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Death penalty / Legal concern

24 January 2007

USA (North Carolina)

James Edward Thomas (m), black, aged 51

James Thomas is due to be executed in North Carolina at 2am on 2 February 2007 for the murder of Teresa Ann West, a white woman, in June 1986. He was convicted of first-degree murder and sentenced to death in 1987. The state Supreme Court overturned the death sentence in 1991 because the jury had been wrongly instructed. A new sentencing was held in 1995, at which James Thomas was again condemned to death.

On 14 June 1986, Teresa West's body was found at the Sir Walter Raleigh Tourist Home in Raleigh, North Carolina, which she managed. She had been strangled. James Thomas, who was a heroin addict and had lived in the home previously with his fiancée, had visited Teresa West on the evening of 13 June after she told him she had some heroin for him. She also had an addiction to prescription drugs.

James Thomas claims to have no memory of killing Teresa West. He does not deny that he was there, and is said to be deeply remorseful, but says that after he took heroin and some unidentified pills, and as Teresa West became confrontational and began making sexual demands of him, he blacked out. At his trial in 1987, his lawyers argued that James Thomas had killed Teresa West, but that he was guilty of something less than first-degree murder, which would make the crime non-capital. However, they offered the jury no expert or other testimony explaining what effect his drug use and background might have had on his mental state, or on his ability to premeditate.

James Thomas's childhood was marked by severe sexual abuse by adults. In addition, he began using drugs provided by his stepfather at the age of eight and was addicted by the time he was a teenager. Prior to the 1995 re-sentencing, he was evaluated by Dr David Lisak, an expert specializing in the long-term psychological effects in men of abuse they sustained as boys. He explained at the sentencing that victims of child abuse learn to "dissociate" as a defence mechanism. Dissociating can then become automatic when confronting situations that induce memories of abuse. According to Dr Lisak, the combination of circumstances leading to the death of Teresa West likely rendered James Thomas unable to premeditate the crime. However, the lawyers at the original trial did not present any such expert evidence.

After the re-sentencing, two lawyers were appointed to represent James Thomas for his post-conviction appeals. They barely did any work on the case, and in February 1998, filed a one-and-a-half-page petition raising the claim that Thomas had been under the influence of drugs at the 1987 trial and had therefore been unable to show remorse at his first sentencing hearing. They presented no evidence of this, but even if they had, there was no possible remedy as Thomas had already had a new sentencing hearing in 1995. The judge swiftly denied the petition. In July 1998, other attorneys filed a motion with the same judge to have the two lawyers removed from the case on the grounds that they had "failed to competently and conscientiously represent their client". The judge granted the motion, and signed an order appointing new lawyers, indicating they were to pursue the relief that had been inadequately sought by the original lawyers. The new lawyers subsequently filed new appeals, sought to have the state hand over all its evidence on the case ("discovery"), and requested the appointment of forensic experts. A different judge denied the appeals on the grounds that they were procedurally defaulted because they were not in the original petition.

Relying on this procedural default, the state has successfully fought all attempts to have it turn over its evidence in the case. The courts have likewise refused to consider the claim that his trial lawyers were ineffective, on the basis that it should have been raised in the original petition. In April 2006, the US Court of Appeals for the Fourth Circuit dismissed the claim of ineffective trial counsel on the grounds that the claim was procedurally barred. It stated that "if there is any unfairness" in this default, "it is that the attorneys who

were first appointed to represent him on post-conviction review were deficient". However, it held that there was no error because there was no constitutional right to counsel in post-conviction proceedings. International standards require that capital defendants receive "adequate assistance at all stages".

James Thomas's appeal to the US Supreme Court in October 2006 stated: "There can be no dispute that post-conviction counsel in this case were grossly ineffective – failing to ask for discovery, which the state was obligated to provide on request, and filing a two-page [petition] with no cognizable claim. No one has argued, and no court has found, otherwise." In December 2006, however, the Supreme Court refused to intervene, and the execution date was set.

James Thomas is reported to be widely respected by his fellow inmates and by prison staff. He has a reputation as a stabilizing influence in the prison, and has served as a literacy teacher to fellow prisoners.

BACKGROUND INFORMATION

The US capital justice system is riddled with error and inconsistencies. Wrongful convictions have been uncovered in scores of cases and a landmark study published in 2000 concluded that US death sentences are "persistently and systematically fraught with error", mainly as a result of inadequate defence counsel and prosecutorial misconduct. The study expressed "grave doubt" as to whether the courts catch all such errors.

The background of deprivation and abuse from which large numbers of those on death row in the USA come – and its possible mental health consequences – is an aspect of this punishment which is impossible to ignore. In many cases, trial lawyers have failed to investigate such backgrounds, leaving juries with little or no knowledge of the life stories of those against whom they are being asked to pass a death sentence (see *Cycle of violence – from the home to the death chamber, in USA: The execution of mentally ill offenders*, January 2006, <http://web.amnesty.org/library/index/engamr510032006>).

There have been 1,060 executions in the USA since judicial killing resumed there in 1977, 43 of them in North Carolina. There are signs that the USA is slowly turning against capital punishment (see *USA: The experiment that failed: A reflection on 30 years of judicial killing*, January 2007, <http://web.amnesty.org/library/Index/ENGAMR510112007>). There is strong public support for a moratorium on executions in North Carolina. Approximately 1,000 faith group congregations, businesses and community groups have passed resolutions calling for a moratorium, including almost 40 local governments in the state. In addition, more than 40,000 people in North Carolina have signed the moratorium petition.

RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in your own words, in English if possible:

- expressing sympathy for the family and friends of Teresa Ann West, and explaining that you are not seeking to excuse the manner of her death or to downplay the suffering caused;
- expressing concern at the wholly inadequate representation James Edward Thomas received for post-conviction review, and that these lawyers' failure has meant that Thomas has neither been granted access to the prosecution's evidence in the case or been able to challenge the adequacy of his trial representation;
- expressing concern that the trial lawyers failed to introduce expert or other testimony to support the theory that James Thomas was not guilty of first-degree murder, and noting post-conviction expert evidence of the possible effect of the severe sexual abuse he suffered as a child and his drug abuse on his ability to premeditate or deliberate at the time of the crime;
- calling on the governor to grant clemency to James Thomas in the name of compassion and justice;
- calling on the governor to support a moratorium on executions in North Carolina, noting the large public support for such a measure based on concerns about the reliability and fairness of the capital justice system.

APPEALS TO:

Governor Michael F. Easley, Governor's Office, 20301 Mail Services Center, Raleigh, NC 27699-0301, USA

Email: governor.office@ncmail.net
(via website) <http://www.governor.state.nc.us/email.asp?to=1>.

Fax: +1 919 733 2120 or +1 919 715 3175

Salutation: Dear Governor

COPIES TO: diplomatic representatives of the USA accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY, to arrive by 1 February 2007.