

January 29, 2019

VIA EMAIL AND FAX

The Hon. Kwame Raoul
Attorney General of the State of Illinois
100 W. Randolph St., #13
Chicago, IL 60601

Mr. Joseph McMahon
Special Assistant Cook County State's Attorney
Kane County State's Attorney's Office
37W777 Route 38, Ste. 300
St. Charles, IL 60175

Re: *People of the State of Illinois v. Jason Van Dyke*
No. 17 CR 4286

Dear General Raoul and Mr. McMahon:

We are writing to you on behalf of both Reverend Marvin Hunter, Laquan McDonald's uncle and family representative, and twenty-one community-based civil and human rights organizations to convey our urgent request that one or both of your offices take the appropriate and necessary steps to rectify the illegal sentence that was imposed upon Jason Van Dyke in this matter. The sentence imposed upon Jason Van Dyke suggests that Illinois criminal law requires relative leniency for a white police officer who murdered a Black teenager. Of course, the law does no such thing. Your offices now have the opportunity to ensure fair and equal application of our laws. Laquan's family, supported by twenty-one diverse organizations urge you to do so. The supporting organizations are:

Action Now, Arab American Action Network, Black Lives Matter Chicago, BlackRoots Alliance, Black Youth Project 100 Chicago, Blocks Together, Brighton Park Neighborhood Council, Chicago Alliance Against Racist and Political Repression, Chicago Urban League, Enlace Chicago, Gay Liberation Network, Good Kids Mad City, Grassroots Collaborative, Justice for Families, Latino Union, NAACP-Westside Branch, Network 49, Southsiders Organizing for Unity and Liberation, Rainbow PUSH Coalition, U.S. Palestinian Community Network, and Women's All Points Bulletin.¹

¹ A description of each supporting organization can be found in the attached Appendix.

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As you know, Judge Gaughan ruled at the sentencing hearing on January 18 that it was proper to sentence Mr. Van Dyke to 81 months of imprisonment upon his conviction of the crime of second degree murder and not to sentence Mr. Van Dyke on the sixteen separate counts of aggravated battery with a firearm for which he was also convicted. Under this sentence, Mr. Van Dyke will be eligible for day-for-day good time credit and, with additional credit for time served, can expect to be released in a little over three years.

Judge Gaughan's reasoning cannot be reconciled with clearly established Illinois law.

First, the Illinois legislature has classified the crime of aggravated battery with a firearm as a Class X felony, for which day-for-day good time credit is not available. The crime of second degree murder is a Class 1 felony—less serious by statutory definition than the Class X felonies for which the jury also found Mr. Van Dyke guilty.

The Illinois Supreme Court has held in *People v. Lee*, 213 Ill. 2d 218 (2004) that, where a defendant is convicted of both aggravated battery and second degree murder, the sentencing court is required to vacate the second degree murder conviction—the *less serious* offense—and sentence the defendant on the more serious Class X conviction. Thus, Illinois law *required* Judge Gaughan to impose sentence on the aggravated battery convictions, *not* the second degree murder conviction. (Inexplicably, Judge Gaughan's ruling cited and discussed the dissenting and concurring opinion of Justice Thomas in the *Lee* case rather than the opinion of the Court.)

Second, Mr. Van Dyke was charged with and convicted of sixteen separate counts of aggravated battery—one for each shot that he discharged into Laquan McDonald. The court was required: (1) to impose sentence on each of these separate counts and (2) to determine whether some or all of the sentences should be served consecutively, in the circumstances of this case.

At the sentencing hearing, Judge Gaughan erroneously asserted that the sixteen aggravated battery convictions would “merge” into a single conviction because the shots were fired within a short period of time and constituted a single act. To the contrary, the Illinois Supreme Court held in *People v. Crespo*, 788 N.E.2d 1117 (2003), that separate acts support separate crimes if, as in this case, the State has charged each act as separate crime. *See People v. Harris*, 182 Ill. 2d 114, 695 N.E.2d 447 (1998) (defendant could be convicted of first-degree murder and attempted armed robbery, based on the same incident, where defendant fired two shots at automobile, first shot shattered automobile's window but did not strike victim, and second shot struck victim in the head and killed him; separate shots were discrete physical acts which could support separate convictions); *see also People v. Bowens*, 307 Ill. App. 3d 484, 490–92 (1st Dist. 1999) (separate acts of stabbing and kicking the victim in the head could support separate convictions for murder and for armed violence); *People v. Dixon*, 91 Ill.2d 346, 355–56, 63 Ill. Dec. 442, 438 N.E.2d 180, 185 (1982) (holding that numerous strikes against the victim with a broom or mop handle by the defendant and codefendant were, even though closely related, not one physical act, but rather separate acts sufficient to support the defendant's convictions for aggravated battery and mob action); *People v. Miller*, 284 Ill.App.3d 16, 26–27, 219 Ill. Dec. 462, 671 N.E.2d 376, 384 (1996) (affirming the defendant's multiple convictions on the basis that the defendant's stabbing of the victim five times within brief period of time constituted separate and distinct acts); *People v. Mayes*, 257 Ill.App.3d 137, 156, 196 Ill. Dec. 713, 630 N.E.2d 878, 889–890 (1993) (ruling

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the defendant's convictions for aggravated battery and attempted murder were proper where the defendant's stabbing of the victim three times in the back and once in the forearm during struggle represented multiple acts; “[o]ne stab wound can support the attempted murder conviction and another stab wound can support the aggravated battery conviction”); *People v. Partee*, 157 Ill.App.3d 231, 270, 110 Ill. Dec. 845, 511 N.E.2d 1165, 1191 (1987) (ruling that the defendant's assault on the victim that resulted in lacerations to the victim's face and neck and of the ear canal, and a puncture wound to the neck, constituted multiple acts sufficient to support convictions on three counts of aggravated battery).

The Illinois statutory sentencing scheme makes consecutive terms *mandatory* in any case in which one of the offenses for which the defendant was convicted was, as with at least some of the aggravated battery charges here, a Class X felony and the defendant “inflicted severe bodily injury.” 730 ILCS 5/5-8-4(d)(1). The Special Prosecutor’s sentencing memorandum informed Judge Gaughan that, even under the defendant’s theory of the evidence, at least *two* separate shots were necessary to cause Mr. McDonald’s death. Therefore, no fewer than two of the aggravated battery counts required the imposition of consecutive sentences.

In other words, the *minimum* sentence to which Mr. Van Dyke could lawfully be sentenced under Illinois law was *18 years*: one six-year sentence for the first shot that caused severe bodily injury (the minimum sentence for a Class X felony); a second, consecutive six-year sentence for the second shot that produced severe bodily injury; and a six-year sentence, consecutive to the first two, for the remaining 14 shots.

Under Illinois sentencing law, Mr. Van Dyke is required to serve 85% of the sentences imposed for his Class X felony convictions, meaning, that he would actually serve in excess of 15 years. Put another way, *the minimum lawful sentence* that could be imposed on Mr. Van Dyke would require him to serve a sentence of imprisonment more than 12 years greater than the unlawful sentence imposed by Judge Gaughan.

To be clear, we do not suggest that mandatory consecutive sentences are, as a general matter, fair, just or good policy. We abhor, as a general matter, the pain that extremely long terms of imprisonment inflict on the Black and Brown defendants who are the ones typically sentenced to draconian prison terms under this sentencing scheme—the result of the false premise that such sentences deter crime or make our neighborhoods safer.

Be that as it may, the law of our state must be applied without favor. Jason Van Dyke must be required to serve the sentence that Illinois law demands. Make no mistake. If the tables were turned and Laquan McDonald were to have been convicted of multiple counts of armed violence against a Chicago Police officer, the court would have found no difficulty in imposing consecutive sentences that would have sent him to the penitentiary for decades. Such extreme sentences are not uncommon. We object in the strongest terms to an unjustifiable, illegal departure from the requirements of law that enables leniency—merely because the defendant is a White police officer. Indeed, the fact that Jason Van Dyke abused his law enforcement power should have been considered as an aggravating factor at sentencing—not as a justification to sentence him with leniency explicitly prohibited by law.

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We respectfully and urgently request that the Special Prosecutor and the Attorney General, as the chief legal officer of the state,² immediately file appropriate pleadings before Judge Gaughan requesting that he correct his unlawful sentence.

If that is unsuccessful, your offices should seek the intervention of a higher court. In Illinois, the State is not permitted to file a direct appeal seeking to increase a sentence. But, where the sentence is illegal, as this one is, the State has the option of filing an original *mandamus* action in the Illinois Supreme Court asking that court to order Judge Gaughan to impose a sentence that is proper under Illinois law. We ask that, if necessary, you take this further step.

If the prosecution of Mr. Van Dyke stands for anything, it is that no person, whatever his status or his authority, is above the law. The final act in this nationally important case cannot be the imposition of an unlawfully lenient sentence upon this convicted defendant.

Sincerely,

The Roderick & Solange MacArthur Justice Center, Northwestern Pritzker School of Law
The Civil Rights & Police Accountability Project, University of Chicago Law School
Samuels & Associates, Ltd
Law Offices of Jeffery J. Neslund

² See, e.g., *People ex rel. Alvarez v. Gaughan*, 2016 IL 120110, n. 5 (the Attorney General, as the chief legal officer of the state, has discretionary preeminence in legal matters involving the public interest).

APPENDIX

LIST OF ORGANIZATIONS

1. Action Now
2. Arab American Action Network
3. Black Lives Matter Chicago
4. BlackRoots Alliance
5. Black Youth Project 100 Chicago
6. Blocks Together
7. Brighton Park Neighborhood Council
8. Chicago Alliance Against Racist and Political Repression
9. Chicago Urban League
10. Enlace Chicago
11. Gay Liberation Network
12. Good Kids Mad City
13. Grassroots Collaborative
14. Justice for Families
15. Latino Union
16. NAACP – Westside Branch
17. Network 49
18. Rainbow PUSH Coalition
19. Southsiders Organized for Unity and Liberation
20. U.S. Palestinian Community Network
21. Women’s All Points Bulletin

DESCRIPTIONS

1. **Action Now** is a grassroots community organization focused on building the “people power” needed to move the equity needle forward, mobilizing individuals and families to fight for racial, social, and economic justice. Action Now campaigns for equity in education, community safety, housing, economic opportunity, and people of color centered leadership.
2. **Arab American Action Network (“AAAN”)** is a grassroots nonprofit organization that strives to strengthen the Arab community in the Chicago area by building its capacity to be an active agent for positive social change. AAAN’s strategies include community organizing, advocacy, education, providing social services, leadership development, cultural outreach, and forging productive relationships with other communities.
3. **Black Lives Matter Chicago (“BLM”)** is an organization that fights for justice with families most impacted by race-based violence and marginalization of Black communities, while working to create just and equitable systems. Black Lives Matter Chicago works to end state violence and criminalization of Black communities by deconstructing the white supremacist, capitalist patriarchy.
4. **BlackRoots Alliance (“BA”)** is an organization committed to the safety and liberation of all Black people. The BA is made up of Black-led organizations working collectively to build political, social, and economic power in Black communities.
5. **Black Youth Project 100 (“BYP100”) Chicago** is the Chicago chapter of BYP100, a national member-based organization of Black 18- to 35-year-old activists and organizers. BYP100 Chicago is dedicated to creating justice and freedom for all Black people. BYP100 Chicago does this work through building a network focused on transformative leadership development, direct action organizing, advocacy, and political education using a Black queer feminist lens.
6. **Blocks Together (“BT”)** is a membership-based community organizing group in the West Humboldt Park neighborhood on Chicago’s West Side. Blocks Together empowers residents to work together for systematic changes that bring concrete improvement to their lives. Blocks Together tackles social justice issues relating to education, housing, economic justice, the criminalization of youth, and discriminatory policing.
7. **Brighton Park Neighborhood Council (“BPNC”)** is a community-based, nonprofit organization serving a working-class neighborhood on Chicago’s Southwest Side. BPNC’s mission is to create a safer community, improve the learning environment at public schools, preserve affordable housing, provide a voice for youth, protect immigrant rights, promote gender equality, and end all forms of violence, including police violence.
8. **Chicago Alliance Against Racist and Political Repression (“CAARPR”)** is the local branch of the National Alliance Against Racist and Political Repression, which grew out of the mass movement to free Angela Davis and all political prisoners. CAARPA campaigns against police crimes committed primarily against the poor and people of color, including

organizing for the establishment of an elected Civilian Police Accountability Council, for the end of physical and medical abuse of people in prison, and for the release of political prisoners and persons wrongfully convicted.

9. **Chicago Urban League (“CUL”)** is an independent, not-for-profit civil rights organization, that has for nearly a century been at the forefront of providing strategic and impactful advocacy, programming, and outreach in education, economic development, and social justice. Born out of a national movement to meet the needs of African Americans migrating to urban areas in search of a better life, CUL has been fearless in their efforts to remove barriers that prevent individuals and families from opportunities that enable them to strengthen their lives and their communities.
10. **Enlace Chicago** is an organization dedicated to making a positive difference in the lives of the residents of the Little Village community in Chicago by fostering a physically safe and healthy environment and by championing opportunities for educational advancement and economic development. Enlace Chicago convenes, organizes, and builds the capacity of Little Village stakeholders to confront system inequalities and barriers to economic and social access.
11. **Gay Liberation Network** is a multi-issue, direct action group that promotes the rights of Lesbian, Gay, Bisexual, Transgender and Intersex people. It is one of the largest and most-active LGBTQ direct action groups in Chicago.
12. **Good Kids Mad City (“GKMC”)** is a student led advocacy group that developed after the deadly shooting in Parkland, Florida. It is made up of students from Chicago public schools who have collaborated with students from Baltimore and D.C. to organize against gun violence and to stand up against unfair and unjust decisions made by city officials. GKMC is fighting for increased mental health services for low-income people, as well as financial and educational resources.
13. **Grassroots Collaborative** unites eleven membership-based organizations in Illinois in order to create policy change on local and statewide levels. Their alliance spans diverse ethnicities and a variety of organizing networks, including low-wage service employees, the homeless, senior citizens, immigrants, peace activities, faith leaders, and residents of poor and working class neighborhoods. By bringing together organizations across movements, especially labor and community, Grassroots Collaborative has built a broad and deep base necessary for fighting the corporate interests working against off of their constituencies.
14. **Justice for Families** is an organization committed to working with families impacted by violence, including state and police violence. Justice for Families designs campaigns, strategies, and direct actions with families so they can fight for justice for their loved ones. It provides financial support to families after a loss, as well as safe healing spaces for families to talk about their experiences and console each other.
15. **Latino Union** is a membership-based, nonprofit organization that collaborates with low-income immigrant and U.S.-born workers to develop the tools necessary to collectively

improve social and economic conditions. Latino Union accomplishes its mission by developing leadership from within the immigrant and low-wage worker communities, creating feasible alternatives to the injustices workers face, and building the larger movement for immigrants' and workers' rights.

16. **National Association for the Advancement of Colored People (“NAACP”) – Westside Branch** is the NAACP’s Chicago-based branch on the West Side of the City. The NAACP is a national civil rights, non-profit, membership organization whose mission is to ensure the political, educational, social, and economic equality of rights of all persons and to eliminate race-based discrimination. The elimination of racial prejudice among citizens, which would include racially-motivated policing, is identified as one of the NAACP’s major objectives.
17. **Network 49** is a progressive, community-led political organization committed to organizing and advocating for policies and elected leadership that advance a high quality of community life, benefiting all residents in the 49th Ward of the City of Chicago. Network 49 works through community-led and open processes to identify the key issues of concern for its community and its neighbors. Those concerns include opposing the privatization of public education and defending neighborhood schools, improving community safety, and promoting balanced community development.
18. **Rainbow PUSH Coalition (“RPC”)** is a multi-racial, multi-issue, progressive, international membership organization that has been fighting for social change for the past 50 years. RPC’s mission is to protect, defend, and gain civil rights by leveling the economic and educational playing fields, and to promote peace and justice around the world.
19. **Southsiders Organized for Unity and Liberation (“SOUL”)** consists of over 20 member organizations including churches, neighborhood associations, and other groups of organized people willing to fight for change across the Southside of Chicago and South Suburbs. SOUL’s mission is to assist low-income people of color in the Chicago Southland to build power, then subsequently leverage that power to fight for their own interest and liberation.
20. **U.S. Palestinian Community Network (“USPCN”)** is a Palestinian community-based organization, founded to revitalize grass-roots organizing in the Palestinian community in the U.S., as part of the broader Palestinian nation in exile and the homeland. USPCN has a chapter in Chicago that organizes campaigns and projects around Boycott Divestment Sanctions, defense against repression, political prisoners, and culture.
21. **Women’s All Points Bulletin (“WAPB”)** is a human rights and community policing non-profit organization that provides services, education, and training to eradicate all forms of violence against women during policing encounters.