

URGENT ACTION

CLEMENCY DENIED, EXECUTION RESCHEDULED

The authorities in Georgia have reset the execution of Warren Hill from 18 July to 23 July. The parole board has denied clemency despite the prisoner having a mental disability serious enough to leave the constitutionality of his execution in real doubt.

The Georgia Board of Pardons and Paroles met on 13 July to consider **Warren Hill's** clemency petition. On 16 July, they announced that they had voted to deny clemency. As is the Board's usual practice, they gave no detail about the decision.

On 17 July, the day before Warren Hill was scheduled to be executed, the Georgia Department of Corrections announced that, with immediate effect, the prison authorities were switching from a three-drug lethal injection process to a one-drug protocol. In executions under this new protocol, the prisoner would be injected with an overdose of the sedative pentobarbital. The announcement stated that the Department of Corrections had been using pentobarbital in its three-drug process, and that "based upon the experience of other states and competent medical testimony, the drug has proven to be effective."

Please write immediately in English or your own language:

- Express regret at the Board's decision to deny clemency;
- Express concern that Georgia plans to execute a person whom a state judge has found to have mental retardation;
- Calling on the Board to reconsider its decision and to commute Warren Hill's death sentence.

PLEASE SEND APPEALS BEFORE 23 JULY 2012 TO:

State Board of Pardons and Paroles

Email: Clemency_Information@pap.state.ga.us and Webmaster@pap.state.ga.us

Fax: +1 404 651 8502

Salutation: **Dear Board members**

Send copies to diplomatic representatives accredited to your country. Please insert local diplomatic addresses below:

Name Address 1 Address 2 Address 3 Fax Fax number Email Email address Salutation Salutation

Please check with your section office if sending appeals after the above date. This is the first update of UA 197/12. Further information: <http://amnesty.org/en/library/info/AMR51/058/2012/en>.

**AMNESTY
INTERNATIONAL**



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ADDITIONAL INFORMATION

Warren Hill was sentenced to death in 1991 for the 1990 murder of a fellow prisoner. In 1996 his lawyers submitted an appeal against his death sentence, claiming he had “mental retardation”. Georgia’s legislature had passed a law in 1988 prohibiting the imposition of the death penalty on anyone found “beyond a reasonable doubt” to have “mental retardation”. The law defined this disability as the offender having “significantly sub-average general intellectual functioning,” resulting in “impairments in adaptive behavior,” which “manifested during the developmental period”. In 2002 a state trial-level judge found that Warren Hill indeed had “significantly sub-average general intellectual functioning”, but that he had not, beyond a reasonable doubt, proved his adaptive deficits.

The US Supreme Court then ruled, in *Atkins v. Virginia*, that the execution of people with mental retardation violates the US Constitution. Warren Hill’s lawyers moved for reconsideration of his claim in the light of the *Atkins* ruling. This time the trial-level court decided that the standard of proof for determining if he had mental retardation should be “a preponderance of the evidence” – not the higher “beyond a reasonable doubt” standard – and that under this lower standard, Warren Hill’s impairment did indeed amount to mental retardation. However, the state authorities appealed to the Georgia Supreme Court which in 2003 ruled by four votes to three that the “beyond a reasonable doubt” standard was acceptable in this context. The majority reasoned that the US Supreme Court had left it up to individual states to decide how to comply with *Atkins*, and had not specified what the burden of proof for determining mental retardation should be. Warren Hill’s case was sent back to the lower court which reinstated its original 2002 ruling that under the “beyond a reasonable doubt” standard, he did not have mental retardation.

In 2010, a three-judge panel of the federal Court of Appeals for the 11th Circuit ruled 2-1 that “because Georgia’s requirement of proof beyond a reasonable doubt necessarily will result in the execution of the mentally retarded, the Georgia Supreme Court’s decision is contrary to the clearly established rule of *Atkins*”. However, the state appealed for a rehearing in front of the full 11th Circuit, and in 2011 the full court ruled, seven to four, that, even if Georgia had “somehow inappropriately struck the balance” in its statute, US law prevented a federal court from acting even if it considered the state Supreme Court’s decision upholding that law to be “incorrect or unwise”.

No other US state requires proof of mental retardation “beyond a reasonable doubt in the death penalty context. Indeed, 22 of the USA’s 33 current death penalty states, and the federal government, utilize the “preponderance of the evidence” standard, under which the Georgia judge found Warren Hill to have mental retardation.

Name: Warren Lee Hill
Gender m/f: m

Further information on UA: 197/12 Index: AMR 51/064/2012 Issue Date: 18 July 2012