

EXTERNAL (for general distribution)

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UA 89/92 Death Penalty

13 March 1992

USA (Virginia)

Roger Keith COLEMAN, white, aged 32

Roger Coleman is scheduled to be executed in Virginia on 20 May 1992. A former coalminer in Grundy, Virginia, Coleman was convicted in March 1982 of the rape and murder of his sister-in-law, Wanda McCoy. Roger Coleman denies any involvement in the crime. The evidence against him was thin and there is deep concern at the move by the Commonwealth of Virginia to execute Roger Coleman despite doubts about his guilt.

The murder was committed on 10 March 1981. Five weeks after the crime Roger Coleman was arrested and charged with the murder. The main prosecution witness at the trial was a fellow jail inmate who testified that Roger Coleman had confessed the crime to him. The jail inmate was serving a four-year sentence but was released after ten and a half months. According to reports, the jail inmate later told another witness that he fabricated his testimony against Roger Coleman in exchange for a reduction in his own sentence.

Roger Coleman received poor legal representation at his trial. The two court-appointed defence lawyers later testified that neither one had ever defended anyone charged with capital murder before. Neither had ever handled a murder trial or a rape trial before. An important omission was the trial lawyers' failure to investigate or verify Roger Coleman's alibi (several people he reportedly visited during the time period when the murder was committed) or to obtain corroborating evidence supporting Coleman's alibi. The lawyers were unprepared for the sentencing phase of the trial and failed to present mitigating evidence including the fact that Roger Coleman was abandoned by his parents at a very young age and survived hardship and poverty. Witnesses were available but were not called to testify on his behalf at the sentencing hearing.

There was extensive, prejudicial pre-trial publicity in the small town of Grundy where the crime occurred and Roger Coleman's lawyers requested that the trial venue be changed. However, they were unprepared for the hearing and had no affidavits ready to support their motion. The judge denied the motion. There is evidence that at least one juror on the panel which convicted Roger Coleman and sentenced him to death, had already formed a strong opinion that he was guilty before the trial began.

Roger Coleman was represented on appeal by volunteer counsel who were able but unfamiliar with Virginia courts. When a state judge ruled against Coleman's petition in 1986, they misjudged the time available to file their notice of appeal to the State Supreme Court and inadvertently filed the paperwork one day late. The Virginia prosecutors asked the state supreme court to dismiss the appeal without hearing its merits because it was "procedurally defaulted." This the court did in a one-paragraph order.

In June 1991 the US Supreme Court, by six votes to three, ruled that Roger Coleman had lost his right to federal review of his conviction and death sentence because of his lawyers' unintentional procedural mistake. Justice O'Connor, for the majority, spoke of the need to show adequate respect for state courts and the need to protect state officials from

having to endure uncertainty and delay in criminal cases. She said, "Coleman must bear the risk of attorney error that results in a procedural default." The dissenting three judges accused the majority of elevating state interests over the protection of individuals' constitutional rights.

Despite the fact that Roger Coleman has substantial appeal issues to raise in the federal courts, he is procedurally barred from so doing and may be executed without a court review of the merits of his claims.

BACKGROUND INFORMATION

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As of March 1992 there were 48 prisoners under sentence of death in Virginia including one juvenile offender. Forty-six percent of Virginia's death row is black. Thirteen prisoners have been executed in the state since 1982, most recently Derick Peterson on 22 August 1991. In January 1992, Herbert Bassette became the second man to have his death sentence commuted by Governor Wilder because of doubts about his guilt. The method of execution is electrocution.

Safeguards guaranteeing the protection of the rights of those facing the death penalty, adopted by the United Nations Economic and Social Council in 1984 (Ecosoc Resolution 1984/50), provide at (4) that "capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts." The circumstances suggest that this standard has not been met in the case of Roger Coleman.

Amnesty International opposes the death penalty unconditionally in all cases, as a violation of the right to life and the right not to be subjected to cruel, inhuman or degrading punishment as proclaimed in the Universal Declaration of Human Rights and other international human rights instruments. In view of the many doubts raised in the case of Roger Coleman, Amnesty International urges that Governor Wilder give this case a most careful and thorough review, and that he take the necessary steps to prevent the execution from being carried out.

RECOMMENDED ACTION: Telegrams/faxes/telephone calls/express and airmail letters:

Please also seek appeals from trade union groups on behalf of Roger Coleman, who is a former coalminer. Also from lawyers' groups.

Please write letters in your personal capacity, not in the name of AI.

- urging Governor Wilder to intervene to prevent Roger Coleman's execution;
- urging that he give the case his most careful and thorough review in light of the doubts regarding Roger Coleman's guilt;
- mentioning the poor legal representation Roger Coleman received at his trial: his lawyers' failure to secure a change of trial venue, and their failure properly to investigate or present important alibi evidence;
- expressing deep concern at the decision by the courts to deny Roger Coleman a full federal court review of the evidence in his case - because his lawyers filed a notice of appeal one day late; suggest that such strict adherence to procedural rules is wholly inappropriate in a case where the penalty sought by the state is death.

APPEALS TO

The Honorable L Douglas Wilder **Dear Governor**
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or The Richmond News Leader, at the same address and FAX number;

and to diplomatic representatives of the USA in your country.

PLEASE SEND APPEALS IMMEDIATELY. Check with the International Secretariat, or your section office, if sending appeals after 20 May 1992.