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Life Without Parole Is Replacing the Death Penalty -- But For Those Who Don't Have the Possibility of Parole, Their Future Is Bleak.

By Jessica Lerner

Darrell Powell didn't kill Alfredo "Freddy" Piña. He didn't point the loaded gun at Piña, a father of four who was entering his home in upper Manhattan. He didn't pull the trigger. But he is still serving a life sentence without the possibility of parole for his role in the murder-for-hire scheme.

Powell was asked by a drug dealer to kill a man in September 1997, but a different man, Piña, 43, was killed instead. Powell, now 56, was charged with first-degree murder and has spent nearly 25 years behind bars, most recently at Sullivan Correctional Facility in Upstate New York.

Across the country, life sentences are increasingly being used to replace the death penalty, according to a recent study by The Sentencing Project. Nearly 162,000 people are serving life sentences – one out of every nine in prison, the study found – and for those like Powell, who don't have the possibility of parole, their future is bleak.

He's no longer the same man who initially rebuffed responsibility for his role in Piña's murder, says Michael Gonring, a City University of New York law student who worked on Powell's case.

"I think he's always felt bad about what happened and embarrassed about the role he played, but I don't know if he really understood his role in all of this until recently," he said. "That was a big step of him saying he really caused a lot of pain."

Gonring said that Powell is no longer blaming the court system, the lawyers, his co-defendants – everyone but himself – for his predicament, no longer refusing to acknowledge he set into motion a series of events that led to Piña's murder.

"At the end of the day, you go back to your cell, and the door closes, and it's just you," Powell said in an interview. "So you have to look in the mirror, and in looking in the mirror, then you start realizing that all those people that you're blaming, [but] 'What about you?'"

But, in the eyes of the law, that change – spurred by the years Powell spent working as a health assistant at the prison clinic, tending to ill and dying inmates – may not matter. Like the 200,000-plus inmates who are sentenced to life and virtual life sentences in the United States, he will most likely die in prison, separated from their loved ones.

More than 53,000 people are serving life sentences without the possibility of release, a fourfold rise in the last two decades, even while homicide rates have gradually fallen over the same period, according to the Sentencing Project.

Before the 1970s, life without parole was almost unheard of in the United States, but it gained popularity after the Supreme Court's 1972 decision in *Furman v. Georgia*, which temporarily

outlawed the death sentence. According to a report from the American Civil Liberties Union, life without parole has consumed far more individuals than it was designed to punish since its inception.

In New York, when Gov. George Pataki signed a new bill into law in 1995, allowing for lethal injection executions, capital punishment was resumed. No executions, however, were carried out. On June 24, 2004, the New York Court of Appeals, the state's highest court, decided that the state's death penalty legislation violated the New York Constitution, resulting in the state's rise in life without parole penalties.

Many Americans believe life without parole to be a more compassionate sentence than the death penalty. Proponents contend that life without parole achieves the purposes of incapacitation, deterrence or even retribution. Critics, however, believe it either fails or is misdirected in accomplishing these objectives, said Brandon Garrett of Duke Law School, co-author of a 2011 study titled "Life Without Parole Sentencing in North Carolina."

"Life without parole simply can be replaced with life with parole," said Garrett in an emailed statement.

According to Garrett, life without parole statutes indicated a new legislative impulse to focus on retribution rather than rehabilitation, which focused on indeterminate sentencing where a rehabilitated individual may get an earlier release.

Even today, when policymakers and the public are increasingly rethinking criminal sentencing procedures in the United States, such as mandatory minimums and drug punishment, they have yet to do so with life without parole terms, he said.

Moreover, these tough-on-crime directives have created an aging prison population, said Samah Sisay, a Bertha Justice Fellow at the Center for Constitutional Rights.

Older inmates, who already have shorter lifespans than the average American, face safety risks and other age-related problems in prison, institutions not designed to care for them, she said.

In 2016, the average life expectancy of American men was 76, while the average age of male inmates who died in prison was 57. For women, the average life expectancy was 81, compared to women prisoners who died at an average age of 54, according to Prison Policy Initiative, a nonprofit that produces research on the harm of mass criminalization.

"Their sentence is going to lead to them dying in prison because the conditions in prison lead to earlier deaths for folks, and once you reach a certain age, like past 50, the possibility of dying in prison is, unfortunately, very high. It's death by incarceration," Sisay said.

Despite this, elderly inmates have the lowest recidivism rate of any age group when they are released. Recidivism rates in the United States diminish with age, decreasing to 5% for those

aged 50 to 64 and less than 1% for those aged 65 and up, a 2019 study from the U.S. Department of Justice found.

As a result, experts are focusing on the number of elderly offenders who are effectively sentenced to die in jail as part of a campaign to eliminate mass imprisonment in the United States.

In New York, a pair of bills tried – but ultimately failed – to accomplish just that. New York has the nation's eighth highest rate of people serving life sentences. In 2019, there were 303 inmates in New York serving life without parole. An additional 8,006 inmates were serving life sentences, according to the U.S. Bureau of Justice statistics.

There are currently about 1,100 inmates over 55 who have spent 15 years or more in jail and are not eligible for parole in New York state.

Anyone who met that criteria would have been eligible for parole under the “Elder Parole” bill, regardless of their original sentence. When a person reaches the age of 55 and has served 15 years in prison, they could appear before a parole board, analyzing their recidivism risk and deciding whether to grant parole.

The “Fair & Timely Parole” law aimed to overhaul the parole system by making it more accessible. The bill changed the focus of parole boards when evaluating inmates. Rather than focusing solely on the person's original crime, the measure requires decision-makers to consider the person's behavior since incarceration. Members of the board would review their behavior history, educational achievements, and other considerations.

If lawmakers had approved either bill, it would have given Powell a chance at parole. But now, with limited options, a reprieve of any kind is even more difficult.

“It becomes tougher and tougher each day. This is a broken system. It’s not nurturing. It becomes harder to hold onto your sanity in prison for a long period of time. It’s almost impossible, especially as you get older,” Powell said.

Clemency – the process by which a governor, president, or administrative board may reduce a defendant's sentence or grant a pardon – is one of Powell’s last recourse.

While clemency is granted infrequently, Powell has submitted a clemency application for review before the state’s Executive Clemency Bureau, which, in turn, will then send the completed application to the Governor’s Office for review.

The state constitution specifically grants the governor the ability to offer commutations for all acts except treason and impeachment, but governors infrequently grant clemency for fear of being called “soft on crime.” For example, despite receiving hundreds of applications, former New York Governor Andrew Cuomo commuted the sentences of only 36 prisoners during his decade in office.

Advocates, though, believe clemency should be granted more frequently, not just sporadically during and toward the end of a governor's term in office.

"If a person already has a clemency application in, they have already come to terms with the crime, already developed that type of insight and understands the harm done that you can't take that away," said Jose Saldana, director of the grassroots nonprofit Release Aging People in Prison. "They have accepted responsibility for the harm that was done to this person, this family."

That's certainly true for Powell, who has long come to terms with the pain he caused not only Piña's family but his own.

He's said, on multiple occasions, tearing up whenever the topic is broached, he's sorry for the heartache he caused his mom, sorry he abandoned his now ex-wife, sorry he was an absent father. He only hopes he can rebuild those relationships over time.

"This is something you have to face. You can't run from it," Powell said. "These are people you say you love, and how do you say you love them if you're hurting them?"

The absence and hurt run both ways for the Powell family, said cousin Aloha Powell.

"When you understand the love, you can understand what the separation does to us," Aloha Powell said. "It rips our heart out. And it's not because we say that 'our cousin is an angel.' It rips our heart out because a piece is missing."

Powell's clemency request is now pending and will be reviewed by the Executive Clemency Bureau, which is part of the New York State Department of Corrections and Community Supervision and assists the Governor's Office with clemency requests. After that, the Bureau sends the applications to the Governor's Office for review.

All Powell can do now is wait.

"I made a bad decision in my life. I hope that one bad decision does not define who I am because it's not who I am. However, I accept the responsibility for what I did. I can't undo it. I wish I could, and all I could do is show and do things that are positive," he said.