

# URGENT ACTION

## FIRST EXECUTION IN 11 YEARS SCHEDULED IN UTAH

**Ronnie Lee Gardner, a 49-year-old man, is due to be executed by firing squad in the US state of Utah on 18 June. Condemned to death for killing a lawyer during an escape attempt in 1985, he has been on death row for almost a quarter of a century. The last execution in Utah was in 1999.**

On 2 April 1985, 24-year-old Ronnie Gardner was being led into a court building in Salt Lake City for a hearing on a second degree murder charge when a female accomplice handed him a gun. An exchange of gunfire with guards ensued, during which Ronnie Gardner was shot in the chest. Wounded, he entered the archives room, inside which was a court clerk, a prison officer, and three lawyers. He fatally shot one of the lawyers, Michael Burdell, before fleeing the room and the building. He was surrounded by police in the car park, and surrendered. He was tried in October 1985 and sentenced to death for the first-degree murder of Michael Burdell.

After holding an evidentiary hearing in November 1990, a state court judge ruled in 1991 that Ronnie Gardner had been denied adequate legal representation at the sentencing stage of his trial, including as a result of the defence counsel's failure to investigate and present mitigating evidence to the jury. He ordered a new sentencing hearing. However, the Utah Supreme Court overturned the decision, ruling that errors by the lawyers had not been shown to have prejudiced Ronnie Gardner's trial. The state had denied Gardner funding to retain expert witnesses, but he received this funding once the case went into the federal courts.

Mitigating evidence not fully provided to the jury was presented to the federal courts, relating to Ronnie Gardner's deprived and abusive background, together with expert neurological and psychiatric evidence of organic brain damage resulting in cognitive and intellectual deficits and impulse control problems. In 2009, the US Court of Appeals for the 10<sup>th</sup> Circuit noted that "it is undisputed that Mr Gardner's childhood was troubled in many respects," and added that "reasonable minds may differ on the likely impact on the jury of more thoroughly researched mental health testimony." However, noting that the question before it when applying the deference due to state court decisions by federal courts under US law was "not whether the Utah Supreme Court was correct but whether its judgment was unreasonable." The 10<sup>th</sup> Circuit panel concluded that it was not unreasonable.

On 4 May 2010, lawyers filed a clemency petition to the Utah Board of Pardons and Parole requesting that the death sentence be commuted to life imprisonment. They have submitted declarations from those close to Michael Burdell, including his fiancée and his 86-year-old father, who maintain that he would not have wanted Ronnie Gardner to be put to death. The Board has not yet said whether it will hold a clemency hearing.

### **PLEASE WRITE IMMEDIATELY in English or your own language, in your own words:**

- Explaining that you are not seeking to excuse the killing of Michael Burdell;
- Expressing concern that the trial jury did not hear full evidence of Ronnie Lee Gardner's deprived and abusive childhood, and noting further evidence raised since the trial of brain damage and its possible effects on his conduct;
- Noting that Ronnie Gardner has spent 25 years on death row, in itself effectively a life sentence, and a fact that further undermines any assertion by the state that retribution or deterrence will be served by this execution;
- Welcoming the support for clemency from friends and family of Michael Burdell;
- Calling on the Board to hold a clemency hearing, and for Ronnie Gardner's death sentence to be commuted.

### **PLEASE SEND APPEALS BEFORE 18 JUNE 2010 TO:**

Utah Board of Pardon and Parole

448 East Winchester Street, Suite 300,  
Murray, Utah, 84107, USA

Fax: +1 801 261 6481

E-Mail: [bopinfo@utah.gov](mailto:bopinfo@utah.gov)

Salutation: Dear Board members

### **And copies to:**

Diplomatic representatives of the USA  
accredited to your country

Please check with your section office if  
sending appeals after the above date.

**AMNESTY  
INTERNATIONAL**



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### ADDITIONAL INFORMATION

Amnesty International opposes the death penalty unconditionally, in all cases and in all countries, regardless of the method used to kill the prisoner, or the nature of the crime for which he or she was sentenced to death. The USA has carried out 1,203 executions since resuming judicial killing in 1977. Utah accounts for six of these executions, including the first carried out in the USA after the 1976 Supreme Court decision that allowed executions to resume: Gary Gilmore was shot by a Utah firing squad on 17 January 1977 after refusing to appeal against his death sentence. Three of the five men executed in Utah since then have also been so-called "volunteers" who waived appeals and "consented" to execution. The execution of Ronnie Gardner would be the first in Utah since 1999 and the first "non-consensual" execution there since 1992. Ronnie Gardner has chosen to be put to death by firing squad rather than lethal injection.

According to the evidence presented during Ronnie Gardner's federal appeals, his childhood was one of abuse and deprivation: His mother suffered from mental illness, the family's economic circumstances were dire, the children were neglected. The family household was marked by criminality, violence and abuse. Ronnie Gardner suffered meningitis as a child, resulting in possible brain damage. He developed a severe tic, possibly Tourette syndrome. He was sexually abused by an older brother, and later by the man who became his foster carer. He began engaging in substance abuse, such as sniffing paint thinner, from the age of five or six and carried on until he was 18, and was introduced to LSD, marijuana, and alcohol before the age of 10. His stepfather involved him in criminal acts, taking him to Wyoming to steal liquid mercury from oil industry facilities. Ronnie Gardner sustained a number of serious head injuries during his childhood. In a brief filed in May 2010 in state court, his lawyers stated: "The jury convicted Mr Gardner of an intentional killing and sentenced him to death without hearing all these facts. They never heard about the terrible conditions and the moral depravity in the environment of his upbringing. The jury never heard about the physical and sexual abuse and criminality in the household. None of the jurors knew anything about the meningitis, head injuries, inhalant, alcohol and drug abuse, the tic, organic brain syndrome, cognitive and intellectual deficits, impulse disorder, hard signs and radiological evidence of the brain damage."

Those supporting clemency include Michael Burdell's father and his fiancée, as well as a close friend who was at the courthouse with Michael Burdell on the day he was shot. His 86-year-old father signed a sworn statement on 19 April 2010 that: "I do not believe Gardner should be executed. I do not believe my son, Michael Burdell, would want Gardner to be executed. I do not believe Gardner should be executed because I do not believe the murder was premeditated. Gardner himself had been shot and his shooting my son was a spur of the moment reaction. Furthermore, I do not believe Gardner is the same person today that he was in 1985. My son was a caring and generous person who tried to help others. It would not have been in his nature to condone Gardner's execution. He would not have approved of it at all". The fiancée states: "Michael Burdell would not have wanted Ronnie Lee Gardner put to death. There is absolutely no question about this in my mind." The friend who was with Michael Burdell in the courthouse when he was shot, has emphasised that Michael Burdell was a pacifist "who lived his convictions, and I am certain that he would not want Ronnie Lee Gardner to be put to death."

Ronnie Gardner has been on death row for nearly 25 years, more than half of his life. In 1999, a US Supreme Court Justice wrote that "the longer the delay" between conviction and execution, "the weaker the justification for imposing the death penalty in terms of punishment's basic retributive and deterrent purposes." In 2002, the same Justice noted that the uncertainty and lengthy delays between sentencing and execution "can inflict horrible feelings and an immense mental anxiety amounting to a great increase of the offender's punishment."

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