

RECEIVED AUG - 6 2007

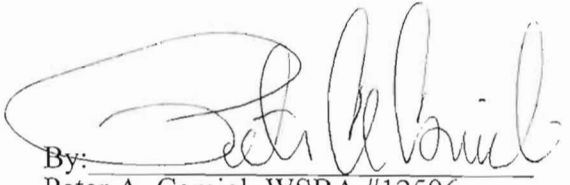
STATE OF MONTANA
BOARD OF PARDONS AND PAROLE

In the Matter of the Executive Clemency)
Hearing of Barry Alan Beach,)
Inmate No. A021520)

Certificate of Service

I hereby certify that I caused a true and accurate copy of the foregoing Supplemental Closing Argument on Behalf of Barry Alan Beach to be mailed to Michael Wellenstein, Assistant Attorney General, 215 North Sanders, P. O. Box 201401, Helena, Montana 59620-1401 and to Craig Thomas, Executive Director of the Board of Pardons and Parole, 300 Maryland Ave., Deer Lodge, Montana 59722 via Federal Express.

DATED this 3rd day of August, 2007.

By: 
Peter A. Camiel, WSBA #12596
Attorney for Defendant Barry Beach

STATE OF MONTANA
BOARD OF PARDONS AND PAROLE

In the Matter of the Executive Clemency)
Hearing of Barry Alan Beach,)
Inmate No. A021520)

**Supplemental Closing Argument on
Behalf of Barry Alan Beach**

No one disagrees that the murder of Kimberly Nees was a horrific crime ending her young, promising life and inflicting pain and suffering upon her family and friends. The question of the guilt or innocence of Barry Beach as the perpetrator of this crime has been vigorously contested. The question of the sentence imposed is the subject of this supplemental closing argument. If Barry Beach is innocent, as we believe, then each day he has spent in prison has been one day too long. If the Board still has questions about his innocence, he has served more than enough time for this crime.

Rarely, if ever, in the history of the State of Montana has a more severe sentence been imposed upon a defendant for a single victim homicide where the alleged perpetrator was but 17 years old at the time of this crime who had no prior convictions for violent acts.

Barry Beach was convicted of deliberate homicide yet it is clear that whoever committed this crime did not preplan it, but rather acted in a rage or frenzy. Under the State’s theory of the case, Barry Beach allegedly acted in a rage after being rejected by Kim Nees, after having spent a day drinking beer and the evening smoking marijuana. Under the State’s theory, no weapon was brought to the scene but rather an object that happened to be present was grabbed and used. The crime, though brutal, was impulsive and not premeditated.

One hundred years with no parole under the present Montana State sentencing scheme means that Barry Beach could not be released until the year 2035, when he is 73 years old. This Board has paroled

1 many others convicted of deliberate homicide who have been sentenced to far shorter sentences or who
2 have been sentenced to a similar term of years, but were eligible for parole.

3 The Board Chairwoman posed an insightful question during the first phase of the clemency
4 hearing: "What sentence would be appropriate for the person who did kill Kim Nees?"

5 To answer this question, we first ask the Board to look not only at the crime which indeed was
6 a brutal act, but also at the alleged perpetrator, Barry Beach. Barry was not a convicted felon who had
7 previously been imprisoned -- he was a junior in high school. Like many of the Poplar, Montana youth
8 of his generation, Barry drank and smoked marijuana. He had accumulated DUI's and a theft conviction,
9 but no assaults or crimes against persons. Barry was progressing fairly well in school, he had a lot of
10 friends, and he earned his own money. Barry had made plans for the summer of 1979 to travel to
11 Louisiana to live with his biological father for the first time. Barry's parents had divorced when he was
12 a young child. Barry grew up a neighbor of Kim Nees and her family.

13 Secondly, we ask the Board to look at what has happened to Barry since his conviction. For most
14 people facing a 100 year, no parole sentence one would expect their time in prison to be punctuated by
15 anger, bitterness and a total lack of regard for the plight of others. This Board heard from witness after
16 witness a different story about Barry Beach. The immature boy who was convicted and sent to prison
17 for the rest of his life developed into a mature, caring, intelligent man who has made the best out of a
18 bleak situation. Not one witness described ever seeing Barry brooding, bitter or angry.

19 The evidence of Barry's empathy and concern for the plight of others was demonstrated in the
20 testimony of Beverly Morton, the former corrections officer from Tennessee who Barry bravely assisted
21 and protected when she was near collapse and alone in the tier full of felons. Barry escorted her to safety
22 and she never forgot and made her first ever plane ride to Montana to express to the Board her
23 experience and her gratefulness. She described the inmate she met, Barry Beach, as a caring, concerned
24 man. The fact that Ms. Morton would travel from Tennessee to Deer Lodge to speak on Barry's behalf
25 is remarkable.

1 At every prison Barry has traveled to, whether Shelby, Texas, Tennessee or MSP, he has had a
2 good relationship with the staff, he has quelled potential problems between staff and inmates by using
3 reason and common sense and he has bettered himself. Barry has taken advantage of program after
4 program learning to use the computer, learning skilled carpentry and furniture building, electrical wiring,
5 landscaping, business management and he has worked hard to develop these skills so that on the outside
6 he would have a marketable trade to earn a living.

7 Barry has been drug and alcohol free for over 24 years. Not one infraction for using such
8 substances. Barry has completed a number of drug and alcohol abuse courses. He is committed to
9 abstaining from alcohol or drugs on the outside.

10 The Board heard about another side of Barry Beach from the several witnesses from the Prison
11 Ministries program. The members of this program included numerous of Montana's leading citizens.
12 Chris Christiens, Dan Gengler, Bob Kolar, and Ziggy Zeigler, all family men, all accomplished in their
13 chosen business professions, all initially skeptical of Barry's claim of innocence all now urge his release.
14 Indeed, these men would welcome Barry as their neighbor, and offered continuing support on the outside
15 when Barry leaves prison.

16 Barry's participation in the Prison Ministries program is not some recent undertaking. Ziggy
17 Zeigler, the former Yellowstone County commissioner who described the murder of his own father, met
18 Barry in October of 1984 and has worked with him ever since. Chris Christiens, a former State Senator
19 and director of the prison release program, has known Barry for well over 20 years. In 20 plus years,
20 if Barry were faking his commitment, it would have been revealed to men like Ziggy Zeigler or Chris
21 Christiens. Barry became a leader in the program and has brought other inmates into the program and
22 shown them a new way to live both behind the walls and upon their release. The years Barry has spent
23 in the Prison Ministries program have shown Barry to be a good communicator and to have strong
24 leadership skills.

25 At the hearing held in Deer Lodge on August 1, 2007, the Board heard from witness after witness
26 who urged the Board to recommend Barry's release. Most significantly, the Board did not hear from
27

28 **Supplemental Closing Argument on
Behalf of Barry Alan Beach - 3**

1 even one witness or member of the public opposing Barry's release. Not one. We believe the reason
2 for the lack of opposition is that there is a clear understanding in the community that this is a troubled
3 conviction and that Barry is innocent, but moreover that the sentence is simply too severe.

4 The Board heard from childhood friends like Dennis Simons, Lori Shafter and Darlene Peterson.
5 None ever saw a violent side to Barry Beach. All continue to support him after all the years he has been
6 in prison.

7 The Board heard from members of the Nees family including Kim Nees' aunt Glenna Lockman
8 in person and Pam Nees, Kim's younger sister, by note urging Barry's release. Pam Nees attended both
9 the innocence phase of the hearing and the commutation phase, but was overcome with emotion and
10 unable to speak. She believes in Barry's innocence.

11 The Board heard from Dallas O'Connor, the former two term mayor of Poplar and the former
12 30 years head of the Poplar chamber of commerce. Mr. O'Connor doesn't personally know Barry but
13 he does know the feeling in his community about Barry's continued imprisonment. He urges Barry's
14 release and testified that this was the feeling of Poplar as well, many of whom believe he was wrongly
15 convicted. Mr. O'Connor indicates the community of Poplar would welcome Barry back. A petition
16 signed by over 100 Poplar residents was submitted with Mr. Beach's petition to Governor Schweitzer.

17 The Board heard that Barry has a solid, realistic parole plan. He has multiple job offers, he has
18 a place to live, he has financial support from not only his family and friends, but from Centurion
19 Ministries. The Board heard that Barry would participate in mental health counseling. He has a
20 tremendous support system. He is welcome in Billings, Helena or Poplar.

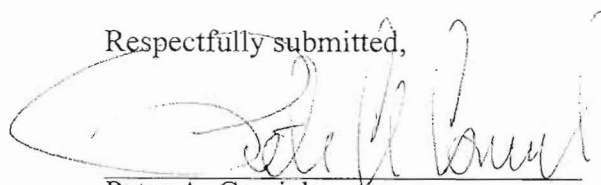
21 Barry Beach as spent over one half of his lifetime in prison – we believe for a murder he had no
22 part in. The question before this Board is whether his life will end in prison. Every grant of parole
23 carries some risk that the parolee will re-offend. In assessing the risk to the public, which is a part of
24 the mission of this Board, the crime of course must be considered. But the Board must also assess
25 whether the potential parolee has demonstrated over an extended period of time that he is not, or is no
26 longer a risk. Barry Beach has done everything humanly possible to show that he is a responsible man

27
28 **Supplemental Closing Argument on
Behalf of Barry Alan Beach - 4**

7 earned the right to reenter society.

8 DATED THIS 2nd day of August, 2007.

9 Respectfully submitted,

10 

11 Peter A. Camiel
12 Attorney for Barry Beach
13
14
15
16
17
18
19
20
21
22
23
24
25
26

27
28 **Supplemental Closing Argument on
Behalf of Barry Alan Beach - 5**