



CHARLIE CRIST
GOVERNOR

STATE OF FLORIDA

Office of the Governor

THE CAPITOL
TALLAHASSEE, FLORIDA 32399-0001

www.flgov.com
850-488-7146
850-487-0801 fax

April 20, 2009

Warden Bryant
Florida State Prison
7819 N.W. 228th Street
Raiford, FL 32026-1000

Re: Execution Date for David Eugene Johnston

Dear Warden Bryant:

Enclosed is the death warrant that I signed to carry out the sentence for David Eugene Johnston, as well as certified copies of his judgment and sentence. I have designated the week beginning at 12:00 noon on Friday, May 22, 2009 through 12:00 noon on Friday, May 29, 2009, for the execution. I have been advised that you have set the date and time of execution for Wednesday, May 27, 2009 at 6:00 p.m.

Sincerely,

A handwritten signature in black ink that reads "Charlie Crist".

Charlie Crist

cc:

Honorable Peggy A. Quince
Supreme Court Chief Justice
The Supreme Court of Florida
507 S. Duval Street
Tallahassee, FL 32399

Chief Judge Belvin Perry, Jr., 9th Judicial Circuit
425 N. Orange Avenue
Orlando, FL 32801

Secretary Walter A. McNeil
Department of Corrections
2601 Blair Stone Road
Tallahassee, FL 32399-2500

The Honorable Lawson L. Lamar
State Attorney, 9th Judicial Circuit
Post Office Box 1673
Orlando, FL 32802

Ms. Carolyn Snurkowski
Assistant Deputy Attorney General
Office of the Attorney General
The Capitol, PL-01
Tallahassee, FL 32399-0001

Mr. Bill Jennings, Capital Collateral Regional Counsel – Middle Region
Attorney for Inmate
3801 Corporex Park, Dr., Suite 210
Tampa, FL 33619

Ms. Janet Keels
Office of Executive Clemency
2601 Blair Stone Road
Building C, Rm. 229
Tallahassee, FL 32399-2450

Mr. David Eugene Johnston
Union Correctional Institution
7819 N.W. 228th Street
Raiford, FL 32026-4000

DEATH WARRANT

STATE OF FLORIDA

WHEREAS, DAVID EUGENE JOHNSTON, did on the 5th day of November, 1983, murder Mary Hammond; and

WHEREAS, DAVID EUGENE JOHNSTON, on the 18th day of May, 1984, was found guilty of murder in the first degree of Mary Hammond; and

WHEREAS, DAVID EUGENE JOHNSTON, on the 1st day of June, 1984, was sentenced to death; and

WHEREAS, on the 13th day of November, 1986, the Florida Supreme Court affirmed the conviction and sentence; and

WHEREAS, on the 28th day of October, 1988, Governor Martinez signed a death warrant for DAVID EUGENE JOHNSTON; and

WHEREAS, on the 19th day of September, 1989, DAVID EUGENE JOHNSTON appealed the trial court's denial of his Motion for Post-Conviction Relief to the Florida Supreme Court;

WHEREAS, on the 28th day of November, 1988, DAVID EUGENE JOHNSTON filed a Petition for Writ of Habeas Corpus in the Florida Supreme Court; and

WHEREAS, on the 20th day of June, 1991, the Florida Supreme Court affirmed the trial court's denial of the Motion for Post-Conviction Relief and also denied the Petition for Writ of Habeas Corpus; and

WHEREAS, on the 23rd day of October, 1991, DAVID EUGENE JOHNSTON, filed a Petition for Writ of Habeas Corpus with the United States District Court, Middle District of Florida; and

WHEREAS, on the 16th day of September, 1993, the United States District Court, Southern District, granted the Petition for Writ of Habeas Corpus in part, and remanded it to the Florida Supreme Court to correct a sentencing error; and

WHEREAS, on the 23rd day of June, 1994, the Florida Supreme Court affirmed the conviction and sentence; and

WHEREAS, on the 15th of November, 1993, DAVID EUGENE JOHNSTON appealed the denial of his Habeas Corpus Petition to the United States Court of Appeals, Eleventh Circuit; and

WHEREAS, on the 8th day of December, 1998, the United States Court of Appeals, Eleventh Circuit, affirmed the denial of the Petition for Writ of Habeas Corpus; and

WHEREAS, on the 6th day of January, 1995, DAVID EUGENE JOHNSTON, filed a Petition for Writ of Certiorari in the United States Supreme Court; and

WHEREAS, on the 27th day of February, 1995, the United States Supreme Court denied the Petition for Writ of Certiorari; and

WHEREAS, on the 5th day of March, 1998, the Florida Supreme Court denied a Petition for Writ of Habeas Corpus and affirmed the trial court's denial of a Motion for Post-Conviction Relief; and

WHEREAS, on the 4th day of October, 1999, the United States Supreme Court denied a Petition for Writ of Certiorari; and

WHEREAS, on the 12th day of April, 2001, the Florida Supreme Court denied a Petition for Writ of Habeas Corpus; and

WHEREAS, on the 4th day of May, 2006, the Florida Supreme Court affirmed the trial court's denial of a Motion to Vacate Judgment of Conviction and Sentence; and

WHEREAS, it has been determined that Executive Clemency, as authorized by Article IV, Section 8(a), Florida Constitution, is not appropriate; and

WHEREAS, attached hereto is a certified copy of the record of the conviction and sentence pursuant to Section 922.052, Florida Statutes;

NOW, THEREFORE, I, CHARLIE CRIST, as Governor of the State of Florida and pursuant to the authority and responsibility vested in me by the Constitution and Laws of Florida, do hereby issue this warrant, directing the Warden of the Florida State Prison to cause the sentence of death to be executed upon DAVID EUGENE JOHNSTON, in accord with the provisions of the laws of the State of Florida.



IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Florida to be affixed at Tallahassee, the Capitol, this 20th day of April, 2009.

Charlie Crist
GOVERNOR

ATTEST:

[Signature]
SECRETARY OF STATE

2009 APR 20 PM 12: 59
CLERK OF THE STATE
TALLAHASSEE, FLORIDA

FILED

PROBATION VIOLATOR
(Check if Applicable)

IN THE CIRCUIT COURT, NINTH
JUDICIAL CIRCUIT, IN AND FOR

2129719 ORANGE
CO., FL

ORANGE COUNTY, FLORIDA

May 22 2 55 PM '04

DIVISION 15

STATE OF FLORIDA

C.F. 3509 PG 1056

CASE NUMBER CR 83-5401

-vs-

David Eugene Johnston
Defendant

FILED IN OPEN COURT
THIS 18 DAY OF May 1904
W. D. Gorman, Clerk
BY Francis Benefield

JUDGMENT

The Defendant, David Eugene Johnston, being personally before this

Court represented by Clyde Wolfe, his attorney of record, and having:

(Check Applicable
Provision)

- Been tried and found guilty of the following crime(s)
- Entered a plea of guilty to the following crime(s)
- Entered a plea of nolo contendere to the following crime(s)

6750

COUNT	CRIME	OFFENSE STATUTE NUMBER(S)	DEGREE OF CRIME
<u>One</u>	<u>Murder in the First Degree</u>	<u>782.04</u>	<u>F-Life</u>

and no cause having been shown why the Defendant should not be adjudicated guilty, IT IS ORDERED THAT the Defendant is hereby ADJUDICATED GUILTY of the above crime(s).


\$ 15.00

The Defendant is hereby ordered to pay the sum of ten dollars (~~\$10.00~~) pursuant to F.S. 960.20 (Crimes Compensation Trust Fund). The Defendant is further ordered to pay the sum of two dollars (\$2.00) as a court cost pursuant to F.S. 943.25(4)

The Defendant is ordered to pay an additional sum of two dollars (\$2.00) pursuant to F.S. 943.25(6).
(This provision is optional; not applicable unless checked)

(Check if Applicable) The Defendant is further ordered to pay a fine in the sum of \$ _____ pursuant to F.S. 775.0835.
(This provision refers to the optional fine for the Crimes Compensation Trust Fund, and is not applicable unless checked and completed. Fines imposed as part of a sentence pursuant to F.S. 775.083 are to be recorded on the Sentence page(s)).

The Court hereby imposes additional court costs in the sum of \$ _____
STATE OF FLORIDA, COUNTY OF ORANGE, CLERK OF THE CIRCUIT COURT
that the above and foregoing is a true and correct copy of the original filed in this office
LYBIA GARDNER, Clerk of Court

Date 5/21/08 By [Signature] D.C. 

Imposition of Sentence Stayed and Withheld (Check if Applicable)

The Court hereby stays and withholds the imposition of sentence as to count(s) _____ and places the Defendant on probation for a period of _____ under the supervision of the Department of Corrections /Orange County Probation (conditions of probation set forth in separate order.)

Sentence Deferred Until Later Date (Check if Applicable)

The Court hereby defers imposition of sentence until 5-29-84 9am (date)

The Defendant in Open Court was advised of his right to appeal from this Judgment by filing notice of appeal with the Clerk of Court within thirty days following the date sentence is imposed or probation is ordered pursuant to this adjudication. The Defendant was also advised of his right to the assistance of counsel in taking said appeal at the expense of the State upon showing of indigency.

DONE AND ADJUDGED in open Court at Orlando, Orange County, Florida this the 18 day of may, 1984, pursuant to Rule 3.670.

[Signature]
JUDGE

FINGERPRINTS OF DEFENDANT

1. R. Thumb	2. R. Index	3. R. Middle	4. R. Ring	5. R. Little
6. L. Thumb	7. L. Index	8. L. Middle	9. L. Ring	10. L. Little

Fingerprints taken by

[Signature]
Name and Title

DONE AND ORDERED in Open Court at Orlando, Orange County, Florida, this 18 day of May A.D. 1984 I HEREBY CERTIFY that the above and foregoing fingerprints are the fingerprints of the Defendant, David Eugene Johnston and that they were placed thereon by said Defendant in my presence in Open Court this date.

[Signature]
JUDGE

STATE OF FLORIDA, COUNTY OF ORANGE I HEREBY CERTIFY that the above and foregoing is a true and correct copy of the original as filed in the CLERK OF COURT'S OFFICE

Date 8/2/03 By *[Signature]*

D.C.



RECORDED & RECORD VERIFIED

[Signature]
County Comptroller, Orange Co.

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO. CR 83-5401

STATE OF FLORIDA,

Plaintiff,

vs.

DAVID EUGENE JOHNSTON,

Defendant.

FILED IN OPEN COURT 84
THIS DAY OF June, 19
W. D. Gorman, Clerk
BY J. Benefield D.C.

SENTENCE OF DEATH; FINDINGS IN SUPPORT THEREOF
AND ADVISEMENT OF RIGHT TO APPEAL

The Defendant, DAVID EUGENE JOHNSTON, was personally before this Court accompanied by his attorneys Clyde Wolfe and Christine Warren. Defendant had been previously tried by jury and on May 18, 1984, was found guilty of Murder in the First Degree and was adjudicated guilty of this crime. On May 29, 1984, in a separate penalty phase proceeding, the same jury by a majority of 8 to 4 rendered an advisory sentence recommending defendant be sentenced to death.

After hearing the evidence at trial and at the separate penalty phase proceedings, the Court finds beyond a reasonable doubt that the following three aggravating circumstances exist:

1. The defendant was previously convicted on June 28, 1982, in Case No. 81-6008, Circuit Court for Orange County, Florida, of Battery on a Law Enforcement Officer, a felony involving the use of violence. The defendant was previously convicted on June 26, 1981, in Case No. K-39226, District Court of Johnson County, Kansas, of Terroristic Threat, a felony involving the threat of violence. Sgt. Tony Higgins of the Olethe, Kansas Police Department testified at the penalty phase proceedings that when he arrested defendant on January 25, 1981, defendant stated that "once he got out of jail he was going to kill me with an AR-15, and if that didn't take care of the job, he was going to get some bikers to do the job." This is an aggravating circumstance.

2. The capital felony for which the defendant is to be sentenced was committed while defendant was engaged in the commission of a burglary of the victim's dwelling. This is an

elic to do 6/1/84

aggravating circumstance.

3. The capital felony for which defendant is to be sentenced was especially heinous, atrocious and cruel. The medical examiner's testimony at trial showed that the victim (an 84 year old woman who had retired to bed for the evening) was strangled and stabbed three times completely through the neck and twice in the upper chest with a knife; that she took 3 to 5 minutes to die after the fatal knife wound severed the juglar vein although she might have lapsed into unconsciousness sooner. This Court has no doubt that the victim was in terror and experienced considerable pain from the murderous attack of the defendant. This is an aggravating circumstance.

The Court further finds that the aggravating circumstances enumerated in Florida Statute 921.141(5)(a), (c), (e), (f), (g) and (i) are not applicable to the evidence in this case.

The Court considered each of the following mitigating factors and finds as follows:

1. The defendant does have a significant history of prior criminal activity. This finding is based upon stipulation of counsel and proof of the two prior felony convictions mentioned above.

2. Although the evidence showed that the defendant had an argument with his fiance and was angry with a person who had been arrested for shoplifting in the convenience store where she was working, both of these events occurring within an hour or two of the murder, and that the defendant was excited because of these events, I am not reasonably convinced that the defendant was under the influence of extreme mental or emotional disturbance at the time of the murder which would constitute a mitigating factor.

3. The victim was not a participant in the defendant's conduct nor did she participate in defendant's act.

4. The defendant was not an accomplice in a murder committed by another in which his participation was relatively minor. The evidence establishes that the defendant was the sole perpetrator of this murder without assistance from anyone.

5. The defendant did not act under extreme duress

under the substantial domination of another person.

6. Although there was evidence that the defendant suffered from mental disorder; that he had earlier been diagnosed as schizophrenic; that he had been admitted to mental institutions on a great number of occasions as he was growing up; that he was given to tremendous mood swings on occasions; that he told one of the officers that he had been drinking alcoholic beverages and taking LSD prior to the killing, the evidence affirmatively showed that defendant had capacity to appreciate the criminality of his conduct. Immediately following the murder he attempted to make the apartment look as if it had been burglarized by some unknown intruder prior to his calling the police and reporting the crime. Further, I do not find that his capacity to conform his conduct to the requirements of law was substantially impaired at the time of the killing.

7. Defendant was 23 years of age at the time of the murder. This is not a mitigating circumstance.

8. I have considered the other evidence offered relating to the character of the defendant. Mrs. Corrine Johnston, his stepmother, testified in essence that defendant was the product of a broken home; he was abused, neglected and rejected by his natural mother and several time physically abused by his father; that his father's death when defendant was 18 greatly affected him; that defendant has a very low IQ, did not do well in school and was mentally disturbed despite the mental health treatment he had received.


In summary, I find that three aggravating factors exist and no mitigating factors exist which would outweigh them; consequently, under the evidence and the law of this State a sentence of death is mandated.

The Court now being fully advised of the facts and circumstances surrounding the defendant and the offense, and the Court having given the defendant an opportunity to offer matters in mitigation of sentence and to be heard personally, and no legal cause having been shown to preclude pronouncement of sentence, it is therefore, the sentence of the law that you, DAVID EUGENE JOHNSTON, be committed to the custody of the custody of the Florida Department of Corrections and that you

be put to death by electrocution at such time as the Governor of this State shall by his Warrant appoint. And may God have mercy on your soul.

You are advised that you have the right to appeal the Judgment and Sentence of this Court, provided you do so by filing written notice of appeal with the Clerk of the Court within thirty (30) days of this date. If you cannot afford a lawyer or to pay costs of the appeal, the court will appoint a lawyer for this purpose and the costs of the appeal will be paid by the County of Orange.

DONE and ORDERED in open Court in Orlando, Orange County, Florida, this 15th day of June 1984.



CIRCUIT JUDGE

STATE OF FLORIDA, COUNTY OF ORANGE. I HEREBY CERTIFY that the above and foregoing is a true and correct copy of the original for the Clerk of the Court.

Date 6/21/88 By 

