

EXTRA 48/00

Death penalty / Legal concern

18 May 2000

USA (Oklahoma) Roger James Berget, white, aged 39

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Roger Berget is scheduled to be executed by lethal injection on 8 June 2000 in Oklahoma. He was sentenced to death in 1987 for the 1985 murder of Rick Patterson. His clemency hearing before the Oklahoma Pardon and Parole Board is scheduled for 30 May.

Roger Berget was arrested in August 1986 following a spate of burglaries, allegedly committed by him and another man, Scott Thornton. During questioning, Thornton apparently told police that they should question Berget about a 1985 murder. Roger Berget subsequently told police that he and Mikell "Bulldog" Smith had abducted Rick Patterson in his car in October 1985, and indicated that Smith had shot Patterson.

The prosecutor agreed not to seek the death penalty against Berget if he would plead guilty to first-degree murder and testify against Smith. Under this agreement, Berget would be sentenced to consecutive life prison terms. Berget agreed, but changed his mind after meeting Smith when they were held in the same jail. He said that he would refuse to testify against Smith and would instead accept sole responsibility for the murder. He pleaded guilty, and was sentenced to death at a sentencing hearing before a judge in March 1987. Mikell Smith was himself sentenced to death at a jury trial, but this was later reversed to life imprisonment on appeal. Smith has since been convicted of two killings of fellow inmates and the attempted murder of a guard, and is serving further life sentences without parole for these crimes. Other than at his own and Smith's trials, Roger Berget has consistently maintained that it was Smith who shot Rick Patterson.

Roger Berget's trial lawyer has signed an affidavit acknowledging that his representation of Berget was inadequate, due to a combination of his inexperience, his workload, and because "my other clients facing a death sentence very much wanted to live, while Roger did not much seem to care". He admitted failing to fully investigate and present evidence of Berget's history of non-violent behaviour in criminal partnerships with more aggressive men (for example, Berget had once talked Thornton out of killing a man during a burglary), his model behaviour when serving previous prison terms, or his mental state when he decided to plead guilty. Berget, who reportedly suffers from manic depressive illness (bipolar disorder), had attempted suicide shortly before the sentencing hearing. The lawyer stated in his affidavit: "I simply did not understand the importance of mental health evidence to present a full picture...this entire area was left uninvestigated."

The lawyer admitted that he failed to investigate Roger Berget's abusive childhood: "There were indicators of serious childhood trauma that should have been investigated and explored by an expert...His juvenile [criminal] history was presented in a vacuum, without any explanation of Roger's terrible home environment...". Roger Berget grew up in a very dysfunctional family in South Dakota. The son of an abusive alcoholic father, Berget ran away from home at an early age to live in an abandoned house nearby. His mother would bring him food there, but when his father found out he beat both the mother and the boy. At the age of 14, Roger Berget suffered a serious head injury in a car accident. At 15 he was sent to adult prison to

begin the first of a number of prison sentences for robbery. He met both Thornton and Smith in prison.

In his affidavit, the lawyer stated his "strong belief" that Berget would have been sentenced to life imprisonment if the judge had been made aware of all the facts surrounding the crime and the defendant.

#### **BACKGROUND INFORMATION**

Since the USA resumed judicial killing in 1977, 632 prisoners have been executed in 31 states. Thirty-four inmates have been executed this year, including five in Oklahoma, where executions have begun to accelerate over the past 18 months. US death sentencing is marked by arbitrariness, unfairness and unreliability. Who lives and who dies frequently depends more on where the crime was committed, who the victim was, and how competent the defence lawyer was, than on the crime itself. For equally heinous murders some receive prison terms while others are condemned to die. Prisoners have been executed even when their responsibility for the crime they were convicted of was in serious doubt.

#### **RECOMMENDED ACTION: Please send telegrams/faxes/express/airmail letters in English or your own language, in your own words:**

- expressing sympathy for the family and friends of Rick Patterson, brutally killed in October 1985, but expressing concern that Roger James Berget is scheduled for execution;
- noting doubts over whether Berget was the actual triggerman in the crime;
- noting that Roger Berget's trial lawyer has signed an extensive affidavit in which he admits he failed to provide Berget with an adequate defence against the death penalty at his sentencing, noting that international standards require adequate representation at all stages of capital trials;
- expressing concern that Roger Berget's mental health at the time he pleaded guilty to the crime was not evaluated, despite his recent suicide attempt, and his reported bipolar disorder;
- expressing concern that the sentencing judge was not made aware of the extent of Roger Berget's childhood abuse or his model behaviour during earlier prison terms;
- noting that Berget's co-defendant is serving life sentences, including for murders committed in prison;
- calling for clemency for Roger Berget;
- expressing deep concern at Oklahoma's increasing resort to execution in the face of world trends against this, at a time when more and more people are questioning the fairness and reliability of the US death penalty.

#### **APPEALS TO:**

Oklahoma Pardon and Parole Board  
4040 N. Lincoln Boulevard, Suite 219,  
Oklahoma City, OK 73105-5284, USA

**Tel: +1 405 427 8601**

**Fax: +1 405 427 6648**

**Telegrams: Oklahoma Pardon & Parole Board, 4040 N. Lincoln Blvd, Oklahoma City, USA**

**Salutation: Dear Board Members**

If possible (and if your letter would arrive by 30 May) please also send your appeal to the individual board members: (Salutation for all, Dear (name), eg Dear Mr Ballard):

Mr Currie Ballard, PO Box 171, Coyle, OK 73027-0171, USA  
Mr Flint Breckenridge, 2010 Utica Square, Suite 403, Tulsa, OK 74114-1635  
Ms Susan Bussey, PO Box 636, Norman, OK 73070-0636, USA  
Ms Stephanie Chappelle, PO Box 1945, Tulsa, OK 74101-1945, USA  
Mr Patrick Morgan, PO Box 361, Arcadia, OK 73007-0361, USA

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

You may also write brief letters of concern (not more than 250 words) to:

"Your Views", *The Oklahoman*, PO Box 25125, Oklahoma City, OK 73125, USA

**Faxes:** + 1 415 475 3183

Letters to The Editor, *Tulsa World*, 315 South Boulder Avenue, Tulsa, OK 74103, USA.

**Faxes:** + 1 918 581 8353

**PLEASE SEND APPEALS IMMEDIATELY.**