

PUBLIC

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Further information on UA 139/06 (AMR 51/078/2006, 18 May 2006) - Death penalty / Legal concern

USA (Virginia) Percy Levar Walton (m), black, aged 27

Governor Timothy M. Kaine of Virginia issued a stay of execution for Levar Walton about an hour before he was due to be put to death on the evening of 8 June. The reprieve is for six months and is for the purpose of obtaining an evaluation of Levar Walton's mental competency. Levar Walton suffers from serious mental illness. He was sentenced to death in 1997 for the murders of an elderly white couple, Elizabeth and Jesse Hendrick, aged 81 and 80, and a 33-year-old black man, Archie Moore, in the town of Danville in November 1996.

Levar Walton's execution was stayed on 7 June by a federal judge following a challenge on the constitutionality of the state's lethal injection process. The state appealed to the US Court of Appeals for the Fourth Circuit which overturned the stay. Governor Kaine's decision on the case came shortly after the US Supreme Court rejected an appeal for a stay of execution. The Governor's statement included the following:

"State and federal courts have consistently upheld Walton's convictions. However, courts considering his death sentence have struggled with the question of whether his mental capacity imposes a bar to his execution. It is unconstitutional to execute a person who is mentally incompetent. The US Supreme Court has held that a person must have sufficient mental capacity to understand the punishment he is about to suffer, and why he is to suffer it.

A few days before Walton's scheduled execution date of May 28, 2003, the US District Court for the Western District of Virginia granted Walton a stay of execution in order to determine Walton's mental competence. In July 2003, following extensive submission of evidence about Walton's mental state from 1997 through 2003, the court ruled that he was competent to be executed. A three-judge panel of appellate judges of the United States Court of Appeals for the Fourth Circuit vacated the lower court ruling, directing a broader inquiry into Walton's mental state. Before that inquiry took place, the entire court reconsidered the panel's decision in an en banc (full court) review. The en banc Court found Walton competent to be executed by a narrow 7-6 majority.

In issuing its ruling, the Fourth Circuit properly limited its consideration to the evidence before it regarding Walton's mental state as of 2003. However, three years have passed since the evidence was presented. Walton's clemency petition presents significant information suggesting that he has schizophrenia, that such a mental illness can cause serious deterioration of mental competence, and that there is more than a minimal chance that Walton no longer knows why he is to be executed or is even aware of the punishment he is about to receive. Due to the history of judicial concern about his mental status, the claims in Walton's clemency petition are entitled to serious consideration.

In order to comply with the law forbidding execution of a mentally incompetent person and to insure just application of Virginia's capital punishment statute, it is important to have current and independent information about Walton's mental condition. It would be imprudent to either proceed with the execution or grant clemency without further review. Therefore, I have decided to delay Walton's execution date until December 8, 2006, for the purpose of conducting an independent evaluation of his mental condition and competence, on terms and conditions prescribed by this office."

No further action is requested at present. Levar Walton's clemency lawyer has expressed his gratitude to Amnesty International's "help in making this happen. Your support was and is a critical part of this campaign for decency, mercy and compassion for another human being."