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July 31, 2017

Board of Parole Hearings  
Attn: Nonviolent Parole Review Process  
P.O. Box 4036  
Sacramento, CA 95812-4036

**Re: Inmate James Michael Cherry; CDC H080771  
Ventura County Superior Court Case 2001012319  
Opposition Letter Due to Board of Parole Hearings August 2, 2017**

Dear Board Members:

This letter is written to recommend denial of early parole for inmate James Cherry. This recommendation is based upon:

- 1) The inmate's commitment offense.
- 2) The inmate's significant criminal history.
- 3) The unreasonable risk of violence to the community if released early.

## **CIRCUMSTANCES OF THE COMMITMENT OFFENSE**

On March 9, 2001, victim Erik Gray returned home to his apartment. As he approached, he encountered the inmate on the walkway. When the inmate, who was 36 years old at the time, saw Mr. Gray, he took off running. Curious, Mr. Gray walked up to his apartment, found the door ajar, noticed that his TV and VCR were missing, and took off running after the inmate.

Mr. Gray caught up with the inmate who was sitting in his car. Mr. Gray's TV and VCR were in the backseat. The inmate's car, a blue Ford Taurus with an Oregon license plate, had been backed into a parking space. When Mr. Gray yelled at the inmate, the inmate sped away. Mr. Gray was able to note the license plate number.

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Approximately three hours later, the inmate was located sleeping in the car. He was wearing different clothing and Mr. Gray's belongings were nowhere to be found. Mr. Gray identified the inmate as well as the clothes the inmate had been wearing that were found in the trunk. Mr. Gray's property was never recovered.

The inmate was found guilty after a jury trial and sentenced on September 23, 2002. The court granted the inmate's request to strike one of the inmate's strike priors, sentencing him to 12 years for the burglary (Pen. Code § 459), which represented a double term due to the court's imposition of one of the inmate's strike priors pursuant to Penal Code section 667(e)(1). The inmate received an additional ten years for the two serious prior conviction allegations pursuant to Penal Code section 667(a)(1), for a total fixed determinate term of 22 years in prison.

## **CRIMINAL HISTORY**

### **Strike 1**

On September 17, 1991, the inmate and an accomplice used a rock to break into a house. They stole a VCR, Walkman, money, and jewelry. They pulled a rifle from the closet, but left it behind. The inmate's fingerprints were found on the rifle and at the scene. He was identified by four witnesses, who chased him from the location. The inmate pled guilty to first-degree residential burglary on December 11, 1991. He was initially sent to CRC; however, he was disqualified within one year and sentenced to serve four years in prison.

### **Strike 2**

On the morning of September 14, 1994, victim Sabrina Zamecki was asleep in her bedroom when she heard the doorbell ring several times. Minutes later she heard a noise in her house and came out of her bedroom to find the inmate in her home holding her VCR. The inmate had his back to her. She asked him what he was doing and he turned around. She recognized him as someone she went to high school with. He seemed to recognize her too, and said, "I'm sorry, I don't steal from friends." He put the VCR down and left the house. Police were called and made contact with the inmate who asked to speak "off the record," and admitted dating Ms. Zamecki in high school. He denied being in her house.

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The inmate was found guilty of first-degree residential burglary by a jury on January 31, 1995. He admitted the prior enhancements, including the above-mentioned strike. He was sentenced to serve a total of 13 years in the prison. After his release, he was returned to prison on a parole violation in July 2000.

### **Other Criminal Convictions**

The inmate has a lengthy criminal history that began in 1985 when he was 19 years old and continued until he was convicted of the commitment offense at the age of 36. In addition to the above-listed offenses, the inmate has five theft convictions, one of which likely involved the act of residential burglary, as he was arrested for first-degree burglary in May 1985, but only convicted of misdemeanor grand theft. (Pen. Code § 487.1) He has five convictions for being under the influence of drugs (Health and Safety § 11550) during this time span, as well as multiple arrests for the same charge with no resulting conviction. The inmate has been convicted twice for driving under the influence of alcohol (Veh. Code § 23152), twice for vandalism (Pen. Code § 594), and once for loitering on private property (Pen. Code § 647(g)).

### **Other Criminal Arrests**

The inmate was arrested for battery causing serious bodily injury in violation of Penal Code section 243(d) in 1986, possession of narcotics for sale (Health and Safety Code § 11351) in 1989, rape (Pen. Code § 261) in 1990, possession of a weapon to commit assault in August 1991, and assault with a deadly weapon (Pen. Code § 245(a)) in November 1991.

Between April 1985 and September 2002, when the inmate went to prison for the commitment offense, he was never free from custody for more than a year. He has remained in custody since 2001 when he was arrested and eventually convicted for his third residential burglary.

### **DISCUSSION**

Granting this inmate early parole will create an unreasonable risk of violence to the public. He committed his first residential burglary in 1991 when he was just 25 years old. He committed his next residential burglary almost immediately upon release in 1994, and again went to prison. Yet, despite having twice been convicted and punished, he resumed the criminal lifestyle as soon as given the opportunity, and was apprehended again for burglary in 2001 while still on parole.

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It should be noted that the victim was sleeping inside her home when the inmate entered in 1994. In 2000, the victim was not yet inside the home, but was approaching his residence, being forced to have face-to-face contact with the inmate. Residential burglaries are inherently dangerous, and often culminate in violence when the victim and thief encounter one another. Indeed, Penal Code section 667.5(c)(21), was enacted because the legislature has recognized that a residential burglary has the potential to become a very violent situation. This section provides that a "violent felony" is any burglary of the first-degree in which another person, other than an accomplice, was present in the residence during the commission of the burglary.

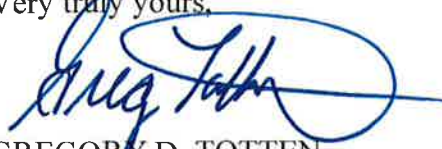
While this enhancement did not exist in 1994, and was not pled and proven as to this inmate, it does not negate the fact that the act he committed in 1994 was an act that is now by law considered to be a violent felony. Further, it is noteworthy that even after the inmate was caught by the victim whose home he was burglarizing in 1994, he continued to commit the very same crime immediately after he was released from prison, missing a confrontation with this victim by mere seconds.

Previous grants of probation and parole have failed to curb the inmate's criminal activity. He has not committed any new acts of burglary, but that is only because he has remained in custody. There is no evidence to suggest the inmate will curb his criminal ways if released into the community and the risk he poses is simply too great.

## CONCLUSION

The inmate poses an unreasonable risk of violence to the community if granted early parole. I respectfully request the Board deny early parole for the inmate.

Very truly yours,



GREGORY D. TOTTEN  
District Attorney

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