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BEFORE THE BOARD OF PARDONS AND PAROLE
STATE OF UTAH

In re. the death sentence of RALPH LEROY MENZIES Offender Number: 113858	**Response to Menzies's "Notice of Mental Condition Related to Competency"**

Menzies asks for a stay under Utah Administrative Code R671-206, contending that he is incompetent to proceed with commutation proceedings before this Board. His counsel assert that he has progressing dementia, which they claim makes him unable to "have rational and factual understanding of a pending Board hearing" or to "consult with counsel and participate in a hearing in a reasonable degree of rational understanding." Notice at 1; R671-206-1(1) & (2). Reasserting claims from his motion for a second competency evaluation filed in district court, he also urges this Court to "institute proceedings to

determine if [he] is competent to proceed," arguing that failure to do so will violate both "due process" and the Board's "governing regulations." Notice at 6.

But, as explained below, the Board should not delay commutation proceedings because 1) Menzies does not have a right to a commutation hearing to begin with, 2) the Board's competency rule does not apply in death-penalty cases, and 3) his counsel's efforts to prevent the State from presenting this Board with relevant evidence about his current competency hinder and delay the Board having a complete and accurate picture of that issue—both here and at any commutation hearing the Board might hold.

First, Menzies does not have a right to commutation or a commutation hearing. Under the federal constitution, Menzies has "no constitutional or inherent right to commutation of his sentence." *Connecticut Bd. Of Pardons v. Dumschat*, 452 U.S. 458, 464 (1981), quoting *Greenholtz v. Nebraska Penal Inmates*, 442 U.S. 1, 7 (1979). And the Utah Constitution simply requires the Board hold a "full hearing" before it *grants* commutation. Utah Const. Art. VII, § 1.

Utah statute and the Board's rules clarify that it can deny commutation without even holding a hearing. Utah Code § 77-27-5.5(7); R671-312-1. Indeed, the Board's rule for death penalty cases makes clear: "No person has a right, privilege, or entitlement to commutation or clemency; nor to the scheduling of a commutation hearing." R671-312-1(2). The rule clarifies further: "Nothing in this rule may be interpreted to convey any right or expectation of commutation, clemency, *or to a commutation hearing*." *Id.* (emphasis added).

In other words, "a petition for commutation, like an appeal for clemency, is simply a unilateral hope." *Ohio Adult Parole Authority v. Woodward*, 523 U.S. 272, 280 (1998), quoting *Dumschat*, 452 U.S. at 465. Any broader due process interest Menzies asserts to essentially grant commutation as a "matter of grace" by allowing this Board to "address a wide range of factors not comprehended by earlier judicial proceedings and sentencing determinations" is wholly "inconsistent with the heart of executive clemency." *Woodward*, 523 U.S. at 280-81.

Second, the Board's competency rule on which Menzies relies does not apply in death-penalty cases. Nothing in the state constitution, statutes, or rules requires that Menzies be competent to proceed before any commutation hearing can occur. Menzies mistakes the meaning and purpose behind Utah Administrative Rule 671-206-1, which provides for a convicted defendant to be able to "consult with counsel" and "participate in a hearing" before this Board. A reading of the rule as a whole reveals that it contemplates commutation proceedings involving a defendant sentenced to a term of years. This is illustrated by R671-206-2(2), which provides that any stay of commutation proceedings by this Board grounded in an offender's incompetence to participate in the proceedings "does not toll any time served nor does it affect an offender's sentence expiration date." Only a term of years has an expiration date. Thus, the very stay that Menzies asks for is not contemplated by the rule. The rule governing competency for board proceedings thus does apply in death-penalty cases. And the rule governing death-penalty commutation hearings contains no mention of a requirement for competency.

Even if the competency rule applies to Menzies—which the State does not concede—it precludes by its own terms that Menzies's execution could be stayed. It provides for a stay of "proceedings." Proceedings—pursuant to the opening clause of the rule—are "proceedings of the Board of Pardons and Parole." R671-206-1, -2. Execution on judgment is not a proceeding of the Board. And the rule precludes any competency evaluations from tolling or affecting the sentence itself. R671-206-2. Note that the rule speaks only to what happens if the offender is found *competent*—the Board shall proceed with scheduled hearings. R671-206-4. It does not say what happens when the offender is found incompetent. But if granting a hearing is a matter of grace (not of right), then the Board should either treat an offender's alleged incompetency as reason to deny a hearing and the petition (because the rules require him to attest under oath to the truth of its allegations (R671-312A-3(1)(A)), or hold the hearing despite his alleged incompetence. Menzies's counsel do not show why they need their client to be competent at the hearing. They have already prepared a 33-page petition supported with 51 exhibits all, according to them, without his input. They do not say what else they need from him.

Finally, the Board should also not stay these proceedings because his counsel have obstructed the State's efforts to give the Board evidence highly relevant to his assertions of recent cognitive decline so that the Board can make an informed determination about commutation. Menzies's counsel have objected to modifying a protective order in district court so that the Board could receive forty-three audio files of Menzies's phone calls from 2022 to 2024—phone calls upon which the district court relied in finding him competent to be executed. St's Resp. Pet. Exh. 16. And they have withheld consent to the State's

expert—whose findings and conclusions the district court fully credited—conducting a new evaluation of Menzies to test his assertion of recent mental decline. St's Resp. Pet. Exh. 15. And finally, in both his Petition for Commutation and Notice of Mental Condition, Menzies declares that "he will not be speaking at the upcoming Parole Board hearing," asserting "significant memory impairments" that "render[] him unable to competently address the board." Petition at 2, n.1; Notice at 3, n.2. Menzies thus steadfastly refuses to permit the State, or this Board, to explore the validity and limits of his one-sided assertion regarding his alleged progressed mental deterioration.

Essentially, Menzies asserts evidence but does not permit the State access to that evidence to either challenge, or confirm, its validity. This is a "heads I win, tails you lose" approach that undermines the Board's proceedings. Simply put, if Menzies can unilaterally call on this Board to stay his commutation proceedings because of his declining mental condition, and then attempt to use that stay to stay his pending execution date, then this Board should deny a hearing and deny Menzies's petition.

Put another way, this Board cannot commute Menzies's repeatedly-affirmed capital sentence where he claims an inability to competently go forward in Utah's commutation scheme but will not permit the State any inquiry into the validity of those claims. And because, under U.C.A. § 77-27-5.5(6), this Board "*shall not* consider legal issues, including constitutional issues which: (a) have been reviewed previously by the courts; (b) should have been raised during the judicial process; or (c) if based on new information, are subject to judicial review, (emphasis added)," it necessarily also cannot evaluate Menzies's new claims of ongoing mental deterioration before the district court has ruled on his request for

a new competency evaluation. Yet this is what Menzies seeks to do—provide a "substantial issue" in a commutation hearing that he simultaneously requests to be granted and then stayed based on his one-sided assertions.

And, again, even if this Board elected to stay Menzies's commutation proceedings based on his claims of incompetence to proceed under R671-206-1, that will have no effect on his execution date and the ongoing legal proceedings surrounding it. The plain language of R671-206-1 provides that a stay imposed in commutation proceedings based on the defendant's incompetence under the rule does not toll the sentence or stay any judicial proceedings. In essence, by claiming incompetence to proceed in his requested commutation proceedings and seeking a stay of those proceedings, Menzies has necessarily forfeited them.

Based on the above, the Board should deny Menzies's request for a stay of commutation proceedings and for evaluation of his claimed incompetency.

DATED this 23rd day of July 2025.

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/s/ Ginger Jarvis

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CERTIFICATE OF SERVICE

I hereby certify that on July 23, 2025, I electronically filed the foregoing Response to Menzies's "Notice of Mental Condition Related to Competency" with the Utah Board of Pardons and Parole by email and served a copy of the same to the following by email and overnight mail of a flash drive containing the response and exhibits:

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