

Case No. S278451

IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

In re Application of Loftis, Martin

On Clemency,

On an executive request for clemency, arising from Los Angeles County Superior Court Case # BA035840, Court of Appeal Case # B071333, Supreme Court Case # S041662

MOTION OF THE SAN BERNARDINO COUNTY DISTRICT ATTORNEY'S OFFICE TO UNSEAL THE REQUEST FOR RECOMMENDATION OF CLEMENCY AND THE SUPPORTING RECORD; MEMORANDUM IN SUPPORT

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**IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA**

In re Application of Loftis, Martin
for Executive Clemency,

No. S278451

MOTION TO UNSEAL APPLICATION

Pursuant to Administrative Order 2021-05-26, *In re Confidentiality of Clemency Records*, the San Bernardino County District Attorney's Office (SBCDA) moves this Court to unseal the application and supporting record in this matter. SBCDA is the primary prosecutorial agency in the County of San Bernardino, whose western border is shared with Los Angeles County.

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**MEMORANDUM IN SUPPORT OF MOTION TO UNSEAL
APPLICATION AND RECORD**

On February 2, 2023, the Office of the Governor submitted a Request for Recommendation for Clemency in this case.¹ A letter to the Clerk of this Court from the Governor’s Deputy Legal Affairs Secretary indicated the filing was done in accordance with article V, section 8, subdivision (a) of the California Constitution. The docket for this case indicates that a “[c]onfidential record from Governor’s Office” was lodged.

In issuing Administrative Order 2021-05-26, *In re Confidentiality of Clemency Records* (Order), this Court recognized that its role in reviewing Gubernatorial requests for executive clemency of twice-convicted felons under article V, section 8, subdivision (a) of the California Constitution “should

¹ Three other cases were also simultaneously submitted: Tyson Atlas – case # S278446 (from San Bernardino County Superior Court case # FVA701479), Carlos Cano – case # S278455 (from Los Angeles County Superior Court case # BA149971), and Gregory Sanders -case # S278453 (from Los Angeles County Superior Court case # CR41379).

be available for public inspection.” (Order, at p. 2.) This conclusion was based on the “public’s legitimate interest in understanding how the court exercises its responsibilities” in this area. (*Ibid.*) The Order thus naturally flows from the public’s general rights to open government, as “[t]he people have the right of access to information concerning the conduct of the people’s business” (Cal. Const., art. I, § 3, subd. (b)(1).)

This theme of open government runs throughout both the California Public Records Act, (Gov. Code, § 7920.000 et seq.) and the Court’s own rule providing access to judicial administrative records, (Cal. Rules of Court, rule 10.500.) As the latter states, the rule “must be broadly construed to further the public’s right of access.” (Cal. Rules of Court, rule 10.500(a)(2).) As to filings with the courts, there is a presumption that records are open, “[u]nless confidentiality is required by law.” (Cal. Rules of Court, rule 2.550(c).)

The sealing of a record may occur only when there is an overriding interest that overcomes the right of public access to the record, the overriding interest supports sealing, a “substantial probability that the overriding interest will be prejudiced” absent sealing, where the sealing is narrowly tailored, and where there is no less restrictive means able to achieve the overriding interest. (Cal. Rules of Court, rule 2.550(d).)

In this case, the public interest in the potential commutation of a convicted special circumstance murderer

and armed robber who also inflicted great bodily injury on his victims, (see *People v. Loftis* (March 26, 2014, B251878) [nonpub. opn.]),² strongly favors a transparent process when commutation is sought by the Executive. As SBCDA's communities share a border with Los Angeles County, SBCDA requests this Court return the Commutation Application and its accompanying record in this case to the Governor's office so that it may be resubmitted in conformity with the procedures described in the Order.

As this Court stated, it “perceives no rationale for nondisclosure that would justify a rigid rule shielding from public inspection the entire contents of documents such as parole or commutation investigation reports, rap sheets, probation reports, letters received by the Governor supporting or opposing a grant of clemency, and prison records, whenever they appear within a clemency file.” The citizens of Los Angeles County, and those of neighboring counties deserve full disclosure when the Executive proposes releasing a murderer into their communities. Although the basic crimes committed by Mr. Loftis are available in an appellate opinion, a true understanding of the circumstances of his offenses cannot easily be known by the public. A release of the record is

² The opinion cited stems from an appeal by Mr. Loftis in which he challenged the calculation of his custody credits. The opinion of the direct appeal of his conviction, in District Court of Appeal case number B071333, is not available on that court's website or on Westlaw. Consequently, a more complete description of his crimes is not readily available for public review.

therefore critical if the People are to understand the circumstances and merits of the Executive's request.

February 28, 2023

Respectfully submitted,

A handwritten signature in blue ink, appearing to be 'R. P. Brown', with a long, sweeping horizontal line extending to the right.

Robert P. Brown
Assistant District Attorney
San Bernardino County
District Attorney's Office

PROOF OF SERVICE

The undersigned declares under penalty of perjury that the following is true and correct:

I am over eighteen years of age, not a party to the within cause, and employed by the San Bernardino County District Attorney's Office, located at 303 West Third Street, San Bernardino, California 92415.

On February 28, 2023, I served copies of the foregoing Motion of the San Bernardino County District Attorney's Office to Unseal the Request for Recommendation of Clemency and the Supporting Record; Memorandum in Support by depositing true copies of it enclosed in sealed envelopes with postage paid in the United States mail, in the County of San Bernardino, California, addressed as follows:

Eliza Hersh
Deputy Legal Affairs Secretary
Office of the Governor
State Capitol
1303 10th Street
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Rob Bonta
California Attorney General
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Sacramento, CA 94244

Martin Loftis
H51235
California Health Care Facility, Stockton
P.O. Box 213040
Stockton, CA 95213

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 28, 2023, San Bernardino, California.



Robert P. Brown