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Death penalty / Legal concern

07 May 2003

USA (Virginia)

Percy Levar Walton (m), black, aged 24

Percy Walton, black, is scheduled to be executed in Virginia on 28 May 2003. He was sentenced to death in 1997 for the murders of an elderly white couple, Elizabeth Hendrick, aged 81, and Jesse Hendrick, aged 80, and a 33-year-old black man, Archie Moore, in Danville in November 1996.

Percy Walton was 18 years and one month old at the time of the crime. There is evidence that he has suffered from schizophrenia, a serious mental illness, from the age of 16.

Percy Walton's mental health had deteriorated during his mid-teens. Having been clean, neat, polite, popular and well-behaved until then, he began to display dramatic changes in behaviour. He stopped bathing, began to have difficulties controlling his emotions at home and school. He skipped school, stopped playing sports, became withdrawn, and began talking to himself. He laughed at inappropriate times, displayed irrational thought processes and between 1996 and 1997 his IQ dropped from 90 to 77.

After his arrest in November 1996, Percy Walton displayed signs of possible mental illness. In telephone calls to his family, he insisted that his mother was his sister, and referred to his father as his brother, his grandfather as his father and his grandmother as his mother. He said he had discovered that he had two brothers, when he has none. He told his mother he was the Queen Bee, and his grandmother that he was Superman. He told relatives that he was Jesus Christ, and that he was a millionaire. He insisted that he would come back to life as soon as he was executed, and that he would retrieve and bring back alive his grandfather who had recently died.

In pre-trial custody, his lawyer noted Walton's unusual behaviour. In February 1997, for example, Percy Walton claimed to be Percy Gunn (Walton's father) and also the "King of Hearts". During a subsequent meeting, Walton told his lawyer that if he closed his eyes he could not be seen. He remained convinced that he would be released on bail despite his lawyer stating that this would not happen. Walton demanded a speedy trial at which his innocence would be proven. By July, however, he was saying that he wanted to plead guilty because the "[electric] chair is for killers". In a 1999 affidavit, the trial lawyer recalled how Percy Walton "did not meaningfully assist us in preparing a defence. Often times it was extremely difficult to communicate with Mr Walton, and there were occasions when we could not tell whether he understood what we were saying to him. Other times it was clear from Mr Walton's questions and responses to my questions that Mr Walton understood little of what I was telling him". The lawyer recalled that "we were unable to convince Mr Walton that he would not come back to life" if he was executed.

In July, a court-appointed psychologist wrote that Walton's articulation of his thoughts was incomprehensible. He recommended that Walton be placed in a secure psychiatric hospital on the grounds that he was a danger to himself and others. The trial court rejected this. In a 2001 affidavit, the psychologist wrote that the symptoms that Walton displayed in July 1997 were "consistent with forms of schizophrenia", but that he had not been able to make such a diagnosis without further evaluation. He stated that it was and remains his opinion that at that time Percy Walton was not competent to stand trial. However, he was not called to testify to that effect after the court ordered a psychiatrist at the state hospital to conduct an assessment. This psychiatrist determined that Walton was competent.

In September 1997 Percy Walton told his lawyer that he wanted to plead not guilty and have a jury trial because he was innocent. Days later, he reverted to admitting guilt again. At end of that month, asked whether he would plead guilty or not guilty, he refused to speak, but responded by writing the word "chair" on a piece of paper. He told his attorneys that he wanted to be executed in order "to come back to life so he

could be with his honeys". In court in October 1997, Percy Walton pleaded guilty to the murders and the judge accepted the plea.

The proceedings then moved into a sentencing phase. During the hearing, Percy Walton laughed, smiled and waved to family members. He even laughed during the "victim impact" testimony of one of the Hendrick's granddaughters. After a recess on the second day of the hearing, Percy Walton refused to come back into the courtroom because he had been "disrespected". He was sprayed with mace and brought back into the courtroom in shackles. Percy Walton's state-appointed lawyer chose not to offer a mental health defence against the death penalty, and instead offered evidence that his client was a young man who was usually polite, quiet and respectful, and who had taken responsibility for the three murders. The judge passed three death sentences against Walton.

In 1999, a psychiatrist, a neuropsychologist and a neurologist assessed Percy Walton's mental health for his appeals. In their opinion, he suffers from severe chronic schizophrenia and was probably suffering from this mental illness at the time of the crime.

BACKGROUND INFORMATION

Amnesty International opposes the death penalty in all cases. Today, 112 countries are abolitionist in law or practice. In repeated resolutions, the United Nations Commission on Human Rights has called on all retentionist countries not to impose or carry out the death penalty against anyone with any form of mental disorder. Since the USA resumed executions in 1977, it has put more than 850 men and women to death. Virginia is ranked second in the number of executions carried out, having killed 88 prisoners. In 1999, Virginia's then Governor, James Gilmore, commuted the death sentence of Calvin Swann on grounds of his schizophrenia from which he had suffered since his late teens.

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

- expressing sympathy for the relatives of Elizabeth and Jesse Hendrick and of Archie Moore, explaining that you are not seeking to minimize the suffering their deaths will have caused;
- opposing the execution of Percy Levar Walton;
- expressing concern at evidence that he was suffering from serious mental illness at the time of the crime and the trial, and that the sentencing judge was not presented with any mental health evidence in mitigation;
- noting that post-conviction expert assessment has diagnosed him as suffering from schizophrenia;
- pointing to the repeated resolutions at the UN Commission on Human Rights against the use of the death penalty against people suffering from mental illness, praising Governor James Gilmore's decision to commute the death sentence of Calvin Swann because of the prisoner's schizophrenia;
- calling for clemency for Percy Walton in the interest of decency and the reputation of Virginia.

APPEALS TO:

Governor Mark R. Warner

State Capitol, 3rd Floor

Richmond, Virginia 23219, USA

Telegram: Governor Mark R Warner, Richmond, Virginia, USA

Fax: +1 804 371 6351

Email via website: http://www.governor.state.va.us/Contact/email_form.html

Salutation: Dear Governor

COPIES TO: Diplomatic representatives of USA accredited to your country.

You may also copy your appeals or send brief letters of concern (not more than 250 words) to: Letters to the Editor, *Richmond Times-Dispatch*, Box 85333, Richmond, Virginia 23293, USA.

Fax: +1 804 819-1216. E-mail: letters@timesdispatch.com

PLEASE SEND APPEALS IMMEDIATELY.