon the time frame in which the crime occurred, a common kitchen knife should not have been ruled as a deadly weapon, sufficient to support the enhancement of NRS 193.165, as a matter of law per *Zgomgic v. State* (106 Nev. 571, 798 P.2d 548 (1990)). Along with other case law, my husband's conviction post-dated the Supreme Court ruling by two months and with some aggressive representation or with a better sentencing system in place, Duane may not have been indicted, convicted or sentenced to the weapon's enhancement charge. In addition to this case law, there has been a more recent U.S. Supreme Court ruling in *Blakeley v. Washington* (02-1632) that held that it was unconstitutional for a person to be sentenced to an additional sentence without having been tried by a jury as the sixth amendment protects the rights to trial by jury. There is yet to be determined a clear implication of how this case ruling applies to cases such as Duane's and how would someone go about addressing this after their right to appeal has already expired.

We submitted this information in applying for a pardon and to inform the parole board of this information for their consideration for commuting Duane's sentence for cause and to grant parole. We are not aware if the Parole Board has even considered the legal issues, but at this point, seem to have ignored it as a consideration in granting parole.

It would be recommended to 1) require all sentencing matters to be tried against the most current case law and supreme court rulings on record and; 2) that provisions for new or revised law and regulations be developed to clearly layout a specific timeframe for enhancement sentences rather than to leave the determination of length of time to be served up to the parole board such as a 5-to-life situation,

2. Pardons

There are no clearly explained regulations or process available for review regarding the application review process and determination methods used in being considered for the pardon's board agenda. In addition, it is confusing as to how the Pardon's Board is different from the Parole Board as they utilize the same staff and office in reviewing applications for Pardon's and coordinating parole matters. Because pardon's applications and parole matters are addressed by

the same office. Under the current process, there appears to be a conflict of interest in providing a fair and equitable review of applications submitted for review.

It would be recommended to 1) review and update or develop clear guidelines on the application submission, agenda selection and review process, and; 2) to provide a clear and specific separation of the Pardon's Board review process from the Parole Board's staff and processes to remove any appearance or potential for conflict of interest.

### 3. Parole.

In our situation, Duane was sentenced to two 5-to life sentences with the following provided to explain sentence time to serve, parole eligibility, actual hearing dates and decisions by parole board.

Conviction Sentencing Date: November 1989	Parole Eligible Date	Date of Actual Parole Hearings	Decision by Parole Board
<u><b>First Offense:</b></u> 2 <sup>nd</sup> Degree Murder  ~ Eligible after 5 years ~ Ended up serving a total of 9± years for this offense	April 1994	4/19/1995	Parole Denied 2 years to 6/1997 because of no 2 month advance
		06/19/1997	Parole Denied 18 months to 12/98
		10/26/98	<b><i>Parole granted</i></b> –effective 10/1/99
<u><b>Second Offense:</b></u> Weapons Enhancement  ~ Became eligible 5 years from 4/1994 ~ Has served 7± years for this offense	March 2000	03/15/2004	Parole Denied 3 years to 7/07
		01/31/06 ROP Hearing (requested by inmate)	Parole Denied 1 year to 7/07
<b><i>Since November 1989 to the date of this hearing, Duane has served 16 years and 4 months.</i></b>			

What has been experienced is not only are time-frames not adhered to for hearings, there is concern for the manner in which the hearings are held and how decisions of the parole board are made and upon denial of parole, there are no specific guidelines provided to the inmate on which he can work on to be granted parole. He is provided no reason for the denial and is left hanging and following denials, inmates experience severe depression to the point of complete hopelessness. There is no support to help the inmates through this difficult time and many give up and stop trying to reform and in many instances they become problematic.

Duane is considered an “old-timer” because he has served so much time. He is respected and greatly liked by not only many correctional officers and staff he works with or has worked with, he has become a mentor to many inmates who seek him out not only for friendship, but for personal counseling and support. He encourages other inmates when they are down, depressed and having hard times making it through the system and worry of personal affairs on the outside. He is usually there to help others when they need help the most. He has been involved with the sweat lodge that has provided him the spiritual strength to persevere. There is no way for the parole board to be made aware of these qualities and positive characteristics. No credit or consideration given individuals involved with the Native American Sweat Lodge and Native American Spirituality. The Native American “religion” are not identified as a viable method applied and used as a mode of counseling, corrective reformation and behavior

modification, yet Christianity, Catholicism, and other religions are considered as valid forms of belief used to develop appropriate behavioral modifications, yet, because of the Sweat Lodge and spirituality, many Native inmates have made a complete change in themselves similar to Christian conversion.

Although provisions allow the Parole Board to consider information from correctional staff, the Department of Corrections does not allow officers or staff to provide support letters or give any information good or bad to the parole board. Correctional Officers and staff at times are able to witness on nearly a daily basis, the true behavior and character of inmates considered for parole, however, they are not allowed to even if requested in writing. In the case of Duane, because he has served such a long time, many staff could attest to his true character and behavior, if they were allowed.

The current scoring method of evaluating an inmate for parole, especially individuals with two or more offenses do not allow credit for being granted parole on an initial offense followed by subsequent exemplary or good behavior and programming.

The following would be recommended: 1) require the Parole Board to document and provide at least a general guideline for inmates as to the cause of denial and recommendations for them to improve chances of parole at next eligibility date; 2) make provisions where the Nevada Department of Corrections and correctional officers and other staff could, upon request by the parole board via request of parolee, provide some form of input or recommendation for parole; 3) require Native American religious and spiritual activities to be included and given the same considerations as other recognized religions in evaluating character and behavior modification programming of Native American inmates; and 4) Provide regulations to give credit to individuals who have been granted parole on an initial offense at the review of the second offense.