

Cellblocks To Mountaintops Podcast
Episode 7:
GASPING FOR AIR
Transcript

Host: Oregon was experiencing a record heatwave in the weeks just before Sterling Cunio's prison term hearing when the skies turned an ominous dark orange

Media Clip: Oregon declares state of emergency 36

Reporter: This morning, the firefight on the West Coast growing more difficult by the hour. In Oregon, a state of emergency declared as 36 wildfires burn across the state.

Host: In mid-September 2020, Salem where Oregon State penitentiaries located registered an air quality index of 500. Anything over 300 is considered hazardous even for the healthiest populations. About 150 state prisoners were deployed to the frontlines to join the firefighting effort. They were paid less than \$10 a day for their services.

Sterling Cunio: The cellblocks don't have air conditioning. There's a guy here, he's a staff, and he went inside the cellblock and measured it. And it was 109.

Host: We spoke to Sterling over the phone.

Sterling Cunio: They have really, really old people here, it's the roughest on them. We have to go outside to cool off because it's hotter inside. It's because you got all that concrete, you got all that steel. No circulation. Then you got all of them bodies.

Host: 1500 prisoners had to be evacuated from three state prisons, and most of them were shuttled to OSP. The influx of people and smoke completely overwhelmed the prison.

Sterling Cunio: It just kept getting thicker and thicker. It was as if there was a fire in the building. There was no getting away from it. People were sleeping on the floors, people were sleeping in halls, classrooms. Furniture was moved out of staff offices so people could sleep there.

Host: OSP didn't have enough food, staff, restrooms or medical services to go around.

Karuna Thompson: There was nothing humane in how things happened.

Host: That was Karuna Thompson. She says that everyone was ill-prepared.

Karuna Thompson: For all of the different security reasons, they couldn't bring an extra change of clothes with them. We didn't even have paper cups so that they could get drinking water. Just very basic, basic human things. And part of it was just the complete overwhelm that everybody was in.

Host: A spokesperson for the corrections system said that inmates did have access to food and medications during the fire, just - quote - not on their normal schedule.

Media Clip: Oregon inmates evacuate amid wildfires

Reporter: Corrections Director Collette Peters stressed it's a temporary situation and one, she argues could, have been much worse.

Corrections Director, Collette Peters: We successfully transported thousands of individuals across the state safely. Nobody was injured, nobody went missing.

Host: But the fires, the ongoing pandemic, and the sudden surge in the inmate population combined to create an unprecedented situation that clearly no one was prepared for.

Karuna Thompson: One of the facilities that was evacuated was a facility that people had opted out of gangs, and then they were brought back into a facility with those same gangs that they had debriefed from. The danger of that was huge, and we had people who were just cowering in the corner and choosing not to eat so that they didn't have to face the physical risk of going to have a meal.

Sterling Cunio: A lot of violence erupted because a lot of these people were targets. It was just chaos, you know, and this is the middle of Covid. Officers was responding to incidents differently. So instead of running in a dog pile, they just empty in a lot of mace. So you just had mace everywhere, wildfire smoke everywhere, violence everywhere.

Karuna Thompson: Just living in that red haze. The impact that has on you. Nobody was thinking right. Nobody was doing things well.

Sterling Cunio: It was wild. I was meditating more conflicts than ever before. Even the peacebuilders were in conflict.

Karuna Thompson: Three times a day. All of the people had to be counted, and people were made to stay in the room where they were. And partly that was so that they could get an accurate head count. But they couldn't leave that room for a couple of hours, which meant they were left to either pee in my plants, pee in the corner, or pee themselves.

Host: An incarcerated woman reported a similarly inhumane scene to her husband as she was evacuated from the only women's prison in the state.

Media Clip: Oregon inmates evacuate amid wildfires.

Reporter: Everyone was told by the officers to go to the bathroom in their pants. Women were peeing in cups and throwing tampons and feces out the windows because they could not leave the bus to use the bathroom.

Host: Alleen Brown is an independent investigative reporter who covers climate change and its impact on communities, with a focus on prison populations. She says any extreme weather event hits incarcerated people particularly hard.

Alleen Brown, Investigative reporter: People who are incarcerated don't really have control over what happens to them and how they respond to these crises. They're totally reliant on state officials.

Host: Getting appropriate medical care in prison can be difficult on a good day. The population already disproportionately suffers from several conditions. The Prison Policy Initiative found that across U.S. state prisons, asthma rates are more than two times higher than in the general population.

Alleen Brown: A lot of these facilities are in poor condition, are poorly ventilated, and people with asthma have significantly less access to medications. Typically you're not allowed to carry around an inhaler cause it could be a weapon.

Host: OSP is the oldest prison in Oregon, and some of the buildings were constructed in the mid-eighteen hundreds.

Alleen Brown: A lot of people are arguing that you could invest thousands and thousands of dollars into infrastructure. You could put in place elaborate protocols. But the prison system is just not compatible with the deepening climate crisis. And it's hard to avoid cruel and unusual punishment in these places, especially as the climate crisis deepens. The only really serious approach to resolving these harms is decarceration strategies.

Host: In the meantime, she said, she anticipates a wave of wrongful death suits as inmates suffer the effects of these extreme weather events. For Sterling, all of this took place just six weeks prior to his hearing before the parole board. The moment when he had more hope than ever that he might soon live a life outside the prison walls.

Sterling Cunio: I thought I might die. That's the biggest fear is dying in there. But I thought I would die of old age, not young, healthy, suffocating in a burning cell. It was absolutely the most perilous, hazardous time that I ever experienced, with the absolute most on the line.

Host: But would the parole board find him worthy of freedom? Would his legal battles finally come to an end? I'm Phil Stockton, and this is Cellblocks To Mountaintops, Episode 7.

Sterling Cunio: There was plenty of reason to believe that I was gonna have a realistic chance of being released within a few years.

Host: Sterling was feeling optimistic and so was his legal team. Here's his lead attorney, Ryan O'Connor, the day of his prison term hearing.

Ryan O'Connor: It's such an important day, for Sterling, and because I believe so strongly in his rehabilitation and that he deserves to be out of prison and deserves to make a life with Cheryl and make a life in the community. You know, it makes me emotional just thinking about it.

Host: Usually the board spends fewer than 30 days reviewing a case. But as the 30-day mark came and went, everyone got anxious, including Cheryl, who by this point had stayed by his side for 16 years.

Cheryl Cunio: I haven't been able to sleep. I have been able to eat very well. Like everything's just disrupted and crazy and stressed out. Just checking my phone constantly even more than I normally do, if you can imagine.

Host: Sterling had spent decades watching people he'd grown close to leaving the prison. OSP is right outside of downtown Salem, and from a window in the chapel, he could see a yellow fire hydrant. His friends would stand outside and touch it as they waved goodbye. And to him, that fire hydrant became a symbol of freedom.

Sterling Cunio: I hope to one day know the freedom to walk among the tree-lined landscapes viewed in the distance, to sleep in a comfortable bed, in a quiet room. And most importantly, the freedom to create a legacy defined by more than my worst failures. When friends I've known for decades leave, we know it's unlikely we'll ever see each other again. Thus, once they walk out the prison's front door, they head straight to the yellow fire hydrant and wave back to the window from which I stand, watching them go, hoping they cherish every moment of liberty.

Host: When the Oregon Board of Parole finally reached their decision, it wasn't what he or any of his supporters had expected. Even the way Sterling learned about it was odd.

Sterling Cunio: I was on the phone with Cheryl, and she told me that my parole date had changed online. We didn't know what was happening. It was 13 more years and at first I didn't know what that was about. Right? It didn't make sense to me because that wasn't the expectation.

Host: But soon it became clear Sterling wouldn't be getting out anytime soon. The board decided his next parole date wouldn't be for 13 years.

Sterling Cunio: So when I first realized that, I was devastated, I was crushed.

Host: Here's Cheryl.

Cheryl Cunio: I was very stunned and disappointed and sad and then angry and all these feelings. I found out at work. So, you know, I have to keep my composure.

Ryan O'Connor: I was expecting a couple of years at most.

Host: Sterling's attorney, Ryan O'Connor, again.

Ryan O'Connor: Their decision instead is going to make him serve 13 more years, which is just crushing. I feel it's it's really deflating after all the work that Sterling has done to rehabilitate himself. And after all the legal work we've done.

Sterling Cunio: All of us was thrown off by their decision.

Host: Aliza Kaplan had been working on his case with students in her Criminal Justice Reform Clinic at Lewis and Clark Law School.

Aliza Kaplan: It was so awful. I mean, we spent the whole semester working on it. We love him. We really wanted to make it happen for him.

Host: Aliza said Sterling's entire legal team believed the purpose of the hearing was to show that he had transformed. But the board saw things differently. They opted instead to simply recalculate his sentence, using an archaic law that actually gave him more time than he would have gotten had he been an adult when he committed this crime.

Ryan O'Connor: Those rules are totally outdated and inconsistent with the brain science and the constitutional law. And it increased Sterling's sentence by years. That's pretty obviously illegal.

Aliza Kaplan: It was really frustrating. It just was like this situation where we felt that they could and we argued legally that they should be treating it like a rehabilitation hearing. And here it is. Here's everything. And then they sat through all of it and asked tons of questions like they always do. And then when they came out with their opinion, they said, we don't think under the law we have a right to judge his rehabilitation. Instead, we're just going to do this basic math equation and come up with a new sentence.

Host: Here's attorney Chloe Williams from Aliza's team.

Chloe Williams: I think his story really highlights what's wrong with our criminal justice system. The fact that we sentence people to long sentences and there's no true purpose to it. If we're saying the criminal justice system is supposed to rehabilitate. This man has spent over 20 years in prison. He is rehabilitated but we're not going to let him out?

Host: In their decision, the board did recognize the positive changes Sterling had made in his life. They wrote that they based their decision on the fact that he had multiple disciplinary infractions on his record before 2009, more than a decade before the hearing. It's hard to know exactly what held the most weight in the board's decision, but Aliza believes the victim testimony swayed the board.

Chloe Williams: Oregon has constitutional rights for victims in a way that I haven't seen in most other states. Anyone that is a victim, victim-related has an opportunity, has the floor for as long as they want, and in many situations, depending on the decision maker, it can really, really sway the judgment.

Host: Still, there was one major bright spot. The board did decide to recalculate his sentence to run concurrently, and Sterling, true to form, clung to that good news.

Sterling Cunio: Because I went from never getting out, never ever to not getting out until I was 88, which you're not going to live that long in there. To like, oh, maybe I can make it to 56. In my head, I'm thinking a little run a little more cut back on some of these cakes. Like I'm not saying like it was the best thing, but I don't want to just demonize them either. You know, they're in a hard position.

Host: Ryan immediately started working on an appeal. He knew that a challenge to *Miller* had just been argued before the Supreme Court, and a few months later...

Host: The Court's conservative majority, led by Justice Brett Kavanaugh, overruled the precedent set by the *Miller* case. Their decision makes it easier for judges across the country to sentence juveniles to life without parole, and it marks a huge reversal of the strides made by juvenile justice reformers over the past decade. Sterling's legal team feared it would threaten any appeal. But Aliza wanted to switch gears and pursue an entirely new path toward Sterling's release. She wanted to ask the governor for clemency. Sterling was apprehensive.

Aliza Kaplan: When I called Sterling and we talked about it. Typical Sterling was, look, I don't want to take away your time from other people that don't have a lawyer at all. And I said, well, why don't you give me that list and we'll still do your your case. I mean, he needed time to think about it. So we ended the call. I think it was a Friday. And then I get a message like on Monday morning and he said, of course, I want a clemency, what, am I, crazy? You know.

Host: And so they went for it. That's after the break.

Host: To see our companion video series and find out more about the show. Go to our website at Cellblockstomountaintops.com.

Host: Remember Anthony Pickens, who we met in earlier episodes? Well, he also ended up getting married while incarcerated, to his teenage sweetheart. When Anthony committed his crime at 15, he'd been living in a group home where he met a girl named Natasha. They were crazy about each other. And when he was sentenced to 25 years to life, she told him she would wait for him.

Anthony Pickens: We met very young, but also we were very ignorant of my circumstances at 15 years old, our brains were okay, I'll go do 25 years and at 40 we'll start a family, have some kids, and finish out life. My how stupid we were at the time, right? It was like we didn't understand life.

Host: Their plan worked for the first couple of years.

Anthony Pickens: She was extremely helpful and instrumental in my mental survival. And then as things happened, shit happens. And so she went about her life.

Host: Every so often he'd get a letter from her, but he rarely answered. It was clear she'd moved on, and he didn't want to hear the details of her life without him.

Anthony Pickens: And so in 2018, I got a letter. She was like, call me.

Host: Now this was different. But he was confused. In the letter, she had a different last name.

Anthony Pickens: I mean, I was like, she freaking got married. Are you serious? I can't believe this. You live your life, but don't write me as a married woman. I'm devastated. Right? But I called.

Host: Turns out she wasn't married. She had changed her name to distance herself from members of her family.

Anthony Pickens: I called and we start talking, and we both came to the same conclusion that hearing each other's voice, the feelings were still there. It was the exact same. There was like no time had passed.

Host: They started to get to know each other again, but it was expensive. Natasha says they spent about \$700 a month just to keep in touch.

It's hard to maintain relationships while incarcerated. For decades, prison systems across the country have received millions of dollars from private companies that hold a monopoly over inmate communication. They charge hefty fees. Cheryl faced the same challenge. She said she spent about \$1,800 a year on calls, texts and the occasional video chat. And that was after she moved only a few miles from the prison and was able to visit several times a week. For people who are incarcerated, there's an undisputed correlation between strong relationships with family and others on the outside and improvements in behavior and mental and physical health. These bonds also significantly reduce the chance of recidivism when someone is released.

Anthony and Natasha persevered, and they were officially married in OSP on April 30th, 2018. The administration doesn't allow people to bring in special food or get dressed up. So Anthony says it was a quick affair.

Anthony Pickens: and it's literally walk up, say your vows, hug, kiss, sign. You husband and wife. Go back to the cell.

Host: On November 9th, 2020, Anthony applied for clemency. and they both anxiously waited to see if the governor would consider his application. Like Sterling, Anthony had changed and matured over the years and was an entirely different person than the 15-year-old kid who entered the adult facility. But unlike Sterling, his victim's uncle, his next of kin actually forgave him at his original sentencing hearing.

Anthony Pickens: And he told me I worked in the Washington penal system for about 15 years. I understand exactly what you're getting ready to go through. I don't think that you should be getting the amount of time you're getting, but I want you to understand and know that we forgive you for what you did. And at the time, I was sitting there and I was kind of like you. You forgive me? It was a shock. Like I didn't understand it. And that.. It's always been on my mind. Once I started to grow and mature, it's always been fuel for my change so that what I did wasn't in vain.

I felt like that if they could forgive me for what I did, then I have to make a positive impact in my life and in other people's lives. So that's how I kind of come to terms with my past and my actions and trying to somehow balance the scale that can't be balanced.

Host: So when it came time for his clemency application to be processed...

Anthony Pickens: The district attorney reached out to him, explained that I was up for clemency. What was his position on my release? And he wrote a letter and his exact response was, I told y'all then I didn't believe he should have got the amount of time that he got. My position hasn't changed on that. And if he's doing everything y'all are telling me he's doing in there right now. Y'all need to let him out. Give him his life back. He said that. And the D.A. turned around and wrote a letter and supported my release as well. So over the months, I kept getting reports back from my attorney about, okay, the D.A.'s acting like he's going to support it. So I'm reporting these same things to Sterling, and I'm like, man, it's kind of looking good. The governor's office is saying they love my story.

Host: Anthony was allowing himself to dream. He was getting excited. Sterling was in a different place.

Sterling Cunio: Inside, the idea of a clemency is like a Powerball ticket. People buy them. They fantasize about what they would do with the win, they don't really expect to win.

Host: September 28th, 2021 was Natasha's birthday, and she spoke with Anthony that morning. He was going to work at his prison job and she was about to lay down to take a nap.

Anthony Pickens: I was the president of Uhuru Sasa the African-American cultural organization. And so I was doing my office work, and one of the staff members came to our cage because they literally had our offices in dog kennel cages, for the record, came to the cage and was like, you got a phone call.

Host: It wasn't abnormal for him to get calls about the organization's work. So he assumed that's what this would be, but it wasn't.

Anthony Pickens: So I go out, get the phone, and I'm like, hello? And I hear a voice, and it's only one voice that sounds like this that I know she's very strong English accent. Venetia Mayhew.

Host: That's Anthony's lawyer.

Anthony Pickens: And she's like, Anthony. And I'm like, oh shit, 1 or 2 things are going to happen right now. I'm going to get it, yes or no. She was like, the governor's agreed to sign your clemency. You're going home.

Host: It took him a minute to comprehend what she just told him, that after 24 years, he'd been given a second chance. Oregon Governor Kate Brown had decided to grant him clemency. He immediately wanted to call Natasha. He knew she'd be asleep.

Anthony Pickens: So I called so I know she can be upset, but I know she going to get over it, she's like, why are you calling me? And I was like, it's over. And she was like, what do you mean, what's over? She's still foggy. Like, what are you talking about? Like huh? I'm like, it's over. The governor signed the clemency. She was like, what? Oh my God, are you serious? Oh, my God. Oh, my God. And I was like, happy birthday babe.

Host: Governor Brown was doing a lot at the end of her time in public office. She'd become fully invested in criminal justice reform and was using her power as governor to change whatever she could. Here's a Aliza.

Aliza Kaplan: She 100%. I think I can say this believes in the science and in the development of youth that it's different. She believed that we disproportionately targeted Black and brown youth and our mandatory minimums. And she didn't agree about youth automatically going into adult court.

Host: Remember, this was late 2020 and into 2021, the country was having a historic reckoning with institutionalized racism, and Governor Brown used her clemency power liberally to try to begin correcting some of those inequities. She cleared out death row and pardoned nearly 50,000 people with convictions for possession of small amounts of marijuana. She took a year off the sentences of more than three dozen inmates as a reward for their firefighting efforts in the 2020 wildfire, and she made more than 70 juvenile offenders who were convicted in the adult court system eligible to pursue parole. By the end of her term, she'd also commuted more than 100 cases and granted 130 pardons. She received a lot of criticism.

Media Clip: Oregon Governor criticized for granting clemency to murderer

Reporter: Oregon Governor Kate Brown okays the release of a convicted murderer, and the decision is being heavily criticized, even from those in her own party. Wyden said this clemency decision is wrong on every level, starting with its callousness towards the crime victim's family.

Media Clip, KPTV FOX 12: Oregon Family

Well, tonight, a family is grieving once again because a woman connected to their father's murder is asking for clemency from Governor Brown.

Reporter: The D.A. prosecuted, The police arrested. The judge sentenced. Everything worked up until decades later. The governor comes in and undoes all of that, in a way that completely flies in the face of common sense and public safety.

Host: In an exit interview with a local news station. Governor Brown defended her choices.

Media Clip, Governor Brown:

We locked up young people who committed crimes for an entire lifetime. Disproportionately, the young people were Black and brown. Many of these kids went through horrific, horrific childhoods. And what we now know is that young people who commit crimes can change. They can be rehabilitated, they can be reformed. They can achieve remarkable things in their communities.

Aliza Kaplan: I think Governor Brown's use of clemency was both extraordinary and not extraordinary.

Host: Aliza Kaplan again.

Aliza Kaplan: It shouldn't be so extraordinary, because clemency should just be part of the criminal legal system. That's how it was designed. And she just used it the way it should be used. Unfortunately, there's such a political taboo around it. More people than we think have used clemency over the years, but it's usually pretty quiet. But I think the combination of Covid and that Governor Brown is a woman, I think she got especially targeted. And I actually felt really bad, I'm sure she got way more hate mail than I got, but I got a lot.

Anthony Pickens: When I filed for clemency, Sterling's position on clemency was there's absolutely no way that they're going to let me out, you maybe, but me? No.

Host: In Sterling's case, his victim's family and the D.A. were decidedly not in support of his release. Anthony and Sterling grew up together behind bars, and they've been close all along the way.

Sterling Cunio: We had a whole story, like we were both the youngest in the prison at one time. We had started programs together, worked on projects together.

Host: So when Anthony got the news, he'd be getting out. The first person he went looking for was Sterling.

Sterling Cunio: I was up in the chapel, and Anthony came running up and told me he had been commuted, so I was genuinely happy.

Host: Anthony got his news in the morning along with several other people in the prison.

Sterling Cunio: And I was like, dang. Well, mine was in that group and I didn't hear nothing, you know? And I didn't really have a lot of time to feel bad about it because I was still feeling really good for Anthony. And then after count, the officer came and told me they wanted me in the chapel.

Host: He had worked in the chapel for years, at this point, so he thought nothing of it. But when he got there Anthony and Karuna and several other people were in her office waiting. Aliza was on speakerphone. Karuna motioned for Sterling to sit in the chair across from her.

Sterling Cunio: Oh. Hello, hello?

Aliza Kaplan: Sterling?

Sterling Cunio: Yeah.

Aliza: Hi, It's Aliza, Mieke and Chloe and we were wondering whether you wanted to have breakfast with us on November 3rd. The governor has granted you a commutation for release, and your release date will be November 1st.

Host: Sterling put his head in his hands and wept. Then he looked up at Anthony.

Sterling Cunio: Come here Six. How come you're the only one I can hug?

Anthony Pickens: Oh. Oh. Oh. Oh. Same day. That's right.

Host: Sterling was overjoyed. They let him call Cheryl and a few other people.

Sterling Cunio: I was glad that Anthony was there. I was happy that I got to share that. Everybody just cried. It was like, you know, some crying, and shock. And I went back and told my friends throughout the institution, so, you know, we're all celebratory.

Host: It was emotional news for all of us to have sat through the parole hearing. The dashed hopes and disappointment of knowing that Sterling had 13 more years behind bars, and then this out of the blue. It was an amazing day. Sterling's release date was set to be four days after Anthony's. And as he watched Anthony walk out of OSP, part of him still couldn't quite believe it was really going to happen.

Sterling Cunio: I told Anthony, I said, bro, if something happens and I don't get out of here next week. Raise hell, get me out. You know.

Host: That's next time on the final episode of Cellblocks to Mountaintops. To see our companion video series and find out more about the show. Go to our website at cellblockstomountaintops.com.

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