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COMMON THEMES: MITIGATION FOR THE NEGATIVE AND THE POSITIVE

NEGATIVE	POSITIVE
Theme: Defendant is a victim of abuse/neglect/trauma/institutionalization ● Child Abuse/Maltreatment ○ Physical abuse ○ Sexual abuse ○ Emotional abuse ○ Witness to violence in the home, drug use, sex work in the home ● Neglect ○ Childhood hunger/malnutrition ○ Poor hygiene/no running water or electricity in the home ○ No child caretaker for long periods ○ Chronic truancy permitted ○ Failure to enroll in school ○ Out-of-home placements ○ Multiple residences with non-familial members ○ Abandonment ○ Allowed to use alcohol or drugs ○ Accidents in the home (with or without medical intervention) ● Trauma ○ Witness to abuse/violence in the home ○ Natural disaster (fire, flood, etc.) ○ Parent or sibling death ○ Victim of sexual or physical abuse ○ Victim of serious injury, threatened death (or observed this in others) ● Institutionalization ○ Foster care/emergency shelter placement ○ Juvenile justice facility ○ Hospital (medical or mental health) ○ Substance use treatment	**Theme: Defendant is loved** ● Client has active support from family/long term friends/mentors ● Client is a positive influence on: ○ Own children ○ Children in extended family ○ Children in the community ● Client has many visitors, money on books, connected relationships ● Client has a place to stay, job in the community, post-release supports and mentors

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program ○ Out-of-state placement	
Theme: Defendant is mentally ill/cognitively impaired/previously diagnosed ● Prenatal/Birth Complications ○ Mother lacked prenatal care ○ Mother drank/used drugs during pregnancy ○ Mother was incarcerated/civilly committed during pregnancy ● Complications during pregnancy ● Complications during birth ○ Premature birth ○ Low birth weight ○ Congenital problems	**Theme: Defendant's life has value; Defendant is restorable (redeemable)** ● Client is involved in community based activities ○ Church ○ Child's school ○ Sports groups ○ Volunteerism ● Past military service ○ Highest rank ○ Training ○ Skills ○ Deployment

Theme: Defendant has substance use disorder but wants treatment ● Current/History of substance use disorder ○ Age of first use (for each substance) ○ Most recent use (for each substance) ○ Average day's use (kind of substance(s) used, amount, route of administration, duration of use, total amount used in a day) ● Prior efforts to stop use and result(s) ● Prior treatment episodes (including detox and civil commitment) ● Medical consequences of use (cirrhosis, cellulitis, hepatitis, endocarditis, etc.)	**Theme: Defendant is religious/Is involved in community groups** ● Childhood religious involvement ● Religious family ● Traditions/tenets (beliefs) of family, client ● Pre-offense religious involvement (in adulthood preceding offense) ● Participation level ● Frequency ● Activities with religious group ● Current supports from religious group ● Post-offense religious involvement (during incarceration) ● Visit from Chaplain ● Church/chapel attendance ● In-pod religious study individual, group

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Theme: Defendant is the product of his/her family (biological factors) ● Family History of Illness – List for each family member ○ Alcoholism ○ Drug use ○ Medical problems – chronic ○ Medical problems – terminal ○ Mental illness ○ Suicide ○ Interpersonal violence ○ Criminal behavior	**Theme: Defendant is remorseful** ● Evidence of remorse in words, actions ● Expressed remorse, concern during confession, to police ● Statements made to defense team about remorse ● Written/prepared statements of remorse ● Willingness to make overtures to victim(s) family ● Mental health evidence of guilt (PTSD, sleeplessness, suicide attempts, behavior changes)
Theme: Defendant has medical conditions (costly to incarcerate) ● Diabetes ● Asthma or COPD ● Heart problems ● Need for surgery ● Cirrhosis ● Hepatitis ● Mobility problems ● Neurocognitive disorder	**Theme: Defendant is less culpable than others** ● Duress/compulsion by co-defendant(s) ● Co-defendant is influential because of: ○ Size ○ Strength ○ Experience/life history spent together ○ Threats of violence/actual incidences of violence in front of client ○ Past criminal history ○ Co-defendant was armed/weaponry/use of force ○ Co-defendant was lover/relationship partner ○ Co-defendant was parent ○ Client has a dependent personality ○ Client is intellectually disabled, easily coerced (a follower) ○ Client lack of criminal motivation ○ Did not bring a weapon to the crime ○ Did not flee the scene ○ Did not threaten, endanger others ○ Possible accident or

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	self-defense ○ Not the mastermind/did not plan the crime ○ Helped police, prosecution

Theme: Defendant was not himself/herself at the time of the crime ● Severe substance use disorder ● Recent trauma ● Heat of passion ● Extreme emotional state leading up to/at time of the crime ● Recent change in medications ● Recent life stressors ● Severe grief/loss ● Altered state of consciousness (from what?) ● Recent medical diagnosis ● Recently uncovered past secret	**Theme: No criminal history/aberration** ● First time offender ● No prior violent offenses ● Only prior low level offenses ● Only prior property crimes ● All crimes substance use induced Traumatic or significant life event(s) before incident ● Client was typical before and has returned to typical behavior after crime ● Client can reflect on an out-of-body experience during crime ● Memory problems at time of and after crime ● Extreme emotional state leading up to/at time of the crime
Theme: Defendant never had an opportunity to succeed ● Poverty ● No electricity ● No running water ● Environmental factors growing up ● Ruralness (no contact with outside world) ● Other factors of rural growing up ● Hardship of childhood ● Bullied as a child ● Education cut short ● Failure to thrive ● Responsibilities as a child not age	**Theme: Defendant has family stability/community support** ● Phone calls, letters from family and/or community members ● Outreach to defense team by family, community members ● Willingness to house, employ, financially support client ● Willingness to be present at trial/plea ● Willingness to provide testimony, letters of

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appropriate ● Early (young) employment ● Sacrifices in childhood ● Lack of parenting ● Lack of stability, security in childhood ● Message client was raised with ● Survival skills honed early ● Never taught how to conduct self as an adult ● Limitations of 'the system' ● Foster care system did not take care of the client ● Therapy/treatment was inadequate to take care of the client ● Missed opportunities in educational setting ● Missed opportunities in medical setting ● Missed interventions by family/extended family	support ● Willingness to provide clothing for client for court ● Willingness to meet with defense team ● Willingness to write letter of support on behalf of client

Theme: Lingering doubt ● Innocence ● Case based on shaky circumstantial evidence ● Viable alibi witnesses ● Long jury deliberation ● Rallied community support	**Theme: Impropriety by the state in investigating the case** ● False statements ● Brady issues ● Issues with the science ● Issues with the State's experts Community bias/sensitive issues of attention ● Inappropriate conduct (prosecutor, police)