

STATE OF MARYLAND

vs.

JERRY FURMAN

— IN THE —

CIRCUIT COURT FOR BALTIMORE

COUNTY

CRIMINAL

DOCKET

FOLIO

NO. 86

CR

1129

MR. CLERK:

Please enter my appearance for the Defendant(s) in the above entitled case.

ATTORNEY'S NAME: CARL SCHWARTZ

ADDRESS: 500 VIRGINIA AVE, 21204

TELEPHONE NO.: 321-2608 ZIP: _____

I HEREBY CERTIFY that a copy of the foregoing was mailed this ^{delivered} 11TH day of MARCH, 1986, to MICKEY NORMAN, State's Attorney for Baltimore County, Towson Court House, Towson, Maryland 21204.

Carl R. Schwartz
ATTORNEY FOR DEFENDANT

Mail Original and Yellow copy to Clerk's office.

Mail Pink copy to State's Attorneys office.

Retain Green copy.



DISTRICT COURT OF MARYLAND FOR

LOCATED AT (COURT ADDRESS)

110 Painters Mill R

NOTICE OF ADVICE OF RIGHT TO COUNSEL

DEFENDANT'S NAME (LAST, FIRST, MI) FURMAN, JERRY DARWIN		PRIMARY CHARGE	RELATED CASES	TRACKING NUMBER (ORCS) 62322306
COMPLAINANT PARKER, NELSON W.		DEFENDANT FURMAN, JERRY DARWIN		
AGENCY PC#3	SUB-AGENCY 2407	I.D. NO. (POLICE)	I.D. NO.	RACE N
WORK TELEPHONE	HOME TELEPHONE	WORK TELEPHONE	HOME TELEPHONE	SEX/HT M 5'11
ADDRESS	APT. NO.	ADDRESS	APT. NO.	WT 170
CITY	STATE	CITY	STATE	D.O.B. (MM/DD/YY) 6-18-62
ZIP CODE	RELATED CASES	ZIP CODE	RELATED CASES	OTHER DESCRIPTION (SEE INSTRUCTIONS)
08-02		21136		E 449530
				112613

STATEMENT OF CHARGES

UPON THE FACTS CONTAINED IN THE APPLICATION OF (NAME AND ADDRESS OF APPLICANT)
Police Officer Nelson W. Parker, Baltimore County Police Department, Garrison District

IT IS FORMALLY CHARGED THAT THE DEFENDANT
1 MDCCS AR ON OR ABOUT (DATE) AT (PLACE)
1-1103 April 13, 1985 12 Brookebury Drive, Apt #12, Baltimore County

Did engage in vaginal intercourse with Mary Fitz-Patrick, without the victim's consent, by threatening imminent strangulation to Mary Fitz-Patrick, victim.

IN VIOLATION OF:
 MD ANN. CODE, ART. **27** SEC. **462** ; COMMON LAW OF MD; PUB. LOCAL LAW, ART. SEC. AGAINST THE PEACE, GOVERNMENT AND DIGNITY OF THE STATE.
 COMAR OR AGENCY CODE NO. ; ORDINANCE NO.

2 MDCCS AR ON OR ABOUT (DATE) AT (PLACE)
1-2299 April 13, 1985 12 Brookebury Drive, Apt 12, Baltimore County
 Did break, in the daytime, the dwelling house of Mary Fitz-Patrick, located at 12 Brookebury Drive, Apt #12, with the intent to commit a felony therein.

IN VIOLATION OF:
 MD ANN. CODE, ART. **27** SEC. **30** ; COMMON-LAW OF MD; PUB. LOCAL LAW, ART. SEC. AGAINST THE PEACE, GOVERNMENT AND DIGNITY OF THE STATE.
 COMAR OR AGENCY CODE NO. ; ORDINANCE NO.

CONTINUED ON ATTACHED SHEET (FORM DC/CR 3A)
 DATE **2/1/86** TIME **12:08 PM** JUDICIAL OFFICER AND I.D. NO. **Louis F. Hayes 8029**

NOTICE OF ADVICE OF RIGHT TO COUNSEL

DEFENDANT'S NAME (LAST, FIRST, M.I.)	PRIMARY CHARGE	RELATED CASES	TRACKING NUMBER (GCR)
--------------------------------------	----------------	---------------	-----------------------

- This paper charges you with committing a crime.
- If you have been arrested, you have the right to have a judicial officer decide whether you should be released from jail until your trial.
- You have the right to have a lawyer.
- A lawyer can be helpful to you by:
 - explaining the charges in this paper;
 - telling you the possible penalties;
 - helping you at trial;
 - helping you protect your constitutional rights;
- Even if you plan to plead guilty, a lawyer can be helpful.
- If you want a lawyer but do not have the money to hire one, the Public Defender may provide a lawyer for you. The court clerk will tell you how to contact the Public Defender.

7. If you want a lawyer but you cannot get one and the Public Defender will not provide one for you, contact the court clerk as soon as possible.

8. DO NOT WAIT UNTIL THE DATE OF YOUR TRIAL TO GET A LAWYER. If you do not have a lawyer before the trial date, you may have to go to trial without one.

RECEIPT

I have read or have had read to me the contents of the within document and acknowledge receipt of a copy thereof.

.....
 Date *Jerry Summers*
Signature of Defendant

RETURN OF SERVICE

I CERTIFY that at o'clock M. on
 Date

at
 Place

I executed this Writ by taking the witness into custody and delivering a copy thereof to him/her.

.....
 Signature of Peace Officer
 Title

JUDICIAL OFFICER AND I.D. NO.	TIME	DATE
<i>James T. Hynes</i>	15:08 PM	5/18
Address		

CL 2-6-86-gms

COMPLAINANT			DEFENDANT					
NAME (LAST, FIRST, M.I.)	TITLE		NAME (LAST, FIRST, M.I.)	TITLE				
PARNER, NELSON W.	POLICE OFFICER		FURIAN, JERRY DARWIN					
AGENCY	SUB-AGENCY	I.D. NO. (POLICE)	I.D. NO.	RACE	SEX	HT.	WT.	D.O.B. (MM/DD/YY)
AE	PC#3	2407	86-1445	N	M	5'11	170	6-18-62
			OCA	HAIR	OTHER DESCRIPTION			
			E 449530		#12613			
WORK TELEPHONE		HOME TELEPHONE		WORK TELEPHONE		HOME TELEPHONE		
()		()		()		()		
ADDRESS			ADDRESS		APT. NO.			
			31 Caraway Road					
CITY	STATE	ZIP CODE	CITY	STATE	ZIP CODE			
			Reisterstown	Maryland	21136			
DIST./LOC.			RELATED CASES				TRACKING NUMBER <input checked="" type="checkbox"/> W <input type="checkbox"/> S	
03-02							62322306	

INITIAL APPEARANCE

Juvenile Waiver
 Released on own Recog—No probable cause
 Copy of charges provided Copy not provided
 Defendant advised of right to counsel Undecided
 Waived Employ own counsel Public Defender

Advised of right to preliminary hearing
Preliminary Hearing was was not requested.
 Released on own Recog. Supervised by/Custody of _____
Bail \$ 27-538A (Full; _____ % without collateral security)
 Committed
Hearing/Trial Date pending CC Date 2-5-86
Judge/Comm. Fritch I.D.# _____

86-1129

BAIL Posted _____ Date _____ Cash Corporate Property _____
Judge/Comm./Clerk _____ Date _____

BAIL REVIEW

Bail to Remain the Same 0 % Reduced to _____ %
Increased to \$ _____ % ROR _____ Unsecured _____
Advised def. of Right to Counsel _____ Received copy of charges
Judge J.P. ... Date 2/6/86

PRELIMINARY HEARING

Requested/Waived _____ State's Attorney Notified _____
Represented by Counsel _____ Counsel Waived _____
Probable Cause/Defen. Held _____ Bond/Recog. Continued _____
Bail Set \$ _____ Full _____ % Committed in Default _____
No Probable Cause/Dismissed/Defendant Released _____
Judge _____ Date _____
C.D. Filed in Circuit Court 2-26-86 Papers Forwarded 3-14-86
DATE DATE
Amended/New C.D. Filed _____ DATE _____
Dismissed for Lack of Prosecution _____
Judge _____ Date _____

PRELIMINARY INQUIRY

Advised def. of Right to Counsel _____ Received copy of charges
Referred to Public Defender _____ Waived Counsel _____
Will Retain Own Counsel _____
Judge _____ Date _____

No charging document having been filed in Circuit Court, the charges are dismissed.
 After hearing in presence of Defendant and a finding of good cause, the time is extended to _____
for State's Attorney's action.
Date _____ Judge _____

FILED MAR 18 1986

PRETRIAL STATUS

FTA	Date	Bond/Recog. Forfeited	Recog. Revoked	Bench War. Issued	Bail \$ Amt.	Def. Sur. by Surety	Forf. Stricken/ War. Recalled	Previous Bail Reinstated

Date _____ Judge _____

COURT APPEARANCE

The Court made certain that defendant received a copy of the charging document, informed defendant of right to counsel and importance of assistance of counsel. Advised defendant of nature of charges and allowable penalties including mandatory or minimum, conducted waiver inquiry if defendant wants to waive counsel, and if continued advised defendant that at next appearance, appearing without counsel could be a waiver.
Date _____ Judge _____
 Defendant appeared without counsel. Meritorious reason. Case continued.

ref. requested to attend

7-5

Defense Counsel.....

Defendant **FURMAN, JERRY DARW**

State's Attorney.....

Case No. **08-02-623223C6**

TRIAL

No. of Charges...**7**

- Express Waiver of Counsel. Court determined after examination that defendant knowingly and voluntarily waived right to counsel.
- Defendant appeared without counsel. No meritorious reason. Court determined that defendant waived counsel.
- Defendant appeared with counsel. Private Public Defender JTP Jury Trial Waived

Charge #1 **RAPE, 1ST DEGREE** AR: Non-CJIS Art/Sec: **27-462** Code: **1-1103**

Amended: Art/Sec: Code:

Max Sentence: Plea: NP Stet Verdict: PSI Ordered: Sub Curia Until:

FINE: \$ COST: \$ CICF: \$ SUS: \$ RESTITUTION: \$ to

Sentence: DOC Local Commencing: Credit time awaiting trial:

Suspended Sentence: Probation time: Supervised Unsupervised

Conditions:

Date Judge

Charge #2 **BURGLARY, INT-STEAL DAY** AR: Non-CJIS Art/Sec: **27-30** Code: **1-229**

Amended: Art/Sec: Code:

Max Sentence: Plea: NP Stet Verdict: PSI Ordered: Sub Curia Until:

FINE: \$ COST: \$ CICF: \$ SUS: \$ RESTITUTION: \$ to

Sentence: DOC Local Commencing: Credit time awaiting trial:

Suspended Sentence: Probation time: Supervised Unsupervised

Conditions:

Date Judge

Charge #3 AR: Non-CJIS Art/Sec: Code:

Amended: Art/Sec: Code:

Max Sentence: Plea: NP Stet Verdict: PSI Ordered: Sub Curia Until:

FINE: \$ COST: \$ CICF: \$ SUS: \$ RESTITUTION: \$ to

Sentence: DOC Local Commencing: Credit time awaiting trial:

Suspended Sentence: Probation time: Supervised Unsupervised

Conditions:

Date Judge

Defendant Advised of Right of Appeal. Upon Perfecting of Appeal, Sentence to be stayed and Recog. to Continue

Present Bond to Continue; Appeal Bond in Amount of \$ to be Required; Sentence not to be Stayed; Other

(If Sentence is Satisfied Prior to Perfecting of Appeal, no Appeal Bond Required)

Bond forfeiture entered as judgment in the amount of \$ Date with interest from date of forfeiture and costs and liens filed in Circuit Court. Docket entries forwarded to Bail Bond Commissioner, if any, and to State's Attorney and Chief Clerk.

Date Clerk

Indictment filed. Papers forwarded to Circuit Court

REEL#	DATE	START	END
8-22979	2-6-06	2140	2162

Defendant Notified of Nolle Pros/Stet

Judgment Recorded in District Court

Notice of Lien filed in

Appeal Noted

Appeal Forwarded



DISTRICT COURT OF MARYLAND FOR Baltimore County

Located at 110 Painters Mill Road, 21117 Case No. E-449530

STATE OF MARYLAND

VS Fuman, Jerry Darwin

Defendant
31 Caraway Road
Reisterstown, MD 21136 None
Telephone

DESCRIPTION: Driver's License# Sex Male Race Negro Ht. 5'11"
Wt. 170 Hair Black Eyes Brown Complexion Medium DOB: 6/18/62
I.D. 112613 Other

APPLICATION FOR STATEMENT OF CHARGES

I, the undersigned, apply for a Statement of Charges and a Summons or Warrant which may lead to the arrest of the above named Defendant because on or about April 13, 1985
at 12 Apt. C-1 Brookebury Drive, Reisterstown, Maryland 21136, the above named Defendant

(Concise statement of facts showing that there is probable cause to believe that a crime has been committed and that the Defendant has committed it):
Mary Fitz-Patrick, white female, 7/22/45, 12 Apt. C-1 Brookebury Drive, Reisterstown, Maryland 21136, reported the following: On April 13, 1985, the victim advised that she was up with her husband at approximately 0445 hours, as he was getting ready to go on a fishing trip. She returned to bed and her husband, John Fitz-Patrick left the apartment sometime between 0500 - 0530 hours. The victim advised that she got up to get a cup of coffee at 0545 hours. She stated she knows the time as the coffee maker has a digital clock on it, she then walked over to the sliding patio door and looked out to see if it was raining, the patio doors were locked at that time. The victim

(Continued on attached sheet.)

I have read or had read to me and I understand the notice on the back of this form.

Nelson W. Parker #2407
Print Applicant's Name
Officer
Applicant's Title or Position
494-2355
Applicant's Telephone No.

Signature of Nelson W. Parker
Applicant's Mailing Address: 3701 Reisterstown Rd 21136

Subscribed and sworn to before me this day of 19
Time: M. I.D. Judge/Commissioner

I do solemnly declare and affirm under penalties of perjury that the matters and facts set forth in the foregoing application are true to the best of my knowledge and belief.

January 30, 1986
Date
Baltimore County Police Department
Agency/Sub Agency Code, I.D.

Signature of Nelson W. Parker
Police Officer's Signature
Nelson W. Parker #2407
Police Officer's Printed Name

I understand that a charging document has been issued and that I must appear for trial on
at, at the court location shown at the top of this form.

I declined to issue a charging document because of lack of probable cause.

Date Commissioner

NOTICE TO APPLICANT FOR A CHARGING DOCUMENT



You are making an application for a charging document which may lead to the arrest and detention of the individual you are charging. If, as a result of your application, a charging document is issued by the commissioner, it will not be possible for the commissioner to withdraw the document. The charge may only be disposed of by trial or by action of the State's Attorney.

You will be required to appear at the trial as a witness. Failure to appear on the date set by the court could result in your arrest for failure to obey a court order.

The application which you have filed has been filed under oath. Article 27, Section 151, of the Annotated Code of Maryland provides that any person who makes a false statement or report of a crime or causes such a false report or statement to be made to any official or agency of this State, knowing the same, or any material part thereof, to be false and with intent that such official or agency investigate, consider or take action in connection with such statement or report, shall be subject to a fine of not more than \$500, or be imprisoned not more than six months, or be both fined and imprisoned, in the discretion of the court.

It is essential that you furnish as much information as possible about the offense. To be sure that your information is adequate, your application should clearly state the following:

- 1. WHO?
Identify the accused, (the person you are complaining about), and identify yourself.
- 2. WHEN?
The time, day, month and year of the offense.
- 3. WHERE?
The exact address and street, the city, county and state where the offense happened. Also state whether the offense happened in a private home or in some public place.
- 4. WHAT?
State exactly what was done to you. For example: if property was taken, describe it and its value; or, if property was damaged or destroyed, indicate the original cost of the item or its replacement value. If you do not know the exact value, estimate it as accurately as possible.
- 5. WHY?
The facts you give must show the accused intended to commit a criminal act.
- 6. HOW?
How the accused committed the offense. For example, if you were physically assaulted, were you struck with a fist, a flat hand, kicked, or pushed, or were you struck with an object, such as a club or pipe, etc.? If property was taken, how did the accused get it? If it was destroyed or damaged, how did the accused cause the damage?
- 7. At the top of the application, you will notice a space marked "DESCRIPTION." The information in this space refers to the **accused**. It is important that you furnish as much of this as possible so that the accused may be easily identified.

If you need further assistance in completing your application, please feel free to ask the commissioner.

NOTICE TO APPLICANT FOR A CHARGING DOCUMENT

I declined to issue a charging document because of lack of probable cause.

Defendant's Name... Furman, Jerry Darwin Case No.....

CONTINUATION SHEET

APPLICATION FOR STATEMENT OF CHARGES/STATEMENT OF PROBABLE CAUSE

advised at this point she went to the bathroom, leaving the door open while in the
bathroom, she looked through the open bathroom door into an empty spare bedroom. She
saw a man's head at the bedroom window, she jumped up and ran out of the bathroom. She
saw the suspect, a negro male, approach her from the patio doors, and she yelled at
him to get out. He grabbed her by the throat and told her he would kill her. The
victim's two year old granddaughter was in another bedroom, but didn't wake during this
incident. He forced Mrs. Fitz-Patrick back into the bathroom and turned her around with
her back towards him. She was wearing only a T-shirt and panties. He pulled down her
panties, bent her over and held her arms at her sides. He attempted anal intercourse,
but she complained that it hurt. He told her she was dry when he tried vaginal inter-
course and asked her when she last had sex. She told him not for some time. He per-
formed cunnilingus on her and used his fingers on her vagina. He again, trying to get
an erection, attempted vaginal intercourse and penetrated her. He then ran out of the
bathroom and fled the apartment by the sliding patio doors. He took her pocketbook,
which contained some money and her personal identification.

.....
Apparently, the suspect gained entry into the apartment thru the ground level bedroom
window. Once inside, the suspect may have been startled by the awakening victim and hid

.....
January 30, 1986
Date

.....

Applicant's Signature

Defendant's Name..... Fuman, Jerry Darwin..... Case No.....

CONTINUATION SHEET

APPLICATION FOR STATEMENT OF CHARGES/STATEMENT OF PROBABLE CAUSE

in the livingroom... The suspect, observing the victim enter the bathroom, fled out.....
the sliding patio doors and observed the victim through the bedroom window in the.....
bathroom... The suspect re-entered the apartment and attacked the victim.....

The victim described the suspect as a negro male, 20-22 years old, 6 feet tall, 190.....
pounds, muscular build... He wore a dark blue or black jump suit and a red ski cap... She...
further advised he had a mustache as she felt it against her skin... The blue or black.....
jump suit also had a scorched or chemical odor on it.....

Investigation revealed on September 6, 1985, Jerry Fuman was arrested on the following.....
cases: Burglary-E 560902, Assault with intent to rape-E 575184 and Burglary-E 578663.....

When the above cases were compared to this offense the following similarities were.....
discovered. Three of the four cases occurred in the Westbury Apartment Complex. All.....
victims were white females. The descriptions were similar, three of the four cases,.....
the point of entry was a ground level bedroom window, the fourth case the point of entry.....
was the unlocked door to a ground level apartment, and all offenses occurred between dusk.....
and dawn.....

..... January 30, 1986.....
Date

.....  2407.....
Applicant's Signature

Defendant's Name..... Fuman, Jerry Darwin..... Case No.....

CONTINUATION SHEET

APPLICATION FOR STATEMENT OF CHARGES/STATEMENT OF PROBABLE CAUSE

When this rape offense is compared to the assault with intent to rape E-575184, additional similarities were discovered. Both husbands of the victims left the apartment within a few hours prior to the offense, during the attack the suspect held the victims' arms at their sides, the suspect physically removed the victims' underwear, the terms, "Don't scream or I'll kill you", and "Shut up or I'll kill you", were used and the victims' were sexually assaulted from behind. Finally, in all four cases, the victims' purse was the only property taken from the apartment.

As stated earlier, a white female was present in the apartment during the four incidents.

When the four cases are compared, a definite method of operation is established.

On January 24, 1986, I caused the suspect's (Jerry Fuman) fingerprints to be compared with those recovered at the crime scene. A positive identification was made.

It should be also noted that Jerry Fuman does fit the physical description given in all cases and at the time of his arrest, the address he gave is located directly to the rear of this offense.

January 30, 1986
Date

[Handwritten Signature] 2407
Applicant's Signature



DISTRICT COURT OF MARYLAND FOR Baltimore County

Located at 110 Painters Mill Road Case No. 08-02-623223C6

STATE OF MARYLAND VS FURMAN, JERRY DARWIN
Charge (1) Rape-1st Degree
AR. 86-1445 Code. 1-1103
Charge (2) Burglary, Int/Steal-Day
AR. Code. 1-2299

ARREST WARRANT ON CHARGING DOCUMENT

STATE OF MARYLAND, Baltimore County, City/County:

TO ANY PEACE OFFICER, Greetings:

YOU ARE ORDERED to arrest and bring before a judicial officer the above-named Defendant as soon as practicable and without unnecessary delay.

IF THE DEFENDANT IS NOT IN CUSTODY FOR ANOTHER OFFENSE,

- Initial appearance is to be held in county in which Warrant was issued.
Initial appearance is to be held in county in which Defendant is arrested.

Issued February 1, 1986 Date

Signature of Judge/Commissioner

Given to Baltimore County Police Department Name of Law Enforcement Agency for Service

IF DEFENDANT IS IN CUSTODY FOR ANOTHER OFFENSE, this Warrant is to be lodged as a detainer for the continued detention of the Defendant for the offense charged in the charging document.

RETURN OF SERVICE

I certify that at 1:12 o'clock P.M. on 2/5/86 at

PC03 Place

I executed this Arrest Warrant by arresting the Defendant and delivered a copy of the Statement of Charges to the Defendant.

I left a copy of the Warrant and Charging Document as a detainer for the continued detention of the Defendant at:

Detention Facility

Signature of Peace Officer: O.H. Parker 2407
Title: Balt. Co. PD



DISTRICT COURT OF MARYLAND FOR

Balto. City/County

Located at Court Address

TR CR Case No. 62322306

STATE OF MARYLAND

VS

Defendant

Address

First degree Rape B+E (dwelling)

Fulman, Jerry D. 31 Caraway Rd. Reisterstown, MD 21136

INITIAL APPEARANCE REPORT (Rule 4-213)

E-449530 86-1445

I hereby certify that when the above named Defendant was brought before me for his initial appearance, I:

- DETERMINED that Defendant had already been provided with a copy of the charging document.
PROVIDED the Defendant with a copy of the charging document.
ADVISED Defendant that copy of Charging Document is not available, but will be provided to Defendant within 24 hours.
ADVISED Defendant of right to counsel. Defendant desires to proceed without counsel to employ his own counsel.
ADVISED Defendant that he is charged with a felony that is not within the jurisdiction of the District Court and that he has a right to have a preliminary hearing by a request made now or within ten days and that failure to make a timely request will result in a waiver.
REQUIRED Defendant to read the Notice to Defendant printed on the charging document.
READ the Notice to Defendant printed on the charging document to the Defendant.
FURNISHED to the Defendant a copy of the Notice to Defendant printed on the charging document since no charging document was available.

Pretrial Release Determination (Rule 4-216)

On the basis of information available to and developed by me I HAVE DETERMINED:

- That Defendant is not eligible for release under Art. 27, Sec. 616 1/2 (c) (h) Art. 27, Sec. 638 A of the Maryland Code.
That he may be released on his personal recognizance because:
He is not charged with an offense for which the maximum penalty is death or life imprisonment.
It will reasonably assure his appearance.
There is a lack of probable cause to believe that the Defendant committed the offense.
That release on personal recognizance will not reasonably ensure the appearance of the defendant as required because...

I imposed the following conditions to ensure his appearance:

- committed him to custody of... who agree to supervise him and assist in ensuring his appearance in court.
placed him under the supervision of... Probation or Public Officer
subjected him to restrictions... travel, association, residence

- required a bail bond in the amount of \$... and on the following condition:
without collateral security.
with collateral security of \$...
to be satisfied by depositing the required amount in cash or certified check or the pledging of intangible property approved by the Court.
to be satisfied by encumbering real estate.
with the obligation of a corporation which is an insurer or other surety in the full penalty amount.

Informed the Defendant that a warrant for his arrest will be issued if he violates the conditions of release and informed him that if the recognizance or bail bond is forfeited and he willfully fails to surrender himself within 30 days following the forfeiture, he may be charged and fined not more than \$5,000 or imprisoned for not more than 5 years or both, if given in connection with a charge of felony; or charged and fined not more than \$1,000 or imprisoned not more than 1 year or both, if given in connection with a misdemeanor charge.
Informed the Defendant that he must notify the Court in writing of any change of address or telephone number.

2-5-86 Date

8:20 P.M. Time

Judith Fitch 08-038 Judicial Officer

Receipt

I have read to me the offense with which I am charged, the conditions of release, the penalty for violation of the conditions of release, the Notice of Advice of Right to Counsel, and I acknowledge receipt of a copy hereof. I have been informed that the trial date/preliminary inquiry/preliminary hearing date is... o'clock M. at... pending Cir. Ct. (Balto. Co.) or that I will be advised of the date by the clerk. I agree to the conditions of release and agree to appear at trial.

2-5-86 Date

Custodian

Jerry Fulman Signature of Defendant

(This form replaces CR 706.)



STATE OF MARYLAND
Located at

Case No. *23-03330*

Fuman Terry D

vs

*31 Caraway Rd
Bristowtown MD 21114*

*First degree Rape
R.F. (a.k.a.)*

INITIAL APPEARANCE REPORT (Rule 4-213)

I hereby certify that when the above named Defendant was brought before me for an initial appearance, I
DETERMINED that Defendant had already been provided with a copy of the charging document.
PROVIDED the Defendant with a copy of the charging document.
ADVISED Defendant that copy of Charging Document is not available, but will be provided to Defendant within 24 hours.
ADVISED Defendant of right to counsel. Defendant desires to proceed without counsel. I to employ his own counsel.
ADVISED Defendant that he is charged with a felony that is not within the jurisdiction of the District Court and that he has a right to have a preliminary hearing by a referee made now or within ten days and that failure to make a timely request will result in a waiver. Defendant requests preliminary hearing and I clerk will notify him of date. If a scheduled for
ADVISED Defendant to read the Notice to Defendant printed on the charging document.
ADVISED Defendant to read the Notice to Defendant printed on the charging document to the Defendant.
FURNISHED to the Defendant a copy of the Notice to Defendant printed on the charging document since charging document was available.

4-216:

In determining which conditions of release will reasonably ensure the appearance of the Defendant as required, the judicial officer, on the basis of information available or developed in a pretrial release inquiry may take into account

- (1) The nature and circumstances of the offense charged, the nature of the evidence against the Defendant, and the potential sentence upon conviction, insofar as these factors are relevant tot he risk of non appearance.
- (2) The Defendant's prior record of appearance at court proceedings or flight to avoid prosecution or failure to appear at court proceedings.
- (3) The Defendant's family ties, employment status and history, financial resources, reputation, character and mental condition, length of residence in the community and length of residence in this State.
- (4) The recommendation of an agency which conducts pretrial release investigations.
- (5) The recommendation of the State's Attorney.
- (6) Information presented by Defendant's counsel.
- (7) The danger of the Defendant to himself or herself and others.
- (8) Any other factor including prior convictions, bearing on the risk of a willful failure to appear.

requred a bail bond in the amount of \$7,000.00 and on the following conditions:
without collateral security
with collateral security of \$7,000.00
to be satisfied by depositing the required amount in cash or certified check or the placing of intangible property approved by the Court
to be satisfied by encumbering real estate
with the obligation of a corporation which is an insurer or other surety in the full penalty amount.
I informed the Defendant that a warrant for his arrest will be issued if he violates the conditions of release and returned him to the recognizance or bail bond is forfeited and he willfully fails to surrender himself within 30 days following the forfeiture, he may be charged and fined not more than \$2,000 or imprisoned for not more than 2 years or both. If given in connection with a charge of felony or charged and fined not more than \$1,000 or imprisoned for more than 1 year or both. If given in connection with a misdemeanor charge, I informed the Defendant that he must notify the Court in writing of any change of address or telephone number.

Date *8-2-82* Time *8:30 a.m.* Judicial Officer *[Signature]*

I have read and had read to me the offense with which I am charged, the conditions of release, the penalty for violation of the conditions of release, the Notice of Right to Counsel, and I acknowledge receipt of a copy thereof. I have been informed that the trial date preliminary inquiry hearing hearing date is *8-2-82* at *[Signature]* and I will be advised of the date by the clerk. I agree to the conditions of release and agree to appear at trial.
Signature of Defendant *[Signature]* Date *8-2-82*
DCCR (Rev. 2/82)



DISTRICT COURT OF MARYLAND FOR

Ba Hu

Located at Court Address

Case No. 62322306

STATE OF MARYLAND

VS

Furman, Jerry D Defendant

INITIAL APPEARANCE QUESTIONNAIRE

Present Offenses Rape 1st degree; Burglary/Day CC # F-449530
Name
Address 31 Caraway Rd, 21136 ZIP 5
Previous Address
State of Maryland (Residence) How Long LIFE
Marital Status Single No. of Dependents 1 Children 0
With whom are you living Mary Charles Relationship grand mother
Parents Living yes Where MD
Employer
Address
Phone #
Approx. Income
Income from other sources: Amount Source
Unemployed X How Long Sept 9, 1985 Last Employer Larry Knight Construction
Address Ba Hu Co Phone #

CRIMINAL CONVICTIONS:

Charge Date
See STA copy

AWAITING TRIAL ON OTHER CHARGES:

Charge Trial Date Where Bail
3 separate cases of Robbery; burglary 3-11-86 TOWSON 1 million

PRESENTLY ON PAROLE/PROBATION:

Charge Probation Agent Term
Theft & Viol of Prob State Inst. 6 yrs total 18 mth left til exp.

ASP client during past 12 months? Yes X No
Defendant appears to have has admits denies an alcohol drug problem? No YES
ASP Referral

Julith Fitch 08-038 2/5/86
Commissioner/Judge Date



DISTRICT COURT OF MARYLAND FOR

Balto. City/County

Located at Court Address

Case No. 62322306

STATE OF MARYLAND

VS

Defendant

Furman, Jerry D.

Address

31 Caraway Rd. Reisterstown, MD 21136

Telephone

COMMITMENT PENDING HEARING

E-449530

86-1445

TO:

Sheriff Balto. Co

YOU ARE HEREBY COMMANDED to receive from any officer the body of the above-named Defendant who is charged with the offense(s) of Rape 1st degree; Burglary/Day

- checkboxes for bail conditions: In default of \$... bail, Bail review was held by Judge... and Defendant is committed in default of \$... bail, Having been surrendered by bondsman...

YOU ARE FURTHER COMMANDED to:

- checkboxes for further court actions: Transfer the Defendant to the jail or detention center in... county/city, Produce the Defendant: for further review before a judicial officer of the District Court for... county/city located at... Maryland, within 30 60* days if before that time the Defendant has not posted the bail or been arrested on a warrant of the Governor of Maryland on a requisition of the executive authority of the State of... for court appearance as follows: Court, Location, Date, Time, Purpose (Bail Review, Preliminary Hearing/Inquiry, Trial, Other (describe))

2-5-86 Date

Judith Fitch 08-038 Clerk/Judge/Commissioner I.D.

*Applies to second commitment only



DISTRICT COURT OF MARYLAND FOR

Baltimore

City/County

Located at

Towson

Court Address

Case No.

20-20206

STATE OF MARYLAND

VS

Jerry Darwin Furman

Defendant

Charge: (1)

E-449520

Address

(2)

NOTICE TO STATE'S ATTORNEY

TO THE STATE'S ATTORNEY FOR

Baltimore

COUNTY:

Please be advised the following action took place in the above entitled case regarding a preliminary hearing.

Defendant affirmatively waived right to a preliminary hearing on Date

Defendant failed to request a preliminary hearing within 10 days after initial appearance, thereby waiving right to a preliminary hearing on 2-18-86 Date

A preliminary hearing was held on Date, and the Court found probable cause to believe that the Defendant committed an offense.

As a result of the above action, you have 30 days from the above date to comply with the provisions of Maryland District Rule 727 (i). 2-20-86

2-19-86

Date

[Signature]

Clerk

Receipt of the above Notice acknowledged:

Date

State's Attorney

NOTICE TO STATE'S ATTORNEY

STATE OF MARYLAND

* IN THE CIRCUIT COURT

ac

VS.

*
FOR BALTIMORE COUNTY
*

JERRY FURMAN

* CASE NO. 86 CR 1129

* * * * *

MOTION FOR RECONSIDERATION OF SENTENCE

Jerry Furman, Defendant, by his attorney, Carl R. Schlaich, Assistant Public Defender, respectfully moves this honorable court to modify, reduce or strike the sentence imposed in this case, and for reasons states:

1. On March 11, 1986, the Honorable William Buchanan sentenced the defendant to forty-five (45) years in the Division of Correction on a plea of guilty to first degree rape. This sentence is concurrent to a ten year sentence imposed in case 85 CR 4981, and Patuxent has been recommended.

2. The sentence imposed is excessive and not in the best interest of the defendant or society.

3. The defendant is sorry for his criminal activity and desires to be rehabilitated.

4. The Court has revisory power for a period of ninety (90) days pursuant to Rule 4-345.

WHEREFORE, the defendant respectfully requests that this Court:

- A. Hold a hearing on this motion;
- B. Allow the defendant leave to produce such other information in support of this sentence modification as may become available; and
- C. Modify, reduce or strike the defendant's sentence.

FILED MAR 5 1986

Respectfully submitted,

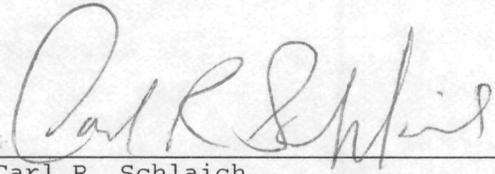
Carl R. Schlaich

Carl R. Schlaich
Assistant Public Defender

PROVER B
25% COTTON
USA

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Motion for Reconsideration of Sentence was delivered to the Office of the State's Attorney for Baltimore County, County Courts Building, Towson, Maryland 21204, this 5TH day of June, 1986.



Carl R. Schlaich
Assistant Public Defender
500 Virginia Avenue
Towson, Maryland 21204
321-2608

June 6, 1986

Carl R. Schlaich, Asst. Public Defender
500 Virginia Avenue
Towson, Maryland 21204



Re: State v. Jerry Darwin Furman
Case No. 85CR4981 & 86CR1129

Dear Mr. Schlaich:

I acknowledge receipt of your Motion for Reconsideration of Sentence filed June 5, 1986 in the above captioned cases.

I have carefully reviewed these cases and believe the sentence imposed on March 11, 1986 was fair and just. Your motion is, therefore, denied.

Very truly yours,

William R. Buchanan, Sr.

WRB:bas

CC State's Attorney's Office



The Circuit Court for Baltimore County

TOWSON, MARYLAND 21204

CHAMBERS OF
JOHN O. HENNEGAN
JUDGE

COUNTY COURTS BUILDING
TOWSON, MARYLAND 21204
(410) 887-3290

July 31, 1992

Mr. Jerry D. Furman
P.O. Box 700
Jessup, MD 20794

Re: State v. Jerry Darwin Furman
Case No. 86CR1129 & 85CR4981

Dear Mr. Furman:

I acknowledge your Motion to Revisory Power of Court filed June 24, 1992 in the above captioned case. This court no longer has jurisdiction in this case. Your motion is, therefore, DENIED.

Very truly yours,

John O. Hennegan

JOH:bas

CC State's Attorney's Office
File

COPY

FILED AUG 05 1992



The Circuit Court for Baltimore County

TOWSON, MARYLAND 21204

CHAMBERS OF
JOHN O. HENNEGAN
JUDGE

COUNTY COURTS BUILDING
TOWSON, MARYLAND 21204
(410) 887-3290

July 31, 1992

Mr. Jerry D. Furman
P.O. Box 700
Jessup, MD 20794

Re: State v. Jerry Darwin Furman
Case No. 86CR1129 & 85CR4981

Dear Mr. Furman:

I acknowledge your Motion to Revisory Power of Court filed June 24, 1992 in the above captioned case. This court no longer has jurisdiction in this case. Your motion is, therefore, DENIED.

Very truly yours,

John O. Hennegan

JOH:bas

CC State's Attorney's Office
File

COPY

STATE OF MARYLAND

*

IN THE

*

CIRCUIT COURT

vs.

*

FOR

*

BALTIMORE COUNTY

JERRY D. FURMAN

*

CASE.: 86CRI129 & 85CR4981

* * * * *

MOTION TO REVISORY POWER OF COURT

Now comes Jerry D. Furman, by Angela Lowery, his attorney, and moves this Honorable Court to pass an Order pursuant to Md. Rule 4-345 revising said sentence, for the following reasons:

1. That in case number 86CRI129, the said Jerry D. Furman was sentenced by Judge William R. Buchanan, Sr. following a guilty plea in Circuit Court for Baltimore County, on the 11th. day of March, 1986, to a term of forty-five years as to count 1; and to a term of Ten years concurrent, as to count 2.

2. After sentencing, the Defendant was evaluated by the Patuxent staff for admission into the Patuxent Program. He was accepted into the program on June 24, 1986.

3. That the said Jerry D. Furman, before his accepted into the Patuxent Program, filed a motion for Reduction and/or Modification of Sentence in the time period required by the Rules for various reasons;

(a) because the said believed that by being accepted into the Patuxent Program, that the guideline, standards, rules and regulations in existence at the time of his acceptance into the program, would continue through his incarceration and treatment; and

(b) because he believed that being accepted into the Patuxent Program, the Court would continue to enjoy Jurisdiction over the sentence imposed on him.

FILED JUN 24 1986

4. At the time this Honorable Court imposed sentence upon Jerry D. Furman, the Patuxent Board of Parole had authority to parole without the approval of the Governor.

5. At the time this Court imposed sentence upon Jerry D. Furman, the regulations concerning "work lease" were substantially more liberal than they are today.

6. The ex post facto and Due Process clauses prohibit the practical, retrospective application of new substantive law in criminal cases.

7. The Maryland Declaration of Rights, as well as statutory and case law within the State of Maryland, prohibit the retrospective application of penal statutes and regulations.

8. The double Jeopardy and due process prohibits enhancing an accused's sentence by de facto resentencing procedure.

9. That this Court, in imposing sentence upon the Jerry D. Furman, had every right to expect that the guidelines, standards, rules and regulations in effect at the time the sentence was imposed, would continue during his incarceration, and that the sentence imposed would have been different had the Court known that these changes in practice and procedure would take place during that period of incarceration.

10. That the sentencing Court did not and could not have known that the systematic changes relating to Patuxent, would have effect of enhancing an accused's sentence.

11. The said Jerry D. Furman did not and could not have known that the systematic changes relating to Patuxent, would have the effect of enhancing his sentence.

12. The sentencing Court and Jerry D. Furman, had the right to rely upon the guidelines, standards, rules and regulations respecting Patuxent in effect at the time of Defendant's trial and sentencing.

13. That the Defendant's liberty interests and institutional entitlement have been adversely and unfairly affected by changes in the guidelines, standards, rules and regulations and statutes respecting the Patuxent Institution.

14. That the said Jerry D. Furman, believed, and therefore avers, that this

Court enjoy the continuing Jurisdiction to modify and alter the sentence imposed in order to reflect the initial intent of the sentencing Court.

WHEREFORE, Jerry D. Furman, by and through his attorney, move this Honorable Court to pass an Order;

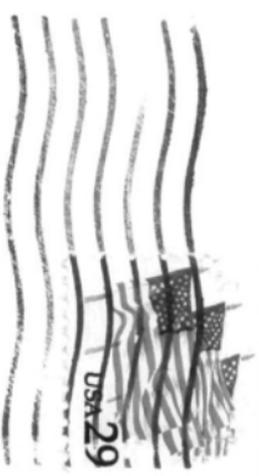
- A. Directing that a hearing be held on this Motion;
- B. That the Court correct the sentence in accordance with the foregoing Motion.
- C. Provide for such futher modifications necessary to modify the sentence imposed to carry out the intent of the Court.


JERRY D. FURMAN

THIS IS TO CERTIFY, that on this day of ,1992,
a copy the foregoing Motion To Revisory Power of Court was mailed to the Office of
the State s Attorney for Baltimore County.

JERRY D. FURMAN 6464
P.O. BOX 700
JESSUP, MD. 20794

Judge: John O. Hennegan
The Circuit Court for Baltimore County
County Court Building
Towson, Md. 21204



03

PATUXENT INSTITUTION
MAIL ROOM

JUN 10 1992

State of Maryland, Baltimore County, to wit:

JERRY DARWIN FURMAN

The State of Maryland Vs.-----

charged with the crime of Rape, 1st degree, etc.

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY.

CRIMINAL INFORMATION

The above entitled case having been referred to Sandra A. O'Connor, the State's Attorney for Baltimore County, and the said State's Attorney for Baltimore County having fully investigated said case after it had been referred to her as aforesaid, now comes into the said Court and for and on behalf of the State of Maryland gives the Court here to understand and be informed that -----

JERRY DARWIN FURMAN

late of Baltimore County aforesaid, on the 13th day of April in the year of our Lord nineteen hundred and eighty-five at Baltimore County aforesaid, did unlawfully commit a rape upon Mary Fitzpatrick in violation of Art. 27, Sec. 462, of the Annotated Code of Maryland; contrary to the form of the Act of Assembly in such case made and provided, and against the peace, government and dignity of the State.
~~(Rape - 1st degree - Art. 27, sec. 462)~~

SECOND COUNT

~~And the State's Attorney aforesaid, with power and authority as aforesaid, gives the Court here to understand further that the said JERRY DARWIN FURMAN on the said day, in the said year, in the County aforesaid, did unlawfully commit a rape upon Mary Fitzpatrick in violation of Art. 27, sec. 463, of the Annotated Code of Maryland; contrary to the form of the Act of Assembly in such case made and provided, and against the peace, government and dignity of the State.~~
~~(Rape - 2nd degree - Art. 27, Sec. 463)~~

THIRD COUNT

~~And the State's Attorney aforesaid, with power and authority as aforesaid, gives the Court here to understand further that the said JERRY DARWIN FURMAN on the said day, in the said year, in the County aforesaid, did unlawfully commit a sexual offense upon Mary Fitzpatrick in violation of Art. 27, Sec. 464 of the Annotated Code of Maryland;~~

contrary to the form of the Act of Assembly in such case made and provided, and against the peace, government and dignity of the State.

(Sexual offense - 1st degree
Art. 27, Sec. 464)

~~The State's Attorney for Baltimore County.~~

STATE OF MARYLAND

JERRY DAWSON TURMAN VS

The State of Maryland

charged with the crime of Rape, 1st degree, etc. IN THE CIRCUIT COURT FOR BALTIMORE COUNTY.

CRIMINAL INFORMATION

The above entitled case having been referred to the State's Attorney for Baltimore County, and the said State's Attorney for Baltimore County having fully investigated said case after it had been referred to him as aforesaid, now comes into the said Court and for and on behalf of the State of Maryland gives the Court here to understand and be informed that

CHARGE: JERRY DAWSON TURMAN

CRIMINAL INFORMATION

late of Baltimore County aforesaid, on the 15th day of April

WITNESSES: in the year of our Lord nineteen hundred and eighty-five at Baltimore County

did unlawfully commit a rape upon Mary Elizabeth in violation of Art. 27, Sec. 462, of the Annotated Code of Maryland, contrary to the form of the Act of Assembly in such case made and provided, and against the peace, government and dignity of the State.

SECOND COUNT

And the State's Attorney aforesaid, with power and authority as aforesaid, gives the Court here to understand further that the said JERRY DAWSON TURMAN on the said day, in the said year, in the County aforesaid, did unlawfully commit a rape upon Mary Elizabeth in violation of Art. 27, Sec. 462, of the Annotated Code of Maryland, contrary to the form of the Act of Assembly in such case made and provided, and against the peace, government and dignity of the State.

THIRD COUNT

And the State's Attorney aforesaid, with power and authority as aforesaid, gives the Court here to understand further that the said JERRY DAWSON TURMAN on the said day, in the said year, in the County aforesaid, did unlawfully commit a rape upon Mary Elizabeth in violation of Art. 27, Sec. 462, of the Annotated Code of Maryland,

contrary to the form of the Act of Assembly in such case made and provided, and against the peace,

government and dignity of the State. (Sexual offense - 1st degree - Art. 27, Sec. 462)

The State's Attorney for Baltimore County

FOURTH COUNT

And the State's Attorney aforesaid, with power and authority as aforesaid, gives the Court here to understand further that the said JERRY DARWIN FURMAN On the said day, in the said year, in the County aforesaid, did unlawfully commit a sexual offense upon Mary Fitzpatrick in violation of Art. 27, Sec. 464A, of the Annotated Code of Maryland; contrary to the form of the Act of Assembly in such case made and provided, and against the peace, government and dignity of the State.
(Sexual offense - 2nd degree - Art. 27, Sec. 464A)

FIFTH COUNT

And the State's Attorney aforesaid, with power and authority as aforesaid, gives the Court here to understand further that the said JERRY DARWIN FURMAN On the said day, in the said year, in the County aforesaid, did unlawfully commit a sexual offense upon Mary Fitzpatrick in violation of Art. 27, Sec. 464B, of the Annotated Code of Maryland; contrary to the form of the Act of Assembly in such case made and provided, and against the peace, government and dignity of the State.
(Sexual offense - 3rd degree - Art. 27, Sec. 464B)

SIXTH COUNT

And the State's Attorney aforesaid, with power and authority as aforesaid, gives the Court here to understand further that the said JERRY DARWIN FURMAN on the said day, in the said year, in the County aforesaid, did unlawfully commit a sexual offense upon Mary Fitzpatrick in violation of Art. 27, Sec. 464C, of the Annotated Code of Maryland; contrary to the form of the Act of Assembly in such case made and provided, and against the peace, government and dignity of the State.
(Sexual offense - 4th degree - Art. 27, Sec. 464C)

SEVENTH COUNT

And the State's Attorney aforesaid, with power and authority as aforesaid, gives the Court here to understand further that the said JERRY DARWIN FURMAN on the said day, in the said year, in the County aforesaid, did unlawfully attempt to commit a sexual offense upon Mary Fitzpatrick in violation of Art. 27, Sec. 464, of the Annotated Code of Maryland; against the peace, government and dignity of the State.

(Attempted sexual offense 1st degree - common law)

EIGHTH COUNT

And the State's Attorney aforesaid, with power and authority as aforesaid, gives the Court here to understand further that the said JERRY DARWIN FURMAN on the said day, in the said year, in the County aforesaid, did unlawfully attempt to commit a sexual offense upon Mary Fitzpatrick in violation of Art. 27, Sec. 464A, of the Annotated Code of Maryland; against the peace, government and dignity of the State.

(Attempted sexual offense 2nd degree - common law)

NINTH

COUNT

And the State's Attorney aforesaid, with power and authority as aforesaid, gives the Court here to understand further that the said JERRY DARWIN FURMAN

on the said day, in the said year, in the County aforesaid, feloniously committed burglary, in the night time, of the dwelling of Mary Fitzpatrick situated 12 Apt. C-1 Brookebury Drive, 21136

contrary to the form of the Act of Assembly in such case made and provided, and against the peace, government and dignity of the State.

(Burglary - common law and Art. 27, Secs. 29, 30, 31)

TENTH

COUNT

And the State's Attorney aforesaid, with power and authority as aforesaid, gives the Court here to understand further that the said JERRY DARWIN FURMAN

on the said day, in the said year, in the County aforesaid, in the daytime, unlawfully did break the dwelling house of Mary Fitzpatrick

there situate, at 12 Apt. C-1 Brookebury Drive, 21136 with intent to steal, take and carry away therefrom, the goods and chattels, monies and properties, of value, of the said Mary Fitzpatrick

contrary to the form of the Act of Assembly in such case made and provided, and against the peace, government and dignity of the State.

(Daytime House Breaking - Art. 27, Sec. 30)

ELEVENTH

COUNT

And the State's Attorney aforesaid, with power and authority as aforesaid, gives the Court here to understand further that the said

JERRY DARWIN FURMAN

on the said day, in the said year, in the County aforesaid, did steal

purse, Forty Dollars current money of the United States (\$40.00),
wallet

being the property and services of

Mary Fitzpatrick

having a value of less than Three Hundred (\$300.00) dollars, an act constituting Theft, in violation of Art. 27, Sec. 342, of the Annotated Code of Maryland; contrary to the form of the Act of Assembly in such case made and provided, and against the peace, government and dignity of the State.

(Theft - Art. 27, Sec. 342)

TO THE PERSON CHARGED:

1. This paper charges you with committing a crime.
2. If you have been arrested, you have the right to have a judicial officer decide whether you should be released from jail until your trial.
3. You have the right to have a lawyer.
4. A lawyer can be helpful to you by:
 - (A) explaining the charges in this paper;
 - (B) telling you the possible penalties;
 - (C) helping you at trial;
 - (D) helping you protect your constitutional rights; and
 - (E) helping you to get a fair penalty if convicted.
5. Even if you plan to plead guilty, a lawyer can be helpful.
6. If you want a lawyer but do not have the money to hire one, the Public Defender may provide a lawyer for you. The court clerk will tell you how to contact the Public Defender.
7. If you want a lawyer but you cannot get one and the Public Defender will not provide one for you, contact the court clerk as soon as possible.
8. DO NOT WAIT UNTIL THE DATE OF YOUR TRIAL TO GET A LAWYER. If you do not have a lawyer before the trial date, you may have to go to trial without one.

Sandra A O'Connor by Barbara R. Jones
The State's Attorney for Baltimore County

STATE OF MARYLAND

VS

86CR-1129

JERRY DARWIN FURMAN (JAIL)
BCI 112613
dob 6/18/62
31 Caraway Rd., Reisterstown, Md., 21136

CHARGE: Rape, 1st degree, etc.

CRIMINAL INFORMATION

WITNESSES:

Mary Louise Fitzpatrick
12 Apt. C1 Brookebury Drive, 21136
off. S. Gossage #2725
PC #3
Albert Toler
16 Brookebury Avenue, 21136
Det. B. J. Mathis #1202
Det. Webb #1420
Sgt. Simms #1491
Crime Lab
Det. B. Magladry #2128
CID PROP
Off. Nelson Parker #2407
PC #3
Det.D. Einolf #1600
Sex Crimes Unit

E449530 08-02-623223C6

FILED FEB 28 1986

STATE OF MARYLAND

*

IN THE CIRCUIT COURT

V.

*

FOR BALTIMORE COUNTY

JERRY DARWIN FURMAN

*

STATE'S AUTOMATIC DISCOVERY
AND REQUEST FOR DISCOVERY

Now comes Sandra A. O'Connor, State's Attorney for Baltimore County, and Barbara R. Jung, Assistant State's Attorney, and in compliance with Rule 4-263(a) of the Maryland Rules of Procedure, say the following:

1. Any information known to the State at this time which tends to negate the guilt of the Defendant as to the offense charged or which tends to reduce his punishment therefore is attached hereto. If no such attachment is included, no such information is known to the State at this time.

2. Any relevant material or information regarding whether the State used a search and seizure, wire tape or eavesdrop in gathering evidence in this case is attached hereto.

3. The Defendant made no statements or confessions, oral or written, which are known to the State at the present time.

The Defendant made a written statement or confession, the copy of which is attached hereto.

The Defendant made an oral statement or confession, the substance of which is as follows:

4. The Defendant has not, at this time, been identified by a pre-trial identification procedure.

The Defendant was identified (at lineup/by photograph/ other _____) by the following witnesses:

(Name)

(Date)

4a. SEE ATTACHED

5. Upon notice to the State, the Defendant may inspect the contents of the State's file in this case, excluding those items otherwise privileged by law.

The State requests that the following discovery be provided by the Defendant in accordance with Rule 4-263(d):

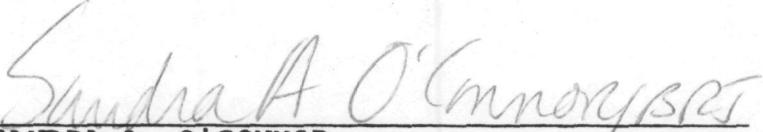
1. That the State be allowed to inspect and copy all written reports made in connection with this case by each expert which the Defendant intends to call as a witness at trial and that the Defendant furnish the State with the substance of any oral report and conclusion made in connection with this case by an expert the Defendant intends to use at trial.

2. That the Defendant furnish the State with the name and address of any alibi witness the Defendant intends to call as a witness. The crime occurred on the 13th day of April, 1985 at unknown hours at 12 Apt. C-1 Brookebury Drive, Baltimore County Maryland.

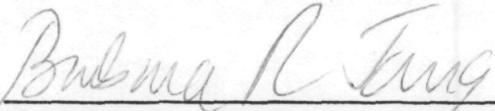
3. Upon request of the State, the defendant shall:

- (a) Appear in a line-up for identification;
- (b) Speak for identification;
- (c) Be fingerprinted;
- (d) Pose for photographs not involving reenactment of a scene;
- (e) Try on articles of clothing;
- (f) Permit the taking of specimens of material under his fingernails;
- (g) Permit the taking from his body of samples of blood, hair and other material involving no unreasonable intrusion upon his person;
- (h) Provide specimens of his handwriting;
- (i) Submit to reasonable physical or mental examination;

as provided for in Rule 4-263(d).

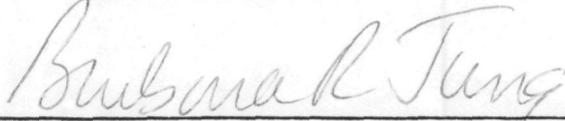


SANDRA A. O'CONNOR
State's Attorney for Baltimore County



BARBARA R. JUNG
Assistant State's Attorney

I HEREBY CERTIFY that a copy of this foregoing State's Automatic Discovery and Request for Discovery was attached to the above indictment when delivered to the Defendant.



BARBARA R. JUNG
Assistant State's Attorney

COURT CLERK'S WORK SHEET

TRIAL DATE 3/11/86 Judge WRBS

STATE'S ATTORNEY M. Norman DEFENDANT'S ATTORNEY C. Schuler

COURT REPORTER P. Giffi CLERK BL

CASE # 86 CR 1129 NAME Jerry D. Furman

CHARGE Rape

TRIAL COURT JURY PLEA GUILTY NOT GUILTY NOLO CONTENDERE

MOTIONS: 1. END of STATE'S CASE defs. Motion For Judgment of ACQUITTAL

GRANTED OVERRULED

2. END of ENTIRE CASE defs. Motion For Judgment of ACQUITTAL

GRANTED OVERRULED

VERDICT: GUILTY ON COUNTS NOT GUILTY ON COUNTS

SENTENCE TERM OF SUSPENDED PROB. FINE & COSTS

Department of Correction	4/5 yrs			
Balto. Co. Detention Center	acc't from 9/24/85			wait

REMARKS Court recommends Patient Inst. Commit Sent

paid

NOTE: IF PRE-SENTENCE REPORT IS ORDERED OR DEFENDANT IS ON PROBATION DEFENDANT MUST REPORT TO PROBATION INTAKE OFFICE ROOM 346 COUNTY COURTS BUILDING IMMEDIATELY WITH COUNSEL.

MARYLAND SENTENCING GUIDELINES WORKSHEET

OFFENDER NAME (Last, First, Middle) FURMAN, JERRY DARWIN

BIRTHDATE 6/18/67

1 Male 1 White 3 Hispanic JURISDICTION 13

2 Female 2 Black 4 Other

DATE OF OFFENSE 4/13/85 DATE OF PLEA/VERDICT 3/11/86 DATE OF SENTENCING 3/11/86

CONVICTED COUNT TITLE 1st Count 2nd Count 3rd Count

HOW MANY CONVICTED COUNTS AT THIS SENTENCING? 01 HOW MANY CRIMINAL EVENTS AT THIS SENTENCING? 02 WORKSHEET # 1 OF 2 PSI 1 Yes 0 No

MD. CODE, ART. & SECTION 37/462/c2 STAT. MAX. LIFE GUIDELINE RANGE 30Y-35Y DOCKET NUMBER 86 CR 1129

DISPOSITION TYPE (Circle Only One)

0 Charge Bargain

1 Binding Plea Agreement as to Actual Sentence

2 Binding Plea Agreement as to Sentence Maximum or Range of 45 yrs

3 Plea Agreement: Non-Binding Recommendation of _____

4 Plea, No Agreement

5 Other Guilty Plea

6 Court Trial, Contested Facts (No Plea Agreement)

7 Court Trial, Uncontested Facts, Contested Legal Issue (No Plea Agreement)

8 Jury Trial

DISPOSITION TYPE	OFFENSE SCORE (S)			OFFENDER SCORE	AOC USE ONLY: DO NOT WRITE IN SPACE BELOW
	1st Ct.	2nd Ct.	3rd Ct.		
0				A. Relationship to CJS When Instant Count Occurred 0 = None or Pending Cases 1 = Court or Other Criminal Justice Supervision	INC _____ SUS _____ ACT _____ CON _____ STA _____
1	01	01	01	B. Juvenile Delinquency 0 = Not More Than One Finding of Delinquency 1 = Two or More Findings Without Commitment or One Commitment	SUS _____ ACT _____ CON _____
2	03	03	03	C. Prior Adult Criminal Record 0 = None 1 = Minor 3 = Moderate 5 = Major	CON _____ PRO _____
3	05	05	05	D. Prior Adult Parole/Probation Violations 0 = No 1 = Yes	STA _____ PRO _____
4	08	08	08		ACT _____ CON _____
5	08	08	08		CON _____ PRO _____
6	10	10	10		STA _____ PRO _____
7	00	00	00		CON _____ PRO _____
8	01	01	01		ACT _____ CON _____
	02	02	02		CON _____ PRO _____
	03	03	03		ACT _____ CON _____
	04	04	04		CON _____ PRO _____
	05	05	05		ACT _____ CON _____
	06	06	06		CON _____ PRO _____
	07	07	07		ACT _____ CON _____
	08	08	08		CON _____ PRO _____
	09	09	09		ACT _____ CON _____
	10	10	10		CON _____ PRO _____

OFFENSE SCORE (S) (Check Boxes when Sentenced as Subsequent Offender)

1st Convicted Count 45 years to D.O.C.

2nd Convicted Count with 85 CR 4981

3rd Convicted Count _____

TOTAL OFFENDER SCORE 016

REASON IF ACTUAL SENT. DEPARTS FROM GUIDELINE RANGE/ADDITIONAL INFO.

OVERALL GUIDELINE RANGE (For Multiple Counts Only)

45y to 45y

INSTITUTIONAL/PAROLE RECOMMENDATION

Patrol/Probation

WORKSHEET COMPLETED BY M.J. Norman STATES ATTORNEY M.J. Norman

SENTENCING JUDGE Buchanan DEFENSE ATTORNEY C. Schlaich

SIGNATURE [Signature]

CIRCUIT COURT FOR BALTIMORE COUNTY

Towson, Maryland 21204

District Court Case No. -----

Case No. 85CR4980 4981 + 4982

86CR1129

3/11, 19. 86

REPORT OF PRISONER BROUGHT TO COURT FOR TRIAL

FROM: ELMER H. KAHLIN, JR., CLERK

TO: THE SHERIFF OF BALTIMORE COUNTY, MARYLAND

Name Of Prisoner Jerry D. Furman

Date Of Trial 3/11, 19. 86 Judge WRB h.

Charge Robb Rape Guilty ✓ CT #1 86CP 1129 NOT GUILTY -----

DISPOSITION:

A. Sentenced To Department Of Correction -----

10 yrs - 85CR4981 45
Length Of Sentence years

B. Sentenced To Baltimore County Detention Center -----

Length Of Sentence 86CR 1129
TO PR

C. Remanded To Baltimore County Detention Center -----

Probation Report Of Psychiatric Evaluation u/een
OT

D. Placed On Probation -----

Length Of Probation -----

E. Sentenced To Baltimore County Detention Center Work Release Recommended -----

F. Stet -----

G. Nol Pros balance of counts in 86CR1129 + 85CR4981 and

ENTIRE CASE - 85CR4980 + 85CR4982

H. Arraignment -----

I. Trial Continued -----

J. Trial Postponed -----

K. Bail Hearing -----

L. Defendant Released From This Case Only. Release In Transit.

Counts to Transit

ELMER H. KAHLIN, JR., Clerk

Per [Signature]

Deputy Clerk

CIRCUIT COURT FOR BALTIMORE COUNTY
Towson, Md. 21204

COMMITMENT RECORD

STATE OF MARYLAND

VS.

Jerry Darwin Furman

Dist. Court Case No. n/a

CASE NO. 86CR1129

DOCKET -- FOLIO --

TERM Jan. 1986

Date of Birth 6/18/62

Charge or Offense (Specify as to each count in indictment) * Rape, etc.

Plea Guilty ct. one Trial by (Court) (~~Jury~~) Judge William R. Buchanan Sr.

Verdict (Specify on each count) * Guilty as to count one (1), Rape, 1st degree, Art. 27 Sec. 462. Nol Pros entered as to the balance of counts.

Date of Verdict March 11, 1986 Date Sentence Imposed March 11, 1986

SENTENCE:

Prisoner is committed to the jurisdiction of:

- A. Commissioner of Correction
- B. Sheriff of Baltimore County

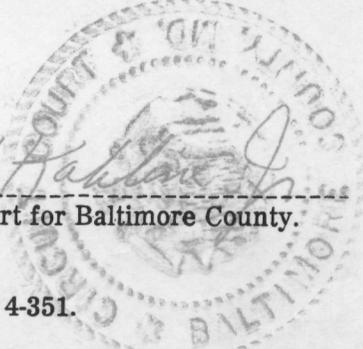
Commencing on 9/24/85 for a period of 45 years. Patuxent Institution recommended.

(Specify concurrent or consecutive terms)

Truly taken from the Docket Proceedings of the Circuit Court for Baltimore County. In testimony whereof, I hereunto set my name and affix the seal of the said Court this 11th day of March, 1986.

per DJJ

[Signature]
Clerk, Circuit Court for Baltimore County.



*In accordance with Maryland Rule of Procedure 4-351.

(IF ADDITIONAL SPACE IS NEEDED TO ANSWER ANY OF THE ABOVE, PLEASE USE REVERSE SIDE OF FORM.)

COURT CLERK'S WORK SHEET

TRIAL DATE 3/11/86 Judge WRBS

STATE'S ATTORNEY M. Warner DEFENDANT'S ATTORNEY C. Schulz

COURT REPORTER P. Giff CLERK RL

CASE # 86 CR 1129 NAME Jerry D. Furman

CHARGE Pope

TRIAL 1st COURT JURY PLEA 1st #1 GUILTY NOT GUILTY NOLO CONTENDERE

MOTIONS: 1. END of STATE'S CASE defs. Motion For Judgment of ACQUITTAL
 GRANTED OVERRULED

2. END of ENTIRE CASE defs. Motion For Judgment of ACQUITTAL
 GRANTED OVERRULED

VERDICT: GUILTY ON COUNTS NOT GUILTY ON COUNTS
1st #1 Not Pros balance

SENTENCE	TERM OF	SUSPENDED	PROB.	FINE & COSTS
Department of Correction	<u>45yrs</u>			<u>Waived</u>
Balto. Co. Detention Center				

REMARKS Court recommends Probation Dept.
Commit Sent

NOTE: IF PRE-SENTENCE REPORT IS ORDERED OR DEFENDANT IS ON PROBATION DEFENDANT MUST REPORT TO PROBATION INTAKE OFFICE ROOM 346 COUNTY COURTS BUILDING IMMEDIATELY WITH COUNSEL.

CIRCUIT COURT FOR BALTIMORE COUNTY

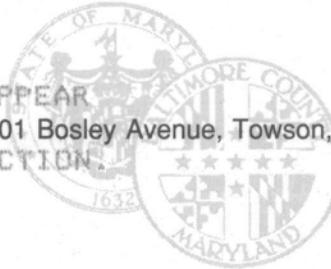
State of Maryland vs. JERRY DARWIN FURMAN

Case No. 84CR1129

State of Maryland, Baltimore County to wit:

TO: JERRY DARWIN FURMAN # 180-817
 MD. DIV. OF CORR.- TRANS. UNIT
 550 E MADISON ST
 BALTIMORE, MD 21202

You are hereby NOTIFIED TO APPEAR before the Judges of the Circuit Court for
 Baltimore County, County Courts Building, 401 Bosley Avenue, Towson, Maryland, ON NOVEMBER 1, 1999 AT
 09:15 A.M. FOR POST CONVICTION.



Witness the Honorable Chief Judge of the Third Judicial Circuit of Maryland.

Issued: AUGUST 24, 1999

SUZANNE MENSCH

Clerk, Circuit Court for Baltimore County

887-2694

VOICE/TDD Md. Relay Service 1-800-735-2258

MD Toll Free Number 1-800-938-5802



C.C.

Mickey Norman, Esq
 Collateral Review
 Kate Scruggs

WRIT OF HABEAS CORPUS

CIRCUIT COURT FOR BALTIMORE COUNTY

State of Maryland vs.

JERRY DARWIN FURMAN

Case No.

86CR1129

I.D. NO. 180-817

State of Maryland, Baltimore County to wit:

D.O.B. JUNE 18, 1962

TO:

WARDEN; MD. DIV. OF CORR.- TRANS. UNIT
550 E MADISON ST
BALTIMORE, MD 21202

You are hereby **COMMANDED TO HAVE** before the Judges of the Circuit Court for
Baltimore County, County Courts Building, 401 Bosley Avenue, Towson, Maryland, **ON NOVEMBER 1, 1999**
09:15 A.M. THE BODY OF JERRY DARWIN FURMAN FOR POST CONVICTION



Witness the Honorable Chief Judge of the Third Judicial Circuit of Maryland.

Issued:

OCTOBER 14, 1999

SUZANNE MENSCH
Clerk, Circuit Court for Baltimore County
887-2625

"Md. Toll Free Number 1-800-938-5802"
VOICE/TDD Md. Relay Service 1-800-735-2258



REPORT OF PRISONER BROUGHT TO COURT

CIRCUIT COURT FOR BALTIMORE COUNTY

401 Bosley Ave. Towson, Maryland 21204

TO: SHERIFF BALTIMORE COUNTY, MARYLAND

FROM: SUZANNE MENSCH, CLERK

Name of Prisoner JERRY D. FURMAN 11/1 19 99

Charge POST CONVICTION GUILTY NOT GUILTY CIRCUIT COURT# (S) 85CR4981, 86CR1129

JUDGE JTS, JR DISTRICT COURT# _____

TRACKING# _____

DISPOSITION:

A. SENTENCED TO DIVISION OF CORRECTION COMMIT IN TRANSIT _____ length of sentence _____

B. SENTENCED TO BALTIMORE COUNTY BUREAU OF CORRECTIONS COMMIT IN TRANSIT _____ length of sentence _____

C. SENTENCED TO BCBC, WORK RELEASE RECOMMENDED COMMIT IN TRANSIT _____ length of sentence _____

D. SENTENCED TO DWI FACILITY COMMIT IN TRANSIT _____ length of sentence _____

E. PLACED ON PROBATION UPON RELEASE _____ length of probation _____

F. REMANDED BCBC 1. per detainer 2. pending disposition 3. PSI Ordered

G. REMANDED DOC. 4. trial continued 5. hearing trial postponed 6. arraignment

7. Psych. Evaluation Ordered 8. _____

9. defendant to be brought to Court on _____

H. STET _____

I. NOL PROS _____

J. DEFENDANT RELEASED FROM DOC / BCBC AS TO THIS CASE ONLY. RELEASE IN TRANSIT

K. CURRENT BAIL REVOKED

L. BAIL STATUS TO REMAIN THE SAME

M. BAIL HEARING _____

- 1. CASH
- 2. CORPORATE SURETY
- 3. OWN RECOGNIZANCE
- 4. PERSONAL PLEDGE OF _____
- 5. PROPERTY AT: ACCEPTABLE _____

[Handwritten signature]
ppd w/ CT
TO LATER DATE.

SUZANNE MENSCH, CLERK

per hm Deputy Clerk

BALTO.
CO.
CIR.



DIVISION OF CORRECTION
TRANSPORTATION UNIT
COURT ENVELOPE

THIS SIDE TO BE COMPLETED BY INSTITUTIONAL COMMITMENT OFFICE

Inmate's Name Jerry Gumar
AKA _____
DOC # 180.817 Institution MHC
Security Level Max Med Min PR
Destination (Court) Baltimore Co. Circuit
Judge _____
Date ~~9:15 am~~ 11.1.99 Time 9:15 am
 Writ Enclosed E Card Enclosed

Commitments (enclosed)			
Date	Case #	Offense	Sentence
<u>See Enclosed</u>			

Total Sentence 45 years Start Date 9.24.85 M R Date 7.5.2021

Detainers/pending charges (enclosed)	
Jurisdiction	Offense
<u>None</u>	

Medication Yes No
Escape risk history Yes No
Other: Enemies

J. Sheets 10.25.99
Supervisor - Commitment Office Date



The Circuit Court for Baltimore County

THIRD JUDICIAL CIRCUIT OF MARYLAND

JAMES T. SMITH, JR.
JUDGE

HEARING NOTICE

COUNTY COURTS BUILDING
TOWSON, MARYLAND 21204
(410) 887-2620

DATE: March 21, 2000

RE: State of Maryland v. Jerry D. Furman

CASE NO: 85-CR-4981 and 86-CR-1129

HEARING FOR: Post Conviction Hearing

**DATE, TIME
and PLACE:** Tuesday, May 9, 2000 at 9:30 a.m. in Ctrm. #3

COMMENTS: None

IF THE ABOVE DATE IS NOT AGREEABLE TO ANY PARTY, PLEASE CONTACT MY OFFICE TO RESCHEDULE THE ABOVE HEARING. IF THE POSTPONEMENT REQUEST IS GRANTED, IT WILL BE UP TO COUNSEL REQUESTING THE POSTPONEMENT TO NOTIFY ALL PARTIES OF THE CHANGE, WITH A COPY OF THE CONFIRMING NOTICE BEING SENT TO MY CHAMBERS.

TO: CRIMINAL/CENTRAL ASSIGNMENT OFFICE: PLEASE ISSUE WRIT TO D.O.C.
Inmate No. 180-817

Mickey Norman, Esq., State's Attorney's Office, Towson, Maryland 21204
Jerry Darwin Furman, Inmate No. 180-817, P. O. Box 534, MHC, Jessup, Md. 20794
Robery Barry, Esq., Office of the Public Defender, 300 W. Preston St. (S-213), 21201

JAC

WRIT OF HABEAS CORPUS

CIRCUIT COURT FOR BALTIMORE COUNTY

State of Maryland vs.

JERRY DARWIN FURMAN

Case No.

86CR1129

State of Maryland, Baltimore County to wit:

I.D. NO. 180-817

D.O.B. JUNE 18, 1962

TO:

WARDEN, MD. DIV. OF CORR.- TRANS. UNIT
550 E MADISON ST
BALTIMORE, MD 21202

You are hereby

COMMANDED TO

before the Judges of the Circuit Court for

Baltimore County, County Courts Building, 401 Bosley Avenue, Towson, Maryland,

ON MAY 9, 2000 AT

09:30 A.M. THE BODY OF JERRY DARWIN FURMAN FOR POST CONVICTION



Witness the Honorable Chief Judge of the Third Judicial Circuit of Maryland.

Issued:

MARCH 24, 2000

SUZANNE MENSCH

Clerk, Circuit Court for Baltimore County

887-2625

"Md. Toll Free Number 1-800-938-5802"

VOICE/TDD Md. Relay Service 1-800-735-2258



Jerry Darwin Furman #180817

P. O. Box 534 M. H. C.
Jessup, MD 20794

PETITIONER

VS.

State of Maryland

RESPONDENT

IN THE

CIRCUIT COURT FOR

BALTIMORE COUNTY

Case No. 85CR4981
86CR1129

PETITION for POST CONVICTION RELIEF

Now comes the Petitioner, Jerry D. Furman, #180817, PRO SE and IN FORMA PAUPERIS, who is hereafter referred to as the "Petitioner", and who respectfully petitions this Honorable Court for Post Conviction Relief, pursuant to Article 27, §645A, of the Annotated Code of Maryland, and rule 4-401 of the Maryland Rules of Procedure, and for reasons say:

1. That Petitioner is presently confined at the Maryland House of Correction, P. O. Box 534, Jessup, Maryland 20794.
2. That on March 11, 1986, before the Honorable Judge William R. Buchanan, Sr., Associate Judge for Baltimore County Circuit Court, Petitioner was convicted of First Degree Rape, and sentenced to a (45) year sentence, and First Degree Attempted Rape, and sentenced to a (10) year sentence to run concurrent with the first.
3. That on June 5, 1986, Petitioner filed a Motion for Reconsideration of Sentence.
4. That on June 9, 1986, an Order of the Court denying Petitioner's Motion for Reconsideration was filed.
5. That on June 24, 1992, Petitioner filed a Motion for Revisory Power of the Court.
6. That on August 5, 1992, Petitioner's Motion for Revisory Power of the Court was denied.
7. That this is the Petitioner's first Petition for Relief under the Uniform Post Conviction Procedure Act, and the petitioner raises the following contentions:

CONTENTION #1

Petitioner was denied his Right under the Fifth Amendment of the United States Constitution, made

CC:JA
17

CRIMINAL JUSTICE SEP 10 1999

applicable to the State of Maryland through Article 2 and Article 44 of the Maryland Declaration of rights, to be charged by way of indictment rather than by criminal information.

CONTENTION #2

Petitioner was denied Effective Assistance of Counsel as guaranteed him by the Sixth Amendment of the United States Constitution.

CONTENTION #3

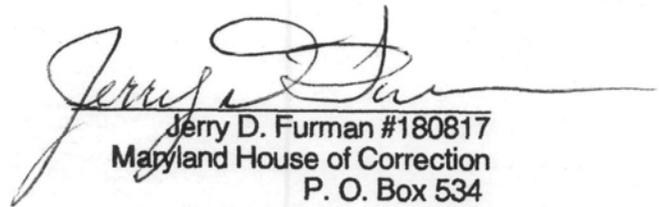
Petitioner was denied Due Process of Law because of the nature of the charges against him, and a Factual Basis for a guilty plea was not made part of the record as afforded by the Maryland Rules of Procedure.

CONTENTION #4

Petitioner contends that the Constitutional Rights Violation raised in this Petition are of such Constitutional scope and context that Fundamental Fairness requires an Evidentiary Hearing on the merits of the petitioner's claims, and that the Petitioner has not "intelligently and knowingly", in any previous proceedings, waived the issues outlined in this Petition for Post Conviction Relief.

WHEREFORE, the Petitioner prays as follows:

1. That an Order be issued for an Evidentiary Hearing, where proof of the allegations in this Petition may be offered.
2. That the Petitioner be allowed to attend any and all Hearings concerning these matters.
3. That Counsel be appointed to represent the Petitioner on the issues of this Petition.
4. That the Petitioner be freely allowed to amend his Petition as Justice may require.
5. That after a hearing on the merits, an Order be issued directing that the Petitioner be allowed to withdraw his Guilty Plea.
6. That after any and all Hearings, the Petitioner be furnished with a copy of all documents and briefs with respect to this Petition.
7. And for such other and further relief as Law and Justice may require.


Jerry D. Furman #180817
Maryland House of Correction
P. O. Box 534
Jessup, Maryland 20794
PETITIONER

DATE

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

Jerry Darwin Furman #180817

*

P. O. Box 534 MHC

*

Jessup, MD 20794

Petitioner

Case No. 85CR4981

VS.

*

86CR1129

*

State of Maryland

Respondent

*

.....
MEMORANDUM IN SUPPORT OF PETITION FOR POST CONVICTION RELIEF

On November 25, 1985, Petitioner went for arraignment and Attorney Carl R. Schlaich entered his appearance in case number 85CR4981, which charged Petitioner with a five count Criminal Information, to wit: Count 1 - Burglary; Count 2 - Breaking and Entering; Count 3 - Theft; Count 4 - Assault, Common Law; Count 5 - Attempted First Degree Rape. On January 22, 1986, trial was scheduled before the Honorable Judge Edward Dewaters, and was postponed by the defense.

On February 5, 1986, Petitioner, without being arraigned, was charged in an eleven count Criminal Information, Case No. 86CR1129, to wit: Count 1 - First Degree Rape; Count 2 - Second Degree Rape; Count 3 - First Degree Sexual Offense; Count 4 - Second Degree Sexual Offense; Count 5 - Third Degree Sexual Offense; Count 6 - Fourth Degree Sexual Offense; Count 7 - First Degree Attempted Sexual Offense; Count 8 - Second Degree Sexual Offense; Count 9 - Burglary; Count 10 - Burglary-Int./Steal/Night; Count 11 - Theft.

The above charges stemmed from two separate incidents alleged to have happened, respectively, to one Ms. Melanie Tighe, Apt. D-1, 109 Caraway Road, Baltimore County, Maryland, on August 31, 1985,

and to a Ms. Mary L. Fitzpatrick, Apt. C-1, 12 Brookbury Drive, Baltimore County, Maryland, on April 13, 1985. Both victims alleged they were raped by a black man who broke into their apartments.

On March 11, 1986, Petitioner went to court at Baltimore County Circuit Courthouse (Towson, Maryland) with the belief he was going to trial for cases 85CR4980-82 that were pending against him. Mr. Carl R. Schlaich of the Public Defender's Office was appointed as counsel. While waiting to be taken into the courtroom, the Petitioner was told by his counsel that a ten (10) year plea had been offered to him in exchange for a guilty plea to count five of the Criminal Information, 86CR4981, which was one of the cases the Petitioner thought he was going to trial for. But then Petitioner's counsel also informed him of an offer of "no less than 25, and no more than 45 years" in exchange for a guilty plea to count one of Criminal Information 86CR1129, a case the Petitioner was fully unaware of. Petitioner was informed that if he did not accept the State's offer, he would go to trial and, if found guilty, receive a life sentence for each charge.

On advice of counsel, the Petitioner plead guilty to the aforementioned counts, and received a ten (10) year sentence and a forty-five (45) year sentence, to run concurrently, and all remaining counts on both criminal informations were nolle-prossed.

DOCKET ENTRY

November 21, 1985	Writ of Habeas Corpus Served
November 25, 1985	Defendant's Motion Pursuant to Md. Rule 4-252
November 25, 1985	Defendant's Request for Discovery and Motion to Produce Documents
December 3, 1985	State's Answer to Motion for Discovery and Inspection
December 6, 1985	State's Motion Order to Summon Tangible Evidence before trial
March 7, 1986	State's Supplemental Answer to Motion for Discovery and Inspection
March 11, 1986	Jury Trial Waived; Case Submitted on Agreed Statement of Facts
June 6, 1986	Petitioner Files Motion for Reconsideration of Sentence
June 9, 1986	Order of Court Denying Motion for Reconsideration of Sentence Filed

June 24, 1992

Petitioner Filed Motion for Revisory Power of the Court

August 5, 1992

Court Denies Motion for Revisory Power of the Court

This is the Petitioner's first petition under the Uniform Post-Conviction Relief Act. In support of his Petition for Relief, the Petitioner contends the following:

CONTENTION #1

The Petitioner was denied his right under the Fifth Amendment to the United States Constitution, made applicable to the State of Maryland through Articles 1 and 44 of the Maryland Declaration of Rights, to be charged by way of Indictment rather than by Criminal Information.

STATEMENT OF FACTS

On February 5, 1986, Petitioner was issued an arrest warrant on charging document along with an initial appearance report, Rule 4-213, and an attached application for statement of charges. Petitioner was given a bail hearing before Judicial Officer Judy Fitch (08-038) for same, First Degree Rape, and was denied. On March 11, 1986, without having received a copy of the Criminal Information, nor having been arraigned or assigned counsel, Petitioner was before the court to answer this charge. Acting on the advice of Mr. Schlaich - the counsel appointed on November 5, 1985, for cases 85CR4980-82 (See notice of appearance and certificate of service) - Petitioner plead guilty to Count 1 of Criminal Information 86CR1129, which charged Petitioner with First Degree Rape.

ARGUMENT

The Fifth Amendment to the United States Constitution provides, in relevant part, that "no person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury." Article 2 of the Declaration of Rights of Maryland provides: "The Constitution of the United States, and the Laws made, or which shall be made, in pursuance thereof...are, and shall be, the Supreme Law of the State; and the Judges of this State, and all the

people of this State, are, and shall be bound thereby; anything in the Constitution or Laws of this State to the contrary notwithstanding." Article 44 of the same provides: "That the provision of the Constitution of the United States, and of this State, apply as well in the time of war, as in time of peace; and any departure therefrom, or violation thereof, under the plea of necessary, or any other plea, is subversive of good government and tends to anarchy and despotism."

Article 27, section 592 provides, inter alia:

(a) In all cases involving a felony other than a felony within the jurisdiction of the District Court, in which the accused has not requested a preliminary hearing within ten days after being informed by the ?? or the court commissioner of the availability of such a hearing, or in all cases in which a preliminary hearing has been held and probable cause to hold the accused has been found, the State's Attorney may charge by information.

Subsections (b)(2) and (b)(3) of 592 state, respectively:

(2) If the State's Attorney elects to charge the accused by criminal information the right of the defendant to the preliminary hearing is absolute, if he has requested such a hearing as set out above.

(3) If the State's Attorney elects to charge the accused by a grand jury indictment, the preliminary hearing is not a matter of right to the defendant but may be afforded in the court's discretion. A preliminary hearing is not a matter of right in any other case, but may be afforded in any case in the court's discretion, upon motion of the State's Attorney or the defendant.

The aforementioned constitutional and statutory provisions form the analytical framework within which the following argument is constructed. We now turn to that argument.

(2)

By its adoption of Articles 2 and 44, quoted infra, the People of the State of Maryland have reserved to themselves the benefits and protections of the provisions of the United States Constitution, so as to make the requirement of a grand jury indictment set forth in the Fifth Amendment of the United States

Constitution applicable to the State. Numerous cases, both Federal and State, have flatly rejected the argument that the Fifth Amendment's indictment clause is applicable to the States by incorporation through the Due Process Clause of the Fourteenth Amendment. See Hurtado v. California, 110 U.S. 516, 535 (1984); Moaney v. State, 28 Md. App. 408, 412 (1975)(and cases cited therein). It should be noted that *Moaney* argued his right to indictment under common law. *Moaney* held that "[t]here is no provision of Maryland Constitution requiring an indictment in any case. Article 21 of the Declaration of Rights merely requires that an accused has 'a right to be informed of the accusation against him, to have a copy of the indictment, or charge in due time (if requested) to prepare his defense.'" *id.* While *Moaney* is correct as far as it goes, neither it or any other Maryland case has ever addressed what effects, if any, the combination of Articles 2 and 44 of the Declaration of Rights have on a defendant's Fifth Amendment right to indictment. It is therefore contended that, together, they guarantee the citizens of Maryland the right to indictment as to capital or infamous crimes and thereby render any statute, law, or Maryland Constitutional provision to the contrary without force or effect.

While no Maryland case has specifically addressed what effect the combination of Articles 2 and 44 of our Declaration of Rights has on a defendant's Fifth Amendment Right to indictment, it is instructive to note the holding of the Court of Appeals in Committee v. Tawes, 229 Md. at 418, wherein it is stated in pertinent part:

"In the majority on the first appeal Maryland Committee for Fair Representation v. Tawes, 228 Md. 412, 180 a. 2d 656, we stated some familiar positions which are equally opposite here; that the Constitution of the United States and the laws made in pursuance thereof are parts of the supreme law of the land and are paramount to any contrary provisions of the Constitution or laws of this State...We believe that there is no dispute or difference between the members of this Court on those propositions."

Early on the Supreme Court ruled that the first ten Amendments of the Federal Constitution were not applicable to the states. Barron v. Baltimore, 32 U.S. (7 Pet.) 243 (1833). Over the intervening century and a half or so since *Barron*, the Supreme Court has selectively incorporated those provisions of the Bill of Rights which it considers fundamental to the American system of law, to apply to the states through the due process clause of the Fourteenth Amendment. The Fifth Amendment clause guaranteeing

criminal prosecution by grand jury indictment, however, has not been so incorporated. Rotunda and Novak, Treatise on Constitutional Law: Substance and Procedure, 2d, Section 14.2 at 346-348. Whereas on the federal level the Supreme Court has used the due process clause of the Fourteenth Amendment as a vehicle for incorporating provisions of the Bill of Rights, the State of Maryland has undertaken the process of "reverse incorporation" through the adoption of Articles 2 and 44 of it's Declaration of Rights.

Article 2 provides, in relevant parts, that "[t]he Constitution of the United States...shall be the Supreme Law of the State, and the Judges...and...People of this State...shall be bound thereby; anything in the Constitution or Laws of this State to the contrary notwithstanding" (Emphasis added). Thus, Article 2 recognizes the United States Constitution as *the* supreme law, rendering our State Constitution and our State Laws subservient. Article 44 goes on to provide that the provisions of the Federal Constitution apply in both times of peace and times of war. Taken together, both Articles vest supreme authority in the protection of the United States Constitution, "anything in the Constitution or Laws of this State to the contrary notwithstanding." Accordingly, the Fifth Amendment, as part of the United States Constitution, is the supreme law of Maryland. As such, it's guarantees of a grand jury indictment have been adopted by this State. To any degree that Article 27, section 592, is to the contrary, it must yield to the supreme authority of the Federal Constitution. In other words, any practice under Article 27, Section 592, is unconstitutional if it is used to deny those charged with an infamous crime their right to grand jury indictment. Since Petitioner was denied that right in the instant case, his conviction was obtained in violation of both the Constitution of the United States and the Declaration of Rights of Maryland. Under the Post Conviction Procedure Act, the Petitioner is entitled to have his conviction

CONTENTION #2

Petitioner was denied effective assistance of counsel as guaranteed him by the Sixth Amendment of the United States Constitution.

STATEMENT OF FACTS

Petitioner avers that he was, for the first time on March 11, 1986, presented with a statement of charges by Assistant State's Attorney Mickey Norman relating to First Degree Rape, #86CR1129. The Petitioner had not been arraigned for the charge, nor did he have an attorney appointed him for representation against this charge, and that the guilty plea he entered was done so on advice well out of the range of competency demanded of an attorney in a criminal case (See Transcripts on the merits, p. 3, lines 4-21).

ARGUMENT

The Sixth Amendment of the United States Constitution has as its "core purpose" an accused's right to be represented by counsel at trial. Gideon v. Wainright, 372 U.S. at 340 (1963). In Tolliver v. U.S., 563 F. 2d at 1120 (1977), a federal court ruled that the standard for competence in a guilty plea is whether counsel's advice "was within the range of competence of attorneys in criminal cases", or, if the defendant is given wrong advice, whether the misadvice was so flagrant that "it results from neglect...rather than from informed, professional deliberation."

The applicable standard for such claims was set forth in the Supreme Court's decision of Strickland v. Washington 466 U.S. 668 (1984). Under this standard it must be demonstrated that (1) "counsel's representation fell below an objective standard of reasonableness," and (2) "there is a reasonable probability that, but for counsel's unprofessional error, the result of the proceeding would have been different." 466 U.S. at 688, 694. *Strickland* also provides that a reviewing court "must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." (Emphasis added)

This decision also provides that the reviewing court "must indulge strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance...". The Petitioner's position is that such a "presumption" is not an absolute escape from the duty owed the criminal defendant and when under challenge, the presumption is dispelled when it is demonstrated that the tactical decision is contrary to existing law. In other words, how can counsel's tactical decision be considered "reasonable" when the existing law supports the fact that the issue is sufficiently generated by the evidence to merit

the instruction? To make such a finding the legal community would be armed with the right to appear "pro forma rather than zealous and active" to defend their clients. Powell v. Alabama, 287 U.S. 45, 58 (1932). SEE ALSO *The Preamble to Maryland Rules of Professional Conduct* and *ABA Standards for Criminal Justice, "The Defense Function"* 4-3.6 (2d Ed. 1980).

Clearly, "The Sixth Amendment demands more than placing a warm body with a legal pedigree next to an indigent defendant." Bazelon, *The Realities of Gideon and Aegersinger*, 64 Geo. L.J. 811,819 (1976). When a lawyer represents a defendant, he speaks and acts with authority on his behalf, defending the client's rights (as if they were his own), with zeal and loyalty. Defense counsel considers "all procedural steps which may be taken" to protect the rights of the accused and promptly makes motions or files appeals from adverse rulings. They investigate the posture of the case, seek out and exploit the weaknesses in the prosecution's case and evidence in general. (ABA Defense Standard, 4-1) "Counsel had a duty to make reasonable investigations or to make reasonable decisions that makes a particularly investigation unnecessary" Strickland v. Washington 446 U.S. 668, 681 (1984). SEE ALSO Powell v. Alabama, 287 U.S. 45, 68-69 (1932); Wade v. Armontrout, 798 F. 2d 304 (8th Cir. 1986); People v. Ledesma, 729 F. 2d 839 (Cal. 1987); Osborn v. Schillinger, 681 F. 2d 612 (10th Cir. 1988); People v. Lee, 541 N.E.2d 747, 750 (Ill. App. 1989).

To rule that the conduct of counsel was strategic and/or proper, would be nothing less than a threshold finding when analyzing a Sixth Amendment violation. The posture of the individual case (i.e. was the issue sufficiently generated by the evidence) must also be analyzed to decide if counsel's conduct was "reasonable". One significant point would be if the Petitioner had a standing or a valid expectation under the law.

A more comprehensive analysis was owed to reach the merits by a full and fair determination. The matter of the error compromising the rights of the Petitioner has never been visited by any court. It is clear that the law supports the Petitioner's position and entitlement to the instruction. Undoubtedly, this omission impeded the fact finding process by leaving the court trapped in the options of the highest degree of culpability, and not being able to apply their facts to the law, which is their function. This is the

basis for the Petitioner seeking a reversal and remand on this claim.

Under what is now known as the *Strickland* standard, ineffective assistance of counsel (of any variety) places a burden of persuasion upon the moving party of the claim. The prevailing or outstanding standard of analysis for collateral challenges (including, but not limited to, Post Conviction) is "proof by a preponderance of the evidence." This standard is significantly different from the "reasonable doubt" standard. The principal distinction being, the evidence required to prove a claim is less under the preponderance standard. Nevertheless, the evidence required must be "independent evidence" or evidence in which the moving party is not a party in interest. Namely, this standard makes way for a moving party to air a claim, but requires the claim to be supported by evidence which is not related to or which presents a remote chance of being tainted by a vested interest in the outcome. Under this standard of proof, in order for a moving party to procure the maximum benefit from evidence presented, it is only fair to say that it is best or more logical to present untainted or independent evidence. In doing so, the trier of fact (or Judge) cannot diminish the credibility of the testor based on an interest in the outcome.

In furtherance of this philosophy, one should (logically) procure witnesses or documents which mirrors the testimony that the moving party would present in his testimony or which validly supports the claim. In the claim of ineffective assistance of counsel (again, of any variety) the *Strickland* standard requires that one show that (1) counsel was deficient in his or her performance, and (2) that the conduct of counsel fell below the professional norm and compromised an interest or right that the accused enjoyed (including, but not limited to, the right to a defense). Harris v. State, 303 Md. 685 (1985) explaining *Strickland*, supra., and Bowers v. State, 320 Md. 416, 424 (1990).

In essence, the holdings within this jurisdiction seem to suggest (without saying it directly) that proving ineffective assistance of counsel is synonymous with proving a claim of malpractice (as one would against a Doctor or any other skilled professional who is a member of a Board which regulates the profession and conduct of its members). To prove ineffective assistance of counsel, one must challenge the deficiency alleged and verify its existence (as a matter of law and fact) by independent evidence.

In Hill v. Lockhart, 474 U. S. 57 (1985), defendant's who plead guilty upon the advise of counsel "may

only attack the voluntary and intelligent character of the guilty plea by showing that the advise he received from counsel was not within the standards set forth in *McMann*. In McMann v. Richardson, 397 U. S. 763-66 (1970), the inadequacy of counsel allegedly arose from the short period of consultation. Whether a guilty plea was entered before or after Jackson v. Denno, the question of the validity of the plea remains the same: was the plea a voluntary and intelligent act of the defendant? Not unless the defendant was incompetently advised by his attorney. in State v. Anderson, 117 N. J. Supra, 520 (1971), it was decided that the issue of effective assistance of counsel is raised when counsel first interviews counsel immediately before the trial. The untimely appointment of counsel in the Petitioner's case closely parallels ineffective assistance of counsel. Both suggest error due to the inability of counsel to prepare effectively. A review of the case at bar shows counsel was totally unprepared to represent the Petitioner on Criminal Information #86CR1129. (See Transcript pp. 1-2 & 1-3; also see Docket Entry of same) It is here that the Petitioner shows on the record that counsel did nothing with regard to preparation to defend the Petitioner in #86CR1129. One would assume, under this philosophy, it would be most effectively presented by using a person of the profession who is highly skilled and versed in the area of expertise and thus capable of being qualified as an "expert" under the laws of this State.

Strickland contemplates the use of an objective standard of reasonableness concerning the prevailing professional norm against which a lawyer's performance is measured. Harris v. State, 303 Md. 685, 697, 496 A. 2d 1074, 108 (1985). A post conviction hearing where ineffective assistance of counsel is suggested, is logically indistinguishable from the holding in Fishow v. Simpson, 55 Md. App. 312, 462 A. 2d 540, 544 (1983), citing Bonhiver v. Rotenberg, 461 F. 2d 925 (7th Cir. 1972), where the court held that:

"[A] determination of the standard of reasonable care by the trial judge based upon his own private investigation, or upon his intuitive knowledge of the court, untested by cross-examination, or any rules of evidence, constitutes a denial of due process in a criminal or civil matter."

Petitioner avers that had counsel investigated said case with due diligence he would have filed for "Discovery" and would have observed the "Exculpatory DNA Evidence", submitted by chemist C. Bacasnot on January 19-20, 1986, to Assistant State's Attorney Norman in reference to case no. 86CR4981. Also, had counsel filed for discovery, he would have recovered information with respect to the medical examination of Mary Fitzpatrick on April 13, 1985, (case no. 86CR1129), as well as a copy

of the "line-up" photo array's composite. Petitioner asserts that he was never identified by either DNA evidence or a line-up in either case, even though he was advised by his counsel, Mr. Carl R. Schlaich, to plead guilty.

In Hill v. Lockhart, 474 U. S. 59 & 60 (1985), where the alleged error of counsel is a failure to investigate or discover potentially exculpatory evidence, the determination whether the error "prejudiced" the defendant by causing him to plead guilty rather than go to trial will depend on the likelihood that discovery of the evidence would have led counsel to change his recommendation as to the plea. State v. Edge, 57 N. J. at 593 (1971). "A conviction, otherwise valid, will be reversed on appeal because of the ineffectiveness or inadequacy only if what he did or failed to do is of such magnitude as to thwart the fundamental guarantee of a trial." State v. Dennis, 43 N. J. at 429 (1964), "Putting it another way, to warrant reversal, defense counsel must have been so incompetent as to make the trial a farce or mockery of justice. Also see *ABA Standard for Criminal Justice*, 4-1.1 to 4-8.6 (2d Ed. 1980); *Maryland Lawyer's Rules of Professional Conduct*, Rule 1.1 (Competence); Rule 1.2 (Scope or Representation); Rule 1.33 (Diligence).

Here, Petitioner avers that counsel's actions from the onset of his cases, specifically case #86CR1129, fell far below the objective standard of competence by (1) failing to investigate either case, (2) failing to file for discovery in either case, and (3) failing to inform his "impromptu" client of exculpatory evidence available in either case (RFLP, PCR Evidence, Line-up reports, etc.) Petitioner further avers that had he been informed of the existing exculpatory evidence, he would not have plead guilty.

CONTENTION #3

Petitioner's rights to due process and equal protection under the law were violated when the trial court failed to comply with Maryland Rule 4-242(c) and Federal Rules of Criminal Procedure - Rule 11(c)(1).

ARGUMENT

Maryland Rule 4-242(c) provides:

(c) Plea of Guilty - The Court may accept a plea of guilty only after it determines, upon examination of the defendant on the record in open court, conducted by the Court, the State's Attorney, the Attorney for

the defendant, or any combination thereof, that (1) the defendant is pleading guilty voluntarily, with an understanding of the nature of the charge(s) and the consequences of the plea; and (2) there is a factual basis for the plea. The Court may accept the Plea of Guilty even though the defendant does not admit guilt. Upon refusal to accept a Plea of Guilty, the Court shall enter a plea of Not Guilty.

The Court of Appeals of Maryland has stated that this Rule is similar to that contained in Rules governing the acceptance of a Guilty Plea in other States and under Federal Rule 11, State v. Priet, 289 Md. 278-279, 355 (1981). Thus, under both Federal and State law, before the Court can accept a guilty plea, it must determine *on the record* that the defendant understands the nature of the charges and the consequences of the plea, that it be voluntary, and that there exists a factual basis to support the plea.

Petitioner avers that he was not advised of any of the elements of the crimes in which he was charged by either his attorney, the State's Attorney or the Court. (Transcripts on the merits, pp. 1-2, 1-5, 1-9 through 1-12, 1-16) It is here that the Petitioner offers the docket entry as support that he did not have an attorney assigned or retained in case #86CR1129; thus, advice given him by Carl R. Schlaich concerning this case, as well as the plea rendered as a result of that advice, is questionable because the advice falls below the standard of effectiveness (See transcript, pp. 1 through 18 and Docket Entries). Furthermore, Petitioner asserts that the trial judge accepted the guilty plea without first addressing the Petitioner personally in order to determine whether the plea was voluntary and whether the Petitioner understood the nature of all of the charges against him as well as the consequences of a guilty plea. Additionally, the Court never determined whether there was a factual basis for the plea (See Transcripts, p. 1-11, lines 18-25 & p. 1-13, lines 1-7). Henderson v. Morgan 426 U. S. 641. Because of this, the Petitioner did not intelligently enter a plea of guilty as mandated by law. In McCarthy v. United States, 394 U. S. 466, 467 (1964), the Supreme Court held that a guilty plea is an admission of all of the elements of a criminal charge, and that it cannot be truly voluntary unless the defendant possesses an understanding of the law in relation to the facts.

The "Core Concern" of Rule 11(c)(1) of the Federal Rules of Procedure provides:

Before accepting a plea of guilty or nolo contendere the Court must address the defendant personally in open court and inform him of and determine that he understands...the nature of the charge to which the plea was offered.

As in United States v. Punch, 709 F. Ed. 894 (1983), a particular remedy is required when there is a

violation of this "core concern." It was determined that *McCarthy* requires that defendants whose guilty pleas are taken in procedures not fully in compliance with Rule 11 be allowed to repleg, without having to show that actual prejudice resulted from the violation of the Rule.

Thus, under State and Federal law, before a court can accept a guilty plea, it must determine *on the record* that the defendant understands the nature of the charge(s) against him, as well as the consequences of a plea of guilty. Petitioner avers that the trial court failed to do either, and that this failure constitutes a violation of both his right to Due Process and Equal Protection Under the Law.

CONTENTION #4

Petitioner contends that the Constitutional Rights violations raised in this Petition are of such scope and context that "fundamental fairness" requires an evidentiary hearing on the merits of Petitioner's claim, and that the Petitioner has not "intelligently and knowingly", in any previous proceeding, waived the issues outlined in this Petition for Post Conviction Relief.

ARGUMENT

Prior to December 18, 1978, it was generally accepted that in post conviction proceedings, the waiver rule established by the Maryland Legislature in Article 27, Section 645A(c) provided that "the failure to raise a claim even on constitutional error is presumptively a waiver of that claim." Curtis v. State, 37 Md. App. 459, 468 (1977). Accordingly, courts found waiver to be effective whenever the allegation had been raised in a petition if the petitioner could have learned about the problem in time to have it in prior to direct appeals, post conviction hearings, or any other previous proceeding actually conducted at which the claim could have been presented.

In Curtis v. State, 284 Md. 123, 395 A.2d 470 (1978), the Court of Appeals modified this all-inclusive waiver rule and held that the waiver provision of Article 27, Section 645A(c) does not apply to all allegations raised in post conviction actions, but only to "those circumstances where the waiver concept of Johnson v. Zerbst, 304 U.S. 464, 465 (1938), and Fay v. Noia, 372 U.S. 439 (1963), was applicable." The concept of waiver established in *Johnson* has become known as the "intelligently and knowing" relinquishment of a right. *Curtis* created two new questions of law, namely: 1) what is the "intelligent and

knowing" waiver? and 2) when does the "intelligent and knowing" waiver concept apply?

Based upon a synthesis of the holding in *Curtis* as well as *Countess v. State*, 286 Md. 444, 1305 (1979) and *Williams v. State*, 292 Md. 201, 1307 & 1310 (1979), the requirements of an "intelligent and knowing" waiver may be found to be satisfied when:

(1) the record expressly reflects that the defendant had a basic understanding of the nature of rights which were relinquished or abandoned; and

(2) the record expressly reflects acknowledgment that the relinquishment or abandonment of the right was made or agreed to by the defendant.

In *State v. Magwood*, 290 Md. 622, 621 (1981), the Court of Appeals held that the "intelligent and knowing" waiver concept was required only where the rights being waived were "fundamental" rights. Fundamental rights have been defined as being, almost without exception, basic rights of a constitutional origin, whether Federal or State, that have been guaranteed to criminal defendants in order to preserve both a fair trial and the reliability of the truth-determining process. See *Schneckloth v. Bustamonte*, 421 U.S. 235, 236 (1973); see also *Curtis* and *Williams* supra. Some rights that have been determined fundamental are:

- 1) The right to counsel
- 2) The right to a trial by jury
- 3) The right to be properly advised before the acceptance of a guilty plea
- 4) The right against self incrimination
- 5) The right against double jeopardy
- 6) The right to confrontation
- 7) The right to a speedy trial, and
- 8) The right to counsel at a post indictment pretrial lineup.

In *Curtis*, supra, the Court of Appeals held that the right to effective assistance of counsel at a criminal trial is a "fundamental right", and that any allegation or error charging a violation of that right may not be waived unless it is found that the petitioner "intelligently and knowingly" effected such a waiver. In the

event, however, that it is determined that Petitioner did intelligently and knowingly waive the right to contest a particular allegation of error, waive will not be found if Petitioner can show "special circumstances excusing the failure to raise the allegation." Viewing this case in light of the holdings in *Curtis*, *Countess* and *Williams*, supra, several relevant factors are now discernible which accord Petitioner's standing, at this time to raise the allegations of error contained in this petition for post conviction relief, and that the available court records of the instant case *do not* reflect the Petitioner at any time previous to the current undertaking for post conviction relief.

CONCLUSION

For the aforementioned reasons, Petitioner respectfully prays

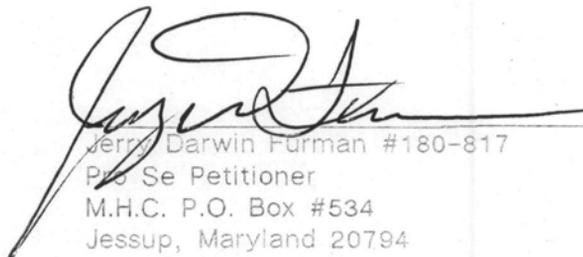
- 1) That this Honorable Court finds that the Rights Violations raised in this petition are of such constitutional scope and context that fundamental fairness requires an evidentiary hearing on the merits of the allegations raised and that the Petitioner did not intelligently and knowingly waive previously any issues outlined in this petition,
- 2) That counsel be appointed to represent the Petitioner in a hearing on the merits of this petition,
- 3) That the Petitioner be allowed to freely amend this petition,
- 4) That the Petitioner be allowed to attend any and all hearings concerning this petition,
- 5) That an order from this Honorable Court be issued directing that the Petitioner be allowed to withdraw his guilty plea in both cases (#85CR4981 and #86CR1129),
- 6) That an order also be issued directing that the Petitioner be furnished with any and all briefs, transcripts and opinions concerning this petition for post conviction relief,
- 7) And for any such other relief as law and/or justice may require.

AFFIRMATION

I hereby certify pursuant to the penalties of perjury, that the contents of the aforementioned Petition for Post Conviction Relief is true and correct to the best of my personal knowledge and belief.

CERTIFICATION OF SERVICE

I HEREBY CERTIFY that on this _____ day of _____ 1999, a copy the foregoing PETITION for POST CONVICTION and MOTION TO PROCEED IN FORMA PAUPERIS was mailed postage prepaid to the CLERK of the CIRCUIT COUNTY for BALTIMORE COUNTY.


Jerry Darwin Furman #180-817
Pro Se Petitioner
M.H.C. P.O. Box #534
Jessup, Maryland 20794

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

Jerry Darwin Furman #180
P.O. BOX 534
MHC
Jessup, MD 20794

PETITIONER

V.

State of Maryland

RESPONDENT

Case No.: #86CR1129 #86CR498

MOTION TO PROCEED IN FORMA PAUPERIS

COME NOW, Jerry D. Furman #180187, Pro Se., the Petitioner in the above entitled action, hereby and herein Motion this Honorable Court as follows:

1. That the Court permit Petitioner to proceed in forma pauperis without the costs associated therewith.
2. That the Court find as is attested to in his attached affidavit; that Petitioner is indigent and therefore entitled to the requested waiver of court cost.

AFFIRMATION

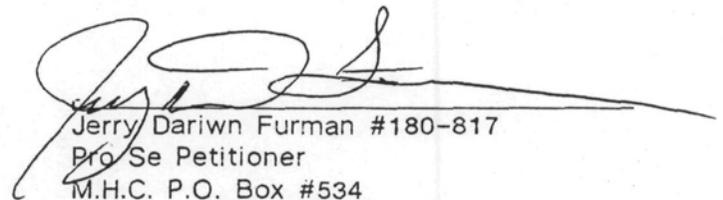
I hereby certify pursuant to the penalties of perjury, that the afore going is true and correct to the best of my personal knowledge and belief.

Jerry D. Furman

CERTIFICATION OF SERVICE

I HEREBY CERTIFY that on this _____ day of _____ 1999, a copy the foregoing PETITION for POST CONVICTION was mailed postage prepaid to the OFFICE OF THE STATE ATTORNEY FOR THE CIRCUIT COURT OF BALTIMORE COUNTY.

Respectfully submitted

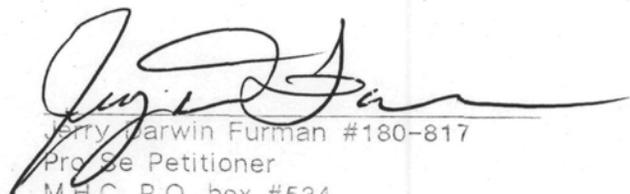


Jerry Dariwn Furman #180-817
Pro Se Petitioner
M.H.C. P.O. Box #534
Jessup, Maryland 20794

CERTIFICATION OF SERVICE

I HEREBY CERTIFY that on this _____ day of _____ 1999, a copy the foregoing PETITION for POST CONVICTION was mailed postage prepaid to the CLERK of the CIRCUIT COUNTY for BALTIMORE COUNTY.

Respectfully Submitted,



Jerry Darwin Furman #180-817
Pro Se Petitioner
M.H.C. P.O. box #534
Jessup, Maryland 20794

REPORT OF PRISONER BROUGHT TO COURT

CIRCUIT COURT FOR BALTIMORE COUNTY

401 Bosley Ave. Towson, Maryland 21204

TO: SHERIFF BALTIMORE COUNTY, MARYLAND

FROM: SUZANNE MENSCH, CLERK

Name of Prisoner JERRY D. FURMAN

5/9 19 2000

Charge POST CONVICTION GUILTY NOT GUILTY

CIRCUIT COURT# (S) 85CR 4981/86CR 1129

JUDGE JTS, Jr.

DISTRICT COURT# 01271604/02322301

TRACKING# _____

DISPOSITION:

A. SENTENCED TO DIVISION OF CORRECTION COMMIT IN TRANSIT _____ length of sentence _____

B. SENTENCED TO BALTIMORE COUNTY BUREAU OF CORRECTIONS COMMIT IN TRANSIT _____ length of sentence _____

C. SENTENCED TO BCBC, WORK RELEASE RECOMMENDED COMMIT IN TRANSIT _____ length of sentence _____

D. SENTENCED TO DWI FACILITY COMMIT IN TRANSIT _____ length of sentence _____

E. PLACED ON PROBATION UPON RELEASE _____ length of probation _____

F. REMANDED BCBC 1. per detainer 2. pending disposition 3. PSI Ordered

G. REMANDED DOC. 4. trial continued 5. trial postponed 6. arraignment

7. Psych. Evaluation Ordered 8. _____

9. defendant to be brought to Court on _____

H. STET _____

I. NOL PROS _____

J. DEFENDANT RELEASED FROM DOC / BCBC AS TO THIS CASE ONLY. RELEASE IN TRANSIT

K. CURRENT BAIL REVOKED

L. BAIL STATUS TO REMAIN THE SAME

M. BAIL HEARING _____

- 1. CASH
- 2. CORPORATE SURETY
- 3. OWN RECOGNIZANCE
- 4. PERSONAL PLEDGE OF _____
- 5. PROPERTY AT: ACCEPTABLE _____

*PETITION
POST CONVICTION
W/D by D w/o
PREJUDICE.*

SUZANNE MENSCH, CLERK

per hm
Deputy Clerk